ROAD SAFETY COMMITTEE

Inquiry into pedestrian safety at carparks

Melbourne—27 July 2009

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Witnesses

Mr D. Healy, Senior Manager, Road Safety, Transport Accident Commission; and
Mr J. Bolitho, Senior Manager, Legal Policy, Transport Accident Commission.
The CHAIR—Welcome and thank you for being here to assist the Road Safety Committee in its inquiry into pedestrian safety in carparks. We are recording Hansard here and anything you say here is protected by parliamentary privilege but you're not afforded that privilege once you are outside the building. You will get a copy of the transcript and correct as appropriate. If you could start by introducing yourself and proceed with your submission.

Mr HEALY—Thank you very much. I am senior manager, road safety, Transport Accident Commission.

Mr BOLITHO—I am the senior manager, legal policy. I am the senior lawyer at the TAC.

Mr HEALY—Thank you very much for the opportunity to present today. Our submission, as you saw, is quite brief and reflected what we thought to be our current knowledge in this area. By way of background, the Transport Accident Commission is an insurance company first and foremost, the government's statutory body and each year provides assistance with some 40,000 clients, and in 2007-08 provided about $775 million in compensation to road accident victims. Its key focal areas include obviously claims management and financial management, scheme viability, scheme design, but also very importantly for us, road safety, the prevention side of the business. The TAC is a partner with VicRoads, Department of Justice and Victoria Police in the conduct of Victoria's road safety strategy arrive alive! which is a 10-year strategy, taking us between 2008 and 2017 with a commitment to reduce in absolute terms death and serious injury by 30 per cent over that 10-year period which is a pretty sizeable ask when you consider that growth in vehicles and licences held presumably over that period of time. There is a fair challenge ahead for all the partners.

With respect to the current inquiry in particular we draw upon too the safe system principles which are embedded in the new road safety strategy and essentially the safe system principles really say that we are human beings and we make mistakes and we will make mistakes on the road system just as we do in the work environment, home and in sport. We will continue to make mistakes because we are fallible. Not only that we know from biomechanics that when our bodies have to absorb a certain amount of energy beyond the threshold, then the likelihood is that we may be killed or seriously injured. Ultimately the plan is to devise a safe system which incorporates a vehicle, the environment—including roads and roadsides—plus compliant behaviour, such that if you do make a mistake on the road system—and I am prepared to include carparks amongst that—that indeed as a result you will not die or be disabled for life. You might secure a small injury but the focus on the safe system is about very serious, life disabling injury or death. In that context I think the safe system is relevant in all manner of settings, including the one which we are considering today in terms of carparks.

The data we have used is that derived from VicRoads. VicRoads did the extraction of the data and we have used that same data set which we thought, for the sake of consistency, and it is based on police accident report data which is common access to all the agencies involved in the strategy. It is crashes involving pedestrians in carparks, including supermarket carparks, shopping centres, fast food outlets, Crown land, sporting venues and the like. It includes all those sorts of venues. We do rely very much on the police data. When we look at table 1 in our submission it spells out the number of pedestrians killed or injured in crashes at carparks over the period 2003 to 2008 which probably translates on an annual basis to 23 pedestrians seriously injured each year and 65 pedestrians less seriously injured each year on average which, while only represents a small proportion of the total road trauma picture, in itself a safe system should be such that we do not see those sorts of serious injuries happening and it would be good for us to collectively devise ways to ensure that it does not happen in the future.

Having said that, the problem in relative terms is reasonably small, nevertheless it does represent a challenge for us. In the submissions subsequent to that there is a reference to the fact that there is very little peer review research in this area to fully understand what are the circumstances leading to all these types of crashes happening in carparks. We do have some information which was based on the analysis of the data we had to hand, and that is there seems to be a concentration, especially on Fridays and Saturday, very much between 9 a.m. and 6 p.m. and I suspect that reflects exposure, shopping times, when you are more likely to be in carparks, daytime and perhaps towards the end of the week and into the weekend when you are doing shopping. I suspect it reflects no more than that.
In terms of sex, approximately 55 per cent females and a slightly smaller number of males 45 per cent. Age groups: the bar chart shows that it is spread across all age groups, but there is a particular focus in the middle-age range, 35 to 54, and a spike in the age group 15 to 19. I am not sure whether we should attribute to that some volatility in numbers, not to assign too much credence to say 15 and 19 as a group and only that group represents a risk at that time. Probably we need to be more broad based in tackling the issue.

Some of our experience internally, we cannot access directly through electronic means claims in carparks which are made on the TAC, but John and others in the TAC have had some experience in dealing with particular claims. I might defer to you, John, to explain those experiences.

Mr BOLITHO—The TAC does from time to time get sued after collisions in carparks and certainly we have been able to distil some information which probably supports people's anecdotal experience, observing what goes on in carparks at weekends and at different times. Many involve pedestrians who are hit by cars that are reversing into or out of carparks, and where the pedestrian and the driver are clearly not keeping a proper lookout for each other. There have also been some instances where the design of the carpark has been a factor. One example that we do have involves a McDonald's fast food establishment where the carpark design and where it entered back into the road network had not been properly designed, and someone trying to get out of the carpark was not able to see the traffic that was approaching and a collision occurred. The TAC was able to get some money back because of the poor design of that carpark.

The CHAIR—It is a valid point and it is good to see that TAC third party insurance, we all pay our registration, but if it has been found that a carpark has been negligent in any way, shape or form—and I think it is obviously right that the TAC want to recover some of those moneys back. But having said that I think in terms of applying for planning permits, local government obviously in this particular area do not have uniformity in terms of some of the requirements and a code of practice. Therefore, from that perspective, I do not know that there is a chain reaction of events that you try to recover the costs from that business, the business says, 'Well, I applied through a planning permit to plan this part of my business and I was given approval, so how am I at fault?'

Mr BOLITHO—I have not seen any live examples of a case that involves those circumstances but in principle I can quite see where you are coming from. It is fairly similar to that problem with the landfill out in the eastern suburbs that has been the subject of some publicity. I think there is potentially a further link in the chain and that is [VCAT] in its planning approvals process as to whether or not they necessarily have the same sort of road safety focus in reviewing planning decisions as perhaps the local authority itself might have. That might, going forward, be something that councils and the tribunal might need to look at, following through on your question.

The CHAIR—Thank you.

Mr KOCH—How were you successful in your claim against McDonald's or whatever organisation it was in the circumstances clearly outlined by our chairman? I would have thought their legal representation would have jumped to their defence on the back of having a local authority tick off on a planning permit.

Mr BOLITHO—The fact that there was planning permit, even though the engineering was deficient, would not constitute a total defence. It was poor design, and it was poor design at common law, whether council—

Mr KOCH—That liability would not live with the local authority, it would live with the owner.

Mr BOLITHO—Yes. As I say, we did not get all our money back, we only got a contribution towards it, nonetheless. If I could give another example too that also shows some of the youth vulnerability that David was talking about in the 15 to 19-year-old age group. We also had a claim involving some young people who were, very early in the morning, going into Crown Casino in a Honda CRV that had an open-top roof. One of the occupants was standing on a seat with her head outside of the roof of the car and banged it on the overhead entry barrier. There is a height warning sign that says vehicles greater than a particular height should not go through, and she banged her head on that and was quite badly injured. As I say, that did not give
any liability to Crown but it does indicate the sort of accidents that happen in carparks.

There was another one that received a degree of media publicity in June of last year where a father was trying to teach an underage child to drive in a carpark in Mount Eliza. The child was not old enough to commence to the learner a process but nonetheless was being tutored by father. He somehow managed to put his foot on the accelerator and not the brake and killed a four-year-old toddler. Most of our claims involve people reversing into, reversing out of, drivers not keeping a proper lookout.

Mr TILLEY—are you able to tell us what year that particular incident was?

Mr BOLITHO—June 2008. Another example that we see that perhaps arises out of Mr Eren's question about proper carpark design is there has been more than one claim where somebody has lost control in a carpark and then mounted a footpath, and in one particular instance it is believed that the driver suffered a heart attack and crashed into an ATM and fortunately there was no-one there. But there was an incident a few years ago where people were sitting outside a coffee shop and were injured. In the case of the vehicle hitting the ATM—this was in Keilor earlier this year—the driver had died by the time the car, it is believed, had crashed into the ATM. If there had been anybody standing there perhaps—

The CHAIR—So barriers—

Mr BOLITHO—There was no barrier, that is really the question. Also coming back to your question about carpark design, the coroner in New South Wales was really quite critical after a fatal accident in a multistorey carpark about proper design, and design that at least matched the Australian design standards for carparks, and particularly barriers in multistorey carparks where a car had gone through the barrier and gone down a floor and injured somebody else. Certainly he was very concerned, in the New South Wales context, that there be much closer liaison in the way that you describe between the planning and the planning appeals process in New South Wales to make sure that the highest quality standards were in place. We have certainly made a reference to the Sydney Morning Herald article that discussed that in the paper.

The other interesting question too is looking at some of the behavioural aspects that are reflected in some studies that have been done by property damage car insurers, such as AAMI and NRMA, talking very much about how people's behavioural attitudes in carparks may well be a driver to property damage and if property damage is caused, it could be that minor injuries are caused as well. In Queensland, there is anecdotal and media reports from a personal injury firm saying that there is an increase in claims from people hit by cars in the course of doing their shopping. Many accidents can be attributed to people rushing around, trying to beat other motorists to the best spot. AAMI have done a survey which said that at least 70 per cent of carpark users have had bad experiences and suffered minor property damage to their cars in carparks, so probably it is all interrelated.

The CHAIR—they are making the carparks so narrow to make more carparks, especially if you drive a bigger vehicle, it is almost impossible to walk in there and open your car door. I wanted to raise the point about disclaimers and liability. If they had a sign out the front saying, 'Enter at own risk,' or on the tickets that you receive as you enter, on the back of it in small writing, does that limit their liability by purely having that on the ticket?

MR BOLITHO—one could have confidently said three years ago it probably didn't, but since the changes to the Wrongs Act that occurred a few years ago, a property owner is more able to reduce their liability by plain language signs than would have been the case before and particularly where the risk is obvious. From the TAC's recovery rights perspective, that is difficult where some carparks have quite clear owner onus signs and the people who enter them sign away their rights and when one seeks recovery, you are generally met with that defence.

The other issue which we thought was useful is that it does appear that there is technology available to carpark operators which does enable them to capture a lot of data about where hotspots in carparks are, plotting by GPS the survey routes taken by cars though the carparks and using that technology to better manage their facilities. It could be that that technology, in addition to the reversing cameras and similar devices that we have also mentioned in our paper could have some virtue in being able to monitor behaviour in carparks.
Mr KOCH—Is there a likelihood in future that the TAC will give consideration for recording activity that has taken place in carparks that is reachable? I note here that you say the TAC is unable to interrogate its database for specific information in relation to claims arising from collisions. Do you see, after this reference has been put towards the Road Safety Committee, that the TAC will give consideration to resourcing a database that may in the future reflect what is happening in carparks and, David, as to how the TAC and others, from an engineering or management point of view, may be able to assist in the correction? Although we do see that the fatalities over the last six or seven years have been low, the injury statistics would indicate and the claims pattern may well indicate that further consideration should be given to further research in this area?

Mr HEALY—What we have attempted to do of late is to link the police accident report data to the claims data, so to the extent now that we have been able to retrieve police accident report data dealing with carparks, that means hopefully in the future we will be able to link claims data to that which will make it easier for us to look at the claims in some depth against carparks as being a basis for selection. I am confident that can happen in the future.

Mr KOCH—Can or will?

Mr HEALY—The likelihood is it can and it will. It is only a question at any one time what you choose to analyse. That's all I'm saying in terms of the breadth and depth of information available. With respect to issues surrounding standards of carparks, that is an issue whereby I am not familiar at present with a standard for carparks which embeds safety as being an important element. I would have thought that would be an advancement to the extent that there's recognition of a requirement for such a standard and I would imagine local government and VicRoads expertise in particular would assist in what should be the design parameters surrounding such a standard and that under those circumstances, that would help define the make-up and the environment for which carparks are constructed in the future. That would be a very positive step.

Looking back at the instances that John related, there are many and varied crashes in carparks and some of them involve deliberate, risky behaviour such as the one with the young woman in the convertible. Others relate more to typical behaviours. What we have is a shared space involving pedestrians who are very vulnerable with cars. Under those circumstances, generally speaking, you can look at risky situations. We know, based on research in respect of impact, speed and pedestrian safety that any speed over 30 kilometres an hour would see a rapid escalation in the risk of death or serious injury. That doesn't mean that it cannot happen at speeds lower than that. We see it escalate but it means that at speeds lower, 20 or similar, you can still get serious injuries. The older person is going to be very vulnerable; a very young person is going to be very vulnerable under those circumstances. Having said that, generally speaking, reversing is an issue and there's many blind spots. That is partly by virtue of the types of vehicles we have, partly by virtue of the make-up and the environmental set-up of the carparks and because it's a blended space, you have inherent risks unless you can control the access of pedestrians to their cars and also a safe entry into the shops et cetera from there.

Turning back to the safe system recommendations, it's our view that we need to look clearly at the environment itself, the vehicle and the human and what each component will add to improving safety in carparks into the future. Clearly, there's an opportunity where you have blended spaces or shared environments, through appropriate means in the carparking environment, to start to segregate pedestrian traffic as far as possible from vehicular traffic. That can be done through barriers, it can be done through line markings, it can be done through a combination thereof, but you have to give careful consideration to the points that John made. What are the natural flows? What do people choose to do through a carpark? How can we somehow cleverly segregate that traffic to minimise the potential for conflict?

The other big area relating to the environment is to set appropriate speed limits. It's arguable that it should be very clear in those carparks that speeds in excess of 10 to 15 kilometres are inappropriate in such environments. That can be engineered if you feel that you aren't going to receive the compliance that you would like. You would certainly be at liberty within carparks to add appropriate design features which will limit the speed of vehicles or else it would make it very uncomfortable to travel faster than that. These are important design features. If you reduce speeds, segregate as far as possible pedestrians from vehicular
traffic—and this links back to what should be an appropriate standard in the future for carparks—then you should secure some safety advantages as a result.

Mr KOCH—What about enforcement, David? It's all very well to hang the signs all over the carpark but if they're not being effective, do you have a mechanism in mind that might be employed to accommodate that?

Mr HEALY—The mechanism I was thinking in the first instance is the best solution is a self-enforcing environment—

Mr KOCH—I couldn't agree with you more.

Mr HEALY—because resources are rarely available to retain a sustained human resource to enforce carparks. It's very difficult to justify in cost-benefit terms for shopping centres.

Mr KOCH—Big shopping centres load their leases if that facility is available because they harness the crowd that's going to use it and they usually have their hand out at the entrance to the carpark—

Mr HEALY—True.

Mr KOCH—doing some collection also. The resources are there, it's where the owners would like to deploy those resources.

Mr HEALY—I don't deny that. I was suggesting as a first priority you would like to have self-enforcing carparks and we recognise the value of enforcement on the road system. Victoria can pride itself in terms of what it's achieved over 30 years through the help of enforcement as a compliance mechanism. Certainly I am not averse to the use of enforcement within carparks to help channel pedestrians to keep speeds down and the like. I see that as being supplementary to self-enforcing design within the carpark itself.

Mr KOCH—I'm interested in your thoughts.

Mr HEALY—In respect to vehicles, there is no doubt that increasingly, new vehicles have reversing cameras in them because of the problems surrounding reversing, particularly in driveways, and young children. Oftentimes, designs of vehicles, the larger four-wheel drives, you simply don't have a clear view.

The CHAIR—Do you think those types of vehicles should have, as standard, cameras in the back?

Mr HEALY—Increasingly, that type of technology should be incorporated. What I would suggest in the first instance, everything is a benefit cost. If every vehicle has a camera that costs a certain amount for every consumer, then you must weigh that up against the trauma you wish to save. I'm not in any way saying don't do that, but I'm saying that everything has an opportunity cost. If you do that, the purchaser has limits in terms of what they are prepared to pay. There may be other technologies which are of a similar cost but may generate greater savings. I would not like to be definitive in respect to that but it is promising to see camera technology coming in to the later vehicles. What has been around for some time is sensor technology at the rear of the vehicle without the camera, just to say as you move closer to an object or a person—

The CHAIR—Or brake assist.

Mr HEALY—Exactly. Those opportunities provide to minimise the risk of colliding with a pedestrian during a reversing moment. Unfortunately that can't happen overnight because we're talking about either retrofitting vehicles or replacing older vehicles with new vehicles and that takes time, but it's something nevertheless we should be mindful of, as we should be mindful of the frontal design of cars. Now that the crash-testing program in Australia looks at the degree to which pedestrians are protected in the event of a frontal collision—and that relates to the design of the bonnet, the degree to which it's flexible, whether there's a hard engine under the bonnet or there's scope for flexibility to absorb some of the energy—and increasingly that's a great thing. What we're doing is starting to promote that vehicles differ in terms of their ability to
protect pedestrians. That's a very positive thing for the future and something ultimately, at least in frontal collisions, that can benefit the reduction of trauma in car parks as well.

The human side is always going to be a difficult one. Having said that, if we're talking about enforcing environments, then we're talking about potentially supplementary car park security enforcement. That clearly helps with compliance. The other area of great interest is what we call the human machine interface, so if you design a car park in a certain way, how do we know the people use it in the way you intended it to be used. That's where the information that John was referring to, where you can now collect information quite cleverly in car parks to understand the flow of pedestrians and vehicles, understand where the trouble spots are and direct your solutions directly at those high-risk locations where exposure is high, involving pedestrians together with vehicles.

Finally, I refer back to the standards, that there is an opportunity to consider what standards are appropriate for car parks, where not only access is relevant but also what safety has been built in to secure the safety of people using it, be they pedestrians or drivers. I am happy to take any questions.

Mr TILLEY—I may have missed something earlier on but are there any incidents where, in the absence of a crash report, crashes aren't reported to police, where claims are put in through TAC?

MR BOLITHO—The legislation says that you have to report it to the police before you can make a claim but the police don't always attend. You can go to the police station and say, 'David crashed into me. We were in the car park and we've exchanged names and addresses. I've hurt my wrist.'

Mr TILLEY—They subsequently report to police and the validity, is it dependent on how vigorously the police investigate that crash, if it's a minor injury as such?

MR BOLITHO—Even if it's a minor injury, people are still entitled to compensation for it. It's a no-fault scheme. We pay medicals after the excess of $600 has been paid. It might only be a small physical impact but somebody could be hurt and the TAC is there to help those people.

Mr TILLEY—I understand the procedure. You do have to make a report to the police if you do attend to make a claim. Is there a possibility of any of those escaping? From what you've said, I'm satisfied that all the data has captured that.

The CHAIR—Thank you very much for your time.

Mr HEALY—Thank you.

Mr BOLITHO—Thanks very much.

Witnesses withdrew.

Committee adjourned.