

# TRANSCRIPT

## LEGISLATIVE COUNCIL ECONOMY AND INFRASTRUCTURE COMMITTEE

### **Inquiry into the Increase in Victoria's Road Toll**

Melbourne—Tuesday, 7 July 2020

*(via videoconference)*

#### **MEMBERS**

Mr Enver Erdogan—Chair

Mrs Bev McArthur

Mr Bernie Finn—Deputy Chair

Mr Tim Quilty

Mr Rodney Barton

Mr Lee Tarlamis

Mr Mark Gepp

#### **PARTICIPATING MEMBERS**

Dr Matthew Bach

Mr David Limbrick

Ms Melina Bath

Mr Andy Meddick

Dr Catherine Cumming

Mr Craig Ondarchie

Mr David Davis

Mr Gordon Rich-Phillips

**WITNESSES**

Ms Janine Gregory, Principal Lawyer and Divisional Head of Personal Injury,

Ms Canda Glanville, Principal Lawyer in Road and Work Injuries Division, and

Ms Katie Minogue, Senior Associate in Road and Work Injuries Division, Maurice Blackburn.

**The CHAIR:** Welcome to the Economy and Infrastructure Committee public hearing for the Inquiry into the Increase in Victoria's Road Toll. We welcome any members of the public watching via the live broadcast.

I would like to just read out a short witness statement before you can begin the presentation. All evidence taken at this hearing is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council's standing orders. Therefore the information you provide during this hearing is protected by law. However, anything you say outside or repeat outside may not be protected. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website. We welcome your opening comments, but I ask that they be kept to a maximum of 5 to 10 minutes to allow plenty of time for discussion. Can I please remind members and witnesses to mute their microphones when not speaking to minimise any interference. If you have technical difficulties at any stage, please disconnect and contact the committee staff using the contacts you were provided.

Could you begin by please stating your names for the benefit of our Hansard team and then begin this presentation. Thank you. I will hand over to you, Janine, Katie and Canda.

**Ms GREGORY:** Thank you for the opportunity to present this morning. My name is Janine Gregory, and I am a Principal Lawyer at Maurice Blackburn. I am accompanied today by Canda Glanville, also a Principal at Maurice Blackburn, and Katie Minogue, who is a Senior Associate of the firm. The three of us have specialist expertise in the management of TAC claims and are passionate about the prevention of road trauma given our exposure to its impacts on our clients.

Maurice Blackburn has been assisting Victorians who have been injured on our roads since vehicles first hit our streets. We have significant expertise across the area, across the laws that govern road use and the statutory compensation schemes that Victorians rely upon when injury occurs. As a statewide plaintiff advocacy firm, we are well placed to observe firsthand trends in road injury. We share the committee's alarm at the recent increases in Victoria's road toll. A review of our client cases reflects the tenor of the terms of reference—that there is no one factor that is driving the increase in claims, serious injuries and deaths.

In our submission, however, we offered observations derived from our experience with assisting those who have been injured on Victorian roads across four areas in particular. Firstly, that there are observable differences between the types of cases we are seeing in our metropolitan branches compared with those we are seeing in the services we provide in regional and in rural communities. Secondly, that driver distraction continues to grow as an area of concern for road safety and something we are seeing quite a lot of. We support initiatives which aim to shift the Australian road rules from having a focus on the source of the distraction itself, such as the use of a mobile phone, to one which presents a clear list of the high-risk behaviours and interactions that drivers on our roads must avoid to ensure they have proper control of the vehicle. In our view this should be regardless of the technology involved or the source of distraction. Thirdly, that there are a number of issues that we see arise when considering road standards and the current road asset maintenance regime, which does require some particular and immediate attention. Finally, we think the importance of driver training and education cannot be overemphasised, particularly in schools.

Maurice Blackburn believes that the committee is well placed through this inquiry to really encourage the development and use of technologies and simulations that assist our young people to understand the key impacts of devices such as mobile phones. We think this should be built in as a mandatory element of the school curriculum.

Maurice Blackburn also believes that despite the growing incidence of death and serious injury on Victorian roads, the *Towards Zero* road safety strategy does still remain relevant. We believe that the strategy is ostensibly focused in the right areas: safe roads, safe vehicles, safe speeds and safe people. But the emphasis on each of these pillars seems to shift over time, and the law needs to be responsive to this—for example, driver distraction.

We encourage the committee to look to the future as the potential for driver distraction increases and cars start to do more of the thinking for us, and we need governments at all levels who understand the critical role that asset maintenance plays in keeping people safe. Importantly, we need the law to keep up with current trends on the road, as well as thinking now about how the drivers of tomorrow will keep themselves safe and ensuring we are properly educating our young people in this regard. We welcome any questions from the committee.

**The CHAIR:** Thank you very much, Janine, for that presentation. I notice that on page 5 of your submission, which is quite detailed and informative, you believe that smartphone use is the single largest contributor to the increase in motor vehicle accidents. Can you provide some insights into that data or the number of claims or types of injuries you are seeing as a result of mobile phone use?

**Ms MINOGUE:** Thanks, Enver. I am happy to pick up on that one. Certainly technology-related driver distraction is where we are seeing the biggest increase in injuries and people coming to see us. We do not collect specific data around that, and we did outline in the paper that it can be really challenging to pinpoint the role that distraction and particularly technology-related distraction plays in an accident. Often we are dealing with second- or third-hand accounts from people. Police after the fact often do not have that sort of information. We are dealing with witness accounts, that sort of thing. That can be challenging, to pinpoint the role of technology-related distraction. But certainly, yes, in terms of anecdotally what we are seeing, and the other source that has been a really prominent one for us is through our relationship with the Transport Workers Union. We represent an enormous number of truck drivers and bus drivers, and we did outline that in our submissions. But their vantage point, from much higher up and looking down into vehicles, is one that is not afforded to most people, and that is an overwhelming level of increasing feedback that we are getting from them in terms of what they are seeing in relation to people being distracted by technology.

**Mrs McARTHUR:** Thank you, Maurice Blackburn, for presenting to us today. It is most illuminating. I have got numerous questions, which the Chair will not be surprised to hear, so I will start with one. A large part of your submission focuses on the poor standards of our roads, especially in regional areas, which you believe to be a major contributing factor in causing road accidents. Do you contend that the government is not allocating enough resources every year on maintaining and upgrading rural and regional roads?

**Ms GLANVILLE:** Thank you, committee. I will take this one. It is a theme through many of the submissions that increased investment into our roads is an important part of this inquiry. We support those submissions because we do believe that the current road standards and road asset maintenance regime is inadequate. Our clients show us photos and they tell us about potholes, changes in road surfaces, whether they have been upgraded or lacking that upgrade, poorly maintained surfaces, gravel patches—all of those sorts of things. And often we do not see that that particular anecdotal evidence either gets to make its way through the courts by way of claims and road management actions, for example, or gets its way to government. So we are certainly one of the supporters in suggesting that part of the solution is indeed increased investment in our roads.

**Mrs McARTHUR:** Your submission also refers to road asset management. Responding to questions on notice in June of 2019 the government conceded that their road asset management transformation plan was, quote, ‘yet to be finalised’. It is now July 2020. Have you seen any progress by the government on implementing or even just finalising this plan?

**Ms GLANVILLE:** I have not been involved in any conversations or meetings in relation to the finalisation of that plan. Colleagues of mine may have been, so we can certainly take that on notice and come back to the committee if that would be helpful.

**The CHAIR:** Yes, please.

**Mrs McARTHUR:** Thank you very much. That would be terrific. I am just wondering if you can estimate how many people who are injured on Victorian roads you have to turn away and not take on their cases because of the complexities in holding road management authorities to account.

**Ms GLANVILLE:** We do not keep data, unfortunately, on the actual numbers of matters we turn away. We do have some datasets for the cases that we do take on. Anecdotally, though, it would be, I would say, definitely more that we turn away than we take on, without a doubt.

**Mr BARTON:** Thank you, team Maurice Blackburn. I will start with about driver fatigue. It is something I am very concerned about. We have heard from the Victorian trucking association this morning about it not being managed as well as it should be, and I am certainly concerned about it in the commercial passenger vehicle sector, where we have got taxidriviers driving 12 hours a day, then jumping into their private cars and doing rideshare through the night. What is the view of Maurice Blackburn about the responsibility of companies allowing this to happen?

**Ms MINOGUE:** Happy to jump in on that one there, Rod. Thank you for the question. I guess again we are particularly informed in that aspect through our strong relationship with the Transport Workers Union. That is certainly a central issue for them and it has been for some time. Certainly for many of the clients we see, and particularly in the WorkCover space, fatigue plays a huge role in some of those injuries that we see, particularly in relation to truck driving. I guess from a broad perspective we are very aware of the problem, and I know the National Transport Commission have been doing a lot of work around heavy vehicle regulation and transformation. They have released a recent paper that we are looking at putting a submission in on, but I guess we would just say that we are very aware of the issue for both of those reasons and we want to be part of that conversation to improve regulation and improve the level of safety and the role of driver fatigue in the road toll.

**Mr QUILTY:** In talking about technology-neutral rules around bicycles and cars, are you suggesting that people should not be able to use navigational devices in a car, because that is the end of me driving in the city? How do you prove distraction, or have you done that?

**Ms MINOGUE:** Excellent question, thank you. Absolutely, there is good technology, there is helpful technology and there is unhelpful technology when it comes to being on the road. I think particularly we also see in relation to the increasing automation of vehicles there is a lot of technology that makes cars safer and that takes a little bit of the human element out of the driving and lets a little bit more of technology do the driving role, and that technology does not get distracted by phone, does not get tired, and so we see technology having a positive role to play in the improvement of road safety and reduction in the road toll. But obviously, particularly in the submissions, we are talking about distraction and the role of technology in distraction, we are talking about defining, and in part of our submissions in a related paper that we talk about we say managing and regulating behaviour as opposed to the technology itself.

The road rules drafted in 1999 have not kept up with the changes in technology, things like people using smart watches that have their text messages come through to them. We do not want a system where that is permissible for people to be distracted by any number of devices because the regulation is still talking about technology that existed in 1999. We think a behaviour-based approach, which puts the onus on the driver not to be distracted and sets out a list of high-risk behaviours and prohibits those, is the best approach for ensuring that technology reduces the impact of technology-related distraction on people getting injured. But that will account for technology that is helpful, and particularly integrated technology. For example, when you talk, Mr Quilty, about your sat nav, that is designed by the manufacturer to be placed and integrated into the car in a way that is the safest possible way, and that goes to a number of safety assurance methods to make sure that is safe, as opposed to someone pulling their phone into the car, putting it on the passenger seat beside them and putting Google maps on. There is a distinction to be made there, which is important.

**Mr QUILTY:** You touch on driver fatigue and you have talked about it already. That is a big concern of mine on country roads when you are driving for 4 hours or 6 hours or 8 hours for long distances at often quite slow speeds, worrying speeds. Can you expand on that—on the role of fatigue?

**Ms MINOGUE:** I think just to say that we also see the significant role that it plays, and I guess just to reiterate that we support measures which reduce the role of fatigue in the road toll and, by way of speaking to Mr Barton's point, the role it plays in people who drive for a living. But I mean in terms of a recreational driver

or a person driving for travel, it really probably is about behavioural change and education as a tool and doing as much as we can to educate drivers about the fatal role of fatigue when driving.

**The CHAIR:** Thank you for that, Katie. Andy, do you have a question?

**Mr MEDDICK:** Thank you, Chair; I have a couple of them. I first of all just seek an opinion. Being from the crossbench I have the luxury, like Mr Barton and Mr Quilty, of being able to view things from a different perspective. I have been able to witness this ridiculous situation we have in Victoria with the road toll—it is people's lives that we are dealing with here, and we have witnessed this subject—being a political football for years. When one colour of government is in, the opposition slam them for not doing enough, and when they get in, those previously in government do exactly the same. Clearly in my mind this is not helpful, and I think a bipartisan approach needs to be taken so far as reducing the road toll, with whatever measures that might be, whatever anyone determines are the best measures to reduce the road toll. You have also the luxury of being a legal firm that has had to look at these things and determine, from a legal sense, what the best outcome is for your clients. Has it been frustrating for you to see this non-bipartisan approach—this 'It's all their fault; no, it's their fault' approach—over the years?

**Ms GREGORY:** I might take that one. I think we are really focused mostly on the issues that face our clients, and no matter who is in the driver's seat, so to speak, it really does come down to those four pillars and about keeping people safe. We absolutely should be all working together to be able to make a difference to the road toll and to serious injury on the roads. So those four areas: in terms of the work that we see, we think all governments and oppositions should be working together to try to make a difference in that regard. Particularly in relation to education, I think that has got a huge role to play with young people—getting some curriculum into schools so people have exposure to or experience of the sorts of things we are talking about through using, again, the good side of technology such as simulators et cetera, where young people can really experience what it is like to feel tired when you are driving, what it is like for somebody to call you on a mobile phone and reach out to pick it up when you are driving. Everything that is around these days and some of the products in the submissions that we have seen into this inquiry around gamification and the impact that that could have on our youth I think should not be underestimated.

**Mr MEDDICK:** Thank you. That segues very well into my next question then on this whole education side of things. A simulator, I think, would be a wonderful idea, because what we are talking about there is really a cultural shift, aren't we, in how that next generation of drivers coming through can understand the impact that this can have. Bear in mind the ideal scenario is we have driverless cars where we do not have control of those sorts of things, where all this technology is available to us and we are not being distracted by what is on the roads—that is taken away from us. We are not there yet, clearly. Would having, say, a built-in device at a manufacturing level or an aftermarket fit that disables mobile phones as soon as they are in the car and once the engine is running be advantageous do you think? Or is that too unrealistic an expectation?

**Ms GREGORY:** Certainly I might get Katie's view on this as well, but my view is anything that can minimise driver distraction and stop what is occurring on our roads from occurring is worthwhile exploring.

**Ms MINOGUE:** Yes. Look, I would agree. I think it really, with specific recommendations, comes down to the research around what would work or what there is research on the efficacy of. My understanding of that kind of disabling technology is that it is a question of community acceptance but that it would have the intended result in terms of eliminating that source of distraction, but there are things that need to be considered in terms of people in certain situations where emergency calls might need to get made—people with medical conditions, those sorts of things. So there are a range of factors, but certainly it seems that the evidence points to that being one of the viable options.

**Mr TARLAMIS:** Just following up on that point, are there any other jurisdictions that you are aware of that have gone further down that path in the terms that Andy spoke about?

**Ms MINOGUE:** In terms of the disabling technology?

**Mr TARLAMIS:** Yes.

**Ms MINOGUE:** I have certainly read some of the research. I would certainly be very happy to come back to the committee with some of that synthesised if that is useful to you. I probably could not pull that out off the top of my head, but I have certainly read some research on that and can come back to you.

**Mr TARLAMIS:** That would be great, thanks.

**The CHAIR:** Bev, I know you had a couple more questions. We have got time. Time permits.

**Mrs McARTHUR:** A follow-up from the last one I asked, and I am certainly concentrating on rural and regional roads here: is it concerning to you that it is only the complexity in holding road management authorities to account that denies many Victorians their right to compensation due to poor road conditions, and what would you see as the solution to this? For instance, Regional Roads Victoria—are they up to the job or just another roadblock to actually fixing the issue?

**Ms GLANVILLE:** Thanks again for the question, Bev. You, like me, are quite passionate on this issue by the sound of it. I think that it is not just one factor that goes to why people do not commence claims and bring claims and take them all the way through. So I think that there are quite a number of things that we need to consider when we are looking at the regional roads and the road toll and the reasons behind that road toll. Is it concerning? Absolutely. It is concerning that we see that our regional roads are actually overrepresented when we look at the road toll. I saw when reading other submissions, I think, deaths on our regional roads are 49 per cent yet only 25 per cent of the population, and statistics like that are absolutely concerning.

We always see the law as an important vehicle for making people accountable and authorities and organisations accountable. So it is something we have always got our eye on because it is important obviously to provide justice to these people who are injured, but if there is a piece for the law to play in making sure that organisations are kept accountable and are held to higher standards, we support that.

**Mrs McARTHUR:** Thank you. Chair, if I may comment on that, it is an alarming statistic, and yet we no doubt find that the vast majority of funds are being spent in the metropolitan areas, and yet we are enduring higher rural rates of accidents and deaths. Also we have got the issue of trying to move produce, as I have said to other presenters before, into urban areas, and we do have to have better roads.

But just a final question: last year Maurice Blackburn made an increase in personal injuries revenue up \$11.5 million from \$128 million in 2018 to \$139.5 million in 2019; is this sharp increase in any way due to the poor conditions of regional roads in Victoria causing more road accidents and trauma, as you have indicated?

**Ms GREGORY:** I think there can be many reasons why revenue moves up and down, and certainly in my knowledge or experience there is not a particular direct correlation with regional roads.

**The CHAIR:** Thank you. Does anyone have one last question?

**Mr BARTON:** Not so much a question but it is a bit of a statement just to clarify. A couple of years ago my understanding is one of the largest trucking companies in Australia started putting in devices, or were heading towards putting devices, in their trucks that would actually stop text messages from coming through and the phone would only work if it went through the vehicle itself. So I think technically they are able to do it; it is whether we have got the willpower to make it happen.

I do not know if it actually went through and they did all those things. But we certainly know they can shut phones down once they start moving over a certain speed as well; we looked at that for the commercial passenger sector. But when you shut the driver's phone down, you also shut down the customer's phone as well, so that may be a difficulty for us.

**The CHAIR:** Thank you, Rod. On behalf of the committee, I wish to thank Maurice Blackburn and all of you for your presentation and contribution to our committee's inquiry. It has been very helpful and informative. I enjoyed reading the work that Maurice Blackburn is doing with the Transport Workers Union and your insights into this concerning issue. So thank you very much, and great to see all of you again. Thank you.

**Ms GREGORY:** Thank you.

**Mrs McARTHUR:** And Mr Chairman, can I just add: Maurice Blackburn will be no doubt pleased that we passed that legislation recently, which will hopefully, I am sure you would agree, enable more of the road users being affected by bad roads to receive an injury claim.

**The CHAIR:** Yes, that is right. If they have got a class action, they should pursue it. We want more people to access justice.

**Mrs McARTHUR:** We want more class actions for Maurice Blackburn.

**The CHAIR:** We want more people to pursue justice. As you can see, it is a very robust committee. Thank you, everyone at Maurice Blackburn, for your contribution.

**Witnesses withdrew.**