

Ms Andrea Coote MLC  
Chair  
Economy and Infrastructure Legislation Committee  
Legislative Council Standing Committee on  
Economy and Infrastructure  
Parliament House  
Spring Street  
**EAST MELBOURNE VIC 3002**

Dear Ms Coote

**INQUIRY INTO THE ROAD SAFETY AMENDMENT (CAR DOORS) BILL  
2012**

I refer to your letter dated 29 March 2012, and a similar letter to Mr Jim Betts, Secretary, Department of Transport, inviting a submission about this matter and seeking representatives to attend a public hearing.

I am pleased to provide the attached submission on behalf of VicRoads and the Department of Transport.

Mr James Holgate, VicRoads' Director Road User Safety and Ms Shelley Marcus, VicRoads' Director Legal Services would be pleased to attend the Committee's public hearing on 2 May 2012.

Thank you for providing VicRoads and the Department of Transport the opportunity to comment on this matter.

Yours sincerely



**GARY LIDDLE  
CHIEF EXECUTIVE**

27/4/2012

**VicRoads Submission to the  
Standing Committee on Economy and Infrastructure  
Legislation Committee's**

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

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**BACKGROUND**

On 10 November 2011, the Coroner delivered her findings into the death of Mr James Cross on 17 March 2010. The Coronial Inquiry involved a driver who opened her car door into the path of a cyclist (Mr Cross), who subsequently fell into the path of a truck and died at the scene. Mr Cross was riding in a shared parking/bicycle lane.

The driver involved gave evidence that she looked in the driver side mirror to check it was safe before opening the door, and did so cautiously due to the presence of the truck, but did not see Mr Cross.

The Coroner made recommendations about improving the road environment and increasing awareness of risk, but made no recommendation about fines or penalties.

Following this inquest, the Road Safety Amendment (Car Doors) Bill 2012 was introduced by Mr Greg Barber, MLC into the Legislative Council on 8 February 2012. The Bill was further debated on 29 February 2012.

The Bill proposes to:

- introduce an offence into the *Road Safety Act 1986* that substantially duplicates rule 269(3) of the Road Safety Road Rules 2009 ("Road Rules");
- increase the maximum court penalty for this offence from 3 penalty units to 10 penalty units; and
- impose 3 demerit points on offenders.

The Economic and Infrastructure Legislation Committee seeks input on whether it is appropriate to:

- increase the maximum court penalty from 3 to 10 penalty units;
- attach demerit points to the offence of 'car dooring';
- make 'car dooring' an offence under legislation rather than regulations; and
- change the process for enforcing 'car dooring' offences and have the matter dealt with by the Magistrates' Court.

### *Existing laws and penalties*

'Car dooring' is currently an offence under road rule 269(3) of the Road Safety Road Rules 2009. This states:

*A person must not cause a hazard to any person or vehicle by opening a door of a vehicle, leaving a door of a vehicle open, or getting off, or out of, a vehicle.  
Penalty: 3 penalty units.*

The Road Safety (General) Regulations 2009 also allows for an infringement notice to be issued in relation to an offence against road rule 269(3), which carries a penalty of one penalty unit.

One penalty unit is equal to \$122.14 (during 2011-12 financial year).

If the opening of a car door seriously injures or kills a cyclist, it is possible that the person responsible could be charged with a range of offences. These include:

- causing serious injury recklessly under section 17 of the *Crimes Act 1958* (maximum penalty of 15 years imprisonment and/or a fine of up to 1800 penalty units<sup>1</sup>);
- causing injury intentionally or recklessly under section 18 of the *Crimes Act 1958* (maximum penalty of 10 years imprisonment and/or a fine of up to 1,200 penalty units if the injury was caused intentionally and maximum penalty of 5 years imprisonment and/or a fine of up to 600 penalty units if the injury was caused recklessly);
- conduct endangering life under section 22 of the *Crimes Act 1958* (maximum penalty of 10 years imprisonment and/or a fine of up to 1,200 penalty units);
- negligently causing serious injury under section 24 of the *Crimes Act 1958* (maximum penalty of 10 years imprisonment and/or a fine of up to 1,200 penalty units);
- recklessly engaging in conduct that places or may place another person in danger of serious injury under section 23 of the *Crimes Act 1958* (maximum penalty of 5 years imprisonment and/or a fine of up to 600 penalty units);
- dangerous driving under section 64 of the *Road Safety Act 1986* (maximum penalty of 240 penalty units and/or imprisonment for up to 2 years or both, as well as mandatory licence/permit cancellation and disqualification from holding a licence or permit for not less than 6 months (or not less than 12 months where the person was travelling at a speed of 45 kilometres per hour or more in excess of that permitted); or
- careless driving under section 65 of the *Road Safety Act 1986* (maximum penalty of 12 penalty units for a first offence and 25 penalty units for a subsequent offence);

The offences under sections 64 and 65 of the *Road Safety Act 1986* only apply if the person who opens the car door is driving the vehicle. The offences under the *Crimes Act 1958* are not limited to the driver.

The offence under rule 269(3) of the Road Rules, and as described by the Bill, apply to a broad range of situations, which for example, could include a driver or passenger who:

- by opening a door damages the side of a vehicle parked beside them;
- when opening the door causes impact with a vehicle travelling on the road;

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<sup>1</sup> The maximum fine for this and the following offences under the *Crimes Act 1958* are able to be imposed in addition to, or instead of, imprisonment by virtue of section 109(3) of the *Sentencing Act 1991*.

- when opening the door causes impact with a vehicle or pedestrian on the footpath;
- by opening a door causes a vehicle to swerve (no crash or injury occurs). This could be on the road side or the passenger side of the vehicle where cyclists are legally allowed to ride on the footpath or on Copenhagen style cycle paths;
- leaves a car door open while removing items from the car and a pedestrian walks into the door or a vehicle collides with the door (this may include a rear door of a truck, ute or hatchback);
- when exiting a bus collides with a pedestrian or cyclist on the footpath;
- when in a truck/ute carriage area or on a motorcycle as a passenger, jumps off and by doing so injures a pedestrian or causes a vehicle to take action to avoid them; or
- when mounting or dismounting a motorcycle accidentally impacts a vehicle or pedestrian with their boot, helmet, etc.

It can be seen from the above examples that this offence has many subjective elements and is not restricted to 'car dooring' of cyclists. However, it is most likely to be used when a vehicle (bicycle or motor vehicle) actually collides with a car door and damage or injuries result, as under this circumstance the elements that make up this offence are less subjective and therefore easier to prove.

## **ROAD SAFETY CONSIDERATIONS**

### *Increase in cycling*

The popularity of cycling has increased dramatically over the past 10 years. Research identifies an average 28 per cent increase in cycling trips to work in Australia between 2001 and 2006. Commuter cycling has increased annually by 10 per cent on key routes between 2006 and 2010. Bicycle sales are also increasing with 2010 being the 11<sup>th</sup> year in a row that bicycle sales in Australia have outstripped cars and the 9<sup>th</sup> year in a row they have exceeded one million. There were 1.3 million bicycle sales in 2010.

### *Cycling crash data*

There were eight cyclist fatalities in 2011, equal to the annual average for the July 2006 to June 2011 period. So far in 2012, there have been five cyclist fatalities (preliminary data to midnight 25 April 2012).

There were 395 cyclist serious injuries reported to Victoria Police (where a person is admitted to hospital) for the year July 2010 to June 2011. Final figures for 2011 are not yet available. The annual average over the last five years was 460 cyclist serious injuries.

Considering hospitalised cyclists more broadly, about a half were in a crash involving no other road user.

In terms of cycle fatal crashes, the following points are of note:

- males are over represented;
- crashes occur in higher speed zones (50km/h+);
- rear end and side swipe crashes are the most common;
- roads are typically dry;
- crashes typically occur during daylight hours; and
- mid block crashes are more common than intersection crashes.

### *Crash Data for 'car dooring'*

Over the period 2007 to 2011, there was an average of 38 serious injuries annually from car door and cyclist collisions. There has been one fatality in the last 10 years (this was the matter investigated by the Coroner referred to at the start of this submission).

Over the last five years, eight per cent of cyclist serious injuries and fatalities across Victoria occurred when a driver opened their car door into the path of a cyclist. Car door/cyclist serious injuries are higher in the Melbourne CBD and surrounds, at approximately 20 per cent of police reported cyclist crashes.

### *Crash data for other key comparable safety offences*

It is important to retain relativities between offences. That is, offences that contribute the most to death or serious injuries of cyclists should have greater consequences (including fines) than offences that contribute less.

A key comparison offence that contributes to deaths and injuries of cyclists is non-helmet wearing. During the five year period 2006-2010, non-helmet wearing cyclists were involved in an average of about 46 serious injuries and two fatalities annually. This comprises 19% of cyclists killed and about 10% of all cyclist serious injuries.

### *Offence data*

The number of times the offence of 'car dooring' of a cyclist has occurred is unknown. Like all offences, police need to witness the offence or to be called to an incident in order to record the commission of the offence to take action.

During 2010-2011, Victoria Police issued 187 infringement notices for the offence of causing a hazard to any person or vehicle by opening a door of a vehicle, leaving a door of a vehicle open, or getting off, or out of, a vehicle.

However, 'car dooring' of a cyclist is a subgroup of this larger offence pool. Police cannot determine the actual numbers of infringements within the 187 issued specifically for 'car dooring', of a cyclist.

## **RESPONSES TO THE COMMITTEE'S QUESTIONS**

### **1 - Should the penalty increase from 3 penalty units to 10 penalty units?**

VicRoads would support the increase of the maximum court fine for this offence from 3 to 10 penalty units (\$366 to \$1,221).

Road rule 269(3) (and the proposed offence in the Bill) includes a wide range of offences, some of which are far less serious than that which occurs when a car door is opened into the path of a cyclist in traffic. These lesser offences would not warrant a higher monetary penalty.

However, as courts have discretion in terms of the fine they impose up to the maximum, courts can take all relevant circumstances into account and issue a fine appropriate to the circumstances. Therefore, the courts would have available discretion to impose higher fines for what they see are the more serious offences and lower fines for the less serious circumstances.

VicRoads reviewed the fine levels of over 400 traffic offences, including the offence of opening a car door, in 2008. Fines for most traffic offences were aligned as far as practicable with their relative risk. These new risk based fine levels were introduced in 2009. At that time this offence had not been linked to any fatality.

VicRoads undertook significant work to align the fines imposed by traffic offences with their potential crash risk. To maintain the current structure where offences carrying a similar risk have a similar monetary penalty, the maximum court penalty for other similar risk offences involving cyclists would need to be reviewed to maintain this risk based alignment of monetary penalties.

It should be noted that any change to the penalty, of itself, is not likely to lead to significant changes in behaviour. Penalties can only affect behaviour where the behaviour is a conscious decision made by the offender.

Where drivers deliberately offend, penalties can be useful provided there are high levels of enforcement and publicity. This is needed to make offenders believe that if they offend there is a real prospect that they will be caught and be subject to a penalty that they particularly want to avoid.

*Should there be an increase in the infringement notice penalty?*

VicRoads would support an increase to the infringement notice fine for all the offences covered by road rule 269(3) to two penalty units (\$244).

Mr Barber notes in his comments to the Committee on 28 March 2012 that the on-the-spot fine is one penalty unit. Item 76 in Schedule 7 to the Road Safety (General) Regulations 2009 imposes an infringement penalty of one penalty unit for this offence.

If the maximum court penalty is increased then there is an argument that the infringement fine for this offence should also be increased proportionally. An increase to two penalty units would be consistent with the Attorney General Guidelines that suggest that an infringement fine be 20% to 25% of the maximum court fine.

There is an option to examine a number of cycling related road rules and their associated penalties in a more strategic way to maximise safe cycling. The outcome of such a review, which would need national input as it would potentially modify the Australian road rules, would help inform government of the best approach to using road rules and penalties to achieve cycling safety improvements nationally.

## **2 - Should demerit points attach to the offence of 'car dooring'?**

The Bill provides for the direct amendment of the Road Safety (Drivers) Regulations 2009 to impose demerit points on a person who causes a hazard by opening the door of a vehicle or when getting off, or out of, a vehicle.

Demerit points aim to target risky driving behaviours rather than the more general risks associated with opening car doors or entering/exiting vehicles. They only apply to drivers of motor vehicles and are intended to help drivers modify their driving behaviour through the 'good behaviour' option if they continue to offend. The 'good behaviour' option occurs when somebody who has reached their demerit point threshold chooses to drive safely over the next twelve months rather than take a demerit point suspension.

VicRoads does not support this proposal for the following reasons:

- Demerit points could be imposed on a passenger, including children of a prosecutable age, who commits this offence.
- It would be unfair to impose demerit points on a child of a prosecutable age where the offence is committed years before they can drive solo.
- If a licence holder commits an offence as a passenger they would incur demerit points – this is contrary to the principles of demerit points that apply only to the driver.
- The offence can involve many minor offences that do not impose a high safety risk (eg damage to another vehicle in a parking lot).
- Demerit points normally apply to driving related offences – not to offences involving parked vehicles.
- Demerit points by themselves will not change the behaviour of drivers or passengers.
- Introducing demerit points for this offence introduces inequities regarding application of the penalty to licensed passengers, or to children and other unlicensed passengers for whom the demerit point system does not target behaviour change.

### **3 - Should 'car dooring' be made an offence under legislation rather than regulations?**

VicRoads submits that this matter would be best dealt with by regulation change rather than duplicating road rule 269(3) of the Road Safety Road Rules 2009 within the *Road Safety Act 1986*.

Generally, the Road Rules contain the requirements that describe to all road users how they should use the road system and interact safely. For this reason, the current requirement to ensure vehicle occupants do not cause hazard to others when leaving their vehicle, has been contained in the Road Rules

As the offence already exists and is consistent throughout Australia, it is simpler to increase the penalty in this offence rather than to introduce a duplicate offence. A national process involving a significant amount of work over many years has occurred to achieve national consistency of road rules such as this, across Australia. This ensures that road users, wherever they are in Australia, have the same understanding of what is required when using Australian roads.

Introducing a duplicate offence runs the risk of police prosecuting under the lower penalty offence. To prevent this from happening road rule 269(3) could be rescinded. However, this would then move Victoria away from the nationally adopted approach to harmonize road rules such as this, across Australia.

### **4 - Should the process for enforcing a 'car dooring' offence be changed so it must exclusively be dealt with by the Magistrates' Court?**

VicRoads submits that the current arrangement whereby police have discretion to issue an infringement notice or to take the matter to court should remain in place.

The offence described in the Bill and in road rule 269(3) is not an exclusive "car dooring of cyclist" offence. Rather it is a general offence that covers a wide range of behaviour ranging from a relatively minor to quite serious. Requiring instances of this

offence which have only minor risks or consequences to be taken to court is likely to result in police not pursuing those offences at all.

Requiring all offenders to go to court would also be cumbersome, and costly for police to prosecute. This is likely to lead to fewer people being sanctioned for this offence and therefore the effectiveness of the offence being diminished.

In general terms, research indicates that to be effective the consequences of the offence need to rapidly follow the commission of the offence. Imposing a long delay between commission of the offence and the imposition of the penalty by pursuing the matter in court weakens any deterrence effect the penalty may have.

The changes proposed in the Bill, requiring a hearing before the court would not improve the enforceability of the offence and may inadvertently result in a reduction in its effectiveness.

## **IMPROVING THE SAFETY OF CYCLISTS**

VicRoads and its road safety partners are committed to improving the safety of cyclists.

Increasing fines alone is unlikely to provide improved safety outcomes for cyclists. Improving the safety outcomes for cyclists primarily involves making the road environment safer, enhancing enforcement and increasing awareness of cycle safety issues by educative means.

*What is being done to make roads safer for cyclists.*

VicRoads considers the needs of cyclists as part of major road projects and incorporates bicycle facilities when appropriate. This approach has been formalised with the establishment of a clear policy that outlines when bicycle facilities should be included as part of a road project. The policy applies to all road projects regardless of their size. As a result, substantial lengths of bicycle facilities have been added to the existing bicycle network through the delivery of road projects over a number of years

The Coroner recommended that VicRoads improve the road environment for cycling and reconfigure cycle lanes to the 'Copenhagen' style, in which the cycle lane is to the left of any parked cars. VicRoads is currently working with local councils to do this where practicable. These lanes have already been implemented in some locations.

However, any reconfiguration of roads and bicycle lanes must be assessed in terms of safety for all road users. This means that a standard reconfiguration cannot be applied and each road must be assessed independently.

VicRoads also intends to develop a new series of 'Cycle Notes', which provide design standards for cycling infrastructure. These will be based on treatments that increase the separation between bicycles and motor vehicles, such as the Copenhagen design. Obviously however, the actual designs will depend on the constraints of individual locations.

*What is being done to improve awareness?*

Following the Coroner's recommendations VicRoads will develop a communication campaign to educate motorists about the need to check before opening their car door.



This message has already been included in the Road User or Abuser social media campaign launched on 6 February 2012. The objectives of this campaign are to:

- foster positive and mutual respect between road users;
- clarify cycling related road rules for all road users; and
- encourage drivers to treat cyclists as legitimate road users and share the road with cyclists safely.

VicRoads is also developing two concepts for stickers, which drivers could place in their car to remind passengers or drivers to look for cyclists before they open their car door. The stickers would alert drivers and passengers to the potential risks for road users when opening car doors. Stickers would be supported by messages that would explain the risks to cyclists and refer to the VicRoads website for further information.

The draft designs for stickers were placed on the Facebook page, Road User or Abuser, seeking participants' comments and to let them know what VicRoads is doing about this issue for cycling safety. The final sticker will be available in the coming months.

#### *Enhancing enforcement*

During February, Victoria Police conducted Operation Halo, with a focus on vulnerable road user safety in the Melbourne, Port Phillip, Yarra, Boroondara and Stonnington policing areas. During Operation Halo, police focused on enforcement of road rules which are about increasing the safety of pedestrians, cyclists and motorcycle riders. The following were the main cycle related offences detected:

- Bicycle Offences
  - 216 Fail to Wear Helmet
  - 29 Ride on Footpath
  - 135 Disobey Traffic Lights or Signs
- Motorcycle Offences
  - 127 Ride in Bicycle Lane
- Car/Truck Offences
  - 39 Drive In Bicycle Lane
  - 4 Alight from Vehicle when Unsafe (road rule 269(3))

Victoria Police will continue its targeted enforcement activities throughout the year.

Safe Cycle is a road safety initiative of the Victoria Police with support from VicRoads, which aims to reduce the incidence and severity of bicycle collisions by raising awareness of bicycle safety issues in the community. Safe Cycle is held annually in October.

The Victoria Police Bicycle Coordination Unit coordinates a number of events throughout Victoria during Safe Cycle month with the aim to make as much contact with cyclists as possible, encouraging cyclists to keep riding safely and responsibly and improving compliance with the Road Rules.

During the campaign cyclists may receive bicycle-related rewards when observed by police demonstrating safe and effective cycling behaviour. Targeted police enforcement of offences committed by cyclists and drivers aims to educate all road users to share the road and reduce the rate of injuries to cyclists.

The campaign coincides with Community Safety Month, Around the Bay in a Day, Ride to Work Day, and the Cycling Festival.