

TRANSCRIPT

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Inquiry into the Road Safety Road Rules 2009 (Overtaking Bicycles) Bill 2015

Melbourne — 30 May 2016

Members

Mr Joshua Morris — Chair

Ms Colleen Hartland

Mr Khalil Eideh — Deputy Chair

Mr Shaun Leane

Mr Nazih Elasmr

Mr Craig Ondarchie

Mr Bernie Finn

Participating Members

Ms Samantha Dunn

Staff

Secretary: Dr Christopher Gribbin

Witnesses

Inspector Wayne Chatters, and

Acting Senior Sergeant Ryan Burns, Victoria Police.

The CHAIR — I declare open the Standing Committee on the Economy and Infrastructure public hearing. I welcome you, gentlemen, this morning. We have a subcommittee present. We are hearing evidence today with regard to the Road Safety Road Rules 2009 (Overtaking Bicycles) Bill 2015, and today's evidence is being recorded. All evidence taken today is protected by parliamentary privilege, and therefore you are protected for what you say in here today, but if you go outside and repeat those same things, those comments may not be protected by this same privilege. At this point I will hand over to you to go through your preliminary comments, and then we will have some questions once you have been through those.

Insp. CHATTERS — My name is Wayne Chatters. I am an inspector of police. With me today is Acting Senior Sergeant Ryan Burns. We are very pleased to be able to appear before you today to provide some information and advice in relation to the Victoria Police position on this particular bill. Senior Sergeant Ryan has taken the lead on putting together the Victoria Police position, and I will hand over to him to provide detail of that position.

Acting Sr Sgt BURNS — My understanding is that you have not been provided with a draft copy of our submission at this stage.

The CHAIR — Not as yet, no.

Acting Sr Sgt BURNS — Yes, it has not been signed off by our executive commander at this stage, so I will essentially go through the submission that we will be making and put any questions to you.

Victoria Police currently has concerns with the proposed implementation of this legislation on the grounds of road safety and the application of enforcement in the legislation of the 1-metre and 1.5-metre rule. The current Victorian Road Safety Road Rules relating to overtaking are regulation 144, requiring vehicles to keep a safe distance when overtaking, and 139, when we allow vehicles to move to the right of a dividing line to avoid an obstruction where a driver has a clear view and where it is reasonable and necessary in the circumstances.

The overtaking bicycle bill, if assented, would in essence require motor vehicles passing to the right of a bicycle travelling on a carriageway in the same direction to provide the minimum 1-metre space when the posted speed limit of up to 60 kilometres an hour applies, and obviously in a higher speed zone it is a 1.5-metre space. Our concern initially is that this would permit motorists to cross, when they believe safe, the centre dividing line of a carriageway, including single and double lines, for the purpose of providing the required space for cyclists.

We understand that the 1-metre rule is strongly supported by the Amy Gillett Foundation and part of the broader A Metre Matters campaign and that bicycle safety should be significantly enhanced by the introduction of the mandated 1-metre rule.

We will talk to the outcomes and the experience of implementing similar laws in relation to the other Australian states and territories, such as Queensland, ACT and Tasmania, and the final report that they have submitted in relation to their minimum passing distance road rules. While the 1-metre rule has been supported and promoted by a public education campaign, it had not accounted for poor bicycle safety behaviour. Anecdotally they suggest that better driver behaviour around bicycles has been observed since the introduction of their 1-metre rule, and while bicycle fatalities have been relatively steady, there had been a reduction in 2015 to the date of the report's release.

There were identified enforceability, measurement and evidentiary issues associated with the 1-metre rule, with police thinking that camera footage would be useful in estimating the distance, while others were concerned about the disproportion in videos rendering it difficult to estimate distances between motor vehicles and bicycles, and there were questionable levels of support from the courts in terms of electing not to record a conviction or reducing monetary penalties for offenders.

The results also suggested that drivers find it hard to accurately establish lateral distances, and police have noticed some drivers leaving larger distances, resulting in potential collisions with oncoming vehicles. A low number of infringements have been issued to motorists, and targeted operations have resulted in increased numbers of penalties being issued to bicycle riders as well.

A 2007 Australian Transport Safety Bureau research and analysis report indicated that police officers generally do not have difficulty enforcing distance-based road rules, subject to the following factors. There are similar

enforcement issues, as with other road rules, that rely on visual observation. These would rely on a subjective assessment by police officers, and it is not possible to definitely determine whether there is less than a 1-metre distance, unless the distance is very small and thus easier to detect. Failing to give adequate distance may be detected following an investigation of a collision, and offending motorists often contest a violation based on the subjective judgement of a distance, so essentially it is hard for us to prosecute the 1-metre rule effectively.

The 2007 research report indicated that in-vehicle video cameras in police vehicles would provide assistance to the enforcement of safe distance road rules and would also provide visual evidence of an offence in the event of a contested matter. At the moment there are probably only about 50 motor vehicles in the Victorian police fleet that have in-car video technology fitted, and most of these operate in rural settings.

In relation to question 3, on the enforcement policies and strategies that would be required to implement the bill in Victoria, the Victoria Police safe cycling plan is intrinsically linked with the *Victoria Police Road Safety Strategy 2013–2018 — Road to Zero* and associated action plans. This sets out the three priorities of building capabilities, enhancing enforcement and prevention, and working in partnership. The strategic direction is to influence and change poor road user behaviours contributing to road trauma through the enhancement of enforcement and prevention. It targets four key behaviours and six key road user groups, commencing with vulnerable road users, and obviously this includes cyclists.

We acknowledge that high-visibility active enforcement increases the perceived and actual risk of detection and that enforcement activities supported by proactive media campaigns are strong and effective, and we acknowledge the need for a combination of general and specific deterrence measures. The strategy applies better data-gathering tools and information sharing, enhanced intelligence tasking and coordination projects, and increased collaboration with our road safety partners in terms of research, education and media campaigns. While the strategy is comprehensive, it is well established and highly cognisant of vulnerable road users, which includes but it is not limited to cyclists.

Our specific enforcement issues are that enforcement policy should be based on best practice, and this includes learnings from other jurisdictions. For example, the enforceability and measurement in evidentiary terms associated with the 1-metre rule identified in the Queensland trial are relevant to the enforcement policies and strategies that would be introduced should this bill be passed. Additionally Tasmania has also identified difficulty in enforcing the new laws due to the inability to provide accurate evidence that the driver has breached the laws.

The ability to enforce the 1-metre rule in some areas will be complicated by the unique road infrastructure specific to Victoria — for example, the tram networks and the other infrastructure treatments. The issue raised is whether it is feasible to suggest that a motor vehicle divert to a lane with tramlines to maintain the 1-metre gap. Similarly on rural roads, where the speed limit is 100 kilometres an hour, there may be small road widths and little to no shoulder on either side, which presents a clear risk to motor vehicles approaching a much slower moving vehicle, in bicycles.

Our previous enforcement campaigns conducted by Victoria Police have focused on driver compliance behaviours around bicycles and have identified and enforced numerous offences perpetrated by bicycles themselves. Enforcement strategy around the 1-metre rule is again likely to identify numerous road rule breaches by bicyclists, which has also been identified in Queensland.

Regarding the subjective versus objective, the proposed amendments would be difficult to enforce if the measurement can be contested. The amendments prescribe an objective form of measurement of 1 metre. It is not unlike the rule to keep a safe overtaking distance, which requires the officer's subjective judgement using a car-length distance. The repealed section previously required motorists to provide a sufficient distance. The amendments require a subjective judgement of an objective criteria, which would be difficult to detect and easier to contest.

Where a party has been charged and the matter goes to court, police are not recognised as subject matter experts for the courts in relation to distances, and therefore expert witnesses would be required to prove or disprove the violation of the 1-metre rule. Due to the subjective nature of a police member estimating the distance, there would be an inability to provide evidence beyond a reasonable doubt.

As I mentioned before, with technology evidence there are very few police vehicles within Victoria that are fitted with the in-car video technology, and this was identified also in the Queensland report. There are difficulties in utilising this as evidence in court. Where police cars are fitted with in-car technology, unless they are travelling directly behind the offending vehicle, the footage angle would distort distance and it would be subject to challenges in court due to its reliability. Subject matter experts would be required to explain the footage, the distance and angles in the court for evidence to be relied upon.

Corroborating evidence, such as GoPro cameras, CCTV footage or body-worn cameras, either affixed to a bicycle helmet, would require a subject matter expert again to convert and explain the evidence via prosecutions to accurately establish the distance. This would incur unsustainable costs in a prosecution process.

An unknown offending vehicle without some form of corroborating evidence from an intelligence report or similar CCTV footage would not progress further than an initial report. Where both the bicycle and the vehicle are moving, providing evidence of which vehicle is responsible for encroaching upon whom may also be challenged. There is difficulty with the establishment of the motor vehicle encroaching upon the bicycle when determining who has breached the 1-metre gap. To do this, police would need to assume that the bicycle is travelling in a straight line and would continue to do so.

Where there is a one-on-one report to police, it would be unlikely to proceed if the alleged offender denies the offence. The matter would be investigated upon report; however, we would not have sufficient evidence to prove it beyond a reasonable doubt.

The Victoria Police position in respect of prosecuting offenders is to only commence a prosecution where the evidence is sufficient and likely to result in a successful prosecution. Given that it would be difficult to prove a distance less than 1 metre in most circumstances, police do not have the method to record or determine the distance. Furthermore, police would also have to prove the motorist moved to within 1 metre.

We also identified a safety issue where there may be safety concerns for the cyclist when police vehicles in turn pass a cyclist if an offence has been observed in effect to intercept the vehicle.

Amendments to the rules would allow drivers to cross the double white lines and the unbroken single lines to be able to obey the new 1-metre rule, which would not be supported by Victoria Police. We would object as it is inconsistent with the previous communications around the danger of crossing over these lines, and it would increase the risk of road trauma. Allowing for the separation of vehicles from bicycles would subsequently increase the likely risks of vehicles coming into conflict. This is not consistent with the safe system approach.

Unless there is a clearly observed intention or an overt action by the driver or rider of a motor vehicle encroaching upon a bicycle, the offence would be difficult to enforce. Noting that, if prosecuting by penalty notice, it is not required to prove intent; it would be a strict liability offence.

Victoria Police makes the following recommendations should the committee recommend the legislation proceed: the cyclist be subject to the other road rule violations specific to lane changing and overtaking in the event that a cyclist moves into the 1-metre distance as a vehicle is passing.

Insp. CHATTERS — I will just interject there. In the latest draft, that has been deleted. I might pull you up there, if I could.

The CHAIR — Sure.

Acting Sr Sgt BURNS — I will just go into our position. Victoria Police does not support the proposed amendment to the legislation. Allowing motorists to cross double lines for the purpose of providing a 1-metre space is contrary to the safe system philosophy, and Victoria Police does not support the proposed amendment to the legislation on the grounds of road safety. Few evaluations from the 42 jurisdictions from around the world that have implemented these laws have indicated an effectiveness for improved rider safety, and none are clear as to whether the laws are actually effective in reducing road trauma. The current road rules ensure the safe overtaking of bicycles and provide an effective deterrent and enforcement tool for Victoria Police to prosecute these offenders. Trials conducted and currently running in other Australian jurisdictions have shown an education campaign aligned with enforcement as best practice in changing road behaviours. We are pleased to attend the public hearing today.

The CHAIR — Excellent. Thank you for that presentation. Obviously there is a lot of evidence there with regard to enforcement, because obviously you are on the very pointy end of how this all looks. We have heard from many witnesses who are talking in more broad terms about this, but I certainly appreciate that that is where you are. You see these offences and attempt to prosecute them and the like.

But I am interested to get your view on cultural change. We have heard a lot about the view that people understand and have said that these types of laws, if they were to be implemented, would be difficult to enforce. However, it speaks more to the importance of cultural change within the community, where I am sure there is a large number of laws that are not necessarily enforced everywhere in the community; however, there is a community expectation that that is the way we behave, and therefore that changes the behaviour that we see amongst community members. I am wanting to get a view on the cultural change outside of the actual enforcement of these particular laws.

Insp. CHATTERS — It is our experience that largely the community will comply with the law. There is always a small group who are highly compliant and will comply at all times with all the laws that they are aware of. There is another small group who are highly non-compliant and do not obey the laws very often at all, even though they may be detected and may suffer punishment. The vast majority of the community are in the middle. They make an assessment as to whether or not they will comply with the law dependent on whether or not they will be detected and whether or not they will sustain a negative consequence for their action. I think in general most of the population do want to be safe. They understand that others want to be safe when they use our road system, and largely they will comply depending on what their other interests might be — that is, if they are late, et cetera.

The CHAIR — Indeed. One of the other issues that you obviously raised there was the crossing of the double white lines. That is certainly something that has been raised. It is gospel law that you do not cross double white lines currently in Victoria; however, we have seen other states implement similar laws with that change in being able to cross those double white lines. Much of the evidence we have heard about the rationale behind that, particularly in overtaking a bicycle, is that a car in areas where you have got double white lines is probably going to be moving much more quickly than a cyclist and therefore can overtake the cyclist in a much shorter period of time than they might be able to a car, which is why we have the double white lines there — obviously so a car does not try and overtake another car or a truck or the like in that circumstance. There is the rationale in saying that it can be done much more quickly and therefore safely with double white lines when you are overtaking a cyclist. I am hoping to get your view on the fact that it is going to take a shorter period of time to overtake a cyclist rather than a car, and sort of expand on the view of Victoria Police on that double white line issue.

Insp. CHATTERS — We work in a safe system approach. Basically it says that people will make mistakes and the system, if it was working correctly, would not result in serious injury or death on our roads. Clearly we do not have a safe system in Victoria at this time. Overtaking vehicles, even if it is a bicycle, does increase the risk. You are increasing the risk in the system while you are overtaking, and it is not the overtaking that we see as risky, it is coming back onto the carriageway and people's ability to judge that so they do not come off the shoulder and go off and into a fixed object on the side of the road. Overtaking in itself, they are probably overtaking for a shorter period of time, so they are at risk for less period of time, but I think the risk is substantially the same and they are still doing that manoeuvre where they go out of their lane, cross into someone else's lane and come back. It is an additional risk.

The CHAIR — I think one of the things that we have certainly heard about is the need for cultural change amongst road users, that cyclists are legitimate road users and motorists need to treat them in that way. Do you have a view on the interaction between motorists and cyclists and the prevailing community views on that? Is there a need for changing views amongst the community of the rights of cyclists on the road?

Insp. CHATTERS — I think the conversation has been ongoing for some time. There are various parts of the community who wish to raise the profile of cycling and this conversation has been going on for a number of years, and I suspect it will continue for a number of years. People have various views on whether or not bicycle riders should be using the road.

Mr LEANE — I think after today's *Australian* newspaper it is important that I declare that I have a relative that works at Victoria Police.

The CHAIR — I did see that. He is quite high up, too, isn't he?

Mr LEANE — Yes. I am sure there are many people in that situation. Senior Sergeant Burns, just to be clear on your evidence, at the moment there is no instance where a motorist is to cross to the other side of double lines?

Acting Sr Sgt BURNS — They can to avoid an obstruction on the road and then they are to return to their — —

Mr LEANE — But not in the instance of passing — —

Acting Sr Sgt BURNS — Not in an overtaking manoeuvre.

Mr LEANE — Whether that be a car or a cyclist?

Acting Sr Sgt BURNS — That is correct.

Mr LEANE — I think from your evidence I felt a little bit of frustration that legislators like us produce legislation that you find very hard to enforce or for the courts to hold up. So your evidence is that if there was a 1-metre law and there may be a CCTV camera used to identify a number of instances, anyone that actually was fined could go to court and have that overturned; is that your — —

Acting Sr Sgt BURNS — That is correct, yes. If we are giving evidence in court to say that they have breached within 1 metre, the objective test of what that metre is is by me actually looking at it and observing the metre. Unless the bicycle and the car become very close, the evidence required to prove beyond reasonable grounds that they have breached that 1-metre gap would be quite difficult to enforce.

Mr LEANE — So taking up a cyclist on the road's concern, in that instance a cyclist is a legitimate road user.

Acting Sr Sgt BURNS — Absolutely.

Mr LEANE — A vehicle comes from behind the cyclist. To get past the cyclist would probably mean in some instances to break the double lines. What is the expectation of that motorist? To just be patient until there is — —

Acting Sr Sgt BURNS — Until there is an opportunity to overtake safely.

Mr LEANE — I think this is part of, as you mentioned, an education program around — I think that is an important part of it, because I think that is something that breaks down. Would that be fair to say as far as VicPol's experience, that a lot of motorists are not actually doing that, are not being patient in that situation? You do not have to answer that if it is just a — —

Insp. CHATTERS — Without looking at the data, the enforcement data, it is hard to give that advice at this time.

Mr LEANE — Right. But that is the clear expectation, isn't it, that a motorist only overpasses when it is safe and does not break the law, does not break the double lines? So it is an expectation from motorists that they need to respect the other road user and only pass when it is safe.

Acting Sr Sgt BURNS — That is the expectation, yes.

Mr LEANE — The current legislation around passing a cyclist is — the wording is — —

Acting Sr Sgt BURNS — Sufficient distance.

Mr LEANE — Sufficient distance, and that is something that would not be enforceable now as well. Have there ever been any cases where there has been someone fined for not leaving a sufficient distance — unless they have had a collision, I suppose?

Acting Sr Sgt BURNS — Normally it would be as a result of a collision. I would not have the data on how many penalty notices have been issued when no collision has occurred.

Mr LEANE — Thank you. That is all.

Ms HARTLAND — I have got a few follow-on questions from Mr Leane's. I am quite interested in how we define 'safe passing distance' because from other evidence motorists might think that is 5 centimetres, 10 centimetres, 15 centimetres. How do you define safe distance?

Acting Sr Sgt BURNS — It would be up to each specific member as to their observations of what has occurred in front of them, whether that distance is safe or not. Again, that is the subjectiveness of the issue — travelling at different speeds, the lower speed you would imagine the closer the distance would be that it would be safe to pass at. So it is hard to say what constitutes safe or unsafe. It would be in a police officer's mind as to the observations that he has made as to whether what he has seen is, in his mind, safe or unsafe.

Ms HARTLAND — You may not be able to give us this information today, but how many in the last year have there been incidents where someone has been charged for not passing a cyclist safely?

Acting Sr Sgt BURNS — At sufficient distance?

Ms HARTLAND — Yes.

Acting Sr Sgt BURNS — I could not give you that information at the moment, so we can provide it to you.

Ms HARTLAND — Could you provide that to the committee?

Acting Sr Sgt BURNS — Yes.

The CHAIR — Just on that, it might be interesting to find out not leaving sufficient distance when hitting a cyclist and also when not hitting a cyclist as well, to get a breakdown between those two, because I would be interested to see if there were charges laid against people who did not leave sufficient distance but also did not hit the cyclist at the same time.

Insp. CHATTERS — There are other offences other than failing to leave a sufficiently safe distance — conduct endangering life, where people deliberately engage in these behaviours to a reckless extent. There is a range of pieces of legislation that we can apply if the circumstances are there.

Ms HARTLAND — Maybe, if it is possible, if you could supply those numbers as well, where it has been an incident with a cyclist, either because of injury or because it has just been an incredibly dangerous situation.

Insp. CHATTERS — We can look at the data we have and try and extract that for you, but that offence I have just mentioned, conduct endangering life, that might be a wide range of conduct that has nothing to do with a bicycle rider and the only way we will get that out is to actually go back and read the detail of the actual offence. So some of the data is easy to get; some is very difficult.

Ms HARTLAND — Rather than just for the past year, if we could have it, if it is possible, for the past 10 years? I think that would give a good example because cycling has changed so dramatically in the last decade, so that I think would be really helpful. Some of the submissions have actually had bike riders with their videos showing how dangerous their situation has been or close a car has come to them. Is my understanding correct that it is difficult for the police to use that video at this stage, and what technology would you need to actually be able to enforce? Evidence we have received from Charles Brown this morning — and he is going to supply this information — was that there are new technologies to be able to measure.

Insp. CHATTERS — The images from a person who collects on behalf of someone else or that they collect themselves and bring them to the police, obviously if we get to a contested matter, they are going to be contested in terms of their ability to prove the charge. Of course Victoria Police are not the subject matter expert in terms of interpreting the image and then determining what the distance is. Unless they are actually almost touching and it is apparent to everybody, then I think we will be back in the position where we probably are not going to mount a prosecution unless we reasonably believe we can succeed. So if they are very close, then I think it is a lot easier, but if there is some debate about what the distance is, if that is the offence we charge them

with, then that is the issue that we are going to have to then prove to the court. We can take the image to the court but then the magistrate may want to hear about, 'Okay. What am I seeing?'.

Ms HARTLAND — If we can go back to the current law on this issue of a safe distance, I am still a bit unclear about whether that is actually currently enforceable, because it seems like from what you are saying to us that it really depends on each member's interpretation of what they have seen or what the person complaining has shown them. My concern is that by not having a set standard the current law would be extremely difficult to enforce.

Acting Sr Sgt BURNS — I think you will find that most of the infringements that are issued in relation to the sufficient distance would be as a result of a collision where a bicycle and car had actually come together. I would not be able to speak on how many have been issued for observations where they have come close but have not actually collided, so I would have to follow that up.

The CHAIR — I am just contemplating if we even reverse-engineered this. If we said at this point in time that we had a law that said a car could not come within a metre of a cyclist and there was a reform suggested that perhaps we should change that law to say that just 'sufficient distance' should be left — I am just wondering, and that might be just a bit of a thought bubble — I am wondering if our thinking about this possible change might be shifted if we were moving from '1 metre' to 'sufficient'. Perhaps that is just a thought bubble that I have just had there. It is probably something that you do not really want to comment on, which I can understand. I am not sure I have any other further questions.

Ms HARTLAND — I just have one final one, and this has come out of one of the submissions, where photographs were actually produced where the person in the passenger side of the car actually reached out to attempt to knock the cyclist off their bike, but the police have not been able to prosecute that because she was not hit and the car did not come near her; it was actually the passenger deliberately attempting to knock her off. It is that issue about: how do we define all of these kinds of behaviours when we do not have a set distance and we do not have a set parameter of what is safe?

Insp. CHATTERS — So that circumstance you have talked about may well be very appropriate to conduct endangering a person, where a person has done something that intentionally endangers another or recklessly endangers another — that is, the arm out of the window trying to hit the person.

Ms HARTLAND — Again, you may need to take this on notice, but where there has been a really close distance but there has not been a collision, do you have that data — when a cyclist has complained about behaviour that has not necessarily knocked them off their bike but was incredibly dangerous and incredibly close?

Insp. CHATTERS — We used to collect data about non-injury collisions, but we do not record that data to the same extent now. So unless it results in an injury now, we do not keep a high level of data.

Ms HARTLAND — Is there a reason for not collecting that data?

Insp. CHATTERS — It was around operational efficiency. We were collecting an awful lot of data around non-injury collisions, but it is not part of our remit in relation to road safety. It is all about reducing injury, so the data did not largely go anywhere when there was no injury.

The CHAIR — Thank you, Inspector; thank you, Acting Senior Sergeant. Did you want to make a final comment?

Insp. CHATTERS — Once the draft submission is signed off, we will make sure it comes to you.

The CHAIR — We very much appreciate it; excellent. Thank you very much. Thanks for your contribution today. I just remind you that you will receive a copy of the transcript for proofreading in coming days, and that transcript will ultimately be posted on the committee's website. Once again, thank you for your contribution today.

Witnesses withdrew.