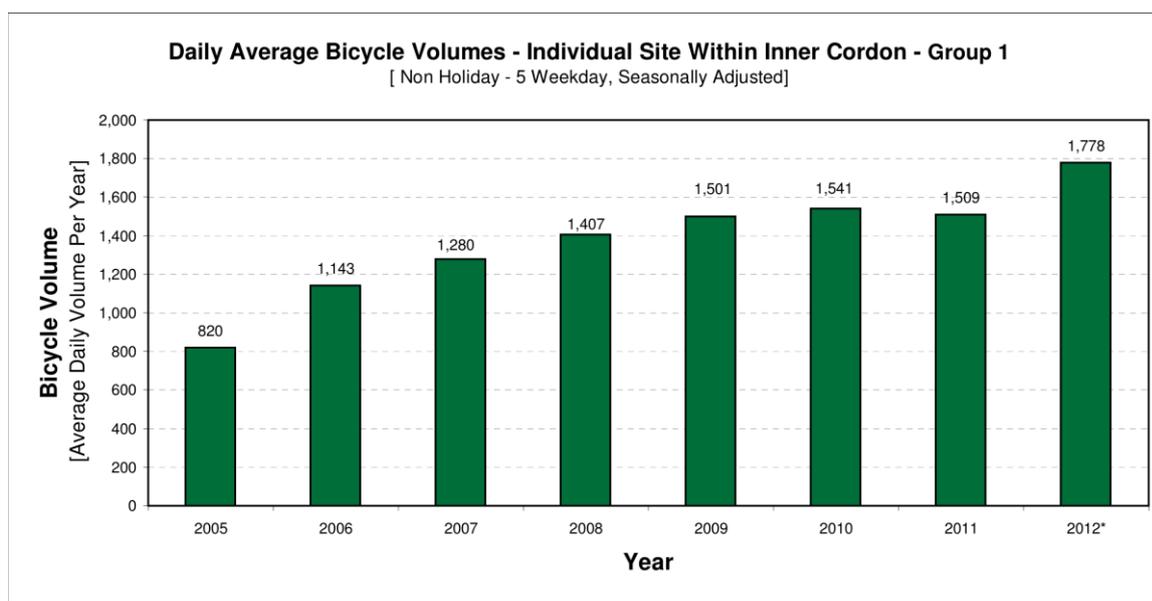


## Legislative Council Standing Committee on Economy and Infrastructure

Greg Barber MLC– 28 March 2012

Melbourne has established a reputation as a cycling city. Cycling to work in Victoria has grown at a staggering annual rate of 8.6% between the census years of 2001 to 2006.<sup>1</sup> Daily average bicycle volumes have also steadily grown. The below graph indicates cycle volumes at specific sites surrounding the CBD.<sup>2</sup>



The increasing popularity of cycling is not limited to Melbourne. In fact Bendigo, Shepparton, Wellington, Wodonga, Campaspe and Wangaratta all have higher cycling mode shares than Melbourne.<sup>3</sup>

Studies from Oregon<sup>4</sup> and the Netherlands<sup>5</sup> show that as the number of cyclists increases, the crash rate, or proportion of cyclists injured decreases as drivers become more accustomed to their new neighbours and adjust their behaviour accordingly. However the total number of actual accidents increases and this is the number that really matters from a road safety perspective.

<sup>1</sup> VicRoads *Cycling to Work in Melbourne 1976-2006* at 3.

<http://www.vicroads.vic.gov.au/NR/rdonlyres/01D7F108-E83A-41D6-B702-483263A95467/0/BicycleVolumesinMelbourne2005toFeb2012.pdf>

<sup>2</sup> VicRoads *Bicycle Volumes 2005-2012: Inductive Loops in Melbourne* at 1. The sites are St Georges Road, Main Yarra Trail (South and North Banks), Canning st, Upfield Railway lines, Footscray rd, Gardiners Creek Trail, Tram 109 Trail, Royal Pde (North and Southbound), St Kilda Rd (North and Southbound).

<http://www.vicroads.vic.gov.au/NR/rdonlyres/01D7F108-E83A-41D6-B702-483263A95467/0/BicycleVolumesinMelbourne2005toFeb2012.pdf>

<sup>3</sup> VicRoads *Cycling to Work in Melbourne 1976-2006* at 9.

<sup>4</sup> Portland Bureau of Transportation *Portland Bicycle Count Report 2010* Appendix page 3.

<sup>5</sup> Netherlands Institute for Road Safety Research *SWOV Fact Sheet: Cyclists* at 2.

[http://www.swov.nl/rapport/Factsheets/UK/FS\\_Cyclists.pdf](http://www.swov.nl/rapport/Factsheets/UK/FS_Cyclists.pdf)

The purpose of the *Road Safety Amendment (Car Doors) Bill 2012* is to stem the tide of a fast growing category of the total accident count. This bill is to increase road safety.

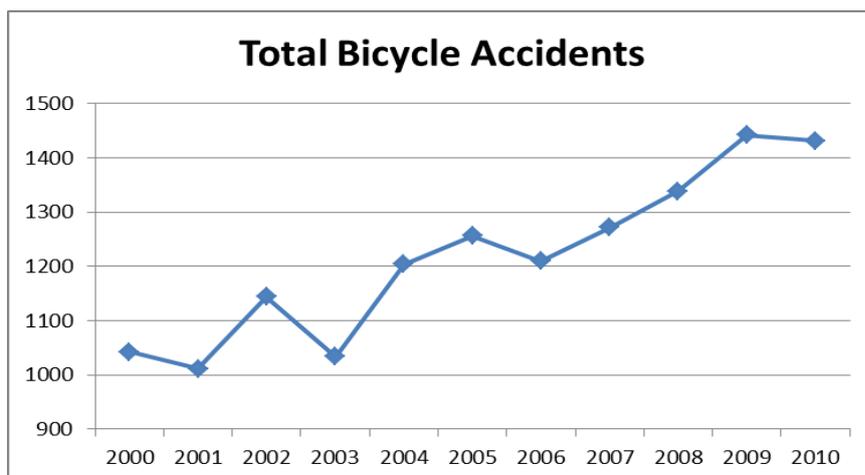
The following extract of the coroner's report into the death of James Cross captures the reasons why Victoria must act to avoid any future tragedies from what have colloquially become known as 'doorings':

Mr Cross is the only known Victorian fatality from a car dooring and his most unfortunate death was entirely preventable. The repercussions and grief will long be felt not only by his family and friends, but also by those associated with this avoidable incident. It has highlighted a very significant public safety hazard, particularly in high-risk areas where car dooring is responsible for many injuries to cyclists... With cyclist numbers growing across the state, ensuring their safety is of paramount importance if cycling is to be promoted as a legitimate alternative form of transport.<sup>6</sup>

The three elements of infrastructure, education and penalties/enforcement are what have traditionally driven down the total number of accidents and this approach should be applied.

### Cycling Accident Rates and Doorings

CrashStats is a public database run by VicRoads and is based on police reports.<sup>7</sup> Therefore only accidents that police attend are included in the following analysis. This graph indicates that the total number of reported bicycle accidents has increased.



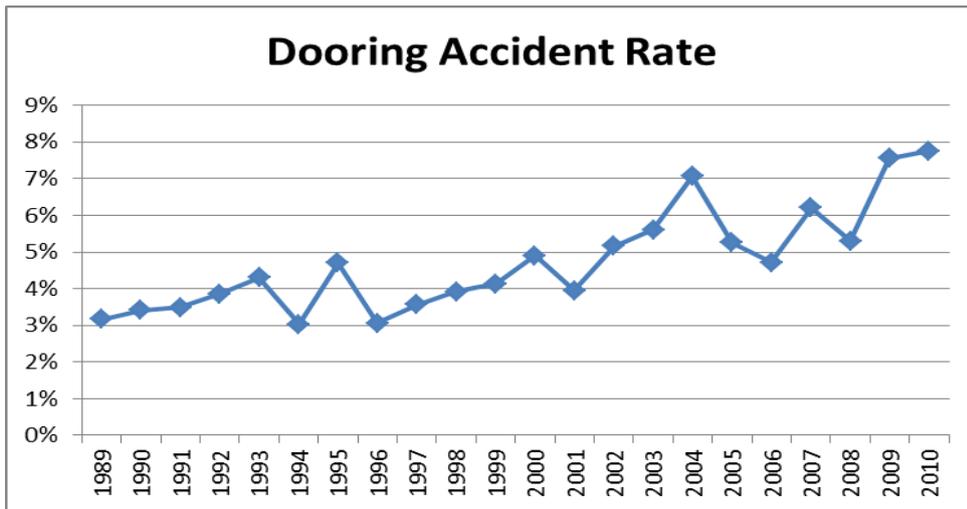
Source: VicRoads CrashStats database

Reported car doorings now occur on average 2-3 times every week and account for 8% of total bicycle accidents. Over the previous 20 years they have averaged around 4% of all bicycle accidents. In the City of Melbourne over the past two years 26% of reported bicycle accidents arise from collisions with doors.

Collisions with car doors are listed in the CrashStats database as (Definitions for Classifying Accidents) DCA 163 – "Vehicle strikes door of parked/stationary vehicle".

<sup>6</sup> Coroner Heather Spooner. *Inquest into the Death of JAMES BERNARD CROSS*. 10 November 2011 at 14.

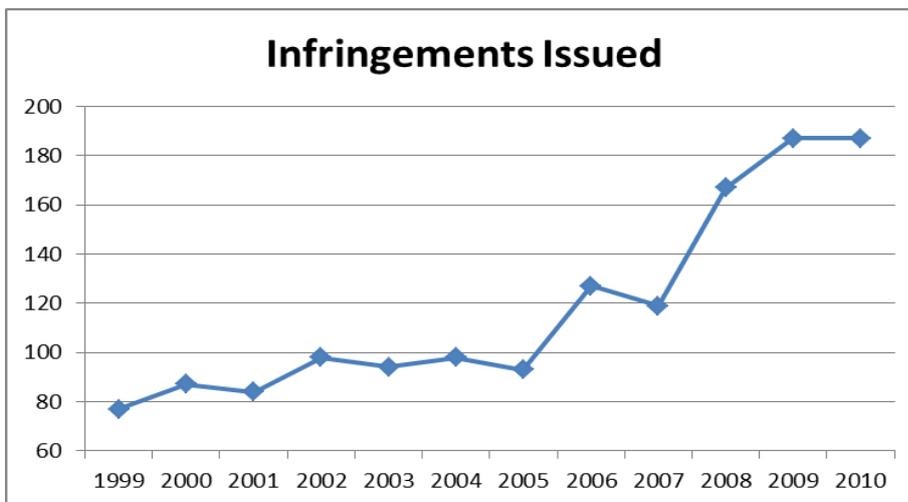
<sup>7</sup> <http://www.vicroads.vic.gov.au/Home/SafetyAndRules/AboutRoadSafety/StatisticsAndResearch/CrashStats.htm#>



Source: VicRoads CrashStats database

### Enforcement

Infringements issued under rule 269(3) of the *Road Safety Road Rules* have grown roughly in line with car door accidents. The data provided by Victoria Police also includes collisions between a car door and another car, so it will overstate cyclist impact infringements and must be treated as a rough guide only.



Source: Victoria Police Fixed Penalty Payment Statistics: Road Rule 2089

It is not clear what guidelines or requirements the police follow when determining whether to either charge an infringement notice or seek higher penalty units before a court. The Senior Constable who prepared the coronial brief told the inquest that “she had spoken to her ‘bosses’ at her station who informed her that a charge against Ms Richards would not be authorised.”<sup>8</sup>

<sup>8</sup> *Inquest into the Death of JAMES BERNARD CROSS*. Transcript of Evidence 12 October 2011 at 89.

Similarly Andrew Tivendale, who was in a coma for months after being struck by a car door in East Brunswick was 'insulted' that the fine was only an infringement notice of \$122. The higher penalty was evidently not pursued.<sup>9</sup>

The committee would need to confirm with Victoria Police the frequency in which the higher offence of 3 penalty units is presented before the courts and the reasoning behind whether a 3 penalty offence is pursued, a 1 penalty unit infringement issued or the matter is not pursued.

This bill will give the police a greater discretion to charge a driver with higher penalty units where the situation warrants it and also record demerit points against a driver's licence.

## **Education**

As previously stated, the recent higher visibility of cyclists may mean that motorists drive with greater awareness and as a result, are less likely to have a collision. The crash rate (the rate of accidents as a proportion of total cyclists) decreases due to safety in numbers. However, the dooring rate has been increasing (as a percentage and in absolute terms) because the motorist is unlikely to see the cyclist unless they actively look for them.

Preventing dooring requires an education campaign focused on behaviour change for cyclists, drivers and child passengers. This bill adds impetus for a campaign for such a behaviour change. However, as Tracey Gaudrey, CEO of the Amy Gillett Foundation wrote to me on the bill, "Harsher penalties on their own will not prevent incidents occurring unless it is coupled with a campaign highlighting awareness of the offence, the serious injury and threat to life such an act can cause, and appropriate safe behaviour."

Funded by Yarra City, Melbourne City and Port Phillip Councils, Bicycle Network Victoria has been undertaking *operation door knock* which aims to promote driver behaviour change that has been successful in Europe by getting drivers to open their door with the left – or inside hand. This results in the motorist seeing an oncoming cyclist in their peripheral vision and reduce the reckless opening of doors. This policy was endorsed by the coroner who said that such a policy should be investigated by VicRoads.<sup>10</sup>

In its submission to the coroner, VicRoads stated they are "currently developing a communications campaign for all road users to look after cyclists... One of the key messages of this campaign will educate motorists to always check for cyclists before opening their car door and also for cyclists to position themselves on the road a metre from parked cars." It would be valuable for VicRoads to furnish the committee with its progress and strategies on the progress and results of this campaign.

Inclusion of bicycle related tests in driving licence applications has also been proposed to the government by the Amy Gillett Foundation.<sup>11</sup>

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<sup>9</sup> Adam Cooper "Doored and down, hurt cyclist now back in the race" *The Age* 15 March 2012.  
<http://www.theage.com.au/victoria/doored-and-down-hurt-cyclist-now-back-in-the-race-20120315-1v4ck.html>

<sup>10</sup> Coroner Heather Spooner. *Inquest into the Death of JAMES BERNARD CROSS*. 10 November 2011 at 9.

<sup>11</sup> Coroner Heather Spooner. *Inquest into the Death of JAMES BERNARD CROSS*. 10 November 2011 at 6.

Similarly Ambulance Victoria have also publicly urged drivers to check their mirrors before alighting from their cars following a spate of bicycle injuries on the first Thursday of December last year.<sup>12</sup> Later in that month, Chief Officer of the Country Fire Authority, Euan Ferguson missed key CFA preparations for the bushfire season after being struck by a car door and was admitted to hospital. He urged cyclists to ride defensively and to “look for opening car doors”.<sup>13</sup>

## **Infrastructure**

In her report, the coroner recommended ‘that VicRoads work closely with local government to promote the reconfiguration of bicycle and parking lanes.’<sup>14</sup>

An enhanced sense of physical security provided by infrastructure investment further encourages more people to take up cycling. The greatest proportion of cyclists to the CBD are from the City of Yarra<sup>15</sup> which has long invested in cycling infrastructure, last financial year at a rate of \$24.64 per head of population.<sup>16</sup> The Cities of Moreland and Darebin have the next highest rate of cyclists to work and have invested \$5.14 and \$7.37 respectively.<sup>17</sup> Meanwhile, the city of Maribyrnong in the West, which is a comparable distance from the city as Moreland has a quarter of cyclists because the investment in infrastructure and safety measures was only \$2.85, well below the \$5 Bicycle expenditure index threshold set by Bicycle Network Victoria.

Infrastructure investment enhances cyclist’s safety, which further encourages cycle use and helps to decongest motorised traffic levels.

## **Vulnerable Road Users**

In 2008, the Oregon State Legislature in the US passed a law for higher penalties when negligent operation of a motor vehicle causes substantial bodily harm or death of a ‘vulnerable road user’. These laws were based on European jurisprudence.<sup>18</sup> These laws have been more recently followed in other states such as Washington, Delaware and New York.

The law operates by providing an additional fine when the victims of driver negligence are vulnerable road users. These are variously classed as a cyclist, pedestrian, person riding an animal, person in a wheelchair, someone operating a farm tractor, skateboard, roller-skates, a scooter, an electric assist bicycle, an electric assistive mobility device and those who frequently alight their vehicles such as garbage collectors, tow-truck drivers, council workers, police and highway patrol.

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<sup>12</sup> Jane Holroyd “Bike crashes trigger safety warnings” *The Age* 5 December 2011.

<http://www.theage.com.au/victoria/bike-crashes-trigger-safety-warnings-20111205-1oejt.html>

<sup>13</sup> Adam Carey “Fire Chief another victim of dooring roads menace” *The Age* 30 December 2011.

<http://www.theage.com.au/victoria/fire-chief-another-victim-of-dooring-roads-menace-20111229-1ped4.html>

<sup>14</sup> Coroner Heather Spooner. *Inquest into the Death of JAMES BERNARD CROSS*. 10 November 2011 at 15.

<sup>15</sup> VicRoads *Cycling to Work in Melbourne 1976-2006* at 6.

<sup>16</sup> Bicycle Network Victoria *Bixe: The Bicycle Expenditure Index: Local Government 2011-12* at 12.

<sup>17</sup> *Ibid.*

<sup>18</sup> <http://www.stc-law.com/vulnerable-user.html>

In addition to any fine levied for negligent driving, the vulnerable road user law enables a court to fix an additional fine between \$US1000 and \$5000. The accused is able to appear before the hearing and request a lower fine and engage in a traffic safety course, community service related to driver improvement.

Such laws seek to protect vulnerable users by communicating to careless motorists that they can be subject to severe fines. However, they are also set at levels that can be set proportionately to the injuries suffered and provide wide discretion to law enforcers who are able to set the level appropriately.

The *Road Safety Amendment (Car Doors) Bill 2012* attempts to utilise these same principles for a particular class of vulnerable users who are confronted with the increasing phenomenon of doorings. Creating a new legislative scheme based on the protection of vulnerable road users would provide a comprehensive approach that would complement this important bill.