

CORRECTED VERSION

STANDING COMMITTEE ON ECONOMY AND INFRASTRUCTURE

LEGISLATION COMMITTEE

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

Melbourne — 2 May 2012

Members

Ms C. Broad

Mrs A. Coote

Mr D. Drum

Mr B. Finn

Ms C. Hartland

Ms J. Pulford

Mr S. Ramsay

Mr A. Somyurek

Substituted members

Ms C. Hartland for Mr G. Barber

Chair: Mrs A. Coote

Deputy Chair: Ms J. Pulford

Staff

Secretary: Mr R. McDonald

Research Officer: Ms V. Delgos

Research Assistant: Mr S. Marshall

Witnesses

Superintendent Robert Stork, road safety strategy division, and
Sergeant Roger Kozulins, legal policy division, Victoria Police.

The CHAIR — Superintendent Robert Stork and Sergeant Roger Kozulins, I would like to welcome you to our committee tonight. I apologise for being slightly late; I am glad that you were here amongst the crowd and could hear why our questioning took so long. We are looking forward to hearing what you have to say to our committee tonight. Before we start I have some formalities to read through. I welcome Superintendent Robert Stork of the road safety strategy division and Sergeant Roger Kozulins of the legal policy division from Victoria Police to tonight's public hearings into the Road Safety Amendment (Car Doors) Bill 2012.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and is further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same comments, they may not be protected by this privilege. All evidence is being recorded. You will be provided with proof versions of the transcript within the next week. Transcripts will ultimately be made public and posted on the committee's website. We have allowed 10 to 15 minutes for you to make any opening comments that you would like, and the rest of the time will be for questions. As I said before, I welcome all those who have stayed to listen to tonight's proceedings. In particular I welcome the sponsor of the bill, Mr Greg Barber, to the audience tonight. I will hand over to you for a 5 to 10-minute submission.

Supt STORK — On behalf of Victoria Police we are very appreciative of the opportunity to represent Victoria Police and the chief commissioner this evening. As you mentioned in the introductions, I am from the road policing strategy division. I have a background in operational policing, including at specialist highway patrol units and working with the major collision investigation unit in a supervisory capacity after hours. Sergeant Kozulins also has a background in a highway patrol unit.

I think in the interests of time and given that we were also sitting in here earlier and we have heard the previous witnesses, I will just reconfirm that Victoria Police's approach around a road policing strategy within Victoria is a combined effort with our road safety partners, which obviously includes VicRoads. 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.

We have provided a written submission to the committee, and I might just touch on a couple of the key points within that submission. We have provided statistics in relation to penalty notice numbers, and a comment was made earlier about the actual number of those penalty notices being 187 for the code of 2089 for the financial year ended 30 June 2011. Until recently the fine or the sanction in relation to that penalty was \$122 without demerit points. The infringements do not take into account the number of people prosecuted through the court system, and it is open for members to utilise a court process and issue summons in certain circumstances, particularly where multiple offences may be involved or through the investigation of a collision that may occur. We did not differentiate between matters initiated by that collision investigation or detected by a police member reporting to police in the submission that we have provided.

In respect of the terms of reference — and we have confined our response accordingly — the committee sought input in relation to an increase in the penalty from 3 penalty units. In respect of that Victoria Police's view is that we would support an increase in the infringement fine or the sanction that is involved. We were asked to comment in relation to demerit points for the offence of car dooring. In respect of that we would support demerit points in relation to that particular offence, which we would view as a safety issue on the roads within Victoria.

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 and the ability to provide an infringement and, as I mentioned a moment ago, particularly around the immediacy and in seeking to change driver behaviour.

In relation to the change in the process for enforcing car door offences and having them dealt with by the Magistrates Court, again 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. An unintended consequence of the court provisions may be an increased utilisation of discretion by members in issuing warnings. We certainly would not support that. We would prefer to see that the appropriate infringement is given when offences are detected.

I guess they are the key points in regard to the submission. It is concise. We have kept it within the terms of reference, and we are here and available to answer questions to the best of our ability.

The CHAIR — Thank you very much. Sergeant Kozulins, do you want to add anything to that?

Sgt KOZULINS — No, nothing at all, but I would like to let you know that I have an operational background as a police prosecutor. I was in charge of a traffic unit, and part of my job, apart from investigating collisions and accidents, was to act as the supervisor and ensure that police members were laying the correct charges for court and proper processes. I had an oversight of that.

The CHAIR — That brings quite a bit of expertise to the table. Thank you very much.

Ms PULFORD — VicRoads' submission indicated that there are a number of offences that road users could be charged with in circumstances of car dooring. These are from the Crimes Act 1958 and include recklessly causing serious injury, intentionally or recklessly causing injury, conduct endangering life and recklessly engaging in conduct that places or may place a person in danger of serious injury. They indicated that these were existing big sticks, to use a phrase referred to earlier. Does this happen? How realistic is the prospect of a conviction?

Supt STORK — 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. If there is intent to do that — 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. I think some of the differentiation between the actual number of infringements issued against collisions may be representative of that court process.

The CHAIR — Do you have another name for car dooring that you would like to put up?

Supt STORK — I guess I have led with my chin, haven't I?

The CHAIR — Yes. I would be very interested.

Supt STORK — It is a collision. For a long time we have not referred to these or any other incidents as accidents. We call them crashes or collisions. In our view, it is a collision.

Mr DRUM — Superintendent, your evidence is contrary to VicRoads in relation to demerit points.

Sgt KOZULINS — We have a different view, yes.

Mr DRUM — You do not see it as a problem to have a driver wear the demerit points for the actions of a passenger, and if that is your position, are there other examples? For instance, if I were to litter out of a car, does the driver get the demerit points? Seatbelts is one. We have already discussed seatbelts. I am trying to think of other offences that a passenger could commit. What happens with littering?

Sgt KOZULINS — Generally speaking, the passenger would wear the offence for that. It is not a reverse onus or applicable to the driver.

Mr DRUM — Do you know of any offences that a passenger can commit?

Sgt KOZULINS — In a motoring sense they are difficult to pick. In a general sense, it could be anything, but to apportion blame to a driver legislatively does not occur often. It generally remains in the realm of seatbelts and not other matters.

Mr DRUM — I asked this at our last meeting. Is it an issue where ignorant pedestrians walk out in the path of a cyclist? Is that an issue for police where you have an accident in which a cyclist may come off and may be duly upset, and it is just because a pedestrian was not looking?

Supt STORK — That occurs, yes.

Mr DRUM — Is that an offence?

Sgt KOZULINS — Pedestrians can incur a number of offences — not crossing the road properly. They are all contained in the road rules where this particular offence lives. The road rules pretty much govern how we all move on roads and road-related areas without crashing and banging into each other. They cover pedestrians, riders of horses, trams and other vehicles, and that is why we believe it should stay in that same realm. But pedestrians have a number of offences. They cross roads diagonally. It could be an offence. It is just a matter of enforcement.

Mr DRUM — Could we just go back? Superintendent, obviously you have no real issue about a driver wearing the demerit points for the actions of a passenger in this issue?

Supt STORK — I think it would depend on the age of the passenger and the competence of the passenger. If it was an adult in the rear seat opening a door and striking a cyclist, there is some responsibility there surely for that person in the vehicle.

Mr DRUM — On the adult?

Supt STORK — Yes.

Mr DRUM — So therefore you would not be trying to take demerit points off the driver?

Sgt KOZULINS — I do not think so. Yes, I would agree with that.

Mr FINN — I suspect you may be ready for this one. There has been some suggestion at a previous hearing that the police have been reluctant to enforce the law as it currently stands with regard to this matter. What would your response be to that?

Supt STORK — It probably often depends on the forum and who we are trying to convince, I guess. 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. I had been thinking about it prior to coming to the committee. I drive probably 40 000 to 50 000 kilometres a year and I ride a bike, and the number of times that I observe a car door opening on a cyclist is actually quite rare. I am not sure — I cannot quantify how prevalent it is, but Victoria Police would certainly have an expectation that members would take the appropriate action on the disclosure of an offence.

One of the things I did do was I had a look, and we have a media release that we can share with you that is in relation to Operation Halo, which we ran in February. It is very much around vulnerable road users — pedestrians, bicycle riders and motorcyclists — and obviously interaction with vehicles as well. We can provide a copy of that release. I was just looking through, and I cannot tell you off the top of my head the number of actual shifts or members involved in the operation; however, during that operation we issued 6000 infringement notices. We were very focused on the issuing of infringement notices for any offences detected for road safety offences, so that is a high number of notices, and during that operation there were five observed and notices issued. I am just trying to put it into some sort of context.

Mr DRUM — Was that a blitz on jaywalking as well?

Supt STORK — Yes. We can provide that data, and when you look at it it will give you a breakdown of pedestrian offences for traffic lights; bicycle offences in relation to helmets, footpaths, lights and signs; motorcycle offences — riding in bicycle lanes, traffic lights and failing to signal; and car-truck offences in relation to traffic lights, mobile phone use and bicycle lanes.

I guess certainly our current Victoria Police philosophy is intelligence/evidence-led policing, and we have subscribed to that for a long period of time. We know that there is a higher incidence of collision and injury with bicycles at intersections, for example. We think the use of bicycle lanes for other than bicycles is particularly dangerous, and that is reflected in the data.

Mr FINN — Could I ask one very quick question? You have been succinct to this point, and I am sure you will continue, but I would ask both of you gentlemen this question: is this law necessary, or does the current situation allow you to do your job in terms of charging somebody who has been involved in an incident or indeed getting a conviction if it got to that point?

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.

Ms HARTLAND — I have a couple of quick questions, hopefully. There were 187 offences that you have given, from your submission.

Supt STORK — Yes.

Ms HARTLAND — So this is presumably someone who has been involved in an incident. They ring police, or you are in attendance because an ambulance has been called and there is a serious injury.

Supt STORK — Our belief in interpreting those statistics is that the majority would be as a result of a collision reported to police where the police attend it on the day or the injured cyclist attended at a police station and reported the collision.

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.

Ms HARTLAND — Also, it seems that there needs to be both bigger penalties and education. How would you see those two working together?

Sgt KOZULINS — Generally Victoria Police does not comment a lot on penalties; we leave that to the courts and government. We do like to believe that they are effective. 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. This would have to piggyback on all the other stuff that is being done at the moment, but, yes, there is certainly room for it.

Supt STORK — I think I just need to clarify. When I mentioned discretion earlier, a member who observes an offence — so, for example, if a car door were opened and a cyclist avoided it, a member could have discretion. Victoria Police would support the member issuing an infringement for that offence. If we have a requirement to submit a brief and issue a summons, which is actually a very onerous administrative process, the

unintended consequence may be exercising discretion and issuing a warning rather than a notice — and it really does warrant a notice.

The CHAIR — I know I have two very anxious questioners here, but I had called Ms Broad before. Would you like to ask your question?

Ms BROAD — In relation to the current offence of causing a hazard to any personal vehicle by opening a car door and the position that Victoria Police has expressed in supporting the attachment of demerit points and an increase in penalties, could I invite either or both of you to draw on your operational experience and indicate to the committee how you believe this would work in practice in relation to the attachment of demerit points, particularly having regard to the issues you have heard being raised in relation to not so much the driver of a vehicle where they are the one committing the offence but in relation to minors and passengers?

Sgt KOZULINS — I do not know whether just raising the penalty and attaching demerit points on its own would increase the consciousness of the driving public terribly much without an onslaught of an advertising campaign. You would have to keep at them a fair bit on this particular issue. If it ended up on page 4 of tomorrow's *Sun* in a small article, I would say that it has not permeated much into drivers' consciousness. It is something that has to be an ongoing campaign to say, 'These are the consequences of your actions if you open a door or step out on a cyclist'. It is difficult to gauge, but it would be an education campaign that needs to go along with it, saying, 'Look, this is serious, and this is why the fines have gone up and demerit points are attached'.

Ms BROAD — Perhaps if I could clarify, what I was actually inviting you to do in terms of drawing on operational experience was to put yourself in the position of an officer in the situation where this offence has been committed and there may be, apart from the driver, a minor or a passenger involved. How would you expect an officer would deal with that circumstance where demerit points are attached to the same offence which exists now?

Sgt KOZULINS — If it were a passenger — I think our friends at VicRoads indicated that they believe it is about 25 per cent of the occurrences that are passengers. 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 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.

The CHAIR — Mr Somyurek.

Mr SOMYUREK — My question has just been answered.

Mr RAMSAY — I just want to confirm if what I am hearing is right. There seems to be a mood for regulation rather than legislation. There seems to be a mood for some flexibility in the way that you provide infringement on whatever action might occur unsafely, and that is at the discretion of the police at the time.

I am unclear about the technicality of car dooring. A bit like you, I am uncomfortable with the name, because I do not actually know what it means. Does it actually mean that a car door is physically opened and a cyclist runs into it, or does it mean — and I use the Albert Street experience, of which I am very well aware, given I live in that street — where, with the left-hand cycle lane, you have cars parked adjacent to the cycling lane, and when you are turning left into a residence or apartment or whatever it might be you cannot actually see the cyclist. I find every night I go home that invariably your view is obstructed. If accidentally a cyclist runs into the side of your car door, are you then technically car dooring as such and then must face some sort of disciplinary action? That is a fairly simplistic technicality in relation to that, but I was just summarising.

The feeling I was getting was that there was a view both from VicRoads and Vic Police that there is no requirement for new legislation and that regulation in its present form is sufficient. You actually have some discretionary powers to use infringements as you see fit in relation to how you see the particular accident.

Sgt KOZULINS — 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.

The way the legislation stands at the moment, it is fairly flexible. It does not have to be a car door; it could be the passenger coming out with a handbag and collecting a person, a cyclist. It is quite broad. I know the theme here is cyclists, but the legislation covers a lot of actions where somebody opening a car door can cause injury to a person or damage to another vehicle, so it is quite flexible.

The CHAIR — Would you like to comment on that as well, Superintendent?

Supt STORK — No.

Mr SOMYUREK — So the cyclist who runs into a door — —

Supt STORK — Which is closed and was not opened?

Mr SOMYUREK — Yes, and the vehicle is mobile. Is that sitting under the same scenario in relation to car dooring?

Supt STORK — As I said, we do not use the terminology of car dooring. It is a collision. It is the circumstances that change. If a bicycle was to strike the side of the car and a collision resulted, we would investigate that to identify the circumstances. If the car has cut across the cyclist and there is some offence disclosed, we would act accordingly. It depends on the circumstances.

Mr SOMYUREK — My question was going to be with respect to the evidence that is required. I presume the evidence required would not be any different to any other collision.

Supt STORK — Correct. We would interview the driver; speak to witnesses, including the cyclist; ascertain what the circumstances are; and then act accordingly. As Roger said, in those circumstances around a collision — and that includes a collision where a car door has been opened on a cyclist — my experience is that that usually results in some sort of injury, mostly some sort of serious injury. We have some very strict processes and guidelines to ensure that the appropriate action is taken.

Mr SOMYUREK — There is a potential situation with — I know you do not like the term — car dooring where a driver opens the door and the bicycle might take a bit of paint off the door, let us say, and the bicyclist wants to push this further. In a normal collision the driver would sit down and exchange details et cetera. If the driver does not do that and believes that nothing really happened and pushes on and drives off, is he committing an offence?

Sgt KOZULINS — 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, and that is what I would do.

The CHAIR — I have one final question, and that is: if this bill were to be enacted, what sort of additional administrative burden would it put onto the police?

Sgt KOZULINS — Filling in collision reports?

The CHAIR — Yes.

Supt STORK — With collision reports, none at all. 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.

Ms HARTLAND — Following on a bit from that, if the demerit points were increased, the fines were increased and it becomes common knowledge that this is a real offence and you are going to get in trouble, do

you think that would then make people be much more careful about how they open their doors and be much more conscious about cyclists on the roads?

Sgt KOZULINS — It is an ongoing consciousness issue. It could pretty easily disappear into the 600-odd traffic laws that we have. Like I said, if it only appeared in page 4 of tomorrow's *Herald Sun* in a short article, it is not going to go far. There has to be some ongoing work with it.

The CHAIR — This brings to a conclusion our briefings for tonight. I would like to thank Superintendent Stork and Sergeant Kozulins for their time and the detail of their answers. On behalf of the entire committee, thank you very much for presenting to us tonight.

Supt STORK — Thank you for the opportunity.

Committee adjourned.