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27 April 2012

Mr Robert McDonald
Secretary
Economy and Infrastructure Legislation Committee
Parliament House
East Melbourne VIC 3002

Dear Secretary

Further Advice for the Committee

In our appearance before the Committee on 28 March 2012, Jay Tilley and I agreed to pass on further advice to the committee in relation to when a passenger of a vehicle is responsible for causing a hazard under rule 269(3) of the *Road Safety Road Rules 2009*. I advise the Committee that whoever receives the infringement notice will also incur the demerit points, be they passengers or drivers.

Demerit points are recorded against a person when 'an infringement notice is issued to the person in relation to a relevant offence'.¹ This will be enabled for 'dooring' offences through the insertion of clause 4 of the *Road Safety Amendment (Car Doors) Bill 2012*.

Under the existing regulations,² demerit points are not strictly limited to drivers, but to 'persons' who offend the relevant provisions; in our case those who cause a hazard under clause 3 of the Bill. Clause 4 of the Bill does not specify who the demerit points accrue to. This will give police discretion to demerit either drivers or their passengers.

Currently, non-drivers can be fined for certain vehicle related offences such as a passenger riding on a roof or boot of a car.³ However the wording of that provision⁴ only allows demerit points to be issued against the driver of the vehicle, not the errant passenger.

There is no technical difficulty with allowing passengers to lose demerit points. I have been informed by VicRoads that regulation 76 of the *Road Safety (Drivers) Regulations 2009* is a specific demerit provision for persons who do not hold a drivers licence. For those passengers who cause a hazard under the bill but do not hold a drivers licence, VicRoads is directed to record those demerit points against their licence if the person subsequently obtains one.

While my advice to the committee requires statutory interpretation of those existing regulations, it is my opinion that either a passenger or a driver can be held liable for offending these 'dooring' provisions as a fine

¹ Regulation 73(1)(d) of the *Road Safety (Drivers) Regulations 2009*

² Ibid.

³ Rule 268 of the *Road Safety Road Rules 2009*

⁴ Schedule 3, item 15 of the *Road Safety (Drivers) Regulations 2009*

and in demerit points. I would encourage the Committee to call VicRoads and Victoria Police to confirm for itself how these regulations are administered in practice.

I also remind the Committee that if the driver or passenger, in all the circumstances, believes it is unfair to incur demerit points the process for internal review and judicial review are available under Part 4 of the *Road Safety (Drivers) Regulations 2009*.

Finally, to clarify a question by Mr Somyurek as to why bicycle accident rates (including doorings) suddenly rose in 2004, I have been informed that this was the period that petrol prices rose steeply. Just as there is a correlation between rising petrol prices and growth in public transport patronage, it appears there is also a correlation with increasing numbers of cyclists sharing our roads.

If the Committee has any further questions, or seeks any further advice on the *Road Safety Amendment (Car Doors) Bill 2012*, please feel free to contact me again.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'G Barber', written in a cursive style.

Greg Barber MLC