

TRANSCRIPT

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

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

Melbourne — 21 June 2016

Members

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Witness

Assistant Commissioner Mike Keating, Queensland Police (*via videoconference*).

The CHAIR — I declare open the Standing Committee on the Economy and Infrastructure public hearing. I thank you, Assistant Commissioner, for providing evidence for us today. I will explain that today the committee is hearing evidence in relation to the Road Safety Road Rules 2009 (Overtaking Bicycles) Bill 2015 and that today's evidence is being recorded. All evidence taken today is protected by parliamentary privilege. Therefore you are protected for what you say today, but if you were to repeat those same things, those comments may not be protected by this same privilege. Once again, thank you for agreeing to provide testimony to our committee today. At this point I might hand over to you for any introductory comments, and then we will move to some questions from the committee after that. Over to you.

Asst Comm. KEATING — Thank you, Chair. I am very pleased to be able to take the opportunity to speak to you today. I suppose right from the outset I need to be pretty clear that I have a very poor understanding of the traffic road rules, compliance arrangements and the peculiarities and complexities of traffic movements particularly in the city of Melbourne but right across Victoria. I drove in Melbourne once, and I hope not to repeat it again. I am just not quite used to those big trams that are moving around. So my comments are directed to our experiences here in Queensland with the implementation of this legislation and the trial and to reflect on the process that we have been through. I appreciate that Professor Narelle Haworth from CARRS-Q has spoken to you previously. Narelle completed a review on behalf of the transport and main roads department of the implementation of the law. Also as I understand it, the deputy director-general, Mike Stapleton, has also spoken to you from a policy and implementation point of view.

The CHAIR — Indeed, yes.

Asst Comm. KEATING — Queensland was the first jurisdiction to implement this type of legislation, as I understand it, in Australia. It was not without its challenges and its difficulties, but as you are aware, on 7 April this year the Minister for Road Safety announced that the trial has been affirmed and that the legislation will continue in its current format.

The background of it was that in that period of 2011 to 2013 there were a number of serious and fatal traffic crashes involving interface between cars or trucks and cyclists, and I am saddened to inform the committee that that trend this year has actually got worse. We had that very good performance in the period after 2011 through until last year, and if you were looking at our reporting this year you might be alarmed at what you would see. In 2011 there were three deaths; for 2012 there were three deaths; for 2013 there were three deaths; for 2014 there were five; and for 2015 there were two. They are year-to-date figures, but as of today, year to date, the figure in Queensland is seven, so I think I need to give you some context around that because your reading of it may not be quite accurate.

The nature of what is in and what is out of scope in relation to fatality traffic crashes is quite complex, but when we look at the incidents — and this is in no way meaning to minimise the tragedy of the loss of life — but five of those seven incidents this year are so peculiar and unique that they do make the situation look a little worse than perhaps on-road incidents.

One of those incidents involved an elderly man riding down a hill and crashing into a parked car. One of those incidents this year involved a matter that is now before the court, which I would prefer not to explain, but the circumstances are not what you would regard as a traditional interface between a cyclist and a car. There was an incident involving a cyclist who has crashed into a bollard on a bikeway, which brings it into scope. There is another incident where a man was missing for a few days and actually was out cycling on an approved cycling track, well off-road, on a BMX sort of a mountain bike track, but that falls within the scope of fatality traffic crashes. Then there is another incident in a regional part of Queensland where a cyclist was going about his normal daily activity. He was actually, it would appear, being overtaken by a motorbike. It was in a fast section of road. Everything was being done correctly, it would appear; however, the cyclist was unaware that the motorcyclist was overtaking him and has turned across his path. So there are five incidents of those seven which, if you were not aware of the circumstances, you might count the figures as being a spike. Even though they count, they are not necessarily what you would regard as those traditional-type matters of concern.

The other important aspect of this legislation is that police are not regularly on-road in Queensland on pushbikes. I know that you are aware that there are some trials being done in Queensland between ourselves and the Department of Transport and Main Roads with some technologies which would measure distances, but we do not use bicycle riders as members of the Queensland Police Service as an on-road enforcement unit; we use bicycles as a means of transport at moving people from where they are to where they need to go, and in many

cases that movement is not on the road; it is on cycle paths and in similar circumstances that you have at Southbank and other places. So we do not have a lot of police riding pushbikes on the road as part of their normal business activity.

With the implementation of this trial some years ago, we were quite concerned how it would go, because there were some variations in the law. Up until that legislation change came into place it was not permissible to cross double lines. This law actually permits that in Queensland now for the purpose of overtaking the bicycle rider. It sets a limit to that, and it requires safety to be assessed. That change in the law we saw would create some confusion and some disharmony between cyclists and car drivers, and that is the way it has turned out to be, but we are managing that.

Overall I think part of the success of the way it has gone in Queensland has been the Stay Wider of the Rider campaign, which was put in place by the Department of Transport and Main Roads, and the reinforcing of that over the trial period, and it continues to be reinforced.

One of the other things that we have done in Queensland alongside the implementation of this legislation is that on 1 July 2013 the Road Policing Command commenced as an agency within the QPS. Quite quickly we saw that we needed to be much better engaged with bicycle riders at a local level and also at a state level, so we have established a consultative forum. I chair that. We have Bicycle Queensland, Cycling Queensland, the RACQ, the National Heavy Vehicle Regulator and our partners from the Department of Transport and Main Roads. More recently we have brought in some people from the Queensland Police bicycle squad and a few other people. We sit down and in a consultative, proactive approach look to identify issues and points of concern amongst various groups. We share what the issues are. The RACQ — I am not sure if I mentioned them — are a very important part of that group. They are Queensland's largest membership-based organisation. If there are issues of concern by any party, we like to get those known, and we deal with them as quickly as we can rather than wait for them to escalate. I think that has been a really effective part of what we have seen.

Over all I am sure TMR have probably given you some background information on their surveys of cyclists and motorists and what they have seen in terms of the understanding of the law. From a personal observation, I travel 15-or-so kilometres to and from work each day. It is a busy part of the road system. You see great compliance — people really trying to do the right thing in terms of getting that space. I am confident to say that that has significantly improved the safety of bicycle riders, but that is not to say that from time to time there are people who get too close.

There are a couple of things that also changed in Queensland. At the same time that the legislation was changed to require motor vehicle operators to give room to cyclists, cyclists came on board with the same rules and enforcement schedule as car drivers did. That has caused a bit of tension. Where previously somebody on a bike would ride through a stop sign, for example, and would get a fairly moderate fine, that fine is now the equivalent as if they were driving a motor car, so there is a significant increase in the penalty to a cyclist who commits a breach. At the same time there is a penalty now for a car driver or a truck driver who does not give room to the cyclist. It has been quite complex to work our way through, but overall I think it has improved safety for cyclists.

The CHAIR — Very good. Thank you, Assistant Commissioner. I was hoping to ask you a question. I suppose it is more of a broad question. We have heard from many witnesses that there needs to be, really, an attitudinal change in society about the way road users look to each other and respect each other on the roads. I am wondering, from your perspective, what effect has the law change in Queensland had on societal attitudes towards cyclists on the road?

Asst Comm. KEATING — We are certainly seeing a good reporting back from motorists that they understand there is a new rule. In my personal observation I see people trying to give more room. From my discussion with representative bodies of cycling groups, they tell me that there is an improving compliance, but there have been some tensions in some places between cyclists and car drivers. There are some people in the community who believe that too much benefit or opportunity has been given to cyclists. There are certainly some groups who do not believe that it is right that cyclists should be entitled to ride two abreast in a lane. That is the rule, that is the law, that is what they are entitled to do and that is the room and the space that needs to be given to them. It would not surprise the committee to know that not everybody in Queensland agrees with every road rule that we have, so it is not unexpected that we would have this point of difference between people about what the rule says and what the rule is designed to deliver.

Cycling in Queensland is mushrooming. You can see it in the streets of Brisbane. I have been for three years going to the Bicycle Queensland cycle to work day promotion that they have as part of cycling week. You can just see the numbers growing there. As you drive around the city, you can see the numbers of people who are riding pushbikes. As I travel around the state, which I do as part of my work all the time, it is absolutely clear that cycling is increasing for a number of reasons. One, we see it increasing for commuting. We see it increasing also for leisure and for recreation and for sport. We see it increasing because there are a lot of promotions about cycling as a health benefit. We are also seeing an increasing rate of cycling in the school communities around the state. I sit on the Community Road Safety Grants program. We receive a lot of applications from around the state for schools to support providing training and guidance to their students in cycling safety, so I am confident that that reflects an increasing rate of cycling by school students.

I believe overall that the program has encouraged cyclists to be aware of their own safety, but it has certainly given motorists more information and a greater understanding of their requirement to make sure that they provide a safe environment for bicycle riders that they are near.

The CHAIR — Excellent. Thank you.

Mr EIDEH — I understand that an evaluation of the minimum passing distance trial was conducted. Did this evaluation find a decrease in the number of accidents between cyclists and vehicles?

Asst Comm. KEATING — The anecdotal evidence is that there has been a decrease. When we look at the fatalities there is a common trend there, except for this year, in terms of the number. The indication that we are getting from our injury traffic crash reporting is that there is a reduction in bicycle-vehicle incidents. It is always difficult to give clarity to that statement, though, because there are delays in traffic crash data being finalised and reported. So the fatality stuff is easier to do because we have a known outcome on a set date, but in relation to injury traffic crash reporting there is a whole range of procedures that have to be followed, and it can take 12 to 18 months before you get the finalised figure. But overall we believe there is a reduction in incidents between cyclists and motorists which result in injury.

Ms HARTLAND — I have got two questions. I was interested in what you were just saying about reductions in accidents. Do you do stats on accidents between cyclists and motorcyclists and then separate those from cyclists and cars, or is it all in one group?

Asst Comm. KEATING — Look, that could be done. It would take a while to sort of break that down. At the moment the raw data would say that it is a motor vehicle and a bicycle, but it is possible, I would assume, that transport and main roads could do a finer search on it. I have not asked for that myself. I could not say it is not possible, but I would presume it would be possible for them to do a review of that. Having said that, I have not heard of a lot of incidents involving bicycles and motorbikes.

On fatalities, the predominant vehicle which results in a fatality is that interaction between a heavy vehicle and a bicycle. It is not just because of the mass of the vehicle; it is because of the nature of the vehicle and vision and so forth. So it is not just about — I am sure there is a significant influence of the disparity between size and weight, but there are many other factors which have to be looked at. The Queensland coroner published a coronial finding in relation to a public event here about four months ago. The report would be available to you online. It is a matter that occurred over at South Brisbane. It involved an international visitor to this community, a student. That was an event involving a heavy vehicle, and there were certain recommendations made by the coroner in relation to heavy vehicles. But in relation to bikes — motorbikes and bicycles — I really cannot give you a definitive answer on that.

Ms HARTLAND — My other question is: if we were to introduce these laws in Victoria, what do you think are the things that we could learn from Queensland in terms of either things we should not do or things we should do?

Asst Comm. KEATING — I think the program that was put in place by TMR has been very successful, that social media campaign and also a traditional media campaign to raise awareness in the community. They themselves I think have made some findings in relation to the timings of it, how long they had to do that and how they would have preferred to have done that in a slightly different way. They more or less had to come up with a community education program after the event started, rather than a community education program before

the timings of the change started. So it is really about those mechanisms to encourage people to understand that the law is about to change.

Another part of it is that there will be different groups who have very strong views on this, and they will go through a process of trying to explore how to get those views understood as part of the review mechanism. It can polarise different parts of the community. A very good example is the issues relating to the possibility of the registration of bicycles. I think you would need to make a really clear statement about your intention on that, for example, right from the start, because that keeps coming back. As far as I am aware, there is no momentum in government at all in Queensland to register bicycles, but this issue comes up quite regularly from people.

We, as I say, have been working in a proactive sense with the bicycle lobby groups, of which there are a number. It is like all groups and communities. There are some people with strong views on this in the bicycle group — that the law, for example, has not gone far enough. There are some groups who say the law is about right. It is not up to me to arbitrate between their views, but it is about being clear to the community — if you were to go to a trial, just be really clear about it being a trial. Having a marketing campaign around that and revisiting that over time is very important, because it is not practical to assume that everybody will understand the law because they have seen the discussion on it once. You need to be repeating it in social media and in traditional media, as for community engagement, quite strongly.

Mr ONDARCHIE — Mike, one of the challenges I think we are going to have in inner Melbourne will be as the traffic slows down the cyclists will be moving a lot more quickly the traffic — in your case, Adelaide Street or Queen Street. What problems have your members had in issuing fines around cyclists getting too close to cars?

Asst Comm. KEATING — The law does not prohibit a cyclist getting too close to a car. This is another point that comes up quite a lot. If I am driving down Kelvin Grove Road and I give room to a cyclist and I go around the cyclist, and 150 metres up the road I come to a red light, the cyclist can ride past me and get in front of me, and then as the traffic moves off I may have to overtake that cyclist again in another 250 or 300 metres from the light. There is no legislation or requirement that says that the cyclist has to stay behind you once you have passed them in that situation, once you have overtaken them, so that often comes up. If you look at the example of filtering for motorbikes, for example, they can move through the traffic, get to the front and then move forward once the light turns green. Well, a pushbike rider can move through the traffic the same way. It is one of those points which creates points of difference between road users, I suppose, but I do not think there is any other practical way you can do it. What you would have to accept is that the bike rider knows every vehicle that has overtaken them, and they cannot pass them —

Mr ONDARCHIE — I was more talking about your officers having confusion around issuing a TIN, for instance — you know, ‘Who got closer to who here?’.

Asst. Comm. KEATING — Well, that is a point of the law. The law gives benefit to the vehicle driver if they reasonably believe that they have given sufficient distance. There is no way of measuring it without stopping them in situ at that exact point and then getting out a tape measure. The tape measure would have to be calibrated, so there are a lot of complexities about prosecutions in these types of things. It is the same with speed cameras, radar and all of those things. You have to operate scientific, calibrated, approved instruments to be able to give evidence in court of speed, for example. In the context of measuring the distance between vehicles and a cyclist, it is purely observation. It is a subjective assessment by an officer. That is where we sometimes get points of difference between people who come to the police and say, ‘I’ve been offended against’ and the available evidence that would assist a prosecution there.

We do see people with GoPros and those types of things who come to us and bring that to us. That is actually not evidence. I am not sure of the rules of evidence in Victoria, but what you have from a GoPro is a recording. It is not necessarily evidence. It can only be evidence when it is admitted to a court in the process of admissibility of evidence. So we would require, for example, the person who took the footage to give oral evidence of what and how they did that and then how that was stored and recorded. A recording in its own right is not evidence. A recording can be evidence provided it is admissible as evidence.

As I said, the legislation in Queensland actually provides that the car driver or the motor vehicle driver, if they reasonably believe that they had given the distance, there is an exculpation there. So it is quite complicated. What we do see from time to time when we go out and do operations from the road policing command to look

for incidents is that we do not come back with a lot of prosecutions in those situations. I am sure you have got the CARRS-Q report or have got access to it. They actually do talk about prosecutions and enforcement within that report of the trial, and they make a point about this issue of subjectivity in that. Even they acknowledge that.

Ms HARTLAND — We have received evidence from motorcyclists that they believe this will make it unsafe for them. Do you have any evidence of increased accidents between cars and motorcyclists because the car has gone around the bikes and has either clipped the motorbike coming the other way or the reverse situation — any kind of increase between motorcyclists and cars?

Asst. Comm. KEATING — It is difficult to make a definitive statement on that. What we do see — and I know you see this on a national level, because I only met with my colleagues from Queensland, New South Wales and Victoria last week — is that there is a significant increase in the rate of fatality incidents involving motorbikes generally, but I cannot really give you specific information in relation to the interface between the motorcyclists and the bicycle riders. Is that what you were asking?

Ms HARTLAND — No. It is more when, say, a car is overtaking the cyclist, and then the motorbike is coming on the other side of the road, and there is a head-on between the motorcycle and the car or that kind of an incident.

Asst Comm. KEATING — I am not aware of any incident as you describe it that has resulted in a fatality in the last three years. Where somebody in a car was overtaking a bicycle and then in that process, if a motorbike, I am not aware of any circumstance like that off the top of my head. The requirement on the car driver or the motor vehicle operator who is overtaking the bicycle is that they can only do that when safe, so there is still responsibility for them to be alert and to take reasonable steps to ensure that it is still safe to overtake. In that circumstance you described, I am not aware of any incident of that type off the top of my head.

Ms HARTLAND — Just one quick question, and this will probably need to go on notice for you. Is there a site or information you could direct us to that might show whether there has or has not been an increase in harm towards motorcyclists because of these laws?

Asst Comm. KEATING — The Department of Transport and Main Roads are the official keepers of those types of statistics. You could go to them, but they would have to do some data mining to actually explore that. But as I say, sadly I can give you a pretty clear summary of almost every fatality traffic crash in Queensland this year off the top of my head, and I am just not aware of any circumstance in the nature as you describe it. There may be injury crashes that have occurred that I am not aware of because I do not see all of the injury traffic crash reports, but I get a summary first thing every morning of every fatal incident in the last 24 hours, and I just do not recall that scenario at all.

Ms HARTLAND — Thank you.

The CHAIR — Thank you very much, Assistant Commissioner, for providing evidence to our committee today. You will be provided with a transcript of today's evidence for proofreading, and ultimately that will be made available on our committee's website. Once again, thank you very much for your contribution today.

Asst Comm. KEATING — Thank you.

Committee adjourned.