

# CORRECTED VERSION

## STANDING COMMITTEE ON ECONOMY AND INFRASTRUCTURE

### LEGISLATION COMMITTEE

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

Melbourne — 23 May 2012

#### Members

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#### Witnesses

Ms T. Gaudry, chief executive officer, Amy Gillett Foundation; and  
Dr M. Johnson, Monash University Accident Research Centre.

**The CHAIR** — I would like to welcome everybody here this evening to this hearing of the Economy and Infrastructure Legislation Committee looking into the Road Safety Amendment (Car Doors) Bill 2012, which was proposed by Greg Barber. I would like to welcome first of all Tracey Gaudry and Marilyn Johnson from the Amy Gillett Foundation. I welcome them warmly to our hearing tonight. I would also like to welcome all of the people who have come this evening to listen to this very important hearing. I thank you for finding the time to come here and join us tonight. I would like to explain to everybody here that we are on a very tight schedule because we are wanting to report back to the Parliament in a timely fashion. Tonight we have four groups presenting, and we are going to stick to a very firm timetable of 20 minutes each. We do have a clock up here, and we are watching it as well. I now make it 8.04 p.m. I thank you for giving us a presentation. We have several questions that we would like to ask of you, and we will make them succinct and focused, if that is possible.

I have some preliminary things to explain before we formally ask you to present. I welcome Tracey and Marilyn to tonight's public hearing of the Legislative Council Economy and Infrastructure Legislation Committee in relation to 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 the 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 up to 5 minutes for you to make opening comments, but if you would like the rest of the time for questions, it is in your hands. At 8.25 p.m. I will finish the proceedings. It is up to both of you. Welcome.

**Ms GAUDRY** — Thank you, and thank you for the opportunity. The Amy Gillett Foundation was established in 2005 when Amy Gillett was killed as a result of a car veering out of control into Amy and her five Australian cycling team mates. The Amy Gillett Foundation has only one focus, and that is to reduce the incidence of death and injury of bike riders. We love bike riding, but for us safety comes first. Our objective is to work with governments, colleagues, colleague safety organisations, bike organisations and the community to literally write ourselves out of existence due to the focus on safety having resulted in a significant reduction in death and injury. We fully support the Australian road safety strategy, which aims for an overall reduction of death and injury by 30 per cent by 2020. However, while overall road safety is improving, the same cannot be said for bike rider safety. At this time bike riders represent the second most vulnerable road user group.

I must confirm that our views tonight represent the Amy Gillett Foundation, Cycling Australia and Cycling Victoria formally, and based on the previous hearing, Victoria Police and a number of other organisations in this room. Our premise is that a safer environment for road users requires proactive work across all elements of the safe system.

#### **Overheads shown.**

**Ms GAUDRY** — Just to recap, the offence we are talking about tonight is dooring. I must note that 'dooring' is not an official term in the *Oxford Dictionary*. It is the phrase coined for this offence, and we will refer to it as such.

It is worth providing an illustration of the offence in question.

#### **Video shown.**

**Ms GAUDRY** — The car doors bill: we must say that we applaud the introduction of the bill into Parliament, with the primary focus of raising the baseline level of safety that should be afforded to all road users, and in particular bike riders. The committee is seeking input, as per this slide here, and in the interests of time I will not repeat that.

In summary, the Amy Gillett Foundation's recommendations are that as an offence under regulations the maximum court-imposed penalty be increased from the current 3 penalty units to 10 penalty units and a court-imposed maximum penalty of 3 demerit points be attached to the offence of car dooring. We propose increasing the current infringement penalty from 1 penalty units to 3 penalty units and attaching 2 demerit points to that infringement penalty. We recommend that car dooring remain as an offence under regulations, not under legislation. We recommend that legislation is only one part of the behaviour change spectrum and that a

whole program be introduced, including drivers looking and acting accordingly in terms of behaviour and cyclists' defensive riding behaviour, which we will talk to in a moment.

Our premise, as mentioned before, is about the safe system as a combination. No item is mutually exclusive out of safer roads, safer speeds, safer vehicles and, particularly in relation to this issue at hand, safer road users.

**Dr JOHNSON** — I am just going to give some quick information about some statistics around this. This is a review of the car dooring crashes that have involved a cyclist from 2000 to 2010. You can see the increase there. The blue line at the top is police-reported crashes; the pink line at the bottom is hospital-reported crashes. You can see already that there is a great discrepancy between the two data sources. Not everyone who is involved in a dooring crash reports it to police, and not everyone who does report it to police ends up in hospital. There is one police report that suggests that as few as 1 in 30 cycling-related crashes are reported to police, so we do not know how much this is actually underestimated by.

This recent time period has been the focus, but crashes relating to car dooring of cyclists are not new. From 1987 to 1995 there were three fatalities of cyclists relating to door crashes. There were also 850 crashes in that time period that resulted in injury to cyclists. There has been one death in the period that is on the slide, but the number of serious injuries has increased, as has the number of all injuries. This is not something that is just restricted to a small number of streets in the CBD either; this is across the entire metropolitan area, and it is across Victoria as well. It is something that cyclists have to deal with every day. They are exposed to driver doors being opened in front of them, regardless of whether or not that results in a crash.

It is also not just drivers but also passengers. It is often the case when a car is stopped in heavy traffic. It is the decision of a driver when he opens a car door when parked, but it is the decision of a passenger when the car is stopped in heavy traffic to say, 'I'll just hop out here'. The car has stopped, the passenger swings open their door and the cyclist has no way of anticipating that that is going to happen. That accounts for about 20 per cent of the crashes with cyclists and cars.

With penalties and regulations, the comparison between the states is that Victoria at the moment with 3 penalty units is amongst the lowest. New South Wales and Queensland have 20 penalty points for this offence, and South Australia already has demerit points attached to this, so we have a precedent there from other jurisdictions. In comparison to another offence that is often used in this argument, seatbelts, the demerit points are equal in Queensland and New South Wales, whereas in Victoria we already have much higher penalty units applied to drivers without seatbelts as opposed to car dooring offences. Again, we have demerit points attached to seatbelts and not to dooring.

Just as a quick comparison with other offences where there are already existing maximum penalty units above that currently for dooring, bike riders without a bell can be penalised up to a maximum of 5 penalty units. Littering from a vehicle already has 1 to 2. We are talking about an offence that can essentially lead to a fatality or a serious injury. The demerit points on the right are for a range of offences that could arguably have a lower risk to the safety of other road users than car dooring does.

**Ms GAUDRY** — In terms of the rationalising argument that has been put forward against increasing penalty units, there is a precedent for 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.

In terms of rationalising arguments against the introduction of demerit points, one argument is that there is no precedent for the demerits. We have demonstrated that there is a precedent in South Australia. Another argument is that demerits are only associated with offences that occur while driving — for example, seatbelts. That is a convention; it is not a standard or a requirement. It is argued that demerit points by themselves will not change behaviour. Nothing in isolation completely changes behaviour. At the moment a fine of 1 penalty unit is not changing behaviour, so we recommend that the whole spectrum be implemented.

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.

It is argued that demerit points introduce inequities regarding application to licensed passengers or unlicensed passengers and minors. Here the question of equity needs to be whether the driver should or should not be held responsible for the behaviour of the passengers, whether the issue is seatbelts or dooring or other. The driver needs to be, in our opinion, responsible for the behaviour of passengers, in particular if that passenger is a minor.

It is argued that a dooring offence committed by a passenger cannot be controlled by the driver. It is argued that a seatbelt offence by a passenger can be controlled by a driver. We actually do not support that argument, because the driver cannot force a passenger in a vehicle which is driving or moving to keep their seatbelt on. We argue that in the same case there is much less strength to say that seatbelts are more controllable by a driver than dooring.

Our detailed recommendation is to change the maximum penalty, as mentioned before, from 3 penalty units to 10, to set a maximum court-imposed penalty of three demerit points and, in terms of infringement, to increase the current infringement notice penalty from 1 penalty unit to 3 and to attach 2 demerit points. In principle we also support that the actual court-imposed penalty may take into account the offender taking part in road safety education, particularly in relation to vulnerable road users, but we respect that there are practicalities and costs associated with that and there would be a need to weigh up the costs and the benefits there.

In terms of offences under regulations, what happens in terms of issuing an infringement notice? Our recommendation is that if the offender is a driver, the driver receives the infringement, which is penalty units and demerit points. If the offender is a passenger and the passenger is an adult, the passenger receives that infringement because the passenger is an adult who can make decisions for themselves. If the offender is a passenger and the passenger is a minor, the driver is responsible for that passenger and receives that infringement.

As far as police discretion goes, there was quite a long deliberation from Victoria Police at the last hearing. We support that it is very difficult for the police to make decisions and that at times judgement can be based on circumstances, but we would like to provide clear guidance that actually enables police to carry out their duties to the maximum effect. Our recommendation is that if the offence does not result in a crash or collision, then the police may have full discretion; however, if the offence results in a crash or collision, regardless of injury or not to the bike rider — because often it is not found to be the case at the time — then the police have no discretion and must pass on the infringement notice.

**The CHAIR** — I just remind you that we have 7 minutes left and the members of the committee would like to ask questions, so if these other recommendations are in the presentation you have given us, in the interests of time would you be happy if we asked questions instead?

**Ms GAUDRY** — I have one more slide I would like to show you.

**The CHAIR** — Okay.

**Ms GAUDRY** — We will pass on that slide; we have already recommended that dooring remain an offence under regulation.

Importantly, as indicated in previous arguments against demerit points, one element of behaviour change alone cannot solve for all, so we certainly recommend a significant behaviour change program that is about awareness of bike riders and understanding of safe behaviour, both for drivers and passengers, and of providing driver cues. We recommend strongly that VicRoads re-enact their dooring sticker work of nearly 10 years ago that was cancelled because it was not seen to be effective. It is very simple at 7 cents a sticker to roll out a couple of million stickers, which is under \$200 000, or indeed to put on the back of the registration sticker that goes on your window a message for a whole year. There are some very simple measures that are very inexpensive but all to be cues.

We also support VicRoads' comments in separate meetings and also those of the national transport council about a review of all Australian road rules in relation to vulnerable road users, because vulnerable road users, particularly cyclists, are now a significant part of the road user population. It is time for that to occur. We also support that mandatory bike-related questions be included in learner driver tests, not as part of the random

generation. We support that driver training education include specifically bike rider safety and that there be periodic driver licence retesting.

Whilst the focus of our argument tonight is on behaviour change, we recognise that infrastructure and vehicle design have a role to play. But the issue at stake here is about behaviour. We will just move to the last slide.

In 2005 a crime inquiry recommended that legislation be introduced to address overtaking distance. That legislation was not brought into effect. In 2011 the Auditor-General recommended a greater level of behaviour change, including awareness education and legislative review relating to cycling safety. We have not yet seen that.

It is a no-brainer that penalty units need to increase when to have no bell on your bike is 5 units and to door is 1 unit. That is a no-brainer, and I would not consider it a success in terms of improving safety if we increased penalty units from 1 to 2. We need to normalise bike riding as a valid part of the road user population, and we need to normalise safety for bike riding as we have for car driving in the last 30 years.

**The CHAIR** — Ms Gaudry and Dr Johnson, that was very comprehensive, and I thank you very much indeed. You have answered many of the issues that are of concern to us, but I shall ask my panel members if they have some further questions. Ms Hartland?

**Ms HARTLAND** — No, I think it has been covered.

**Ms BROAD** — Could I ask you to address the matter of discretion in relation to penalties? You referred to that in your presentation, but I would just like to be crystal clear in relation to the two-level offence — the court-imposed and the non-court-imposed infringement notice. I ask where the discretion comes in in relation to both levels of the offence that you are recommending.

**Ms GAUDRY** — Our recommendation — and Marilyn, if you want to add to my comments — is that if there is no crash or collision but a dooring offence occurs, the police have discretion as to whether to pass an infringement to the offender or not, but if the offence results in a crash or collision, the police must as a minimum fine the offender. Did you want to add to that?

**Dr JOHNSON** — 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.

**Ms BROAD** — And discretion in relation to the court process?

**Ms GAUDRY** — We did not go so far as to state that in the instance of an injury, because, as mentioned before, an injury does not always present itself at the time of the incident. We would recommend that if there is an injury, it immediately become a court-imposed issue.

**Ms PULFORD** — I think you have answered many of our questions in your thorough presentation, but my question relates to penalty units. Queensland and New South Wales have 20, so I would like to ask why you think 10 is sufficient in Victoria, and also, perhaps, as part of that, if you could comment on what kind of circumstances the maximum of 10 points would be appropriate in.

**Ms GAUDRY** — The purpose of this bill is to encourage drivers and occupants of vehicles to change their behaviour. We know that 1 penalty unit is not having any effect on behaviour, so we want to instil in the minds of vehicle users that there is a penalty that fits the crime. In this instance 10 penalty units — the current level is, I think, \$140 per unit or so. Fourteen hundred dollars and up to 3 demerit points — it is nearly a loss of licence — is sufficient to cause a change in behaviour. If that dooring incident results in serious injury or death, then the incident may be brought to court under other ways in terms of risky behaviour, negligent driving or reckless behaviour.

We are not saying that the driver or the offender cannot be penalised beyond that limit, but we recognise that 10 demerit points is sufficient for car occupants to recognise that it is something that they do not want to be subjected to.

**Mr RAMSAY** — I thought it was an excellent presentation. Well done. I guess my question is in relation to your opening statements about safety and changing behaviour. They are the two priorities that I see for the work we are doing, and that works both ways, I have to say. There is a need to change cyclist behaviour in relation to hazards on the road as well as a need for car owners to also appreciate they share the road with cyclists and all the issues around that.

I have a two-part question. One is in relation to demerit points. I am sort of struggling to work out if the big-stick approach to demerit points, as well as a fiscal penalty, will change the behaviour. My understanding is that you think it will. If there is a circumstance where there is some flexibility in the police being able to apply either a penalty or, if it is serious enough, demerit points, to me the present regulations and also an increase in fiscal penalty might actually change the behaviour rather than providing the demerit points as well. I just ask for your response to that.

**Ms GAUDRY** — I will respond in terms of what we are not recommending and then what we are. We are not recommending that an immediate demerit of 3 demerit points be imposed; we are recommending 2. That is in line with demerit point reductions for offences that have a similar potential level of risk to the road user.

In terms of infringements and fines, there are recommendations that the infringements move from 1 to 2 penalty units, so a fine of \$140 versus \$280. It might actually get someone who has been fined to think twice about doing it again. But we want road users to think seriously about it the first time — or not even do it for the first time. This is an offence that is extremely risky behaviour and can result in serious injury or death, therefore the penalty associated with it needs to fit that offence.

**The CHAIR** — We have come to the end of our time. I would like to thank you both very much for honouring what is a difficult process for us and being so succinct and focused. I think you have given us some excellent information. I thank you very much indeed for your presentation, Ms Gaudry and Dr Johnson. Thank you very much for presenting to us tonight.

**Witnesses withdrew.**