

# TRANSCRIPT

## ROAD SAFETY COMMITTEE

### Inquiry into motorcycle safety

Melbourne — 19 October 2011

#### Members

Mr A. Elsbury

Mr T. Languiller

Mr J. Perera

Mr M. Thompson

Mr B. Tilley

Chair: Mr M. Thompson  
Deputy Chair: Mr T. Languiller

#### Staff

Executive Officer: Ms K. Jenkins  
Research Officer: Mr J. Aliferis

#### Witnesses

Mr J. Voyage, principal, and

Mr A. Kostick, community engagement, Maurice Blackburn Lawyers.

**The CHAIR** — Hansard staff will be recording the discussion and a copy of the transcript will be forwarded to the witnesses, Mr Adam Kostick and Mr John Voyage, from Maurice Blackburn Lawyers. They are invited to amend any typographical errors and then return the transcript with a view to it being placed on the committee's website. Should there be any evidence required to be given in camera, we will be pleased to do so if there are any wider matters you think may be appropriate for our consideration but not for the public domain. Please keep that in mind now and into the future.

We have received over 68 submissions in relation to the inquiry. The public hearings have provided a useful framework to delve deeper, and I commend Maurice Blackburn on the calibre of its submission based upon their firsthand insight into the arena and the concerns of people who are directly affected on the road and who have sustained injuries. Last night we heard the case of a young person who survived, as well as during the day of another person who sustained significant injuries — paraplegia — as a consequence. We have heard from the Monash trauma surgery professor, who gave us a much-valued insight. We invite you to contribute your wisdom to our committee, Mr Voyage.

**Mr VOYAGE** — Thank you, Chair, and committee members for the opportunity to present today and participate in this inquiry. We believe it is a timely and very important issue. We are injuries lawyers. We act and have acted for decades for people who suffer injuries, in particular on the roads, and we have seen the consequences of what toll it takes on the individuals, on their families and on society more widely. We see cases all too often where motorcyclists have been injured as a result of incidents and have come in to claims with the TAC. These are the opportunities. We have to meet with these people and to find things out about what has occurred. We have obviously over the years developed a degree of learning of what has happened with those accidents, and we thought it was appropriate to contribute to this committee to tell the stories of the many people who we had seen, what has occurred and to put our comments about what we think could occur.

In the process of putting this together we thought we should speak also with some motorcycling groups. We have been overwhelmed with the support and help we have received from numerous motorcycling people. We thought we knew plenty from all of our experience in dealing with the TAC and dealing with the police, but I must say it was not until I went for a ride with my friend, Mr John Karmouche, that I understood more fully the issues which are before your committee, and we will come to that shortly.

I was hoping to give a couple of examples of some clients and the stories of what has occurred in their particular instances. In the course of us putting our material together we have come across the expression SMIDSY — sorry mate, I didn't see you. Our experience is that it is an expression that huge numbers of motorcyclists are familiar with and many have had SMIDSY experiences.

We were invited to go down to the grand prix on Saturday and Sunday, and we were handing out these little brochures and inviting people to participate on a Facebook page to tell us if they had had a SMIDSY story. We have been surprised at the hundreds of people who have responded with their stories. Whilst obviously we do not have an opportunity today to read them all to you, we were thinking of giving a couple of examples from what we have had from Facebook and a couple of examples from our own clients.

I would emphasise that all of these people are legitimate road users and have sustained these injuries in accidents where there is a common theme of a lack of awareness on the part of motor car drivers. Here are some examples of cases that we have seen in our work. A client, whom I would just like to refer to as client 1, was a man who was riding his motorbike in a city street in the CBD. His motorbike was struck by a taxi which was performing a U-turn. Client 1 was in light traffic. It was mid-morning. It was probably a similar time to today and the traffic was much like what you see out of the window behind you. He was highly visible. There were other witnesses who said the taxi was 100 per cent at fault, that it performed the U-turn when it should not have.

The gentleman suffered significant orthopaedic injuries, which restricted him from returning to semiskilled labour, and in fact stopped him working in a factory altogether. He ended up finding alternative employment as a salesman, but he cannot stand on his feet all day; he has difficulties. Under the TAC scheme I am sure you are aware that a person is forbidden from receiving common-law compensation, from suing the negligent taxi driver, unless they have what is called a serious injury, and there is a very high threshold of how serious the injury has to be.

This particular gentleman's injuries were serious injuries, so he had an opportunity to claim common-law compensation for pain and suffering and for financial loss. However, in his particular case, as we see all too often, the TAC argued that he contributed to his injuries. The TAC relied on the taxi driver not having seen the motorcycle as the basis that the motorcycle must have been travelling too fast. They assumed in that particular matter, as we see all too often, that speed was a contributing factor and that the motorcyclist contributed to his own injuries. When you speak to people in the motorcycling community this sort of event is something that they hear about time and again.

The second example I would like to tell you about is of someone I will call client 2. He was a trade union official prior to his injuries, but as a result of his injuries he has been unable to remain in that work. He was riding in a suburban street in Sunbury that was wide enough for three cars. There were cars parked here and there along the sides of the street, but at one particular unfortunate spot there were cars parked on both sides. A four-wheel drive was approaching. It hindered passage by both vehicles. Somebody had to give way to the other. The motorcyclist saw an opportunity to move into a gap on the side of the road and he was intending to move into that gap. He had impact, however, with a bullbar on the four-wheel drive. He suffered injuries which initially resulted in amputation below the knee, but subsequently he has had amputation above the knee on his right leg. Neither the driver of the four-wheel drive nor her passenger saw the motorcyclist, even though it was a straight, suburban street. Needless to say, he suffered a serious injury, which entitled him to common-law compensation. Again, it is a matter in which the TAC alleged that the speed of the motorcyclist was a contributing factor, even though neither the driver of the four-wheel drive nor her passenger saw him on the straight street prior to the impact. I emphasise these are all legitimate road users, and the common theme was lack of awareness. The difficulty we see is that, increasingly, cars are becoming safer and there is something which we have heard about called the Peltzman effect.

**Mr LANGUILLER** — Sorry, can you repeat that?

**Mr VOYAGE** — The Peltzman effect. Professor Peltzman is apparently an economist. He has lots of theories, apparently. The Peltzman effect is, as I understand it, that as cars become increasingly safe the drivers become involved in increasingly dangerous or risky behaviour. They think they are surrounded by a crumple zone and side intrusion bars, so they do not have to worry about a thing; they can drive as they like. In addition to the drivers being increasingly cocooned, we see also that cars are being filled with increasing numbers of distractions — with satellite navigation devices, mobile phones and cup holders — all sorts of things are there to distract the driver from constant awareness.

One of the things which I had read and heard about from motorcyclists but not really appreciated — I am sure you gentlemen are aware of it — until I went for my ride with Mr Karmouche was the visibility that you have on a motorbike and your awareness of everything around. Visibility in cars is restricted and it is something which car drivers do not appreciate. Part of where we are heading is that we would like to suggest that there should be some further training for car drivers and there should be opportunities for people to be better trained so that they learn more awareness.

In that regard, through the connections we have had in our SMIDSY campaign, we have seen a couple of advertisements. We are all familiar with the TAC ads which people have been referring to, which make reference to '38 times more likely to suffer injuries' and graphic details of the sorts of injuries people suffer. But we have here a couple of ads, one from London and one from Texas, to show the sort of direction that advertising for motorcycle safety has gone in other jurisdictions. I would like to play it to the committee so it can see these ads, if that is okay.

**Video shown.**

**Mr VOYAGE** — Then there is the second ad from Texas.

**The CHAIR** — Where was that last one from?

**Mr VOYAGE** — That one was from London. The next one is from Texas. So 'save a life' is an entirely different message from what the authorities in Victoria are sending out to the community at large and to motorcyclists in particular.

**The DEPUTY CHAIR** — Are you submitting your two CDs to the committee?

**Ms JENKINS** — We have them; we have the links.

**Mr KOSTICK** — One of the main differences between the advertisements currently shown and what seems to be the modus operandi in other jurisdictions is that the advertisement here implies that it is just motorcyclists — it is down to you. Our position is it is up to everyone, and that is the way the advertising has gone in the UK. You simply cannot argue with the fact that because drivers are involved in two-thirds of injuries to motorcyclists and half of the fatalities, you have to make your advances where the biggest gains can be made. Authorities in Victoria could take the position that other jurisdictions have decided to take and adopt a slightly fresh platform for reducing injuries and fatalities, one that they have not explored as much they could.

This might be a nice point to give one story from a Facebook campaign in which we have asked people to tell us their experiences of SMIDSYs so we can help educate the authorities that this is something the motorcycling community feels is worth pursuing, because the authorities have got our message so far. I will start with one from a father who told us he had a SMIDSY while commuting with his 13-year-old son as a pillion passenger. He is always looking for SMIDSY and was able to avoid impact. He still remembers seeing the driver wave and mouth ‘sorry’ as they continued on their way. He pulled up and his son asked him, ‘How could they not see us?’. The report states:

I told him how often it happens and that I’m used to avoiding accidents as part of my daily ride to work and back. He just shook his head and said, ‘You really shouldn’t have to, dad’. Maybe with the right education there’s hope for us in the next generation of drivers.

I hope that perhaps joins the dots a bit on the approach.

**Mr VOYAGE** — We believe there is a potential for achieving a number of successful outcomes from this committee. There is an opportunity to join together road safety policy and transport, and we also mention infrastructure policy in our paper. Changing the perceptions of motorcyclists and the experiences of all road users can be successful outcomes of this committee.

A group of people have come and spoken to us about the sorts of issues which, if they had 5 minutes with the committee, they would like the committee to hear. Overwhelmingly the most important issue for the motorcycling community that we have been speaking to has been improved statistics and good research. There is a clear, strong sentiment that the statistics that we are being fed are not fair or rational — for example, there is the statistic referred to by the TAC that motorcyclists comprise only a very small number of registered road users yet they comprise a larger proportion of TAC clients. All that suggests is that motorcyclists are vulnerable. It does not say anything more than that. If a car strikes a motorcycle, the motorcycle will come off second best most of the time. The same statistics could be brought in relation to pedestrians. What happens when a car hits a pedestrian? What fraction of TAC contribution or revenue is from pedestrians? Zero. How much does the TAC pay? A larger amount. What is the TAC going to do about it? With respect, I would suggest that that is almost a meaningless statistic.

We have seen the TAC in the past say that people with spinal cord damage, quadriplegics, have a disproportionate amount of TAC payments delivered to them, that they are something like half a percent of TAC claimants but they receive — I do not remember the precise number — maybe 8 per cent of the TAC claim costs, as if they are somehow greedy or disproportionate or whatever. That is the cost of somebody who has suffered those sorts of injuries. It is stating the obvious and perhaps it does reflect back on the TAC, but they are the sorts of statistics that they quote rather than trying to enhance the motorcycling experience and the experience of all people. The repeated line we have heard from motorcyclists is that they pay for the mistakes of others. ‘An extra 10 seconds on your life could add years to mine’ is the sort of thing we have heard them saying to us. Good statistics and research is top of the list. Second on the list is prejudice and attitudes. This comes through a number of things. It comes through, for example, in one of the Facebook stories.

**Mr KOSTICK** — Yes, I will mention that now. It is from one of the other people who has joined us. I will say it in the first person because it is easier to read:

My SMIDSY happened years ago in the CBD. A young lady was running late for her lunch appointment with her mother. She turned right in front of me without slowing down and obviously without looking properly. I braked as hard as I could and looked for an escape route. I was left with nowhere to go except into the side of her car. Witnesses say I flew through the air like Superman. When I hit the ground I got knocked out and suffered a shoulder separation. The girl who hit me told the police she

failed to see me, so she was charged with failing to give way. I maintain she failed to adequately look ... The girl was fined and charged \$120. I have a permanent shoulder injury. I've spent over \$2000 on physio.

**Mr VOYAGE** — That is typical of the sort of thing we see. The TAC scheme is a terrific scheme. It is certainly the best in Australia. It must be one of the best in the world, without question. However, in this particular example the gentleman will be out of pocket because the scheme does not cover all of the expenses. There are limits on what is paid. He is \$2000 out of pocket through of no fault of his own and he sees the wrongdoer, the motorist involved, receive what I anticipate would have been a traffic infringement notice and a \$120 fine and maybe a point or two on their licence.

So in looking to what outcome should come from this committee, there needs to be some consideration given to the policing of these sorts of incidents and the attitude towards motorcyclists and the injuries which they suffer.

**Mr KOSTICK** — The levy is at the forefront of motorcyclists' minds, from what we have heard. I was here on Monday. I think it might have been Mr Languiller who asked whether it is the case that the levy money is not only benefiting motorcyclists but also benefiting other road users, and if so, why should that levy be incurred? They said that is always the case. It is always going to benefit other road users. Mr Languiller also asked them whether training worked, and they said something along the lines that training has not been shown to reduce or increase safety.

I thought I would bring to the attention of the committee the Gold Coast City Council's SMART motorcycle training scheme. I think it answers both of those. They offer road-craft skills training for motorcyclists. The scheme was implemented in 2007 to address the mounting motorcycle fatalities their city was experiencing at the time. For that year they had 18 fatalities, which is the highest number they had. It has dropped considerably since then to three for this year. The SMART scheme has delivered training to over 2500 motorcyclists and offers four levels of training for the newly licensed motorcyclist to a very experienced motorcyclist who may have had 20 years riding experience. The service provider is Honda Australia Rider Training, which undertakes the training for the council between March and September. The price to attend is \$45, which is heavily subsidised by the council. That is a scheme which is shown to have reduced fatalities through training, and that is a scheme that, if it was levy funded, would be specifically for the benefit of motorcyclists. We thought that might be worth mentioning.

**Mr TILLEY** — I am familiar with the Gold Coast. The Gold Coast has a large proportion of scooters and mopeds. Have small enterprises downsized on the number of mopeds and motor scooters that have been available?

**Mr KOSTICK** — I could not tell you the exact make-up of the 18 fatalities that have been reduced to three. I can ask Karen Burton, who is the senior safety officer there, to help and show whether or not that is the case.

**Mr PERERA** — Who has subsidised this? Is it the Gold Coast City Council?

**Mr KOSTICK** — The Gold Coast City Council SMART motorcycle training program. I can actually provide the committee with more information on that, but I think it is an excellent example.

**Mr VOYAGE** — We have seen a lot of talk in the newspapers recently, probably generated as result of this committee, about reducing risks to motorcyclists and in particular about the high personal toll and cost to the community involved. The question of training of drivers was covered in an opinion piece on 9 October, there was another one two days ago and there was another one again this morning. Clearly the question of training of drivers is topical at the moment, and there is an opportunity, we would suggest, that these issues could be considered with the outcome of valuable improvement in our roads.

**Mr ELSBURY** — Is that training during the licensing process or is that a renewal of a licensing scheme that requires additional training?

**Mr VOYAGE** — We have a couple of alternatives or suggestions. It could be mandatory or it could be voluntary. If it is voluntary, there is an article in the *Herald Sun* this morning which suggests that young learners or young drivers who get trained might get some theatre tickets and a chance to win a larger prize. Our suggestion was going to be that it might mean that if you have gone through some additional training as a driver, then you are less of a risk on the road to other road users, and therefore your TAC premium should be reduced. There are a number of possibilities. We were suggesting originally that there should be training beyond

the obtaining of the P-plate when drivers go from red Ps to green Ps. It might well be an opportunity for there to be some additional training or increased awareness.

**Mr ELSBURY** — That was in one of the newspapers this week. There was a vox pop — I think it might have even been today — asking young drivers, ‘Would you take on additional training?’, and I think everyone said yes.

**Mr KOSTICK** — Or free movie tickets. I think you could have different rewards for additional training whereby you reduce the risk. I am sure some would more appreciate reductions in premiums, but I think there is certainly room for additional awareness training of vulnerable road users. I think another example you could note is there is a program in Victoria called the Fit to Drive program, which goes around schools for years 10, 11 and 12 students. I got in contact just to discover what sort of influence motorcycles have in that or whether they are mentioned. They are not. That to me is a pretty shocking indictment on the establishment of that program. It is a fantastic program, but again so is the TAC, but there are still ways you can make it better. Now, whether or not it takes the volunteers from the motorcycling community to get involved, I am not too sure. It is not for us to say, but the more we can add in, surely the better.

**The CHAIR** — Gentlemen, our time is reasonably constrained. You have given us a very good written submission. We do have some questions that my colleagues would like to ask of you, but how are you tracking in terms of conveying what you would like to — —

**Mr KOSTICK** — We are done.

**The CHAIR** — We will open up the questions.

**Mr LANGUILLER** — Thank you both for your evidence. I am not legally trained so it would be remiss of me, if I may, on a pro bono basis, not to take advantage of yourselves and seek your advice. TAC submitted to this committee in relation to off-road, and I am assuming VicRoads — I am thinking through this logically — would be responsible for roads. There are various types of roads in this state, as we know. The off-road data in terms of injury, serious and otherwise, and casualties is increasingly significant, and we have received data to that effect, particularly good data, I would suggest, from the Department of Health. I looked at the legislation and TAC said to us words to the effect of, ‘It is not clear as to whether we are or not responsible’. So if I may take advantage of my background of not being legally trained, I want to read the following to you in relation to ‘road’ and what it means. I refer to section 3 of the Road Safety Act 1986. On page 35, the definition of ‘road’ states:

- (a) area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles; or
- (b) a place that is a road by virtue of a declaration under subsection ...

It does not say whether it should be sealed or otherwise. I am quite happy to furnish you with — —

**Mr VOYAGE** — No, I know the provisions.

**Mr LANGUILLER** — In your judgement is VicRoads responsible for off-roads or not?

**Mr VOYAGE** — Is VicRoads or TAC?

**Mr LANGUILLER** — VicRoads. TAC are, because they do accept liability in relation to claims. I was quite confused by the VicRoads submission in relation to that.

**The CHAIR** — Mr Voyage, if I could just interpose, you are welcome to answer the question now. I believe Maurice Blackburn offer the first appointment free, Mr Languiller.

**Mr LANGUILLER** — Thank you.

**Mr VOYAGE** — Our branding has been successful.

**The CHAIR** — It may also be possible too for Mr Aliferis, one of our staff, to work with Maurice Blackburn if there is some in-house knowledge that could quickly assemble an opinion that would give more detail.

**Mr LANGUILLER** — And take that on notice.

**Mr VOYAGE** — I appreciate that. The issue about the involvement of TAC is one where off-road has been an issue in cases which have gone to judgement at VCAT and on appeal in the Supreme Court, and the definition of what constitutes a road in that legislation is very extensive. It goes on to be all sorts of things that you might not expect — a pier, for example. There are all sorts of things which people do not immediately think of as being a road. The extent of VicRoads responsibilities might overlap with other things. They might overlap with parks and many other things, but I take the opportunity to get back to you.

**Mr LANGUILLER** — Just further, and I do want to share this with you, given the fact that you are lawyers — a female friend, who is a rider, looked at the ads that were recently used by TAC and indicated the following to me. She said, ‘What it does is it replicates the culture of prejudice that exists out there’. And interestingly — and it shocked me — she used the analogy of the 1970s when mums and dads used to tell their daughters, ‘Don’t go out so that you avoid sexual harassment. Don’t wear skirts or clothes of this or the other type’. They effectively blamed the victim. Do you think there is an element of that, of institutional culture, where prejudice is somewhat institutionalised and replicated by virtue of the ads that are being used?

**Mr VOYAGE** — I would say strongly the evidence would point to the answer to that being yes. Motorcycling people to whom we have spoken view the ads as being aimed at not the motorcyclists themselves but at their families, so that the family will say, ‘Please don’t do that dangerous activity’. Alternatively, it is telling me you are an idiot if you are riding a motorcycle. These are unacceptable sentiments when the motorcycling community do not fit into those categories.

**Mr KOSTICK** — In normal life we reward those who, I suppose, take — —

It is not that motorcyclists are risk-takers. We see them more as risk managers and people who are pioneering in spirit. In society and other sectors we reward that sort of behaviour. In business we have entrepreneurs. In politics we have statesmen and diplomats who are willing to take an extra step forward. I think motorcyclists are, as you have probably learnt so far, highly aware of the risks that they take and have better road-craft in general, as I think tests have pointed out, than motorists. Yes, the perceptions are wrong and they are present, and I think there is a vilification of motorcyclists that is uncalled for. It is something you should be aware of.

**Mr VOYAGE** — Especially at the conclusion of the current TAC ads, it says ‘Motorcyclists, it’s up to you’. The responsibility is on everybody. It is on all road users. Our submission makes reference to a particular ad for a four-wheel-drive car or a family car that is available at the moment, and it is just shows a woman cocooned in her car. The only use of her internal rear view mirror is to admire her children in the back seat. She is just has no awareness outside the box.

**Mr TILLEY** — I would like to commend you on your sense of corporate social responsibility with the SMIDSY campaign, but in an earlier comment you mentioned a number of groups that you have been dealing with or engaging with over time. I am just curious. Is there any group that this committee may find some benefit with possibly liaising with you? We have had 68 submissions. If there is anybody you may feel might assist this inquiry that have not engaged with the committee particularly — —

**Mr KOSTICK** — I can tell you some of the groups. Would you like to know the ones we have found extremely helpful and insightful? Ulysses have been exceptional in the depth and quality of their information. The VACC, the Victorian Motorcycle Council, the Australian Motorcycle Council, Motorcycling Australia, and specifically Rob Smith, manager of the riders division. If you have not spoken to him, I sincerely suggest you do. Also, I do not know how tech savvy you might be with online forums or discussion groups, but I think if you want to get a real taste of issues affecting motorcyclists in Australia and Victoria, I suggest you look at the Netrider forum discussion group in great detail, not to mention the Australian Scooter Federation, as well as HART and Honda. There is a lot, but the thing is they are very passionate.

**Mr VOYAGE** — That is just some of the people. There have been many others. Many people have been very willing to give their time on hearing that we have been preparing a submission, so that we would be well informed.

**Mr KOSTICK** — And apologies to anyone we have left out.

**The CHAIR** — I reiterate that your submission does reflect good consultation and some good impetus in a number of areas.

**Mr KOSTICK** — We have tried to hold up a mirror to the current concerns of motorcyclists.

**Mr PERERA** — I will refer back to the first case, where the taxidriver hit the motorcyclist. In the end TAC determined that they were not going to look after the motorcyclist because, since the taxidriver did not see the motorcyclist, the implication was that the motorcyclist was speeding.

**Mr VOYAGE** — No, I am sorry if I have given that impression. The TAC has two schemes: no fault and common law. They were obliged under no fault to pay for medical, hospital, pharmacy, time off work and an impairment payment. The common law is where the person sues the negligent driver. In that case the amount of compensation he might be entitled to was something that the TAC challenged, saying that he had contributed to his own injuries, so they wanted to diminish the compensation payment proportionate to his contribution to the accident.

**Mr PERERA** — The TAC concluded that his negligence was because he was speeding?

**Mr VOYAGE** — Correct.

**Mr PERERA** — Where were the witnesses? As they did not have any witnesses, the TAC could have been challenged at a court of law?

**Mr VOYAGE** — The client did not agree, and ultimately we resolved the case favourably for the client.

**Mr PERERA** — Is it a possibility that the TAC could have been challenged?

**Mr VOYAGE** — Certainly. If you do not like what the TAC is saying in those cases, you go on to court. As you are aware, it all turns on what the witnesses have to say. If you do not have the witnesses present, it can be difficult.

**Mr ELSBURY** — I did notice in your submission that you mentioned wire rope barriers. These are the bane of many motorcyclists, from the majority of the submissions I have had a look at, anyway. Would you be able to suggest any alternative to those structures?

**Mr KOSTICK** — We agree that motorcyclists should be consulted more in any infrastructure progress on the roads of Victoria, but I do not think we have the necessary engineering nous to comment on them.

**Mr VOYAGE** — One of the things about the wire rope barriers is the actual wires are a problem — and different people have different degrees of concern about them — and where they are placed is a problem. If they are on curves, it can be a bigger problem than if they are on a straight road. But the little posts that hold them up can be a problem as well. One of the things I have previously seen from my own experience relates to motorcyclists complaining about the posts around Lakeside Drive at Albert Park. I have driven and bicycled around there, but it was only when I went for a ride with Mr Karmouche that we actually saw them up close and you realise that there is just no place for a motorcyclist to go. If you get in the way of some unfortunate accident, the posts are there just waiting to collect the person and to cause injury. I cannot see why those posts are not set back further, or why they should not be made of something which gives a little more flexibility than would seem to be a very strong barrier. If somebody's head or vital parts come into contact, then there could be absolutely unnecessary terrible consequences.

**Mr TILLEY** — In your learned view, and we are talking about wire rope barriers, do these types of infrastructure potentially or possibly expose the state to any risk in relation to litigation?

**Mr VOYAGE** — I think it is possible.

**Mr TILLEY** — You can take that on notice, if you would like.

**Mr VOYAGE** — I would like to. We might speak to some people who are specialists in that area.

**Mr ELSBURY** — Also in your submission you mention that lane filtering is recognised in various European countries, and the Netherlands was mentioned as one of them. But you do not support lane splitting, can you define the difference between the two.

**Mr KOSTICK** — We believe lane splitting is where you are changing lanes at a higher speed in fast-moving traffic and lane filtering is in stationary or slowish moving traffic. In our understanding we support lane filtering. As Melbourne's roads get continually more congested and motorcyclists have to deal with drivers who are not aware, anything they can do to better position themselves for a safe departure from traffic lights, say, has to be supported, logically and with common sense. If drivers feel they are somehow being cheated of their spot in the queue, I think that says more about drivers than it does about motorcyclist safety.

**Mr LANGUILLER** — Can I say thank you for that contribution, because certainly in my mind, that clarification and that distinction between the two makes it easier for me personally to consider a recommendation in relation to the subject. Submissions that treat both as very much the same are not helpful, in my personal judgement, so I do thank you for that.

**The CHAIR** — On Monday we were looking at that as a question. I narrated the circumstances of a fellow who lane split coming around Brunton Avenue. He negotiated the curve successfully and got through. My colleague, a member for Western Metropolitan Region, Mr Elsbury, narrated the circumstances of a person who was lane splitting between two trucks on the West Gate Bridge, and the outcome was not a successful one.

**The CHAIR** — In more general terms the experience of motorcyclists on the road may not be different to those faced by bicycle riders as well. There has been some push for Melbourne to be developed and regarded as being a bike city overall. Do you have many records of cyclists who might encounter similar issues on the road that would form part of your workflow?

**Mr VOYAGE** — We certainly act for a lot of cyclists who have had transport accidents. There are some similarities, in that they are vulnerable road users, but there are a lot of differences as well. Pushbikes have specific bike lanes allocated to them, for example, and they have places, such as along coastal trails and things like this, all over the place. By comparison, motorbikes have to use the same road as cars. Whereas for pushbikes there could be problems with potholes and other road inconsistencies like that, the sort of thing which motorbikes encounter a lot is in the middle of the road where there has been a white line that is covered over; it is fine for a car to be able to drive over that but there can be difficulties for a motorcycle, which is quite different to what a pushbike would encounter. So the experiences are actually more different.

**The CHAIR** — I was thinking partly also about the awareness raising of the risks, and the blind spots on the part of a motorist as they are driving along. Both motorcyclists and cyclists are, I think, equally vulnerable. In terms of there being a component of education and training for learner drivers and even other drivers, there are the two parallel issues. With the increasing incidence of use of motorcycles, likewise there is an increasing incidence of use of bicycles accessing the CBD of Melbourne. The risk to both I would regard as being similar, in terms of the blind spot and of driver behaviour, if they are distracted within their car console area.

**Mr VOYAGE** — Indeed. I would agree with you. Further, for example, on the mornings and weekends along Beach Road, you often see cars getting frustrated and perhaps even showing aggression towards pushbikes. I think that might be a different relationship than the relationship of cars to motorcycles.

**The CHAIR** — It is an important issue overall, because it is an elevated awareness of the rights of all road users on the road, whether they be trucks, cars, motorcycles or bicycles. Under the relevant legislation bicycles are regarded as vehicles as well. They have equal rights on the road overall. While they can delay speed of process, I think there is a lack of awareness of their use on the part of the wider community in their desire to commute to the city at 60 kilometres per hour. There has to be an understanding that they need to accommodate the rights of other road users on the road as well.

**Mr VOYAGE** — That is right. Acceptance of their legitimacy to be on the road.

**The CHAIR** — I do not think that is always an equal understanding on the part of road users, being the motorists. I am interested in your comment regarding an educative program that might raise awareness that could be joined with a program that incorporated the interests of bicycle riders as well.

**Mr VOYAGE** — Certainly.

**Mr ELSBURY** — I am interested in your point of view on safety gear and whether that should be mandatory or voluntary.

**Mr VOYAGE** — There is an expression, 'Let the riders decide'. I think that those who ride, decide. I would suggest that it is the sort of decision that should not be made until people who are involved in riding motorcycles are consulted. I do not purport to have anywhere near the level of experience, knowledge or understanding as the people sitting behind me. I am sure if you spoke to them you would get many intelligent, articulate, well-thought-out answers.

**Mr KOSTICK** — Furthermore I think it might be wise to add that motorcyclists are pretty aware of the fact that if they come off their bike at a high speed they would want to be wearing either the body armour or the protective clothing. You are always going to have — speaking for myself — perhaps a 10 per cent element of people who are never going to fall into that common-sense bracket, be they drivers, cyclists or what have you. So perhaps it is the resources that the TAC may have, whereby they have really pushed this for quite a long time. How much more can you tell motorcyclists? It is a bit like trying to explain to fish that they are under water; they are very aware. Perhaps resources could be better committed to platforms such as trying to increase driver awareness which have been woefully underplayed and they get more for their advertising buck than they are currently getting in terms of success. If all you are doing to measure your advertising success is to measure recall, can I suggest that we should be measuring results. In the corporate world we would not get away with people remembering our products but not buying them.

**Mr ELSBURY** — Also, yesterday, going on the theme you were just talking about with regard to drivers being more aware of their surroundings and more aware of motorcyclists, we had two young ladies come in and present to us. I asked them did they feel there should be more awareness of motorcycles in learners permits and receiving their P-plates? Would you care to comment about that?

**Mr KOSTICK** — I suppose your instant reaction would be that surely as the most vulnerable road users, even though they may represent a smaller percentage of registered vehicles or road users, they should have an elevated position in any driver training that is going to be conducted. That would just be common sense, I would have thought.

**Mr ELSBURY** — It is not being used just at the moment though.

**Mr KOSTICK** — Yes, unfortunately.

**Mr TILLEY** — I just want to continue and explore a bit more about the protective clothing issue. Are either of you aware in all judicial jurisdictions of any grounds that protective clothing was not fit for purpose or failed to protect the motorcyclist? I have a supplementary question.

**Mr VOYAGE** — I am sorry.

**Mr TILLEY** — Are there any findings?

**Mr VOYAGE** — It is something which the TAC raises as an allegation of contributory negligence on the part of a motorcyclist. They will inevitably argue that the helmet was not appropriately fastened, especially if it has come off, of course. They will argue the question about protective clothing as well as an allegation of contributory negligence. I am not aware of it having actually been run to conclusion as a jury verdict.

**Mr TILLEY** — That saves me from asking the second part of my question because I was specifically going to talk about the TAC.

**Mr VOYAGE** — Ask it anyway. There has been confusion — —

**Mr TILLEY** — The use of or the lack of use of protective clothing. Have they argued that as a point?

**Mr VOYAGE** — That is right. They argue it in the original documents when you are exchanging — this is the way we see the case and this is the way they see the case — and you try and reach some middle ground. It is one of the things they throw in. I would hasten to say that we have seen in the past the TAC get a bit confused between their safety area and their litigation area. There was an ad which the TAC was running about 12 years ago. A client of mine who lived in the Latrobe Valley had a son who was a learner driver and they were driving on a foggy morning on the main highway. A car came through a stop sign and caused serious injury to the lady who was the instructor. She suffered a serious injury and she was entitled to sue because the person who came through the stop sign failed to give way. In conducting the defence the TAC's initial documentation said that the lady was negligent by travelling with an inexperienced driver. That was at the time when they were advertising that you needed all of these hours and you needed them in all conditions. It was totally inconsistent with the message they were putting out as a safety message. But it is litigation and that is the way they sometimes conduct themselves. They do a lot of good in the community but they can also be quite an aggressive insurance company.

**Mr LANGUILLER** — Just a quick comment, if I may, to bring something to your attention, and you may wish to take this on notice. It appears to me increasingly that there is a systemic issue in relation to motorcycles and riders and prejudice and so on that appears to be institutional. I say 'appears to be' because I have not yet formed a conclusive view. A submission was put to us yesterday that the National Transport Commission in its report, *Smart Transport for a Growing Nation 2011 — Public Attitudes to Mobility and Access, Social Research Report*, had not taken into account the views and the experience of the sector in terms of motorcyclists. It all goes back to the beginning, doesn't it? If we are supposed to develop *Smart Transport for a Growing Nation 2011*, how can we not take into account the views, the experiences and the needs of motorcyclists?

**Mr KOSTICK** — You are telling your father how to have children! One thing we find is that the way prejudice manifests itself most readily is in the public press. We looked to release comment about our perceptions or ideas about further driver training, about vulnerable road users, in the press, and the sort of feedback we got from motorcyclists was that it was the first positive piece of press about motorcyclists for as long as some could remember. I am not a conspiracy theorist. I am not saying there is an agenda, but we all know what sells newspapers and perhaps that might be one place that contributes to it. I do not know how you might address it, but we feel that bringing the needs of vulnerable road users more to the fore is a good start.

**Mr LANGUILLER** — In other jurisdictions I agree with you — and this has been my experience in my previous roles — that you have a whole-of-government approach. So if you plan for the Commonwealth Games you consult with people with disabilities, you consult with men, you consult with women and you consult with regional and rural areas. You consult with anybody who may potentially be a stakeholder and have an interest. In other words, you consult with everybody. Then you make a decision in terms of design, how you are going to do the games, how best you are going to redesign the MCG and so on and so forth. It does not appear to me to be rocket science.

**Mr KOSTICK** — No, but I think it comes back to that ratio we talked about before. Perhaps the boffins and the statisticians are looking at the 3 per cent or 4 per cent of registered road users, or what have you, and thinking that is how much say people should have. But at the end of the day the people who are going to become worse off when you are designing infrastructure around cars are the vulnerable road users.

**Mr LANGUILLER** — In your submission you spoke about the collection of data and the matrix and I certainly have formed the view by now that, if anything, the agencies are not up to scratch in relation to this. They do not appear to be communicating with the charter and there are discrepancies between VicRoads, TAC, the Department of Health, the Alfred hospital and so on. In your judgement should the data be in the exclusive hands of one or other body or should it be an independent body because it appears to me that, particularly in relation to monopolies, they use the data for their agenda, and why would you not? If you put Dracula — I am sorry to say this — in charge of the blood bank, you do that. Checks and balances are perhaps needed in a very democratic society.

**Mr VOYAGE** — I would suggest that that is spot on. We need first of all to decide what it is we want the data for, and if the data is to have many different purposes then it should not be in the hands of one particular organisation because, as you say, they will colour the data to satisfy their particular requirements, to show that they need a bigger empire perhaps.

**Mr KOSTICK** — And you bore witness to that during TAC's appearance on Monday when they told you that motorcycle injuries and fatalities are increasing. But they did not spend much time telling you about the increase in sales of motorcycles and scooters and how that rate far exceeds that of four-wheeled vehicles. You have to wonder why. Your Dracula blood bank analogy is probably pretty spot on.

**The CHAIR** — Gentlemen, our time is drawing to a close. I would like to thank you for your time and contribution and the research work that you have done. Please feel free to maintain a working dialogue with the committee over the next period of time. We will be working into next year strongly. Just one question in passing: are Maurice Blackburn or other plaintiff lawyers represented on any of the advisory councils, noting their understanding of issues in this arena and the treatment of process and litigation issues?

**Mr VOYAGE** — The answer is no. Plaintiff lawyers have a liaison with the Transport Accident Commission at the most senior level. We meet with the chair and other senior management where we can express concerns and day-to-day actions. But I am unaware of any liaison with the other organisations.

**The CHAIR** — So no road safety bodies or advisory councils? Plaintiff lawyers are not represented on those?

**Mr VOYAGE** — That is right. There used to be a road safety committee of the Law Institute of Victoria which I had been a member of. It disbanded a few years ago. It was originally formed by Mr Chick Lander, who the law institute claims was the person who initiated seatbelt legislation first in the world. It grew out of a law institute initiative. But subsequently it is impossible to deal with road safety when there are hugely funded organisations that run advertising campaigns trying to convince the public what the real issues are.

**The CHAIR** — Gentlemen, we will conclude our dialogue now. Thank you very much for your submission again and please keep in touch.

**Mr KOSTICK** — Thank you, and please feel free to join the Facebook campaign to stop SMIDSYs in Victoria.

**Witnesses withdrew.**