Inquiry into the Road Safety Amendment (Car Doors) Bill 2012

Final Report

August 2012

Legislative Council

Economy and Infrastructure Legislation Committee

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Ordered to be Printed

By Authority
Government Printer for the State of Victoria

No. 155 Session 2010-12

Legislative Council Economy and Infrastructure Legislation Committee

Inquiry into the Road Safety Amendment (Car Doors) Bill 2012

ISBN: 978-0-9872446-4-2

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Chairman's Foreword

Together with my colleagues Jaala Pulford, Candy Broad, Damian Drum, Bernie Finn, Colleen Hartland, Simon Ramsay and Adem Somyurek, I am honoured to present the first report of the Economy and Infrastructure Legislation Committee.

The Road Safety Amendment (Car Doors) Bill 2012 was introduced into the Legislative Council in February 2012. The purpose of the Bill is to increase the penalties associated with Road Rule 269(3), which is to cause hazard by opening a door of a vehicle, commonly called 'car dooring'. While the term 'car dooring' is yet to rate as an inclusion in any English dictionary, judging by the interest generated by this Inquiry and the increase of cycling throughout Australia, it may not be long before it is included in all mainstream dictionaries.

With over one million Victorians riding a bike each week and an increasing number of commuter cyclists in metropolitan Melbourne, it is imperative that cyclists and motorists are fully aware of each other's rights to use Victoria's roads. But it must be noted that cyclists equally have a responsibility to respect Victoria's road rules.

Evidence provided to the Committee showed that 'car dooring' is an increasing problem, particularly in inner Melbourne. The Inquiry generated a great deal of interest within the community, with the Committee receiving 94 written submissions and hearing from 7 witnesses at public hearings. I wish to record my thanks for the support given by the public to this Inquiry, with a significant number of people attending the hearings and filling the public galleries.

The evidence received overwhelmingly supported an increase in the penalties for 'car dooring'. However, a number of witnesses, including VicRoads and Victoria Police, argued that this could be better achieved through changes to the regulations rather than proceeding with the Bill. On 31 July 2012, during the course of this Inquiry, the Government acted in line with this suggestion and made regulations to increase the penalty for 'car dooring' to an on-the-spot fine of $352 and maximum court imposed penalty of $1,408. The Committee believes this change to the regulations has substantially addressed the main issue raised in the Bill.

The Committee also examined the issue of whether demerit points should be attached to the offence, but ultimately decided against supporting the introduction of demerit points at this time. Instead, the Committee believes the effect of the increased monetary penalties should be carefully monitored to ensure they achieve the desired behavioural changes in motorist actions. Once this empirical evidence is collected, there should be a further evaluation of the necessity for the introduction of demerit points.

There is no doubt that 'car dooring' is just one of many dangers facing cyclists, and further issues around rider safety need to be addressed. Education is an integral step in achieving a safer environment for cyclists and it was pleasing to note that many of the submissions acknowledged the establishment of the Baillieu Government's 'Road User or Abuser' Facebook campaign and stickers to remind passengers and drivers to look for cyclists. Other actions the Committee believes should be considered include a cyclist awareness campaign targeting inner Melbourne, bicycle safety questions to be included in the driver licence tests and clear enforcement guidelines to be given to Victoria Police.

Victoria has an excellent reputation for road safety and the Committee hopes that our recommendations will be accepted and implemented in the near future.

ANDREA COOTE
CHAIRMAN

Findings

Finding 1

The offence proposed by the Bill already exists in the Road Safety Road Rules 2009. Following changes made to these regulations on 31 July 2012, the maximum penalty for the offence has been increased to 10 penalty units in line with the increased penalty proposed by the Bill.

[Chapter 2]

Finding 2

The penalties for the offence of 'car dooring' under Road Rule 269(3) that were in force when the Bill was referred to the Committee (an infringement notice of 1 penalty unit and a maximum Court-imposed penalty of 3 penalty units) were insufficient and not proportionate to its potential risks and consequences. The increased penalties (an infringement notice of 2.5 penalty units and a maximum of 10 penalty units) are more appropriate and are better aligned with the gravity of the offence.

[Chapter 3]

Finding 3

There are strong arguments both for and against the introduction of demerit points for the offence. The Committee was unable to reach agreement as to whether it is appropriate to attach demerit points to the offence at this time.

[Chapter 3]

Recommendations

Recommendation 1

The Committee recommends Victoria Police:

- conduct training for police members regarding enforcement of the offence of 'car dooring', particularly those deployed in inner Melbourne municipalities with high cycling activity; and
- consider the development of guidelines to assist police members to determine when it is appropriate for a 'car dooring' offence to be enforced through the Magistrates' Court.

[Chapter 2]

Recommendation 2

The Committee recommends that VicRoads undertake a review of 'car dooring' incidents before the end of 2014 to determine whether the higher monetary penalties and further police training have achieved a decrease in the number of 'car dooring' incidents. If the number of incidents has not decreased, the Committee recommends VicRoads then reconsider attaching demerit points to the offence.

[Chapter 3]

Recommendation 3

As the monetary penalties for 'car dooring' have already been increased through regulations, the Committee recommends that the Legislative Council orders the Road Safety Amendment (Car Doors Bill) 2012 to be withdrawn.

[Chapter 3]

1. Introduction

1.1 Introduction of the Bill

The Road Safety Amendment (Car Doors) Bill 2012 (the Bill) was introduced into the Legislative Council by Mr Greg Barber, MLC, on 8 February 2012. The Bill was further debated on 29 February 2012 and on 13 March 2012 the Legislative Council referred the Bill to the Economy and Infrastructure Legislation Committee for inquiry, consideration and report.

1.2 Conduct of the Inquiry

This is the first inquiry by the Economy and Infrastructure Legislation Committee. The Committee is one of three Legislation Committees established in 2010 under the Legislative Council Standing Orders.

Unlike the Legislation Committee that operated from 2005 to 2010, the Legislative Council Standing Orders no longer prescribe the manner in which the three Legislation Committees must consider Bills referred to them. Therefore the Committee is not bound by the practice of the previous Legislation Committee which was required to examine a Bill clause by clause and could only recommend amendments to Bills.

Although not bound by these procedural rules, the Committee determined it was appropriate for its Inquiry to focus principally on the changes to the penalty for 'car dooring' proposed by the Bill. Several submissions made comments on a number of additional issues related to 'car dooring' that were outside the scope of the Bill itself. While the Committee has summarised these issues in Chapter 4 of its report, it has limited its recommendations to the issues of enforcement and penalties contained in the Bill.

1.3 Purpose of the Bill

The purpose of the Bill is to 'make it an offence to cause hazard by opening a door of a vehicle.'[1] The act of striking a passing cyclist while opening a door of a vehicle is known as 'car dooring'.

'Car dooring' is currently an offence under the Road Safety Road Rules 2009. At the time the Bill was referred to the Committee, Road Rule 269(3) stated:

> A person must not cause a hazard to any person or vehicle by opening a door of a vehicle, leaving a door of a vehicle open or getting off, or out of, a vehicle.
>
> Penalty: 3 penalty units.

Clause 3 of the Bill seeks to create an offence in legislation which is the same as the offence in the regulations, but to increase the maximum monetary penalty to 10 penalty units. In 2012-13, one penalty unit is equal to $140.84.[2]

Clause 4 of the Bill seeks to add a further penalty of three demerit points for an offence.

1.4 Inquiry process

Upon receiving the reference from the Legislative Council, the Committee held a public hearing with the Bill's sponsor, Mr Greg Barber, MLC, on 28 March 2012. Also in attendance was Mr Jay Tilley, Mr Barber's Electorate Officer.

The Committee advertised for public submissions in *The Age* on Monday 2 April 2012 and the *Herald Sun* on Tuesday 3 April 2012. The Committee sought written comments from individuals and organisations as to whether:

- the increased penalties for the offence of 'car dooring' proposed in the Bill are appropriate; and

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1 Road Safety Amendment (Car Doors) Bill 2012, clause 1.
2 Monetary Units Amendment Act 2012, s. 3.

- the legislative and regulatory changes contained in the Bill are the most effective mechanism to implement the increased penalties.

The Committee held public hearings with a further seven individuals and organisations in May 2012. A full list of witnesses who appeared before the Committee is provided in Appendix B.

1.4.1 Submissions received by the Committee

The Committee received 94 submissions from both individuals and organisations. This issue has peaked the interest of many cyclists in Victoria, particularly those in Melbourne. Many of the submissions from individuals shared personal experiences of 'car dooring' or those of family members, friends or colleagues.

The Committee is grateful to the community for the interest taken in this Inquiry and has considered the evidence provided in all submissions, as well as the evidence given at its public hearings.

A full list of submissions received is provided in Appendix A.

1.5 Background to the Bill

1.5.1 Cycling participation in Victoria

Cycling is an increasing form of transportation and recreation in Victoria. In 2011, the National Cycling Participation Survey showed that 1.08 million Victorians rode a bike each week. Some interesting statistics about cycling in Victoria show:

- half of all children under 10, or almost 350,000, ride a bike each week;[3]
- over 70 percent of cycling is for recreational purposes;[4]
- an estimated 17 percent of all journeys to or within the City of Melbourne are by bicycle.[5]

Bicycle sales are also continuing to increase, with sales of over one million outnumbering car sales for nine years in a row.[6] Bicycle sales are mostly to adults, with adult bicycle sales outnumbering children bicycle sales by 2 to 1.[7]

1.5.2 Cycling accidents in Victoria

Cyclists are some of the most vulnerable road users. Some statistics on the vulnerability of cyclists on Victoria's roads show:

- there were over 1,400 bicycle accidents in 2010, increased from just over 1,000 accidents in 2001;[8]
- eight cyclists died on Victoria's roads in 2011;[9] and
- the average number of cycling injuries over the past five years is 460 serious injuries (requiring hospital admission) per year.[10]

1.5.3 'Car dooring' collisions in Victoria

'Car dooring' is where a motorist or car passenger opens a car door, striking a cyclist and causing a collision. The statistics available on 'car dooring' do not accurately reflect the current number of incidents as not all incidents of 'car dooring' are reported. Some available statistics on car dooring show:

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3 Australian Bicycle Council and Austroads, *Australian Cycling Participation 2011 - Victoria*, p. 1.
4 Australian Bicycle Council and Austroads, *Australian Cycling Participation 2011 - Victoria*, p. 1.
5 Infrastructure Australia, *Cycling Infrastructure for Australian Cities*, 2009, p. 11.
6 VicRoads, Submission No. 76, p. 3.
7 Retail Cycle Traders Australia, *Bicycle Sales in Australia*, <http://www.rcta.org.au/index.php?option=com_content&view=article&id=46%3Abicycle-sales-in-australia&Itemid=86>, accessed 9 May 2012.
8 Greg Barber, Presentation to the Committee, 28 March 2012, p. 2.
9 Victoria Police, *CBD police launch Operation Road Runner*, <http://www.vicpolicenews.com.au/more-news/9496-cbd-police-launch-operation-road-runner.html>, accessed 9 May 2012.
10 VicRoads, Submission No. 76, p. 3.

- the number of 'car dooring' accidents are increasing as a total of the number of bicycle accidents. 'Car dooring' made up 4 percent of cycling accidents in 2001 and has doubled to 8 percent in 2010;[11]
- between 2007 and 2011, there was an annual average of 38 serious injuries from 'car dooring' accidents; and[12]
- there were 187 infringement notices issued for the offence of causing a hazard by opening the door of a vehicle in 2010-11. The number of infringements for 'car dooring' can not be isolated from this number.[13]

According to the VicRoads CrashStats database[14], between 2006 and 2010, 616 cyclists were reported as being injured in incidents where a bicycle struck a vehicle door. The following table shows the breakdown of ages of these cyclists:

Table 1: VicRoads CrashStats: Vehicle strikes door of parked stationary vehicle (DCA 163) 1 January 2006 to 31 December 2010

Age of Cyclist	Number of cyclists injured	Percentage
5-12	1	0.2%
13-15	3	0.5%
16-17	3	0.5%
18-21	47	7.6%
22-25	85	13.8%
26-29	102	16.6%
30-39	182	29.5%
40-49	110	17.9%
50-59	48	7.8%
60-74	24	3.9%
75+	4	0.6%
Unknown	7	1.1%
Total	**616**	**100%**

'Car dooring' has resulted in the death of one cyclist, Mr James Cross in Hawthorn in March 2010. A 2011 Coroner's inquest commented 'cyclists have a right to ride in safety and not be fearful of being hit by a car door.'[15]

The Coroner recommended that VicRoads:[16]

- work with local government to reconfigure bicycle and parking lanes; and
- run a communication campaign that makes drivers aware of their responsibility to check for cyclists before opening their car door as well as increase vigilance amongst cyclists when riding past car doors.

1.5.4 Victoria's commitment to road safety

Victoria's strategy for road safety is based on the three pillars of education, strong penalties and enforcement. This has seen Victoria become one of the world's leading jurisdictions in the field of road safety. Victoria has taken a proactive approach to road safety and as a result has been the first jurisdiction in the world to introduce helmets for motorcyclists, compulsory wearing of seatbelts as well as random roadside testing for alcohol and illicit drugs.[17]

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11 Mr Greg Barber, MLC, Presentation to the Committee, 28 March 2012, p. 2.
12 VicRoads, Submission No. 76, p. 4.
13 VicRoads, Submission No. 76, p. 4.
14 VicRoads, *CrashStats*, <http://www.vicroads.vic.gov.au/Home/SafetyAndRules/AboutRoadSafety/StatisticsAndResearch/CrashStats.htm>, accessed 30 May 2012.
15 Coroners Court of Victoria, *Inquest into the Death of James Bernard Cross*, November 2011, p. 14
16 Coroners Court of Victoria, *Inquest into the Death of James Bernard Cross*, November 2011, p. 15
17 State Government of Victoria, '*VicRoads*', <http://www.trade.vic.gov.au/content/vicroads>, accessed 7 June 2012.

1.6 Changes made to the regulations during the inquiry

On 31 July 2012, the Road Safety Road Rules Amendment (Car Doors) Rules 2012 and Road Safety (General) Amendment (Car Doors) Regulations 2012 were made. These regulations increased the maximum penalty for a breach of Road Rule 269(3) from 3 to 10 penalty units and increased the infringement penalty (on-the-spot fine) from 1 to 2.5 penalty units. The increase of the maximum penalty to 10 penalty units through regulations has achieved the same outcome as clause 3 of the Bill proposes.

The Committee received the majority of its evidence for this Inquiry while the previous lower penalties were still in force. This report therefore examines whether the increases to the penalties are appropriate and sufficient. The Committee also received significant evidence about whether the offence should remain in regulations as an infringement offence and whether the enforcement procedure for the offence is appropriate. These issues are examined in Chapter 2.

1.7 Report structure

This report is structured into the following chapters:

- **Chapter 2** discusses enforcement and examines whether the offence should be moved from regulations to legislation as proposed by the Bill. It also examines whether the offence should continue to be an infringeable offence or whether all offences should be determined by the Magistrates' Court.
- **Chapter 3** examines whether the penalty for the offence is appropriate and whether demerit points should be attached.
- **Chapter 4** summarises other issues relating to the offence that were raised with the Committee.

2. Legislative framework and enforcement

2.1 Existing provisions

The offence of 'car dooring' currently exists in the Road Safety Road Rules 2009, which are subordinate legislation (regulations) made under the *Road Safety Act 1994*.

At the time the Bill was referred to the Committee, Road Rule 269(3) stated:

> A person must not cause a hazard to any person or vehicle by opening a door of a vehicle, leaving a door of a vehicle open or getting off, or out of, a vehicle.
>
> Penalty: 3 penalty units.

On 31 July 2012, during the course of this Inquiry, the maximum penalty prescribed in the regulations was increased to 10 penalty units[18] ($1,408.40 in 2012-13)[19].

This offence is a lodgeable infringement offence,[20] which allows police officers to issue infringement notices (on-the-spot fines) to those who commit the offence. At the time the Bill was referred to the Committee, the on-the-spot fine was 1 penalty unit ($122.12 in 2011-12; $140.84 in 2012-13[21]). On 31 July 2012, the on-the-spot fine prescribed in the regulations was increased to 2.5 penalty units[22] ($352.10 in 2012-13)[23]. Alternatively, a person can be charged by police and the matter can be taken to the Magistrates' Court. A Magistrate can impose any penalty up to the maximum penalty.

2.2 The offence proposed by the Bill

The Road Safety Amendment (Car Doors) Bill 2012 proposes to create an offence identical to Road Rule 269(3) within the *Road Safety Act 1994* itself, but with a higher penalty than existed in the regulations at the time the Bill was introduced into the Legislative Council.

The Bill does not seek to repeal the existing offence in the regulations. If the regulations remain in force and the Bill is enacted, there will be a duplication of the offence as it will be included in both the Road Safety Road Rules 2009 and the *Road Safety Act 1994*. Following the changes to the regulations on 31 July 2012, each would impose the same penalty.

Section 51 of the *Interpretation of Legislation Act 1994* states:

> **51 Provisions as to offences under two or more laws**
>
> (1) Where an act or omission constitutes an offence under two or more laws, the offender shall, unless the contrary intention expressly appears, be liable to be prosecuted under either or any or all of those laws but shall not be liable to be punished more than once for the same act or omission.
>
> (2) In subsection (1) law means—
>
> (a) an Act or a provision of an Act;
>
> (b) a subordinate instrument or a provision of a subordinate instrument; or
>
> (c) common law.

If the Bill is enacted, this section of the *Interpretation of Legislation Act 1994* implies that an offender will still be able to be prosecuted for the offence that currently exists in the regulations or for the new offence created in legislation by the Bill. However, only one penalty could be imposed on the offender.

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18 Road Safety Road Rules Amendment (Car Doors) Rules 2012.
19 Monetary Units Amendment Bill 2012, clause 3.
20 Road Safety (General) Regulations 2009, Schedule 7 and Infringements (General) Regulations 2006, Schedule 3.
21 Monetary Units Amendment Bill 2012, clause 3.
22 Road Safety (General) Amendment (Car Doors) Regulations 2012.
23 Monetary Units Amendment Bill 2012, clause 3.

2.3 Legislation versus regulations

At the time the Committee was taking evidence on the Bill, the Bill proposed to create an offence in legislation with a higher penalty than the offence that existed in the regulations. The regulations now impose the same penalty as proposed by the Bill. The first matter the Committee has considered is whether it is appropriate for the offence of 'car dooring' to be taken out of the Road Rules and incorporated into the *Road Safety Act 1994*.

2.3.1 Matters suitable for inclusion in regulations as opposed to legislation

In examining whether it is appropriate to include the offence in the *Road Safety Act 1994*, the Committee first examined the types of offences that are suitable for inclusion in regulations and which are more suitable in legislation. Under section 26 of the *Subordinate Legislation Act 1994*, the Premier has issued guidelines on which matters should be covered by primary legislation (i.e. in an Act of Parliament) and which should be dealt with in subordinate legislation, such as regulations. The Guidelines state:[24]

- matters relating to a significant question of policy, including the introduction of a new policy or fundamental changes to existing policy should be dealt with by way of primary legislation;
- matters imposing significant criminal penalties (such as fines exceeding 20 penalty units or imprisonment) should be dealt with in primary rather than subordinate legislation;
- by contrast, matters relating to the detailed implementation of a policy, or prescribing processes for the enforcement of legal rights and obligations are more appropriately dealt with by subordinate legislation.

The Bill proposes a maximum penalty of 10 penalty units, which is less than the 20 penalty units specified in the Guidelines, therefore is suitable for inclusion in regulations. Furthermore, the Bill also does not seek to implement a new policy, as it is simply seeks to change the penalty for an existing offence. Accordingly, if the Premier's Guidelines are followed, it is more appropriate for the offence to remain in regulations and not be moved to legislation.

2.3.2 Australian Road Rules

Victoria's Road Safety Road Rules 2009 are based on the Australian Road Rules. The Australian Road Rules contain the basic rules of the road for motorists, motorcyclists, cyclists, pedestrians, passengers and others. They are model laws that were created in 1999 under an agreement in which each Australian state and territory agreed that it would adopt the Rules into its laws. The purpose of the agreement was to provide uniformity across Australia in relation to road rules so that people were not confronted with different requirements as they travelled between states and territories. Each state and territory has, by and large, adopted the Rules into their own laws, although not every provision has been copied exactly in each state and territory.[25] The Australian Road Rules do not specify penalties and each jurisdiction can determine the appropriate penalty for each offence.

Victoria's Road Rule 269(3) has been taken directly from the Australian Road Rules. By relocating the offence of 'car dooring' from the regulations to legislation, Victoria would be moving away from these nationally consistent road rules.

In evidence to the Committee, Superintendent Robert Stork of Victoria Police supported the offence remaining in the regulations:[26]

> In relation to making car dooring an offence under legislation rather than the regulations, we have a strong view. On the regulatory controls in relation to vehicle drivers, cyclists, pedestrians and other road users and the provisions of the road safety rules and the national rules, our position would be that is an appropriate area and it is a very workable model for us to utilise. In that regard we would strongly support the retention of the regulations.

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24 Guidelines issued by the Premier under section 26 of the *Subordinate Legislation Act 1994* — *Government Gazette G31*, 4 August 2011, p. 1801.

25 National Transport Commission, National Road Rules, <http://www.ntc.gov.au/ViewPage.aspx?documentid=00794>, accessed 24 May 2012.

26 Superintendent Robert Stork, Victoria Police, *Transcript of Evidence*, 2 May 2012, p. 22.

The sponsor of the Bill, Mr Greg Barber, MLC, stated:[27]

> [The] Minister can tomorrow gazette the exact same penalties associated with that through regulation. It does not need my Bill. They could have done it at any time since this issue has arisen. He can do it tomorrow, take the wind out of my sails and remove the need for my Bill. That is entirely possible.

Further, Mr James Holgate, Director of Road User Safety at VicRoads stated:[28]

> We understand that Mr Barber's only avenue for change is through legislation; I guess that was the catalyst for this Bill. The fact remains that the offence is currently in regulations; I must admit we do not see any justification for moving it from a regulation into the Act.

The Committee supports the views of VicRoads and Victoria Police and believes moving the offence from the regulations to legislation is an unnecessarily complicated way of achieving the Bill's stated objectives. As Mr Barber noted was possible, changes to the penalties have since been made by amendments to the regulations. The Committee believes this has been an effective way of achieving the Bill's objective, and it is not necessary to move the offence to legislation.

Finding 1

The offence proposed by the Bill already exists in the Road Safety Road Rules 2009. Following changes made to the regulations on 31 July 2012, the maximum penalty for the offence has been increased to 10 penalty units in line with the increased penalty proposed by the Bill.

2.4 Enforcement procedure

Road Rule 269(3) can be enforced in one of two ways. Victoria Police can issue an on-the-spot fine (infringement notice), or the offender can be charged and be required to appear at the Magistrates' Court, where the Magistrate can issue a penalty up to the maximum penalty.

2.4.1 Infringement offences

The Committee has examined the enforcement options for the offence, and whether is appropriate for it to remain a lodgeable infringement offence or whether in all cases the matter should be taken to the Magistrates' Court for determination.

A number of submissions to the Committee emphasised the need for the offence to remain an infringement offence in the interests of efficiency of the enforcement process. In his submission to the Committee, the Chief Magistrate stated:[29]

> The infringements system provides a considerable time and cost benefit to the Magistrates' Court, prosecution agencies and infringement offenders. It enables parties to avoid attendance at court where the infringement is not disputed, which ensures court resources can be redirected to other high demand areas.

In evidence to the Committee, Superintendent Robert Stork supported this view:[30]

> In relation to the change in the process for enforcing car door offences and having them dealt with by the Magistrates Court … we would request that the infringement remain. In relation to efficiency and utilisation of the justice process in terms of productivity, lost time and service to the community, that would create a burden on the courts. It would certainly create a burden on police members.

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27 Mr Greg Barber, MLC, *Transcript of Evidence*, 28 March 2012, p. 4.
28 Mr James Holgate, VicRoads, *Transcript of Evidence*, 2 May 2012, p. 13.
29 Magistrates' Court of Victoria, Submission No. 87, p. 2.
30 Superintendent Robert Stork, Victoria Police, *Transcript of Evidence*, 2 May 2012, pp. 22-3.

VicRoads further argued:[31]

> In general terms, research indicates that to be effective the consequences of the offence need to rapidly follow the commission of the offence. Imposing a long delay between commission of the offence and the imposition of the penalty by pursuing the matter in court weakens any deterrence effect the penalty may have.

However, a number of individuals and groups made submissions to the Committee arguing against retaining the infringement offence. Ms Linda Tivendale, the mother of Mr Andrew Tivendale, who spent 55 days in a coma as a result of a 'car dooring' incident, stated:[32]

> I believe that the penalty for car dooring should be increased and that it should become a summary offence dealt with by a magistrate. I think this would represent the gravity of what can occur when someone fails to look before opening their door…
>
> To have to stand before a magistrate and acknowledge that their actions were careless and harmful would be, for us, an acknowledgement of how our life has changed through their behaviour.

Mr Murray Nicholas stated in his submission:[33]

> [W]e need people spending time thinking about their carelessness in a court waiting room.

The Committee agrees that serious cases of 'car dooring' should be taken before the Magistrates' Court by the police. However, as the existing offence also covers near-misses and collisions with car doors by vehicles other than bicycles, taking the matter to the Magistrates' Court is not appropriate in all circumstances. The Committee is also concerned this change could have unintended consequences. Superintendent Robert Stork of Victoria Police stated:[34]

> If we were unable to make the offence infringeable, it would be a burden. It would probably have a negative effect on those instances that are not collisions where police can have discretion. You might find in some cases where they are burdened with paperwork it is easier to give a warning than to compile an amicus brief of evidence and go through the court processes.

Evidence provided to the Committee also casts doubt on the argument that a higher penalty will be imposed if the matter is taken before the Magistrates' Court. In 2010-11, 187 infringement notices were issued for offences under Road Rule 269(3), whereas 12 charges were finalised by the Magistrates' Court.[35] Of the 12 matters finalised by the Court:

- 5 were found guilty and received a fine ranging between $117 and $850;[36]
- 1 case was referred to a diversion program;
- 1 case received a Community Based Order;
- 1 case was found not guilty;
- 2 cases were dismissed under section 76 of the *Sentencing Act 1994* (the charge was proven and dismissed); and
- 2 cases were adjourned undertakings.

As these statistics demonstrate, enforcing the offence through the Magistrates' Court does not necessarily lead to a higher penalty. A Magistrate has wide discretion with regards to penalties and can choose alternatives such as diversion programs and Community Based Orders.

The Committee concludes it is important that the offence remain a lodgeable infringement offence, and that Victoria Police retain the option to either issue an infringement notice or take the matter to

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31 VicRoads, Submission No. 76, p. 8.
32 Ms Linda Tivendale, Submission No. 40, p. 1.
33 Mr Murray Nicholas, Submission No. 8, p. 4.
34 Superintendent Robert Stork, Victoria Police, *Transcript of Evidence*, 2 May 2012, p. 27.
35 Magistrates' Court of Victoria, Submission No. 87, p. 1.
36 These are total fines and include the penalties for other offences where more than one offence was dealt with at the same hearing.

Court, depending on the circumstances. Section 2.4.4 examines the circumstances in which enforcement through the Magistrates' Court may be appropriate.

2.4.2 Graduated offences

All offences of 'car dooring' are currently enforced though Road Rule 269(3). An alternative to replicating the existing offence in the *Road Safety Act 1994*, is to create additional offences within the regulations or legislation that impose different penalties depending on the circumstances.

The Amy Gillett Foundation proposed the creation of a new offence to cover situations when serious injury is caused as a result of a 'car dooring':[37]

> The current law does not hold an offender liable for the serious injury or death of a victim of dooring, as in the case of James Cross. The AGF proposes that the Bill is amended to create a new offence of 'car dooring' causing serious injury under legislation, and that the current offence is retained in regulations.

However, graduated penalties are often differentiated on the level of intent. For example, 'causing serious injury intentionally' has a higher penalty than 'causing serious injury recklessly' which again has a higher penalty than 'negligently causing serious injury'. Most cases of 'car dooring' are unintentional, so offences cannot easily be differentiated on the level of intent. Superintendent Robert Stork of Victoria Police stated in evidence to the Committee:[38]

> The term 'car dooring' does connote intent. For that reason within Victoria Police we do not like the term. I would say that most often the actual incident of a cyclist hitting a car door is unintended, that a driver has opened a door and has not seen a cyclist, or a passenger has opened a door in like circumstances.

The Amy Gillett Foundation proposes imposing different penalties depending on the level of injury (if any) caused to the cyclist by the 'car dooring' offender. The Committee acknowledges that there are currently different offences under the *Crimes Act 1958* that impose different penalties on offenders depending on the consequences of their actions. For example, different penalties are imposed for 'causing serious injury intentionally' and 'causing injury intentionally'. It could be possible to introduce a range of offences for 'car dooring' with different penalties depending on whether the offence causes injury, serious injury or death.

However, the Committee believes this could add unnecessary complexity to the offence and would require police members to determine and assess the level of injury before issuing infringement notices or charging an offender with an offence. Mr Andrew Tivendale highlighted this issue in his evidence to the Committee:[39]

> [T]here are instances where it is unknown on the spot how much damage has been caused, it makes it very difficult. For instance, an ambulance came to pick me up. I went to hospital. I was assessed. They kept me in overnight for observation thinking that I would go home in the morning, and yet six months later I was still there. Based on the information at hand my injury was not serious, and yet it was about as serious as you can get.

VicRoads provided evidence to the Committee that there are a range of existing offences that could be pursued by police as a result of a 'car dooring' incident that caused injury, serious injury or death, including:[40]

- recklessly causing serious injury *(Crimes Act 1958, section 17)*;
- intentionally or recklessly causing injury *(Crimes Act 1958, section 18)*;
- conduct endangering life *(Crimes Act 1958, section 22)*; and
- recklessly engaging in conduct that places or may place a person in danger of serious injury *(Crimes Act 1958, section 23)*.

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37 Amy Gillett Foundation, Submission No. 88, p. 3.
38 Superintendent Robert Stork, Victoria Police, *Transcript of Evidence*, 2 May 2012, p. 23.
39 Mr Andrew Tivendale, *Transcript of Evidence*, 23 May 2012, p. 49.
40 VicRoads, Submission No. 76, p. 3.

Superintendent Robert Stork supported this proposition, although noted that there would need to be sufficient evidence to prove an offence:[41]

> **Supt STORK** — If there is intent … for example, if it was a road rage incident or some other incident — the common manner in which we can prove intent is through admissions or similar facts, so if someone has a consistent behaviour around that or some other overt act. In those circumstances, my expectation would be that police members would charge that person with an appropriate offence. Essentially it is an assault.
>
> **Ms PULFORD** — An injury that perhaps occurs through recklessness as distinct from intent?
>
> **Supt STORK** — It is different, and again there is a higher degree of proof. If a member were able to prove that recklessness, that would certainly be an option.

Sergeant Roger Kozulins added:[42]

> What you would get is a police report or a collision report on a desk in front of somebody like me who would have to look at the whole evidence and decide whether we have a case or not. There are quite often denials by people. That is not necessarily why we would not prosecute. The burden of proof is always on us to the criminal level in road collisions like this.

Given there are existing offences that can be considered for intentional and reckless cases of 'car dooring', the Committee does not believe it is necessary to create additional offences specifically relating to 'car dooring' incidents causing injury. Furthermore, as previously noted, the current offence under Road Rule 269(3) is based on the nationally consistent Australian Road Rules. For matters taken to Court, the Magistrate currently has discretion in applying penalties up to the maximum, and the level of injury caused to the cyclist may be better taken into consideration as part of the sentencing process, rather than in the framing of the offence. Victoria Police, who are principally responsible for enforcing the offence, agreed the current offence is easy to apply in practice:[43]

> **Sgt KOZULINS** — If I put my prosecutor's hat on, I would say that the current law is sufficient. It is succinct. It gives clarity to the situation. That covers both passengers and drivers. It is very workable from a police point of view if you are investigating a collision or an incident for that particular action.
>
> **Supt STORK** — I would agree. It is a consistent process, it is fair, it is readily understood and it probably gives us the best chance to change driver behaviour. As I said earlier, we would not be averse to increasing the sanctions.

2.4.3 Enforcement of the existing offence by Victoria Police

A key issue raised in numerous submissions to the Committee was a perception that Victoria Police are failing to adequately enforce the existing Road Rule 269(3). In his submission, Mr Jelmer Akse commented:[44]

> Every cyclist knows that the police will not show up at a dooring incident unless there are injuries. Even then it is said they need persuasion or an ambulance to be called to the accident site. This incident, as well as many others I have heard about from friends (most stories include a large dose of cynicism about Vicpol and the way incidents are handled) went unreported.

In its appearance before the Committee, Victoria Police was asked to clarify what action it takes following a report of 'car dooring' and under what circumstances it would issue an infringement notice:[45]

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41 Superintendent Robert Stork, Victoria Police, *Transcript of Evidence*, 2 May 2012, p. 23.

42 Sergeant Roger Kozulins, Victoria Police, *Transcript of Evidence*, 2 May 2012, p. 27.

43 Sergeant Roger Kozulins and Superintendent Robert Stork, Victoria Police, *Transcript of Evidence*, 2 May 2012, p. 25.

44 Mr Jelmer Akse, Submission No. 47, p. 1.

> **Ms HARTLAND** — So for someone who has attended at a police station, it is your discretion as to whether someone is charged?
>
> **Sgt KOZULINS** — It is not so much a discretion in that particular area. Police are obliged to complete a collision report, and it would come to somebody at my rank, which is Sergeant. I would review the file and see that there is a clear offence. I would request the member issue a penalty notice for that particular action, and that would be accountable. That would conclude the file.
>
> …
>
> We have a discretion to use or not use infringements if there is not a collision. If there is a collision, the discretion is pretty well removed from the member, and we would require them to issue an infringement for that action. If it was a near-miss and it was witnessed by police, it could be an infringement, or it could be a warning. That is where the discretion comes in.
>
> ….
>
> **Supt STORK** — We had a look at the number of infringements, and they are relatively low. We looked at the crash data, and they do broadly correlate, so I would be very confident that in many cases where there is a collision there is an infringement issued and, as I mentioned, the gap would be through the court process or where there is a driver who is not known or something similar to that.

However, some submissions and evidence provided to the Committee indicated this procedure is not always followed. Dr Michael Cross and Dr Nicola Martin, whose son Mr James Cross was killed in a 'car dooring' incident, stated to the Committee:[46]

> **Dr CROSS** — [O]ur son was knocked over and killed by car dooring but that was deemed by the police not to be a major traffic incident, so the major traffic incident investigative group was not called, nor was the driver interviewed and nor was the driver given 1 demerit point or fined $1. I am not quite sure how that decision was brought about. I do not know who made that decision, but to me that is not sending a very strong message. It is sending a message that a cyclist made the mistake of ploughing into a car door.
>
> …
>
> **Dr MARTIN** — It was also very interesting to us that at no point was the unfortunate person who unintentionally caused James's death ever interviewed by the police — ever — which seems extraordinary when someone has died in that way to not ever have been interviewed. Perhaps some more rigorous delineation of the police's responsibilities may be very helpful. Perhaps not all police are as … diligent as others.

Ms Melissa Payne stated in her submission:[47]

> I have been a victim of car dooring. I took this matter to the police, after collecting details from the car owner and a witness. The police informed me the matter could be taken to court, however it would be hard to prove that the said person had not looked before opening their car door. This to me seemed to make little sense, as if the said person had actually looked before opening their car door, they would have had to have seen me, as I also take extra caution to wear a high visible bike vest when I ride. The police officer said they would issue a warning to the said person. I believe the matter went no further, not on my behalf anyway.

Similarly, Ms Melissa Piries stated in her submission:[48]

> I don't bother to report dooring incidents to police as I feel the chances of the driver facing any consequences are next to zero. I have reported some other dangerous incidents to police, often there is not much that they can do other than to give the driver a warning.

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45 Sergeant Roger Kozulins and Superintendent Robert Stork, Victoria Police, *Transcript of Evidence*, 2 May 2012, pp. 25, 27, 24.

46 Dr Michael Cross and Dr Nicola Martin, *Transcript of Evidence*, 23 May 2012, pp. 43, 45.

47 Ms Melissa Payne Submission, No. 51, p. 1.

48 Ms Melissa Piries, Submission No. 50, p. 1.

The Committee believes that all 'car dooring' incidents reported to police should be fully investigated and appropriate action be taken, regardless of whether it results in a collision. The Committee also supports the view stated by Victoria Police that if a collision results, at minimum an infringement notice should be issued. The Committee is concerned that in the case of Mr James Cross, the Coroner found:[49]

> Senior Constable Kane [the investigating officer] … maintained that it was clear Mr Cross had struck Mrs Richards car door.

However, the Inquest showed:[50]

> A potential charge of 'opening a vehicle door to the danger of another' was not pursued. Senior Constable Kane told the Inquest that she has spoken to her 'bosses' at her station who informed her that a charge … would not be authorised.

While the Committee cannot comment on the merits of this decision without knowing the full circumstances of the case, it appears anomalous given that Road Rule 269(3) is a strict liability offence. As Senior Constable Kane stated at the inquest:[51]

> Once you open the car door and cause hazard to another the offence is complete.

The Committee believes that some police members may not be aware that causing a hazard with a car door is sufficient to establish an offence under Road Rule 269(3). Intent, recklessness, negligence and whether a person looked or did not look prior to opening the car door are irrelevant. A number of witnesses stated they believed more need to be done to educate police about the existing offence. Dr Marilyn Johnson stated:[52]

> At the moment the situation is that there is no mandatory infringement position for the police, so there is no outcome from a dooring event whether it does not involve a crash, whether there is no crash or collision. There is nothing to say that in this circumstance police must issue an infringement, and that is what we are looking to change.

Dr Nicola Martin stated:[53]

> It is beyond our comprehension in James's situation how those decisions were reached, so we would have to agree that it needs to be absolutely clear cut so that police have very clear guidelines — not guidelines; it is set in stone — that this is the action they must take.

Evidence provided to the Committee and the Coroner's report from the Inquest into the death of Mr James Cross indicate Road Rule 269(3) is not being consistently enforced. The Committee believes improved enforcement could be best achieved through further training and education of police officers regarding the existing road rule. The Committee notes that the offence is geographically concentrated, with 91 per cent of 'car dooring' injuries occurring within 10 inner city municipalities.[54] Targeted education of police who are deployed in these areas may be the most effective way of ensuring all 'car dooring' incidents are dealt with appropriately and consistently.

2.4.4 Enforcing the offence through the Magistrates' Court

A number of submissions expressed concern that 'car dooring' offences were not being taken to the Magistrates' Court often enough, which has meant the higher penalty available in the current regulations is not being utilised. Mr Garry Brennan of Bicycle Network Victoria stated to the Committee:[55]

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49 Coroners Court of Victoria, *Inquest into the Death of James Bernard Cross*, November 2011, p. 10.
50 Coroners Court of Victoria, *Inquest into the Death of James Bernard Cross*, November 2011, p. 10.
51 Coroners Court of Victoria, *Inquest into the Death of James Bernard Cross*, November 2011, p. 10.
52 Dr Marilyn Johnson, Amy Gillett Foundation, *Transcript of Evidence*, 23 May 2012, p. 33.
53 Dr Nicola Martin, *Transcript of Evidence*, 23 May 2012, p. 44.
54 Road Safety Action Group Inner Melbourne, Submission No. 79 - Part 2, p. 7.
55 Mr Garry Brennan, Bicycle Network Victoria, *Transcript of Evidence*, 23 May 2012, p. 39.

> My view is that the police have a much more serious issue to address, and that is why they do not take more people to the courts — because, as we know, the range of seriousness of this offence is considerable. You will hear evidence from someone who was doored who was very lucky to get away with having his life intact, and that offender only received the minimum available penalty. Nobody was taken to court in that situation … the issue for the police is for them to explain to this committee and anybody else why they have not more forcibly addressed the serious doorings and put more people through the courts for higher offences. I think that is really the issue for the police to address.

Mr Andrew Tivendale stated:[56]

> In my case, as I was in a coma, my partner, Courtney, was involved with the police and asked what was going to happen to the lady who doored me et cetera. It came to light that she said she had looked and so therefore the minimum penalty was imposed — whether she looked or not. All she had to do was to say she looked — no proof either way — and therefore the minimum penalty was imposed. That does not exactly stand beside what happened to young Mr Cross, where the driver was not even interviewed. However, the fact that simply by saying she had looked, when in my mind she could not have, she gets away with the minimum penalty — I feel that is the wrong thing.

In evidence to the Committee, Victoria Police indicated they were more likely to take a matter to the Magistrates' Court where multiple offences were involved.[57] Some witnesses suggested all cases of 'car dooring' that involved injury should be pursued through the Magistrates' Court. Ms Tracey Gaudry of the Amy Gillett Foundation stated:[58]

> We would recommend that if there is an injury, it immediately become a court imposed issue.

Mr Andrew Tivendale stated:[59]

> There is a part of me that says that any of them where a collision occurs should go to court, and where there is no collision there should be an infringement notice and demerit points. However, that is unrealistic. The courts do not have time et cetera ….
>
> There is no doubt that what occurred to me was not a minimum possible offence. It was not a maximum either. I do not believe there was any malice in the action.

The Committee agrees that 'car dooring' offences should be taken to the Magistrates' Court and the maximum penalty pursued in certain circumstances. However, given the range of injuries that can occur from a 'car dooring', the Committee does not believe that requiring all incidents that involve injury to be taken before a Magistrate is the most effective way to enforce the offence. Furthermore, as noted in section 2.4.1, taking the matter before a Magistrate does not necessarily result in a higher penalty.

Rather than altering the offence to prescribe situations in which the offence must be taken to Court, the Committee encourages Victoria Police to consider developing guidelines to assist police members when considering whether it is a appropriate to take the matter before a Magistrate. Under the *Sentencing Act 1991*, when sentencing an offender, the Magistrate must have regard to a number of factors, including:[60]

> (a) the maximum penalty prescribed for the offence; and
> (b) current sentencing practices; and
> (c) the nature and gravity of the offence; and
> (d) the offender's culpability and degree of responsibility for the offence; and
> ….

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56 Mr Andrew Tivendale, *Transcript of Evidence*, 23 May 2012, p. 48.
57 Superintendent Robert Stork, Victoria Police, *Transcript of Evidence*, 2 May 2012, p. 22.
58 Ms Tracey Gaudry, Amy Gillett Foundation, *Transcript of Evidence*, 23 May 2012, p. 33.
59 Mr Andrew Tivendale, *Transcript of Evidence*, 23 May 2012, p. 49.
60 *Sentencing Act 1991,* s 5(2).

(daa) the impact of the offence on any victim of the offence; and
(da) the personal circumstances of any victim of the offence; and
(db) any injury, loss or damage resulting directly from the offence; and
(e) whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so; and
(f) the offender's previous character; and
(g) the presence of any aggravating or mitigating factor concerning the offender or of any other relevant circumstances.

These issues (which include the injury caused to the victim) may assist Victoria Police in developing guidelines to determine whether a higher penalty is likely should the matter be pursued through the Magistrates' Court.

Increasing the maximum penalty for the offence will have little effect unless police take offenders before the Magistrate's Court to seek a higher penalty. However, it will only be worthwhile for police to take a case before the Court if it is likely the Magistrate will impose a higher penalty, having regard to the matters he or she must consider under the *Sentencing Act 1991*. The Committee believes clear guidelines as to the circumstances in which an infringement notice must be issued and which matters should be taken to Court will ensure the existing offence is appropriately and consistently enforced. The development of guidelines would also give confidence to cyclists that offenders will be pursued by police and encourage cyclists to report all offences.

Recommendation 1

The Committee recommends Victoria Police:

- conduct training for police members regarding enforcement of the offence of 'car dooring', particularly those deployed in inner Melbourne municipalities with high cycling activity; and
- consider the development of guidelines to assist police to determine when it is appropriate for a 'car dooring' offence to be enforced through the Magistrates' Court.

3. Penalties

3.1 Background

At the time the Bill was referred to the Committee, a 'car dooring' offence, as specified in Road Rule 269(3) of the Road Safety Road Rules 2009, had a maximum penalty of 3 penalty units. The Road Safety (General) Regulations 2009 set an infringement penalty, or on-the-spot fine, of 1 penalty unit. On 31 July 2012, the regulations were changed to increase the maximum penalty for a breach of Road Rule 269(3) to 10 penalty units and increased the infringement penalty to 2.5 penalty units.

The Bill proposes a maximum penalty of 10 penalty units (which has since been implemented) but does not propose a change to the infringement penalty. The Bill also proposes the addition of three demerit points to the offence. At the present time, demerit points are not attached to offence.

In advertising this Inquiry, the Committee asked for public submissions on whether the increased monetary penalties and the addition of three demerit points are appropriate.

3.2 Penalty units

There are a number of road safety offences in Victoria that attract a maximum of 10 penalty units. These offences include:

- not stopping for a red traffic light or arrow;[61]
- not stopping at a stop sign;[62]
- not stopping at a children's crossing;[63]
- disobeying 'no overtaking' signs;[64]
- stopping behind a stopped tram at a tram stop;[65]
- not wearing a seat belt;[66]
- stopping for a red bicycle crossing light;[67] and
- disobeying direction from a police officer or authorised person.[68]

In its submission to the Committee, VicRoads stated that the current fine for Road Rule 269(3) was set as a result of a review undertaken of fine levels in 2008.[69] Further, VicRoads stated:[70]

> VicRoads undertook significant work to align the fines imposed by traffic offences with their potential crash risk. To maintain the current structure where offences carrying a similar risk have a similar monetary penalty, the maximum court penalty for other similar risk offences involving cyclists would need to be reviewed to maintain this risk based alignment of monetary penalties.

3.2.1 Evidence received by the Committee

The Committee received a range of evidence via submissions and public hearings. Of the 94 written submissions received, the majority commented on whether the maximum fine should be increased:

- 67 supported the increase to 10 penalty units;
- 22 did not express a view;

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61 Road Rule 56.
62 Road Rule 67.
63 Road Rule 80.
64 Road Rule 93.
65 Road Rule 163.
66 Road Rule 265.
67 Road Rule 260.
68 Road Rule 304.
69 VicRoads, Submission No. 76, p. 6.
70 VicRoads, Submission No. 76, p. 6.

- 4 did not want the penalty increased; and
- 1 wanted the maximum penalty increased to 20 penalty units.

Some of the reasons presented to the Committee in public submissions as to why fines for the offence should increase include:

- to act as a deterrent and raise awareness;[71]
- to change the behaviour of drivers;[72]
- to bring the penalty in line with other offences as it is currently set very low;[73]
- to try and prevent further accidents and fatalities from 'car dooring';[74] and
- to bring Victoria in line with other jurisdictions.[75]

Witnesses at the Committee's public hearings reiterated and concurred with the above reasons for increasing the fine for 'car dooring'.

Deterrence and awareness raising

The Committee received evidence supporting the view that an increase in fine would act as a deterrent and raise awareness of the issue of 'car dooring'. Mr Andrew Tivendale stated:[76]

> In terms of the changes that can be made, I feel that harsher penalties as a motivation for people to look before they open their door — as a deterrent for not looking — is one of the keys.

Ms Greta Gillies stated in her submission:[77]

> Drivers being distracted by fellow passengers, mobile phones, and their busy lives seems to be the biggest causes of unconsidered door openings. However, just like with any other road rule, the threat of hefty penalties helps ensure 'distractions' are kept in check. I don't see how it would be any different in this case

Behaviour change

Changing driver behaviour and making sure that drivers and passengers look before opening car doors is another important strategy to reduce 'car dooring' accidents. Dr Nicola Martin stated in a public hearing that imposing fines and penalties more generally are important because:[78]

> You can educate on the one hand, but if you do not have a bit of a stick at the other end so that people accept that the consequences of their actions do matter, education is worthless.

Victoria Police's Superintendent Robert Stork stated at a public hearing:[79]

> We utilise a Safe System Approach. Under that approach we recognise Safer People and Victoria Police's role through enforcement to change driver behaviour. On that point, we would certainly agree with aspects of the previous submission, particularly in regard to the immediacy and the effect of providing or issuing infringement notices to people who are allegedly in breach of road rules within Victoria.

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71 Austin Bicycle Users Group, Submission No. 12; Mr Peter Richardson, Submission No. 14; Ms Anna Milbourne, Submission No. 25; Ms Josephine MacHunter, Submission No. 36; Mr Robert Cook, Submission No. 58; Ms Rosemary Nugent, Submission No. 73; Mr Callum Dawlings, Submission No. 90.

72 Mr Murray Nicholas, Submission No. 8; Ms Erin Kelly, Submission No. 28; Ms Rhea Scheltus, Submission No. 84; Public Health Association of Victoria, Submission No. 93.

73 Mr Timothy Anders, Submission No. 53; Melbourne Bicycle Users Group, Submission No. 71; Bicycle Network Victoria, Submission No. 80; Amy Gillett Foundation, Submission No. 88.

74 Bicycle Network Victoria, Submission No. 80; Yarra Bicycle Users Group, Submission No. 82; Ambulance Victoria, Submission No. 91.

75 Mr David Charles, Submission No. 30, p. 1; Ms Glenyys Jones, Submission No. 32, p. 2.

76 Mr Andrew Tivendale, *Transcript of Evidence*, 23 May 2012, p. 48.

77 Ms Greta Gillies, Submission No. 13, p. 1.

78 Dr Nicola Martin, *Transcript of Evidence*, 23 May 2012, p. 43.

79 Superintendent Robert Stork, Victoria Police, *Transcript of Evidence*, 2 May 2012, p. 22.

Bringing the penalty in line with other offences

The Committee notes that an act of 'car dooring' can have very serious consequences, including serious injury and death. The Committee heard evidence that the penalty units for this offence do not match other similar offences, or even lesser offences. As pointed out to the Committee at a public hearing, the maximum penalty for not having a bell on a bike is 5 penalty units, compared to 3 penalty units for this offence.[80]

In evidence to the Committee on this Bill, Mr Greg Barber, MLC, stated:[81]

> We have pegged this at other similar offences that are also equally likely to cause a hazard to someone's life. By moving it up to 10 penalty units and 3 demerit points, we are making it the equivalent penalty you would face if you ran a red light or if you drove past the doors of a tram when passengers were boarding.

Mr James Holgate of VicRoads concurred with this view, stating:[82]

> We think that 10 [penalty units] is about the appropriate level. Looking at offences that are at the 10-penalty units level, certainly there are a number of offences like failing to stop at a stop sign which is a 10-penalty unit maximum. It is a pretty significant fine of now about $1,400. It is an offence where there is a whole range of seriousness, and we think that that range from 0 to 10 is probably in the right scale.

3.2.2 Other jurisdictions

While the Road Rules are nationally consistent, each jurisdiction sets its own penalties for breaches of the Rules. This has created a situation where there is a wide variation in the fines associated with the offence across Australian states and territories. Table 2 summarises the penalties for the offence across Australian states and territories.

Table 2: Penalties for offences equivalent to Victorian Road Rule 269(3) in all Australian jurisdictions

State	Provision for maximum penalty exists	Maximum penalty	Monetary value of maximum penalty
Victoria	269(3) *Road Safety Rules 2009*	3 penalty units [February 2012] 10 penalty units [August 2012]	$366 $1,408
New South Wales	269(3) *Road Rules 2008*	20 penalty units	$2,200
Queensland	269(3) *Transport Operations (Road Use Management – Road Rules) Regulation 2009*	20 penalty units	$2,000
South Australia	Road Traffic (Miscellaneous) Regulations 1999	$155	$155
Western Australia	243 *Road Traffic Code 2000*	1 penalty unit	$50
Tasmania	269(3) *Road Rules 2009*	10 penalty units	$1,300
Northern Territory	Traffic Regulations	$40	$40
Australian Capital Territory	Road Transport (Safety and Traffic Management) Regulation 2000	20 penalty units	$2,200

80 Ms Tracey Gaudry, Amy Gillett Foundation, *Transcript of Evidence*, 23 May 2012, p. 33; Ms Anna Hyland, Melbourne Bicycle Users Group, *Transcript of Evidence*, 23 May 2012, p. 53.

81 Mr Greg Barber, MLC, *Transcript of Evidence*, 28 March 2012, p. 4.

82 Mr James Holgate, VicRoads, *Transcript of Evidence*, 2 May 2012, p. 17.

From Table 2, it is evident that a number of jurisdictions have much higher penalties than Victoria. New South Wales, Queensland and the Australian Capital Territory, have set their maximum penalty at 20 penalty units, which equals a maximum fine in excess of $2,000. The maximum fine in Tasmania is 10 penalty units, or $1300.

Ms Tracey Gaudry of the Amy Gillett Foundation, told the Committee:[83]

> [T]here is a precedent for [higher] penalty units in Queensland, New South Wales and Tasmania, and there are other offences with higher penalty units where the impact of the offence has a similar or less threat to the safety of the affected road user.

VicRoads stated in its submission that risk is a consideration when fines are determined.[84] Mr Holgate further stated in VicRoads public hearing:[85]

> The 10 penalty units would provide the court the ability to provide a greater penalty should the circumstances of the offence warrant it. It is potentially a high-risk action.

3.2.3 Submissions that oppose a penalty increase

The Committee received four submissions that did not believe the penalties for the offence should be increased. Reasons given included:

- the real cause of the problem is the Australian Design Rules for cars;[86]
- better infrastructure in the form of 'bike only/priority lanes' would keep cyclists a safe distance from cars;[87]
- an increase in cycling numbers is impacting the data of 'car dooring' incidents;[88]
- an increase in penalty (to 10 penalty units) is not proportionate to the risk of the offence and it does not change behaviour.[89]

Vehicle design and bicycle infrastructure

The Committee recognises that other issues such as infrastructure and car design safety rules can have an impact on the number of 'car dooring' offences (these issues are discussed further in Chapter 4). However the Committee does not believe that changes to vehicle design and bicycle infrastructure will be effective in isolation. A range of measures, including an increase to the penalty, are needed to effectively address the issue.

Penalty proportionate to the risk

The RACV stated to the Committee that increased fines do little to change drivers' behaviour. In its submission, the RACV commented:[90]

> RACV appreciates that 'car dooring' can have significant safety implications for cyclists. However, we do not consider that attaching demerit points or increasing the penalty units that apply to this offence from 3 units to 10 units is proportionate to the road safety risk of 'car dooring'. This penalty will be in excess of penalty units of other serious road safety offences such as failure to give way to a pedestrian (rule 38) – 1.75 penalty units; failure to wear a properly fastened and adjusted seat belt (driver) (rule 264 (1)) – 2 penalty units; and a failure to obey traffic lights (rule 56(1)) – 2.5 penalty units.

The Committee found in its research that the RACV have misquoted the infringement penalties for the offences listed. The maximum penalty for each of the offences is:

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83 Ms Tracey Gaudry, Amy Gillett Foundation, *Transcript of Evidence*, 23 May 2012, p. 31.
84 VicRoads, Submission No. 76, p. 5.
85 Mr James Holgate, VicRoads, *Transcript of Evidence*, 2 May 2012, p. 13.
86 Mr David Wilson, Submission No. 4
87 Mr Wynn Carty, Submission No. 31
88 Mr Montgomery Wooley, Submission No. 42
89 RACV, Submission No. 94, p. 3.
90 RACV, Submission No. 94, p. 3.

- failure to give way to a pedestrian (Road Rule 38) — 5 penalty units;
- failure to wear a properly fastened and adjusted seat belt (driver) (Road Rule 264(1)) — 10 penalty units; and
- failure to obey traffic lights (Road Rule 56(1) — 10 penalty units.

The Committee notes that 10 penalty units will bring the offence in line with those listed by the RACV. Consideration of an infringement penalty is an important issue and is explored in the following section.

3.2.4 Infringement penalties

The offence contained in Road Rule 269(3) is currently a lodgeable infringement offence. In Chapter 2, the Committee noted there was value in retaining the option of issuing an infringement notice in certain circumstances. Although the Bill focusses on increasing the maximum Court imposed penalty, the Committee has also considered what an appropriate penalty would be for an infringement notice for the offence.

When the Bill was referred to the Committee, the infringement penalty was set at 1 penalty unit. Numerous submitters to the Committee and witnesses at public hearings told the Committee that an infringement penalty of 1 penalty unit is too low. Victoria Police commented in its submission that:[91]

> Victoria Police supports … an increase [to] the penalty to the current Road Safety Road Rules 2009 offence as a positive road safety benefit, given the increase in these types of incidents.

James Holgate from VicRoads stated:[92]

> [W]e would support an increase in the traffic infringement notice penalty to 2 penalty units which is a doubling of where it is now. That is roughly in line with the guidelines we have that it is 20 per cent to 25 per cent of a maximum penalty. That 2-penalty unit traffic infringement notice would be what is normally then imposed by the police should they issue a traffic infringement notice, but 10 remains should they decide to send a matter to court for a particularly serious offence.

The Amy Gillett Foundation also recommended that the infringement penalty be increased. It recommended that a penalty of up to 10 penalty units be the maximum, with a minimum of at least 2.5 penalty units.[93] Further, the Chief Executive Officer of the Foundation, Ms Tracey Gaudry stated 'We propose increasing the current infringement penalty from 1 penalty units to 3 penalty units'.[94]

Similarly, in its submission Bicycle Network Victoria stated that it supported an increase in an infringement penalty from 1 to 2 penalty units.[95] At public hearing with the Committee, Mr Garry Brennan stated:[96]

> We would just like to see a simple doubling of the minimum penalty for the infringement notice and an increase in the range of the court penalty from 3 to 10 penalty units.

<u>Guidelines on determining minimum infringement penalties</u>

The Attorney General's Guidelines to the *Infringements Act 2006* provide guidance on determining the monetary value of infringement notices. They state:[97]

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91 Victoria Police, Submission No. 63, p. 1.
92 Mr James Holgate, VicRoads, *Transcript of Evidence*, 2 May 2012, p. 18.
93 Amy Gillett Foundation Submission No. 88, p. 3
94 Ms Tracey Gaudry, Amy Gillett Foundation, *Transcript of Evidence*, 23 May 2012, p. 30.
95 Bicycle Network Victoria, Submission No. 80, p.6
96 Mr Garry Brennan, Bicycle Network Victoria, *Transcript of Evidence*, 23 May 2012, p. 37.
97 Department of Justice, *Attorney General's Guidelines to the Infringements Act 2006*, p. 4.

> An infringement penalty should generally be approximately no more than 20 – 25% of the maximum penalty for the offence and be demonstrated to be lower than the average of any related fines previously imposed by the Courts.

Should the maximum penalty be increased, these guidelines suggest that the infringement notice penalty should similarly be increased.

3.2.5 Committee's view

There is strong support amongst the community for an increase in penalties associated with this offence. This was evident by the number of public submissions that supported the increase in penalties. It was noted by the Committee that the offence has the potential to cause significant injuries to cyclists if they are 'car doored'. This risk is similar to many other offences that carry higher maximum and minimum penalties, such as running a red light or not giving way at a give way sign.

The Committee believes the maximum penalty for the offence should not apply in all situations. However, it is of the view that the Magistrates' Court should have the right to impose up to 10 penalty units in some circumstances. This is consistent with other Australian states and territories which have maximum penalties of between 10 and 20 penalty units.

In Chapter 2, the Committee noted the benefits of this offence continuing to be an infringeable offence, and in particular the administrative efficiency of an infringement penalty available for police ensures that the offence is dealt with by police in the most effective manner. A number of submissions and witnesses at public hearings advocated for an increase to infringement penalty along with an increase to the maximum penalty. The Committee agrees and believes that an infringement notice penalty of 2.5 penalty units is appropriate and accords with the Guidelines set out by the Attorney General.

The increases to the penalties that were made by regulations on 31 July 2012 are consistent with the Committee's view and the Committee believes the regulations now contain appropriate penalties for the offence.

Finding 2

The penalties for the offence of 'car dooring' under Road Rule 269(3) that were in force when the Bill was referred to the Committee (an infringement notice of 1 penalty unit and a maximum Court-imposed penalty of 3 penalty units) were insufficient and not proportionate to its potential risks and consequences. The increased penalties (an infringement notice of 2.5 penalty units and a maximum of 10 penalty units) are more appropriate and are better aligned with the gravity of the offence.

3.3 Demerit points

The Bill proposes adding 3 demerit points to the offence. At the current time, the offence does not have any demerit points attached to it. An individual with a full drivers licence can incur 12 demerit points before either their licence is suspended for three months or they can elect to keep their licence, however must not incur any demerit points for 12 months.[98]

The 94 submissions received expressed a diverse range of opinions regarding demerit points:

- 53 supported adding 3 demerit points to the offence;
- 35 did not express a view;
- 5 argued against demerit points; and
- 1 advocated adding 6 demerit points to the offence.

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[98] VicRoads,'Demerit Points', <http://www.vicroads.vic.gov.au/Home/Licences/DemeritsAndOffences/DemeritPointsAndFines/>, accessed 30 May 2012

Many of the reasons expressed in submissions for the addition of demerit points were similar to the reasons for increasing the fine. The main reasons expressed to the Committee were:

- to act as a deterrent and raise awareness;[99]
- to change the behaviour of drivers, especially those that may not object to paying fines; [100]
- to bring the penalty in line with other offences that have the risk to seriously injure or kill vulnerable road users; [101] and
- to try and prevent further accidents and fatalities from 'car dooring'.[102]

3.3.1 Change behaviour and act as a deterrent

The Committee heard from witnesses both via submissions and at its public hearings that demerit points are a good way to change behaviour and act as a deterrent to undertaking risky activities. In its submission, VicRoads stated that demerit points aim to target risky driving behaviour.[103] At a public hearing, Mr James Holgate of VicRoads stated:[104]

> Generally demerit points are designed to discourage drivers from the higher risk activities they undertake while they are driving, typically speeding — every time you drive how much you are going to push your right foot down and what speed you are going to select. There is a constant decision making the driver makes between how fast I want to go versus the perception of being caught and then the sanction. Quite typically offences like speeding or going through a stop sign or a red light are the ones that attract demerit points because they are potentially the behaviours that people do repeat and the ones that we want to have an accumulation of increasing sanction through demerit points as they repeat the offence, if they repeat the offence.

In a submission to the Committee, Mr Sean Hardy supported increased fines, but did not support adding demerit points:[105]

> I do not think the appropriate remedy is to impose demerit points to anyone who is not a driver of a motor vehicle. I do not believe imposing demerit points is appropriate for a dooring offence because this is not really a driving offence. It should be categorised as a personal injury offence. Demerit points should be imposed only when an offence is grave enough to warrant suspending a person's drivers licence. There are better ways to punish offenders.

Similar to the view of Mr Hardy, VicRoads argued that while demerit points do target behaviour, they should only be used for driving offences, as opposed to this offence, which is primarily focused on entering or exiting the vehicle.[106]

In its written submission and evidence to the Committee, Victoria Police was a strong supporter of demerit points for this offence. In its submission, Victoria Police stated:[107]

> Victoria Police supports the attachment of demerit points and an increase [to] the penalty to the current Road Safety Road Rules 2009 offence as a positive road safety benefit, given the increase in these types of incidents.

Ms Tracey Gaudry from the Amy Gillett Foundation expanded on this view, stating:[108]

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99 Mr Stephen Jay, Submission No. 1; Ms Linda Tivendale, Submission No. 40; Mr Jelmer Akse, Submission No. 47.

100 Mr Julian Morton, Submission No. 7; Mr Timothy Anders, Submission No. 53; Ms Gemma Wilson, Submission No. 60.

101 Mr Rod Phillips, Submission No. 55; Mr James Kent, Submission No. 57; Melbourne Bicylce Users Group, Submission No. 71, Cycling Victoria, Submission No. 72.

102 Mr Andrew Tivendale, Submission No. 41; Mr Andrew Killer, Submission No. 44; Mr Isaac Gibbs, Submission No. 45; Ms Carole Whitehead, Submission No. 48.

103 VicRoads, Submission No. 76, p. 5.

104 Mr James Holgate, VicRoads, *Transcript of* Evidence, 2 May 2012, pp. 13-14.

105 Mr Sean Hardy, Submission No. 85, p. 1.

106 VicRoads, Submission No. 76, p. 5.

107 Victoria Police, Submission No. 63, p. 1.

> Demerits are said to aim to target risky driving behaviour and to encourage improved driving behaviour. It is actually not about driving versus not driving; it is about being in control of the vehicle and that at any point in time while in control of a vehicle it is about risky behaviour associated with being in control of that vehicle. Dooring is a risky behaviour, and we support that demerit points should be applied to target the risky behaviour of dooring.

The submissions and witnesses that supported the introduction of demerit points for the offence strongly argued that demerit points can have more impact than monetary fines because demerit points can result in a loss of licence. In evidence to the Committee, Mr Andrew Tivendale stated:[109]

> I think that demerit points in particular are a high motivator — that people are much more fearful of losing their licence than having a bit of a hit to their hip pocket. It depends on your financial circumstances and all the rest of it, but most people do need a licence, and so I feel that should definitely be included.

Dr Michael Cross, whose son James was killed in a 'car dooring accident in 2010, concurred with this view at a public hearing:[110]

> We do not believe that dollars are really penalty enough. Losing one's licence is much more valuable to most people than simple dollars, and I think the penalty must be commensurate with the action. If it goes around about the same as running a red light, which we know is a very dangerous occupation — you might get away with it most times, but one time you will not — then we believe that opening a car door would be in a similar vein.

The RACV argued against demerit points as a deterrent, stating that other options such as education on the current penalty followed by enforcement would be a more effective way to change behaviour. The RACV was also supportive of VicRoads' 'Road User or Abuser' Facebook campaign.[111]

3.3.2 Applying demerit points to passengers and minors

VicRoads opposed demerit points for this offence. Its submission to the Committee listed a range of reasons as to why it believed demerit points were not appropriate. These included:[112]

- the difficulty of imposing demerit points on a passenger (whether licensed or unlicensed), when demerit points only apply to drivers and driving related offences;
- the difficult of imposing demerit points on a child of a prosecutable age that does not have a driving licence and may not have a licence for many years;
- behaviour change may not occur, especially where unlicensed passengers cannot incur demerit points; and
- the potential to create inequities in the way in which demerit points are applied.

Bicycle Network Victoria also did not support demerit points. It stated that applying demerit points had the potential to create anomalies in the way penalties were applied.[113] Mr Garry Brennan of Bicycle Network Victoria stated at a public hearing:[114]

> I think that when you are trying to reform the law the simple solution, the easiest one, is the best way to go. I do not think you will get any argument from anybody that there should not be at least a doubling of the minimum infringement notice and a substantial increase in the court fine. However, you will get argument about demerit points, so why go there? Why waste your energy, our commitment, our passion, our desire for reform on something that is going to be contentious and difficult to win agreement on

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108 Ms Tracey Gaudry, Amy Gillett Foundation, *Transcript of Evidence*, 23 May 2012, p. 31.
109 Mr Andrew Tivendale, *Transcript of Evidence*, 23 May 2012, p. 48.
110 Dr Michael Cross, *Transcript of Evidence*, p. 43.
111 RACV Submission No. 94, p. 3.
112 VicRoads, Submission No. 76, p. 6.
113 Bicycle Network Victoria, Submission No. 80, p. 6.
114 Mr Garry Brennan, Bicycle Network Victoria, *Transcript of Evidence*, p. 38.

> and that does not deliver us much more than we are already getting? For me it is really a matter of strategy. I do not think there is a convincing argument to hang in there and fight for demerit points. It will not get us anything extra that we need.

An issue that arose during public hearings was that minors exiting a vehicle have the potential to 'car door' a cyclist. The Bill's sponsor, Mr Greg Barber, MLC was asked about this issue during a public hearing:[115]

> **Mr RAMSAY** — Just on that point, that is assuming the driver is actually responsible for creating the hazard by opening a car door. If there were a passenger such as a child or someone who inadvertently opened the door and caused a hazard or something more, how then would you apply a penalty to that person?
>
> **Mr BARBER** — That is correct. Of course if a child opens a door, they do not have a drivers licence so they cannot lose demerit points, but they can be fined. The fine relates. The current offence that is in the road rules and the road regulations now is to cause a hazard by opening a car door — that is, passenger or driver….
>
> **Mr FINN** — …I am interested to hear what you say about parental responsibility, because I too am a great believer in that, but I am just wondering how far this law would take that parental responsibility. For example, if I was driving and one of my children opened the car door and an accident were to occur and the prosecution were to take place, would it be my points that would be sacrificed for the crimes of the child, as it were?
>
> **Mr BARBER** — Certainly you would have to pay your child's fine.

Victoria Police were asked a range of questions on this topic during a public hearing. Sergeant Kozulins believed that applying demerit points was an administrative matter that could easily be dealt with by Victoria Police. Sergeant Kozulins told the Committee: [116]

> We sort of look at that as an administrative function — whether a passenger or minor can get demerit points. If they cannot, they cannot. If it happens to be a driver, and 75 per cent of the time we see it — that is fine; they can be attached. How we would deal operationally with a minor — if it is a collision, there still has to be a collision report. It would still come back to a person like me, who would have to make a decision about how we accountably deal with the situation. If it were a minor, it could be a warning. That is a police process. If it were poor old grandma in the back, and she has opened the door, we might have to say, 'Sorry, but you're getting a ticket', and that accountably finishes a collision.

3.3.3 Other demerit point offences

There are a range of offences that carry demerit points in Victoria, including:[117]

- Exceeding the speed limit (between 1 and 8 demerit points);
- Rail crossing offences (4 demerit points);
- Disobey traffic lights, signs or police direction (3 demerit points);
- Driving without a seatbelt, or a properly adjusted and fastened seat belt (3 demerit points);
- Driving with an unrestrained passenger (3 demerit points);
- Risk colliding with alighting, boarding or waiting tram passengers (3 demerit points);
- Improper overtaking, passing or turning (2 demerit points); and
- Fail to dip headlights or driving at night or in hazardous weather without lights on (1 demerit point).

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115 Mr Greg Barber, MLC, *Transcript of Evidence*, 28 March 2012, pp. 4, 8.
116 Sergeant Roger Kozulins, Victoria Police, *Transcript of Evidence*, p. 26.
117 VicRoads, 'Demerit Point Offences', <http://www.vicroads.vic.gov.au/Home/Licences/DemeritsAndOffences/DemeritPointsAndFines/DemeritPointOffences.htm>, accessed 30 May 2012.

As argued by VicRoads in its submission and public hearing, all the demerit point offences directly relate to driving offences. Driving with an unrestrained passenger is a demerit point offence, however VicRoads argued in its hearing that a driver has a degree of control over the action of a passenger being unrestrained. Mr James Holgate stated:[118]

> They are applied in that case because the behaviour of the driver — that is, driving the vehicle — is something they can control and they can choose not to drive the vehicle if an occupant is not wearing a seatbelt. A driver cannot stop a passenger in the back seat getting out of the car just like that, so it would not be appropriate to apply those demerit points to the driver. The other factor is that in terms of the risks involved and the total harm of the behaviours incurred, not wearing a seatbelt is a very significant contributor to the road toll and it is something we need to take stronger measures to reduce.

Ms Tracey Gaudry commented that South Australia had demerit points attached to this offence, and this could act as precedence in Victoria.[119] In reviewing fines earlier in this Chapter, it is noted that the fine for the offence in South Australia is set much lower than other jurisdictions at $155. While South Australia has demerit points, it is also worth noting that the fine available to law enforcement is much lower than the options available in other jurisdictions.

3.3.4 Committee's view

The Committee notes there are strong arguments both for and against the introduction of demerit points for the offence of 'car dooring'. Key stakeholders took opposing positions on this issue with Victoria Police and the victims of 'car dooring' who presented to the Committee supporting demerit points and VicRoads and Bicycle Network Victoria opposing demerit points.

Proponents for demerit points argued that demerit points provide a greater deterrent than a monetary penalty on its own and they also assist to change behaviour, which is the key to reducing the number of 'car dooring' offences. However, those who do not support the introduction of demerit points argued that attaching demerit points would create anomalies as to how penalties are applied, with unlicensed persons and minors receiving only a fine, but licensed persons receiving a fine and demerit points. Furthermore, in Victoria demerit points currently only apply to driving offences and 'car dooring' is not an offence committed while driving.

The Committee was unable to reach agreement on this issue. Given the monetary penalties for the offence have only recently been increased, the Committee believes the impact of these increased penalties, along with further training of police as proposed in Recommendation 1, should be monitored to determine if they achieve the desired outcome of reducing 'car dooring'. If 'car dooring' incidents are not reduced by these measures, the attachment of demerit points should be re-examined.

Finding 3

There are strong arguments both for and against the introduction of demerit points for the offence. The Committee was unable to reach agreement as to whether it is appropriate to attach demerit points to the offence at this time.

Recommendation 2

The Committee recommends that VicRoads undertake a review of 'car dooring' incidents before the end of 2014 to determine whether the higher monetary penalties and further police training have achieved a decrease in the number of 'car dooring' incidents. If the number of incidents has not decreased, the Committee recommends VicRoads then reconsider attaching demerit points to the offence.

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118 Mr James Holgate, VicRoads, *Transcript of Evidence*, 2 May 2012, p. 15.

119 Ms Tracey Gaudry, Amy Gillett Foundation, *Transcript of Evidence*, 23 May 2012, p. 31.

Finally, the Committee notes that clause 4 of the Bill seeks to attach demerit points to the new offence to be created in legislation by clause 3. As discussed in Chapter 2, the penalties for 'car dooring' have already been increased through amendments to the regulations which changed the penalties associated with existing Road Rule 269(3). The Committee therefore believes the new offence in clause 3 is not needed. Consequently, if demerit points were to be attached to the offence, it would be more appropriate if the demerit points were attached to Road Rule 269(3), rather than a new offence.

The Committee believes there is little merit in proceeding with the Bill in its current form. Should there be a desire to attach demerit points to the offence at a later stage, this could most effectively be achieved through regulations, or by a new Bill, that attach demerit points to Road Rule 269(3). The Committee has therefore concluded the Bill should not proceed in its current form and should be withdrawn.

Recommendation 3

As the monetary penalties for 'car dooring' have already been increased through regulations, the Committee recommends that the Legislative Council orders the Road Safety Amendment (Car Doors Bill) 2012 be withdrawn.

4. Education and infrastructure

4.1 Scope of the Bill

In his initial presentation to the Committee, Mr Greg Barber, MLC, stated:[120]

> Whenever we attack a road safety problem, we always do it with education, changes to the physical road infrastructure or vehicles, and enforcement. Looking at Victoria's very successful long term plan to cut the road toll, it is not possible to say exactly which element has been the most important. Clearly they all reinforce each other, and if we are getting the result we want, we are all very happy.

While the Bill itself focuses on enforcement and penalties, numerous submissions received by the Committee pointed out that these are only two factors that contribute to keeping cyclists and other vulnerable road users safe. The Committee recognises that reducing the occurrence of 'car dooring' requires a multi-faceted approach from various levels of government as well as cycling and other road safety groups. The two other issues raised most frequently in evidence to the Committee were the need for better education and improved infrastructure.

The scope of the Committee's Inquiry is to examine the clauses contained in the Road Safety Amendment (Car Doors) Bill 2012. As the issues of education and infrastructure are not technically within the scope of the Bill, and cannot be legislated, the Committee has not made any specific recommendations regarding these topics. However, the Committee believes it is important to summarise the matters raised with the Committee which may be subsequently considered by the appropriate agencies and groups in conjunction with any changes to penalties for the offence.

4.2 Education

A key theme in submissions to the Committee was that drivers should be more aware of the need to look for cyclists when opening car doors. Melbourne Bicycle Users Group commented:[121]

> [I]t is drivers who cause doorings, drivers who lack awareness of the issues, and cyclists who are injured. … This is not to blame drivers, but to recognise that driver behaviour results in the risk and to identify that addressing driver behaviour and raising driver awareness is essential to tackle the problem.

In its evidence, VicRoads stated it was already conducting a Facebook 'Road User or Abuser' campaign to try to engage with cyclists and car drivers about the relationship between those two sets of road users. VicRoads will also be producing free stickers to remind passengers and drivers to look for cyclists, which will be made available through inner city local government bodies.[122]

Many submissions to the Committee argued that additional work needs to be done to educate drivers about the risks of 'car dooring'. Suggestions for improved education of drivers included:

- 'Lead with the Left' — encouraging drivers to open their car doors with their left hand which forces the driver to swivel in the seat and creates the opportunity for a visual check of traffic behind the vehicle while restraining the range the door can be opened in the initial movement;[123]
- making stickers warning against 'car dooring' mandatory on all cars;[124]
- co-locating driver awareness signs on every parking time limit sign to remind drivers to look out for bicycles;[125]
- prominent warning signs on the streets in areas of high cyclist activity;[126]
- including additional bicycle rider safety in driver training education; and[127]

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120 Mr Greg Barber, MLC, *Transcript of Evidence*, 28 March 2012, p. 2.
121 Melbourne Bicycle Users Group, Submission No. 71, p. 6.
122 Mr James Holgate, VicRoads, *Transcript of Evidence*, 2 May 2012, p. 19.
123 Bicycle Network Victoria, Submission No. 80, pp. 3, 8.
124 Melbourne Bicycle Users Group, Submission No. 71, p. 6.
125 Melbourne Bicycle Users Group, Submission No. 71, p. 6.
126 Mr Larry Stillman, Submission No. 2, p. 1.

- including more bicycle safety questions in driving licence tests.[128]

Some submissions also suggested further education of cyclists was needed, including:

- educating cyclists to better appreciate the presence of the door zone and adjust their position and speed accordingly;[129]
- direct interaction with cyclists, such as engaging with riders face-to-face on the road-side as they travel to improve road user interaction and guide behaviour change;[130]
- targeting newer cyclists who may travel close to the parked cars in fear of the passing cars on the other side, and that is actually far more dangerous;[131]
- greater investment into cyclist education through programs such as Austcycle to ensure adequately trained and skilled cyclists on the roads.[132]

The Committee believes many of these are valuable initiatives and worthy of consideration as part of a suite of measures to improve rider safety. To further improve safety for cyclists, the Committee also notes that cyclists need to ensure they take measures to be visible to drivers, including wearing high visibility vests and having appropriate lights at night time. The Committee believes further educational campaigns for cyclists on ways they can make themselves more easily seen by other road users would be worthwhile.

The Committee also received evidence about the need for a communications campaign to alert drivers to the issue of 'car dooring'. In his evidence to the Committee, Sergeant Roger Kozulins of Victoria Police supported further eduction regarding the offence, but cautioned that road safety campaigns need to be targeted to ensure they are effective:[133]

> Education is a great thing. If I were to quiz everybody in the room about various road rules, most people would forget. The last time you looked at them was many years ago, when you did a test. That is the general public's knowledge as well.
>
> My own personal view is how much can the general punter — a member of the public — out there can tolerate as far as an onslaught of road safety messages. They have to be sharp, they have to be pointed and they have to try to remember them.

Dr Cameron Munro, author of the *Bicycle Rider Collisions With Car Doors: Crash Statistics and Literature Review,* stated:[134]

> There are several ways in which we can improve awareness. One is obviously through a mass media type of campaign for which the effectiveness in road safety literature generally is often poor to moderate at best. What tends to work better is very individualised, focused intervention instead — educate individuals, which helps them to identify the issues, develop a rapport with the issue and hence moderate their behaviours accordingly.

Given 'car dooring' incidents are geographically concentrated within inner Melbourne, the Committee agrees a campaign focused on these localities may be appropriate to target the issue. The Committee encourages VicRoads and other road safety groups to undertake further work in this area and to develop effective education and communication strategies to help decrease the incidence of 'car dooring'.

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127 Ms Tracey Gaudry, Amy Gillett Foundation, *Transcript of Evidence*, 23 May 2012, p. 33.
128 Mr Andrew Tivendale, *Transcript of Evidence*, 23 May 2012, p. 49; Cameron James, Submission No. 35, p. 1.
129 Bicycle Network Victoria, Submission No. 80, pp. 5, 7.
130 Bicycle Network Victoria, Submission No. 80, p. 2.
131 Mr Jay Tilley, *Transcript of Evidence*, 28 March 2012, p. 7.
132 Cycling Victoria, Submission No. 72, p. 5.
133 Sergeant Roger Kozulins, Victoria Police, *Transcript of Evidence*, p. 25.
134 Dr Cameron Munro, *Transcript of Evidence*, 23 May 2012, p. 37.

4.3 Attitude and behaviour change

A related theme raised in submissions was the need to change the attitude of car drivers towards cyclists and change the behaviour of drivers to be more considerate towards other road users. In his evidence to the Committee, Dr Michael Cross stated:[135]

> I suppose what it also suggests to me is that at the moment cyclists are still not legitimate road users, and hopefully that is what will change. Anyone who has ever driven in Europe will see that the attitude to cyclists is extraordinarily different. But you do not change that sort of behaviour overnight unfortunately, and that is where you have got to start getting to people very early on and probably even earlier with their driving careers.

Cr Janet Bolitho, President of the Road Safety Action Group Inner Melbourne, supported this view:[136]

> [T]he goal of our group is to promote individual awareness and responsibility of all road users in a congested shared road environment … we really see that as absolutely primary …

Changing attitudes is not easy and improved education and awareness is a key first step towards changes in behaviour, which will hopefully lead to changes in attitude. The Committee hopes this Inquiry raises the profile of the issue and that the increased penalties, together with further education and communication, will lead to greater mutual respect amongst all road users.

4.4 Infrastructure

Two of the key elements of Victoria's Road Safety Strategy are safer roads and safer vehicles.[137] A number of submissions to the Committee suggested work could be done in both these areas to reduce the incidence of 'car doorings'.

Evidence provided to the Committee indicated that 30 percent of all car dooring collisions involving cyclists are occurring on 5 streets in inner Melbourne and 50 percent on 10 streets.[138] It was argued this was due to high numbers of cyclists, very high parking occupancy and high parking turnover.[139] Given the problem is geographically concentrated, changes to road infrastructure in these particular locations may be effective in reducing 'car doorings'.

Submissions to the Inquiry made a number of suggestions regarding improving road infrastructure, including:

- increased use of kerbside bicycle lanes, also known as Copenhagen lanes;[140]
- bicycle lanes that commence outside the range of car doors, or bicycle routes physically separated from other vehicle traffic such as cars, trucks and buses;[141]
- installing painted buffers between parking and bicycle lanes;[142]
- shared lane markings ('sharrows') to encourage cyclists to take a position in the traffic land offset from the dooring zone;[143]
- prohibiting the installation of narrow parking/bicycle lanes which force cyclists to ride in the 'door zone', and requiring removal of existing sub-standard parking/bicycle lanes; and[144]

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135 Dr Michael Cross, *Transcript of Evidence*, 23 May 2012, p. 45.
136 Cr Janet Bolitho, Road Safety Action Group Inner Melbourne, *Transcript of Evidence*, 23 May 2012, p. 39.
137 Victoria's Road Safety Strategy, <http://www.roadsafety.vic.gov.au/strategy/victorias_road_safety_strategy.html>, accessed 29 May 2012.
138 Dr Cameron Munro, *Transcript of Evidence*, 23 May 2012, p. 37.
139 Dr Cameron Munro, *Transcript of Evidence*, 23 May 2012, p. 38.
140 Road Safety Action Group Inner Melbourne, Submission No. 79 - Part 2, p. 29.
141 Mr Peter Campbell, Submission No. 16, p. 1.
142 Road Safety Action Group Inner Melbourne, Submission No. 79 - Part 2, p. 25.
143 Road Safety Action Group Inner Melbourne, Submission No. 79 - Part 2, p. 31.
144 Road Safety Audits Pty Ltd, Submission No. 43, p. 2.

- prominent warning signs on the streets in areas of high cyclist activity.[145]

These suggestions are supported by one of the recommendations of the Coroner in the Inquest into the death of Mr James Cross:[146]

> That VicRoads work closely with local government to promote the reconfiguration of bicycle and parking lanes. This could be achieved in part through the provision of guidance material to assist local governments in the identification of specific sites where such a reconfiguration would be appropriate.

VicRoads told the Committee that it has begun to implement this recommendation:[147]

> In relation to the infrastructure changes, we are looking at encouraging what is called a Copenhagen style of bicycle lanes where the bicycle lanes are on the left hand side of the row of vehicles, such as in Albert Street, not far from here. We are now working with local councils to look at where it might be practicable to apply that. The design of bike lanes is always a compromise between how much pavement is available, the role of the road in the road hierarchy and what parking provision needs to be made. Trying to juggle all of those to some extent along with the other features determines the design of the bike lane.
>
> We intend to develop a new series of cycle moats to provide design standards for cycling infrastructure, which is basically a design to try to increase the separation between cyclists and larger road users.

The Committee supports further work in this area and encourages all levels of government to work together towards achieving safer infrastructure for all road users.

Some submissions also suggested changes to vehicle design may also be beneficial, such as:

- alternative door designs, such as sliding or rear hinging doors;[148]
- on-board sensors to warn or restrict door opening in the presence of a hazard[149]
- reducing the level of tinting on windows to allow cyclists to more easily see when a vehicle occupant is about to exit the vehicle;[150] and
- ensuring car mirrors are flat, not rounded, to avoid driver's being given a false impression that cyclists are further away than they really are.[151]

While the Committee notes these suggestions could assist in reducing the incidence of 'car dooring', it believes there would be a number of significant practical obstacles to implementing these proposals.

145 Mr Larry Stillman, Submission No. 2, p. 1.
146 Coroners Court of Victoria, *Inquest into the Death of James Bernard Cross*, November 2011, p. 15.
147 Mr James Holgate, VicRoads, *Transcript of Evidence*, 2 May 2012, p. 19.
148 Road Safety Action Group Inner Melbourne, Submission No. 79 - Part 2, p. 24.
149 Road Safety Action Group Inner Melbourne, Submission No. 79 - Part 2, p. 24.
150 Ms Glennys Jones, Submission No. 32, p. 4.
151 Mr David Wilson, Submission No. 4, p. 1.

Appendix A:
List of written submissions received

1. Mr Stephen Jay
2. Mr Larry Stillman
3. Whitehorse Cyclists
4. Mr David Wilson
5. Ms Kim Lambie
6. Mr Craig Lambie
7. Mr Julian Morton
8. Mr Murray Nicholas
9. Mr Herschel Landes
10. Mr Bruce Webster
11. Mr Roger Backway
12. Austin Bicycle Users Group
13. Ms Greta Gillies
14. Mr Peter Richardson
15. Ms Narelle Graefe
16. Mr Peter Campbell
17. Mr Peter Eade
18. Ms Marcia Lewis
19. Mr Glenn Osboldstone
20. Mr Stuart Westbury
21. Mr Frank Reinthaler
22. Velo Cycles
23. Dr Sue White
24. Ms Anna Milbourne
25. Ms Helen Vorrath
26. Ms Debra Shadbolt
27. Dr Stephen Roberts
28. Ms Erin Kelly
29. Mr Robert Merkel
30. Mr David Charles
31. Mr Wynn Carty
32. Ms Glennys Jones
33. Ms Clair Schultz
34. Museum Bicycle Users Group
35. Mr Cameron James

36. Ms Josephine MacHunter
37. Brimbank Bicycle Users Group
38. Transport Accident Commission
39. Mr Owen ONeill
40. Ms Linda Tivendale
41. Mr Andrew Tivendale
42. Mr Montgomery Woolley
43. Mr Bob Cumming
44. Mr Andrew Killer
45. Mr Isaac Gibbs
46. Mr Andrew Ashton
47. Mr Jeimer Akse
48. Ms Carole Whitehead
49. Confidential
50. Ms Melissa Pirie
51. Ms Melinda Payne
52. Mr Nicholas du Bern
53. Mr Timothy Anders
54. Mr Rick Zucchelli
55. Dr Rod Phillips
56. Mr Nicholas Cotterell
57. Mr James Kent
58. Mr Robert Cook
59. Mr Robert Wagner
60. Ms Gemma Wilson
61. Mr Alastair Stewart-Jacks
62. Mr Sam Graham
63. Victoria Police
64. Mr Peter Tsipas
65. Peninsula Pedallers
66. Dr Nicola Martin
67. Mr Nick Szwed
68. Ms Thao Taylor
69. Mr Andrew Costen
70. Mr Neil Taylor
71. Melbourne Bicycle Users Group
72. Cycling Victoria
73. Ms Rosemary Nugent

74. Dr David Burns
75. Doctors for the Environment Australia
76. VicRoads
77. Mr Peter Davison
78. Dr Jan Garrard
79. Road Safety Action Group Inner Melbourne
80. Bicycle Network Victoria
81. Maurice Blackburn Lawyers
82. Yarra Bicycle Users Group
83. Mr William Cawte
84. Ms Rhea Scheltus
85. Mr Sean Hardy
86. Moreland Bicycle Users Group
87. Magistrates' Court of Victoria
88. Amy Gillett Foundation
89. Ms Margaret McKay
90. Mr Callum Dawlings
91. Ambulance Victoria
92. Mr Stephen Broderick
93. Public Health Association of Australia (Victorian Division), Heart Foundation (Victoria) and Monash University Accident Research Centre
94. Royal Automobile Club of Victoria (RACV)

Appendix B:
Schedule of Public Hearings

Wednesday 28 March 2012

- Mr Greg Barber, MLC
- Mr Jay Tilley, Electorate Officer

Wednesday 2 May 2012

VicRoads

- Ms Shelley Marcus, Director Legal Services
- Mr James Holgate, Director Road User Safety

Victoria Police

- Superintendent Robert Stork, Road Safety Strategy Division
- Sergeant Roger Kozulins, Legal Policy Division

Wednesday 23 May 2012

Amy Gillett Foundation

- Ms Tracey Gaudry, Chief Executive Officer
- Dr Marilyn Johnson, Research Manager

Bicycle Network Victoria and Road Safety Action Group Inner Melbourne

- Mr Garry Brennan — Public Affairs, Bicycle Network Victoria
- Cr Janet Bolitho — President, Road Safety Action Group Inner Melbourne
- Dr Cameron Munro — Author of Bicycle Rider Collisions With Car Doors: Crash Statistics and Literature Review

Dr Nicola Martin and Dr Michael Cross

Mr Andrew Tivendale

Melbourne Bicycle Users Group

- Ms Elizabeth Hennessy
- Ms Anna Hyland

Extract of the proceedings

Legislative Council Standing Order 23.27(5) requires the Committee to include in its report all divisions on a question relating to the adoption of the draft report. All Members have a deliberative vote. In the event of an equality of votes, the Chair also has a casting vote.

The Committee divided on the following question during consideration of this Report, with the result of the division detailed below. Questions agreed to without division are not recorded in this extract.

Meeting No. 11 — 15 August 2012

Recommendation 3

Mr Drum moved, That Recommendation 3 stand part of the Report.

The Committee divided.

Ayes 7	**Noes 1**
Ms Broad	Ms Hartland
Mrs Coote	
Mr Drum	
Mr Finn	
Ms Pulford	
Mr Ramsay	
Mr Somyurek	

Question agreed to.

Minority Report

While writing this Minority Report, I would like to acknowledge the work of the Committee Chair, Mrs Andrea Coote, and the rest of the Committee for the co-operative manner in which we worked through this Bill.

I believe that the Committee's work was diligent and worked in a collaborative fashion. I want to give a special thank you to all the people who presented on this very important issue. In particular, I thank the parents of James Cross, Michael and Nicola, whose submission presented us with the tragedy of losing their son to a car door incident on 17 March 2010. This brought home the full human cost when a person is involved with a car dooring incident. In their grief they presented their evidence with dignity and they have not sought vengeance. The work they have done in James' memory should not be in vain and everything possible should be done to prevent other families suffering the same fate.

I also thank Andrew Tivendale, who told of his experience when he was doored and fell under another vehicle. He was in hospital for five months and remarkably survived the incident.

There are two main points that I wish to make about the report:

Recommendation 2 of the Majority Report reads: "The Committee recommends that VicRoads undertake a review of 'car dooring' incidents before the end of 2014 to determine whether the higher monetary penalties and further police training have achieved a decrease in the number of 'car dooring' incidents. If the number of incidents has not decreased, the Committee recommends VicRoads then reconsider attaching demerit points to the offence."

While I agree that it would be an excellent course of action to undertake this work, the Committee has absolutely no power to require VicRoads to do this. So we will not have the empirical research that would be required to see whether the fine increase has actually worked. I would be happy to support Recommendation 2 if the Committee had such a power, but it doesn't. What it does do, is highlight that demerit points could reduce dooring incidents or at least create a stronger deterrent.

While the Committee couldn't agree on the issue of demerit points as there was evidence for and against the effectiveness of this course of action, it was quite clear from the Victoria Police submission both written and verbal, that demerit points have real potential in trying to decrease the numbers of cyclists who are doored and subsequently suffer terrible injuries or die as a result of the incident. The new fine imposed by regulation by the Government is still inadequate in my view.

Included in the Majority Report is the clear view of Victoria Police on the practicality of demerit points:

> "Victoria Police were asked a range of questions on this topic during a public hearing. Sergeant Kozulins believed that applying demerit points was an administrative matter that could easily be dealt with by Victoria Police. Sergeant Kozulins told the Committee:
>
> > We sort of look at that as an administrative function — whether a passenger or minor can get demerit points. If they cannot, they cannot. If it happens to be a driver, and 75 per cent of the time we see it — that is fine; they can be attached. How we would deal operationally with a minor — if it is a collision, there still has to be a collision report. It would still come back to a person like me, who would have to make a decision about how we accountably deal with the situation. If it were a minor, it could be a warning. That is a police process. If it were poor old grandma in the back, and she has opened the door, we might have to say, 'Sorry, but you're getting a ticket', and that accountably finishes a collision."

Recommendation 3 of the Majority Report reads: "As the monetary penalties for 'car dooring' have already been increased through regulations, the Committee recommends that the Legislative Council orders the Road Safety Amendment (Car Doors Bill) 2012 to be withdrawn."

I cannot support the withdrawal of the Bill as I do not believe that the increase in the fine from 1 penalty unit ($122.12 in 2011-12; $140.84 in 2012-13) to 2.5 penalty units ($352.10 in 2012-13) is adequate, nor will it prevent cyclists being doored in the future.

Colleen Hartland, MLC
21 August 2012