

CORRECTED VERSION

STANDING COMMITTEE ON ECONOMY AND INFRASTRUCTURE

LEGISLATION COMMITTEE

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

Melbourne — 23 May 2012

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Witnesses

Dr M. Cross, and

Dr N. Martin, parents of accident victim and report authors.

The CHAIR — I would like to welcome Dr Michael Cross and Dr Nicola Martin to our inquiry this evening. I know you have been here on many occasions amongst the audience, so welcome you to the table here tonight. We are very pleased to have you, and we are particularly interested to hear what you have to say. I know that you have heard me apologise for the very short time frame we are on, but I am quite certain you have given us some understanding of what you would like to say. If you can give us your opinion and then we can ask some questions, as we have done in the format preceding both of you, that would be very helpful. First I have some formalities which I must go through before we commence.

I would just like to explain about this process. I know you have both heard it before, but I would like to reiterate it. I welcome Dr Cross and Dr Martin to tonight's public hearing of the Legislative Council's 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 tonight, 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, and transcripts will ultimately be made public and posted on the committee's website. Given that we have a tight time frame, we are very keen to hear what you would like to present to us, and we would like the opportunity of asking questions. You have 20 minutes. I would now like you to speak to the paper that you have provided us with. Welcome again.

Dr CROSS — Thank you, Chair. First of all we would like to thank the committee for allowing us to put forward a submission and to talk. We do not come here as vindictive people because we have endured the terrible tragedy of a cycle-car collision, but rather we want to turn this somehow into a positive in order to prevent further unnecessary deaths. As you are aware, our son is the one recognised, or known, death from a car dooring incident.

I think it is important to just go through how that occurred, because invariably it is not just one incident that brings about a death on the road. It is a sequence of simple instances that all line up unfortunately to bring about an unfortunate event. In James's case he was riding, as the coroner determined, perfectly safely within a reasonable speed but unfortunately on a busy strip shopping street with cars parked in the early part of the morning — but he had a 15-tonne truck coming down the road on his right-hand side. I think it is a natural reaction to swerve probably away from a 15-tonne truck when you are a vulnerable cyclist, even if that means going a little closer to car doors, and then a car door opened and he was killed by the truck that he careered into.

We are not just talking about car doors; we are talking about a whole series of events that happened on that day, but the car dooring was the preventable incident. It was the one incident that could have not brought about his downfall, so I suppose when we think about it, we think about what are the sorts of things that can be done to try to save people — to protect people — because we know that cyclists are so terribly vulnerable. As we drive around the streets today, every time we see a cyclist we just recognise how vulnerable they are, and we almost say a little prayer hoping that they get home safely, because we believe, and as has been stated, that there is not just a single one-fix answer for this.

The critical thing in our mind is about mutual respect on the roads, for a start, and I am not quite sure how you teach that. It is probably a generational thing, and it needs to be started right from very early on in life, so we need education in the schools and we need people to be able to respect each other and to not become entombed in our two tonnes of metal believing that we are safe from everything and disregarding everybody else on the road, which unfortunately we see does happen. It is about education within the schools, so it is not just motorists; it is cyclists, pedestrians, motorcyclists and everybody else on the road.

We believe it should also be part of road licence testing. If you go over the speed limit, you do not pass your road test. If you park your car and do not look before you get out of the car — as you should be asked to do — you should fail your road test. It is not difficult, but we need to bring it onto the agenda. At least if nothing else, this has raised public scrutiny and public comment. It is out there. It is on the agenda, but as much as education is good and proper — and we know that we probably reach most of the people most of the time — there are always going to be those who disregard what is right and proper.

I regularly hear the question: how do you enforce it? How do you actually see somebody open a car door that might be a risk to a cyclist? I would argue that every time somebody speeds they are not picked up for a motor infringement, but we put cameras where they are more likely to speed. Those people who repeatedly speed finish up losing their licences because it is deemed that is risky behaviour, and that risky behaviour is more likely to bring about an incident.

I would argue that people who regularly for whatever reason — they are in hurry, they do not look — open their car doors without looking, particularly in busy shopping areas, and we have heard the roads mentioned that are the main culprits, are more likely to bring about an unfortunate incident eventually. We are talking about probability, as was mentioned. Passing one car one day a year on your cycle, you are not likely to be knocked over by a car door, but do it repeatedly and the odds do go up.

There is no doubt that increased road safety can be improved by infrastructure and by road traffic plans and the like. That is perhaps outside the brief here, but that is obviously part of what brings about safety on the roads. But where things do go wrong, enforcement is important. I suppose one of the things that we found very difficult to comprehend — and this is perhaps where leaving a lot of grey areas or leaving a lot of interpretative analysis of whether charges or infringements should be brought out — was that our 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.

I think there is a role for enforcement where enforcement needs to be brought. Most evidence will tell you that where people cannot be educated then there has to be some sort of penalty. 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 danger 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. Thank you.

The CHAIR — Thank you very much indeed, Dr Cross. Dr Martin, would you like to add to that?

Dr MARTIN — Yes. Thank you, Chair, and thank you to your committee. I do feel very sorry for you at times. I have thought about you in the last few weeks, because you have been presented with an enormous amount of material and an enormous cross-section of arguments, statistics and material that you have to analyse, and it is not easy.

I am here in two roles really — one as James's mother, but my second reason for being here is in my role as a medical practitioner. Michael and I have been medical practitioners for 32 years, so we have been around. We know human behaviour pretty well, and we see it in all its manifestations.

I would like it to be very clearly noted on the record that our message here is not about vengeance from our own point of view, because we know very well how — well, we can only imagine how — the person who was ultimately and unintentionally responsible for James's death must be feeling when they read and see all of this publicity and so on. We are very aware of that. However, being across human behaviour, it is very apparent. Also for all the mothers and fathers in the room, you know how you try and teach your children to do the right thing. You try and set them an example to do the right thing, and you expect them to do the right thing. We as citizens of this state expect you to do the right thing, as I know you will endeavour to do.

People ultimately, as human beings, are not perfect; we all know that. You can educate on 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. If you just have the stick at the other end without the education, what are you trying to do? You do not achieve the outcome that you are after, so as much as we hate to say it, we do endorse the comments that have come particularly from the Amy Gillett Foundation about both demerit points and the other increase in penalties. I am somewhat distressed, although a bit beyond distressed really, about the discussion of trying to put a monetary value on a person's life or serious and permanent injury. Because James has been the one fatality in the last decade, that seems to me to be a bizarre thing to be doing; however, I do not know what else we can do.

In the time that has elapsed since James's death we have been, and I particularly have been, involved in driving that educational aspect. I visit many schools on the Mornington Peninsula where James grew up and where we live, delivering road safety messages to our emerging drivers, and I have the opportunity, because of our experience, to deliver cycle safety messages. We do it with other people who have been similarly affected week in, week out, year in, year out; we just keep plodding away. We are trying to do our bit, and now it is up to you to do yours. I do not know whether that has been helpful, but we do appreciate the opportunity to have been allowed to speak, and we have tried not to come across as hysterical grieving parents — the grieving part we certainly are.

The CHAIR — I would like to thank you both for a very dignified and very helpful submission. It certainly has helped us to hear your personal experience. I know my colleagues have questions they would like to put to you, but I think you came here suggesting that you were not going to be vengeful parents, and I would have to say you are commendable in how you have presented tonight. Thank you very much indeed. I would like to start with Ms Hartland; I know she has a question.

Ms HARTLAND — I would like to talk about the issue of demerit points. I think you have summed up quite clearly that we need some kind of system that is also easier for the police and to make it such an offence that they have the power to automatically take it to the court. If we have bigger penalties or demerit points, do you think that would help them to understand that this is a serious offence?

Dr MARTIN — As Michael mentioned, 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.

Dr CROSS — Just on that point, it concerns me that we have to wait until there is an incident before we issue demerit points. I think if we are going to be truly preventive, then we should be picking out risky behaviour that does not necessarily have an adverse outcome, and we should be picking up on that and issuing the appropriate penalty, whether that is fines or demerit points. It concerns me. I do not think the outcome is necessarily the main issue about whether you issue points; it is about the behaviour, because if the behaviour is risky often enough, then we will have further tragedies.

We have heard that there are more cyclists, there are more cars and there are more people parking in certain areas. James's will not be the last death. He might have been the first, but the way things are going he will not be the last. I think our job is to try and make sure that the risk — it will never be zero — of another death is as small as we can make it.

Ms BROAD — I would like to thank you very much for the time you have taken and all the work that you are putting in doing your best to educate people about this.

Mr RAMSAY — Yes, I too would like to thank you very much for your time. I appreciate it has been under very difficult circumstances, so thank you. I was pleased to hear that part of your submission was about the education process, which I think is particularly important in our discussions in relation to regulation and legislation. I do not know the circumstances, but under the present legislation the police have the ability to either provide an infringement or in fact allow the case to go to court, and I am just wondering: do you see the ability of the police to still have that capacity as important? We have heard it not from yourself but from some previous witnesses as to why the police are not actually active in pursuing these car dooring incidents with a bit more vigour, given that under the present legislation regulation there is quite — —

Dr MARTIN — You should probably be asking the police that.

Mr RAMSAY — I am saying that the provisions are there for some serious penalties — and I appreciate this committee will have some discussion about whether they are sufficient or not — but to me the police seem reluctant to pursue, as I have said, with some vigour some of these incidents and take them through the court if that warrants it.

Dr CROSS — What we can say is that that is our experience, but why? And unfortunately we were given no reason, and when it came to the coronial inquest, although that issue was raised by ourselves through our barrister, there was no answer.

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 — we are under parliamentary privilege —

The CHAIR — You are.

Dr MARTIN — diligent as others.

Dr CROSS — 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.

The CHAIR — I would like to thank both of you again for presenting here tonight and giving a very personal aspect to our inquiry, and one that is very poignant. You threw down the gauntlet before, Dr Martin, when you said you expect us as a committee to do the right thing. You also said that we have been given an extraordinary amount of information, which indeed we have, and I would like to assure you both that this committee is hoping to do the right thing, and hopefully it will be something that will prevent, just as Dr Cross has said, this sort of circumstance that you have had to feel happening again. We will certainly be trying to do very much the right thing. Thank you for presenting tonight, and thank you for being with us on other occasions as well. Thank you so much.

Dr CROSS — Thank you for the opportunity.

Witnesses withdrew.