

ROAD TRAFFIC AMENDMENT (KEEPING SAFE DISTANCES FROM BICYCLES) BILL 2014

Second Reading

Resumed from 20 March.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [10.08 am]: I rise as the lead speaker on behalf of the government on the Road Traffic Amendment (Keeping Safe Distances From Bicycles) Bill 2014, and I should start by acknowledging that cycling is an important mode of transport and recreation for many Western Australians and that there are many social, financial and traffic congestion management benefits that flow from cycling. An increasing number of people in the Perth metropolitan region choose to cycle to work or for pleasure; in fact, the number has increased more than fivefold over the past 15 years, and the trend in cycling-related serious casualties has been relatively steady over that time, albeit with some fluctuations from year to year.

Sadly, in 2013, we saw the highest number of cyclist fatalities for many years; there were six. To date in 2014, there have been even more deaths—there have been seven, according to the information I have. However, the government cannot support this bill. There are several reasons for that, which I will summarise for convenience at this point and expand on them in due course. In the first place, what is sought is the introduction of a provision into the Road Traffic Act 1974 that more properly is something that ought to be a regulation under the Road Traffic Code 2000. Secondly, if one is to introduce a provision of this character, it ought to be accompanied by other consequential amendments to other provisions of the relevant legislation in order to accommodate the consequences of introducing such a requirement. Thirdly, there is a compelling argument that if one is to introduce a provision of this character, it ought to be part of a package of corresponding obligations on the part of cyclists. Lastly, there has been no evidence presented that this provision will improve the situation currently faced by cyclists, or even save one life, which seems to be the objective of the exercise. I say that it seems to be the objective of the exercise because much of the second reading speech was occupied with spruiking the Greens' policy on cycling rather than getting down to the specifics of whether there is any evidence to support this provision having any sensible effect, apart from the provisions currently contained in the Road Traffic Code.

The Office of Road Safety advises that cyclists represent about five per cent of the total number of people killed and seriously injured in Western Australia. In 2012, 129 cyclists were killed or seriously injured in Western Australia. That was an increase of 29 per cent on the average in 2005 to 2007. As I mentioned, six cyclists were killed last year, which was an increase on previous years, and seven cyclists have been fatally injured as of 14 October this year.

In 2000, the Road Accident Prevention Research Unit at the University of Western Australia, Roadwatch, undertook a study of Western Australian bicycle crashes. The objectives of that study were to identify the major factors involved in cycling crashes in Western Australia. Unfortunately, the study used 1993 and 1994 data, but it drew on that to try to ascertain what the major source of bicycle injuries and fatalities on our roads involved. Part of that study was to recommend countermeasures that might reduce the number and severity of crashes. Interestingly, the results showed that the most common class of bicycle crash was when motorists failed to yield to cyclists at intersections or driveways; that is, pulling out from driveways without regard for cyclists travelling along the road or along a path, or failing to give way at intersections. That accounted for 26 per cent of those incidents. Those will not be solved by this particular provision.

The next most common class of bicycle crash was cyclists riding out mid-block. That means a cyclist is riding out, not from a side road or a driveway, but from some property on to a roadway in front of traffic. Again, this provision will do nothing to prevent those incidents. Motorists making unexpected turns in front of cyclists accounted for 13 per cent of crashes. Once again, this provision will do nothing to stop that kind of incident occurring. According to the UWA study, cycle crashes involving a motorist overtaking accounted for eight per cent of all bicycle crashes in 1993 and 1994. The most common types of crashes within that class were when the motorist was overtaking and either the cyclist was not observed—this provision will do nothing to increase observation skills on the part of road users; that accounted for 35 per cent of those types of crashes—or the motorist misjudged the space required to pass. The latter accounted for 24 per cent of that eight per cent of cycle crashes, and it may be affected by this proposed provision.

What seems to be plain, at least on the data that is available, is that this provision attempts to solve a problem without targeting the actual cause of the majority of cyclist interactions with motor vehicles. It seems to be picking one aspect of the problem and, rather than addressing it in the appropriate manner through road rules contained in the Road Traffic Code, entrenches it in legislation. I will develop that point further.

It is true that the most common type of crash in which cyclists are hospitalised is side-on incidents. The most frequent cause of those, though, is when motorists fail to observe the rider. The message there seems to be that

what ought to be focused on, rather than a distance rule as prescriptive as the one proposed, is an improvement in the visibility of cyclists and an awareness on the part of motorists to exercise due care and attention. The limited evidence available suggests that motorists are currently passing cyclists at an average distance of 118 centimetres—over 1.18 metres—although a number of factors influence that average. It is estimated that one to two per cent of drivers will pass dangerously close to a cyclist regardless of other considerations. That is the issue that needs to be addressed.

Western Australia currently adopts the national position of legislating within its traffic laws a distance that is sufficient to avoid collision. It does that, not by prescribing a figure and a precise distance, but through a provision that requires safety in the circumstances. Regulation 124 of the Road Traffic Code 2000 currently prescribes —

A driver overtaking a vehicle —

- (a) shall pass the vehicle at a sufficient distance to avoid a collision with that vehicle or to avoid obstructing the path of that vehicle; and
- (b) shall not return to the marked lane or line of traffic where the vehicle is travelling until the driver is a sufficient distance past that vehicle to avoid a collision with that vehicle or to avoid obstructing the path of that vehicle.

Since 9 September, when this government increased penalties across the board in the Road Traffic Code, that offence carries a loss of four driver's licence points and a modified penalty of eight penalty units. Each penalty unit is \$50, so the total fine is \$400. I should add that there is also a non-modified penalty for that. A modified penalty is that prescribed for the purposes of an infringement notice issued in respect of that offence. The non-modified penalty for a breach of that regulation for a first offence is 24 penalty units or \$1 200, and for a subsequent offence 32 penalty units or \$1 600. One of the points I should make is that the penalty prescribed by this proposed amendment is a non-modified penalty. It is one of the reasons it is a provision better put into a code rather than the act. Any changes to it would have to be dealt with by bringing a bill before this house rather than modifying the regulations by prescribing new regulations or amendments to them. In its current form, no infringement notice can be issued for this offence. If it were to be enforced, it would mean that each one of these cases would have to be brought by way of summons to a court and dealt with by a hearing, and that is another example of how this Road Traffic Amendment (Keeping Safe Distances from Bicycles) Bill has not been satisfactorily thought out.

As I mentioned, the government recently significantly increased the penalties for breaching the Road Traffic Code regulation that governs this issue at present to four demerit points and eight penalty units, up from two demerit points and two penalty units. I mentioned that there is no evidence to support the efficacy of the proposed amendment. In fact, I do not think any has been presented so far. There is insufficient evidence not only in this jurisdiction but generally that a one-metre mandatory passing distance will improve the safety of bicycle riders or reduce the number of people injured or killed on the roads. Indeed, any changes to the law may have unintended consequences. For example, what happens if a cycle rider passes within a metre of slow-moving vehicles when those vehicles are keeping pace with, or find themselves following, that cyclist? Under this provision, they would need to make distance for the cyclist. What if vehicles are waiting at traffic lights alongside a bicycle and then pull away from the traffic lights; are they able to do so if they are then overtaking the cyclist and passing within a metre, the cyclist having put themselves in the proximity of vehicles? In addition, on roads where there is insufficient room for a vehicle to pass a bicycle by a metre, it is not clear whether the bicycles or the vehicles would be banned from using these roads if the passing distance is mandatory and if this or other aspects of the rule would generate flow-on effects for traffic congestion.

What is apparent is that any such prescription should be in the Road Traffic Code with complementary amendments to other road rules to address the circumstances that I have mentioned and perhaps others that have not been addressed so far. Such a provision in the Road Traffic Act would not only be out of place but also it would not permit the fine-tuning that would inevitably become necessary as experience exposes the deficiencies in the proposed law. For example, Hon Lynn MacLaren has suggested that some amendments to the code may be necessary to enable drivers to cross white lines to comply with proposed section 63A but they would not be able to qualify the absolute nature of the section itself. Queensland has amended other road rules to support the minimum passing distance law, including allowing motorists to cross centre lines, straddle lane lines, drive on painted islands when safe to do so and made other consequential amendments to enable drivers to comply with its provision. None of that has been proposed or addressed so far; it has simply been left vaguely, "We will pass this law and some other amendments might be necessary." I am not sure whether the honourable member has even addressed or turned her mind to some of the complications involved. Again, it emphasises why, even if this provision has merit, it ought to be introduced into the Road Traffic Code along with all the other road rules rather than put in legislation that would require any change to it to be made by way of an act of Parliament.

I have already mentioned the consequence that because it is not included in the relevant schedule to the act, it is one of those provisions that would need to be prosecuted in a court, not by way of infringement notice.

I turn now to another aspect of the bill and that of corresponding obligations on cyclists. Bearing in mind that there is already a provision within the Road Traffic Code requiring that a safe distance be kept, it is apparent—I do not suggest because I do not know, whether any of these particular instances of unfortunate deaths are attributable to this—that cyclists often do not have regard for their own safety. I am sure that many members, themselves, have experienced cyclists riding several abreast on roads, and that has required traffic to slow down or to take risks to pass them. On the way to work I frequently drive along Underwood Avenue where there is a very broad bike and pedestrian path on the north side. Only on rare occasions have I travelled along that road in the mornings and not found a cyclist riding on the road eschewing the bike path that has been provided and obstructing traffic in the process. I fail to understand why that is necessary.

On the issue of riding without due care and attention and cutting through traffic, anyone who has driven through Perth knows the reckless nature with which bike couriers behave, and they are not the only ones. Frequently, we find cyclists taking risks on the road. The other day, while driving through Subiaco, I saw a cyclist not wearing a helmet, riding along a pedestrian path reading a magazine. He had a couple of near misses and obstructions. I suppose his being a cyclist might not have been much comfort if he had bowled over a pedestrian. The point I make is that there needs to be corresponding obligations on the part of cyclists. Once again, if one is looking at a prescriptive provision of this character, one needs to have regard for the consequences and to address the relative behaviour of cyclists and the need for them to abide by particular rules to enable motorists to also abide by them. I stress once again that a prescriptive rule, if it is worthwhile, measuring out a metre or a metre and a half, as the case may be, is better placed in the Road Traffic Code rather than in legislation.

No evidence has been presented to show whether this rule will work. Proponents point to Queensland and some other jurisdictions such as the United States where I think some 27 states have adopted, I think they call it, the three-foot rule, as have some European countries, including the Netherlands, Spain and France. It is informative to see a 2012 paper from the New Jersey Bicycle and Pedestrian Resource Centre, entitled “The 3ft. Law: Lessons Learned from a National Analysis of State Policies and Expert Interviews”, which identified that not all bicycle advocates support the rule, viewing it as a “feel-good law” that is not very practical in reality and does not lead to any noticeable change in motorists’ behaviour. The rule is also criticised in that it runs counter to other important bicycle integration concepts, such as road narrowing and shared space, because it encourages the widening of roads to allow motorists to easily give a distance of three feet to a cyclist. It is also argued that in many states there is little or no enforcement, and often a citation—presumably equivalent to an infringement notice—is issued only after a collision has occurred. Rather than a preventative measure, it is a responsive measure. Indeed, it is also suggested that in many cases prescribing a minimum distance may compromise rider safety, as drivers may use it as an absolute and try to measure out one metre rather than have regard to a safe distance.

In December 2013, the Australian Road Rules Management Group met to discuss the proposal from the Amy Gillett Foundation, to which Hon Lynn MacLaren referred. Although there was general support for the principle of improving cyclist safety, the majority of jurisdictions did not support an amendment to the Australian Road Rules. Concern on the part of that body was centred on enforcement challenges in proving that the minimum distance had been breached, except in the case of a collision; the creation of a rule that would put drivers in breach when cyclists undertake lane filtering until traffic begins to move again—I understand that even the Amy Gillett Foundation acknowledged difficulties with this; practical concerns about the width of roads and whether allowing passing in a one-metre manoeuvre would result in drivers crossing solid white lines; and the potential flow-on effect for traffic congestion. In January 2011 and March 2012, the Road Safety Council was asked by the Bicycle Transport Alliance to consider legislating for a one-metre rule. The council decided not to support the recommendation but asked the Office of Road Safety to maintain a watching brief on the issue.

The WA government is committed to increasing the number of cycle trips for transport purposes to assist in minimising the impact of congestion. The commitment has been demonstrated through an expansion of cycling infrastructure as prescribed by the “Western Australian Bicycle Network Plan 2014–2031”. As the growth in cycling continues, the challenge will be to ensure that serious injuries to cyclists are reduced and that the general perception of rider safety, particularly on-road, can be enhanced. The government is supportive of any measure that will sensibly improve the safety of cyclists and the relationship between cyclists and other road users. There are obligations on both sides of the equation. It is not simply a case of motorists being always at fault. Cyclists need to look out for their own safety too, and motorists need to be more aware of the risks concerned. However, the proposed legislation is not a cure-all. It is unlikely that, by itself, it would be sufficient to improve cycling safety in Western Australia. It is in the wrong place, as in the act rather than in the code, and although the government is examining what more can be done to engender greater safety in the sharing of our road network and improving the outcome for cyclists, it cannot support the proposed bill for the reasons that I have outlined.

HON KEN TRAVERS (North Metropolitan) [10.33 am]: I rise to speak on the Road Traffic Amendment (Keeping Safe Distances from Bicycles) Bill 2014. As you know, Mr Acting President (Hon Simon O'Brien), I come from a long family of cyclists, but I regret to inform the house today that my father at the age of 90 years has finally decided to transition from his bike and tricycle across to a Gopher!

Several members interjected.

Hon KEN TRAVERS: It is a very sad thing actually to watch someone who has been active right up to that point finally realise that it is time to move on to a Gopher. That is why I hope I will provide a slightly more positive contribution to the issue of cycling safety than we have just heard from the Attorney General.

Cycling safety is an issue that for a range of reasons—not just because of my father—I take very seriously. I hope that the family do not mind me mentioning one of those cyclists killed on the roads in Western Australia: an absolutely fantastic young man called Tim Anderson. He actually had lunch with me two weeks before he was killed at Leighton Beach. I knew his father and I still remember finding out that he had been killed in a very tragic cycling accident. Whenever I talk about cycling and cycling safety, I cannot forget young Tim. I did not know him well but he was just a fantastic person whom I have absolutely no doubt, sadly, will not make the contribution that he could have made to the people of Western Australia. Cycling safety is an issue that we need to take very seriously. In fact, whether or not we agree with this bill, I hope that out of this debate today comes a commitment from all of us to try to find the solution that we are all seeking to make cycling safer.

There is no doubt that cyclists are vulnerable road users who operate on our roads. Compared with drivers in cars with the protection of incredibly modern technology to provide a barrier and to ensure their safety, I refer to cyclists, motorcyclists and pedestrians as vulnerable road users. Having said that, it is also for a range of reasons important for us to encourage an increase in cycling participation. Whether it be to address obesity, mental health issues or congestion, many benefits flow both to the individual and to the community collectively by an increase in the participation rate of cycling.

There is no doubt in my mind that should this bill pass—in light of the comments from the Attorney General, I suspect it is now highly unlikely—it would play only a very small part in the many issues that need to be taken into account to improve the circumstances for cyclists. It is also worth acknowledging that there is not universal support for this legislation in the cycling community in Western Australia. There are variously held views about whether this legislation is the right pathway to take. We need to respect that, but it also says to me that if this is not the solution, we must all work harder to work out what the solution is.

The Attorney General has put forward some arguments from those who are opposed to this bill that indicate that they believe it will provide a false sense of security and potentially have very limited benefits to cyclists. I want to refer to a few areas that I believe we need to concentrate and focus on if we are to make cycling safer for cyclists. They can be broken up into four different areas. One area is legislative change, and we are dealing with one proposal today with respect to legislative change. There is no doubt that a significant component of the answer is investment in infrastructure. There is a very strong role for education, both for cyclists and for non-cyclists, to make our roads safer. Finally, there is no doubt in my mind that part of any solution is to ensure behaviour change following the education of cyclists and other road users such as car drivers.

Let us look at the issue of legislation. I have to say that if I were in government the issue I would have dealt with first and foremost with respect to legislative change is the issue outlined in the second reading speech to this bill. The speech by Hon Lynn MacLaren refers to a case in 2011, and states —

Richard Pollett, aged 22, was riding his bicycle on Moggill Road in Kenmore, Brisbane, when he was killed after being hit by a cement truck that was travelling in the same direction. The driver thought he had enough space to safely overtake. He was wrong and the rear tyres of the truck struck Richard. The driver of the truck was accused of driving dangerously and causing the death of a cyclist. In May 2013, a Brisbane District Court jury returned a not guilty verdict and decided that it was reasonable that the driver presumed to have adequate space. The driver was freed without charge.

To me, that is one of the fundamental issues and it obviously raises a legal question that needs to be addressed. Interestingly, when I read that, it immediately reminded me of legislation that also raises great emotion for me when I talk about it in this chamber, and that is legislation that was commonly referred to as “Jess’s law” that went through this Parliament before many members here today arrived in this place. “Jess’s law” arose through a scumbag—I cannot help myself; I do not have any other way of describing him—driving while drunk in Clarkson and killing a young girl called Jess Meehan. The then member for Wanneroo, Dianne Guise, with the family of Jess, called to have legislation brought into this place, which was ultimately passed. That legislation reversed the onus of proof. Mitchell Walsh-McDonald had been successfully able to avoid prosecution and, in my view, facing the penalty that he deserved because the law at the time required the police to prove that the fact that he was drunk had contributed to the accident. We changed the law so that the onus was on him; if it was proven that the driver was drunk, the onus was then on the driver to demonstrate that being drunk did not

contribute to the accident. When I read that case, it struck me that potentially this may be the solution to deal with this matter; we could change who has the onus so that if someone has an accident with a cyclist, they need to demonstrate that they gave sufficient distance to the cyclist. We could, therefore, use a very similar method to what was achieved by this Parliament with “Jess’s law”. I would put that probably front and centre as the highest priority of the changes that we could be making through legislative reform.

I note the comments by the Attorney General about the enforceability of this legislation. Sadly, one of the things I have observed in my time as a member of Parliament and as a customs officer at a legal enforcement agency is that laws can be drafted with all the good intent in the world, but a defence lawyer will always try to find the pathway through it. I remember always being told that if someone stands in a court and says, “Look, that driver was speeding”, a defence lawyer will work them over and ask, “How can you be absolutely sure that that vehicle was speeding?” I am sure lawyers in this place would know many of the techniques used by lawyers to create doubt in the mind of, firstly, the person giving evidence and, secondly, the jury, or whoever is hearing the case, to establish something beyond reasonable doubt; in that case, it would be whether a car was travelling over the speed limit. I suspect there is the potential for a similar set of circumstances to occur in trying to seek a prosecution under this legislation. In the passage of this bill, those are things that we need to think about. I noted the Attorney General made reference to the fact that in one of the US states most of the prosecutions had been after an accident rather than through the pre-emptive, for want of a better term, prosecution of someone. Again, the option that I outlined earlier would equally ensure a successful prosecution after an accident.

I accept that there are legislative issues with this, but I also accept the intent with which this bill was brought to this place. I understand that when one is in opposition, it is not as easy to draft legislation as it is for the government with all its resources. However, often oppositions or minor parties will introduce a private member’s bill to try to stimulate debate on a topic, and for that I congratulate the member. What disappointed me was that I felt that the government simply sought to discredit the bill without investigating the positive alternatives. If we are not going to support this, what can we do legislatively? I hope that some of my comments today are seen in a positive way as putting forward alternatives. If this is not the way, is there another way to achieve what I think are rightly noble motives of the member bringing forward this legislation and the many other people in the community who have been arguing for this legislation? For each and every one of them, having the debate is very much first and foremost about trying to educate the public, if nothing else.

The next of those four areas is infrastructure. We have seen many accidents involving cyclists on our roads in recent times, including one that involved the loss of young Tim to whom I referred earlier. I have absolutely no doubt that this law would have made no difference. I am reasonably confident that what would have made a difference, particularly in Tim’s case, is infrastructure. That accident occurred in an area that has long been identified as one of the routes requiring upgrading as it is one of our principal shared paths in the linkage between Fremantle and Perth. I acknowledge that over the years governments on both sides of the fence have constructed that pathway in sections. Sadly, for a range of reasons, work in the area in which that accident occurred had been deferred due to other debates about what would ultimately happen with the road and other layouts. I accept that there are legitimate reasons. I am not trying to make this into a political debate in any way, shape or form, but that section between Fremantle and Perth needs work. Part of the “Western Australian Bicycle Network Plan 2014–2031” fills in other chunks that are still to be done between Perth and Fremantle. We need to commit to providing good and safe infrastructure for road users.

The Attorney General commented that cyclists use the road at Underwood Avenue rather than the infrastructure provided. Again, to frame that in a positive way, that says to me that maybe we need to think about whether we are designing the infrastructure for cyclists the right way. If they are not using it, why are they not using it? Ultimately, cyclists are no different from the rest of us. Commuter cyclists want to get to work as quickly as physically possible. Sometimes some of the infrastructure designed for cyclists is designed more to say that we have done it, rather than providing a solution that will meet the needs of the cyclists. Then they will make the choice and say, “Well, if I go on the cyclepath, cars will potentially pull out.” I am trying to remember the Underwood Avenue section. It could be that it is left unmaintained by the council, so it is often full of broken glass. As a cyclist, these are some of the things I have come across and some of the reasons that cyclists ride on the road. People put in really lovely bends on cycleways, but that slows down cyclists. One of the things we need to look at is whether we are fulfilling the needs of cyclists when we design cyclepaths.

I acknowledge that the government released the “Western Australian Bicycle Network Plan 2014–2031” in 2013. That plan has bipartisan support. I think the review of that plan commenced under Alannah MacTiernan during the previous government, but for a range of reasons it was not presented in its final form until—based on the question I asked yesterday—I think, 28 March this year. That plan noted that we need about \$10 million per annum in 2012 dollars being spent on high-level infrastructure. The government has made a contribution towards reaching that \$10 million—that was in 2012 dollars. I hope that one of the things to come out of today’s debate, with a bit of luck, is that we get bipartisan support to ensure that all members when in government will

ensure that that \$10 million, increased for inflation on an annual basis, be provided towards cycling infrastructure, including high-level infrastructure and grants to local government. There is plenty of infrastructure. I think over \$100 million worth of cycling infrastructure was provided under the Labor government. The current government clearly has some money to do more, but I am worried that it is not ongoing on a regular basis. Often allocated money is rolled over into future years rather than having \$10 million allocated that we can get on and spend. I hope that we will have a bipartisan approach to ensure that in government budgets every year \$10 million, increased for inflation, is allocated to cycling infrastructure and that any unspent money for the previous year is rolled over and we find ways of spending it.

Education is a really powerful area in which we can all be involved. Ultimately, education and behaviour change are the two things that will have the greatest impact on cycling safety. With respect to this bill, even just having the debate is part of that education campaign. I was in Queensland recently where a trial of this legislation is taking place. If this bill is to pass, it requires the government to embrace the issue. I knew there was a trial on in Queensland—surprise, surprise—but I suspect that most people arriving in that state would not have known about it except for one thing: signs on many roads we drove down said “Give a Metre”. I wanted to pull over and get a photo of one but I never did, because I could never quite find a safe spot to pull over.

Hon Simon O’Brien: Not with your mobile phone!

Hon KEN TRAVERS: If I had stopped, parked the car and removed the key from the ignition, it would have been alright, Hon Simon O’Brien. Hence I never got the photo.

The signage that had been put up across Queensland reminding people was very telling to me. I thought that the signage alone probably has greater impact than the legislation. The signage was probably more powerful than the legislation. I urge the government, even if it opposes this bill, to just put up the signs. The government does not need the legislation, just put up signs on major roads saying make sure you give that distance—“A Metre Matters”.

Hon Dave Grills: The signs actually say “Wider of the Rider”.

Hon KEN TRAVERS: Yes, and that is a really powerful thing and it will outlast the couple of days that people might think about this legislation being passed; the signage is a constant reminder.

Hon Simon O’Brien: That sounds like a very good idea.

Hon KEN TRAVERS: Hon Simon O’Brien, I want to approach this bill in a way that provides a positive array of outcomes. Those signs had an impact on me. That was not the reason I went to Queensland, but it reinforces that you often see things when travelling outside this state that are of benefit and can be brought back to inform you.

The final thing I want to talk about is behaviour change. Behaviour change needs to come from both cyclists and motorists. Cyclists have a lot of responsibility in this regard. Many of the cyclists I know and have ridden with take this issue very seriously. I have seen many a peloton having an argument with another peloton about the behaviour of cyclists. Many cyclists are appalled at the behaviour of some cyclists on our roads, but they are equally appalled at the behaviour of motor vehicle drivers. Some issues are due to carelessness, and I think that is where we can get the greatest behaviour change, but some of it is just idiots on our roads and I am often lost as to what to do about them. I can give two examples of that kind of behaviour. One of my nephews who is a keen cyclist was riding in the hills when a guy with a boat on a trailer behind him clearly swerved to try to scare my nephew and his then fiancée—now wife—and actually grazed them on their bikes. That was just a deliberate act of stupidity by an idiot. Thankfully, they were not hurt. I was on a peloton ride up Ranford Road—which would be known to the members of south metro—a clearly drunk-driver came flying past us. The road was at that stage a single lane and we were riding in a peloton —

Hon Sue Ellery: What time of day?

Hon KEN TRAVERS: This was reasonably early in the morning. It was part of the Ride for Youth and we were complying with all the road rules. Yes, we did impede the traffic behind us, but there was no alternative to doing that. A driver who was clearly drunk—he still had his can in his hand—went flying past us and as he came back in, he deliberately cut back in on the peloton. Thankfully, no-one was hurt. The moral of the story is that karma got him eventually, because about three kilometres up the road—members might know of the side ditches on Ranford Road in that area—his car was lying on its side with him sitting next to it. He had clearly lost control of his car and rolled it into the ditch. I think the whole peloton went, “That’s karma for you.” I do not know whether that experience would have changed that driver’s behaviour. Again, he was a complete idiot and that behaviour does not help. There are lots of messages that we can give to reinforce or change behaviour and constantly remind drivers and cyclists. On that, I congratulate the government for the advertising campaign. A simple behaviour change we can encourage for cyclists is to wear brightly coloured and reflective clothing;

that is, wearing the right clothing and having the right equipment, lights and the like, on their bikes. It never ceases to amaze me the number of people who ride at night without proper lights.

As I say, a comprehensive package is required with a bipartisan, evidence-based approach. I understand the very legal technical issues that the Attorney General wanted to get on the record today and I hope that some of the other government speakers will provide a slightly more positive way forward, outlining how we can all collectively work to get this legislation passed and make cycling safer. The Labor Party supports the second reading of this bill, but we recognise that we need this to be part of a comprehensive package. I would love to see all the various cycling groups, government agencies and non-government organisations in Western Australia sitting down at a cycling summit to work out how we move forward.

In terms of the second reading debate, I indicate our support for this bill as part of an education campaign. If we were to defeat this legislation today, we would potentially send the wrong message to the community that giving a metre does not matter. I hope that government members will think about their position and support this legislation at its second reading in this house. The government can still go away and do the other things that the Attorney General talked about. The bill may never get passed in the other place, but the government should support the bill today and then go back to its bureaucracy and work with the opposition and all of those other groups to come up with a package that is an alternative to this bill.

Hon Nick Goiran: Will that just automatically lead to the defeat of the bill at the third reading anyway?

Hon KEN TRAVERS: As the member well knows, there is a high probability that after the passage of the bill today—if we get to vote on it—it will probably sit on the notice paper. Perhaps it will be brought back one day for the third reading. I am a realist; the bill may pass the second reading, but I suspect it will probably never get through to the third reading nor will it go to the other house.

Hon Lynn MacLaren: It can and it will.

Hon KEN TRAVERS: Based on the government's response today, I think it is highly unlikely that that will happen. However, I do not want to have to wait until I am in government. If the government supports the principle today by supporting the second reading debate, but wants to do other things and then say at the third reading it is unnecessary to pass the bill because it has done all these other things that have achieved the same outcome as the bill, I invite the government to adopt that approach. I have given a lot of thought to how I have responded to this piece of legislation, but I do not want arising out of the debate today the view that when a person drives down the road they should not be giving at least a metre clearance to a cyclist. At this point in time, the defeat of this bill could send that message.

Hon Nick Goiran: Everybody will agree with the member's contribution and understand that that is not the message.

Hon KEN TRAVERS: Where in my contribution is the message that a person does not need to give a safe distance when passing a cyclist?

Hon Nick Goiran: I agree with the member. I am saying that once people have read your contribution they will understand the message.

Hon KEN TRAVERS: If the government changed the view expressed by the Attorney General, that would send a clear sign that we collectively support the view that a person should allow a safe distance of at least a metre, and for faster speeds—as the bill provides for—more than a metre. The government and all of us would find the best way to educate the community about that and ensure to the best of our ability that that is what occurs on the roads, whether it is through legislative changes or all the other things we discussed today.

I know that other members want to have a say, so I do not want to keep going. I certainly hope that whatever the outcome, we can develop a solution. No life should ever be lost. We should always seek to minimise injury but by the same token we want to increase the number of cyclists on our roads, because that is good for everybody.

HON DAVE GRILLS (Mining and Pastoral) [11.03 am]: I shall keep my comments short and sharp because I know Hon Jim Chown would like to speak as well.

Hon Ken Baston interjected.

Hon DAVE GRILLS: Okay, well if that is the case then —

Several members interjected.

Hon DAVE GRILLS: Thank you everybody for that. I retract that comment. I would like to thank Hon Ken Travers for his contribution. He brought up some real points about education. I understand that sometimes road trauma touches all of us. We always have the opportunity to make a difference where we can, so I thank the member for his contribution.

The Amy Gillett Foundation is a charity dedicated to reducing the incidence of death and injury of bicycle riders. The foundation's view on the minimum overtaking distance states that —

Legislative amendment, with appropriate education and enforcement, to mandate a minimum overtaking distance when drivers pass bicycle riders is currently the single most important action needed to reduce bicycle rider fatalities.

Having worked in the major crash investigation section of WA Police for over three years and holding a diploma in major crash investigation, I can speak about crashes and what causes crashes. In addition to attending a crash site, I have taken people to court. I understand the legislation such as Jess's law, which is called case law, where we look into better ways of managing this area. I will talk a bit more about the law and what have you. I guess it is the right of a defence counsel to defend his client to the best of his ability, but we need to make laws more robust to the point that we can successfully prosecute. I will talk about that a bit further.

In Queensland, the legislation is undergoing a two-year trial. As an ex-policeman, I will tell members what Queensland is experiencing with regard to the enforcement of that law. As part of the implementation of the two-year trial of the one-metre rule, an independent evaluation will be conducted. The Royal Automobile Club of Queensland believes that this evaluation is very important and should examine the safety benefits and unintended negative consequences of this legislation, which is what we heard about with regards to bicycle riders and how people must be responsible for their own wellbeing on the road and in other places. Too many times I wrote in my summary to the coroner that there was no evidence to prosecute beyond reasonable doubt an offence in which, given the evidence, it unfortunately appeared that the person had contributed to his own demise. When people drive cars, ride bicycles or are pedestrians, thought for their own personal safety is not always paramount and they can pay the ultimate price.

It has not been mentioned, but it should also be said that the Australian Capital Territory has become the second jurisdiction in Australia to introduce legal measures for safe overtaking distances between cars and bike riders. It has the same rule with the metre clearance for vehicles travelling in carriageways with a 60-kilometre-an-hour speed limit and 1.5 metres for vehicles travelling on carriageways with a speed limit of more than 60 kilometres an hour—that is the policeman in me saying "carriageways".

Hon Simon O'Brien: And decamping in a southerly direction!

Hon DAVE GRILLS: Yes, the defendant decamped from a southerly direction; how many times have members heard that?

I will now talk about the Western Australian road rules and safe riding advice found on the Bicycle Transport Alliance website. A lot of information on the internet and in other good places talks about how not to get hit when riding a motorbike or a pushbike. One of the things mentioned is that a rider should never move right without checking his mirror or first looking behind. Having a mirror on a pushbike is not a legal requirement, but it is not a bad idea. Having a mirror on a helmet—because everyone should be wearing their helmet when riding—is a good thing. People should always look behind them before deciding to change their position on the road, because that is the smart thing to do. The article says that one of the biggest fears cyclists have is a car running into them from behind. Unfortunately, regardless of what people say, that is not the most common accident involving people who ride pushbikes. The Attorney General said that most accidents occur when people pull out and do not see a cyclist and that it is the same for motorbikes. The most frequent excuse that I heard was, "I did not see them." There are different reasons for that. However, most cyclists think that being hit from behind is probably the worst thing that can happen. There are laws and rules we can follow to mitigate that risk. It is all about people having lights on their bikes, choosing the best position in which to ride on the road and making good choices on where to travel. Some roads are safer to ride on than others and some can put a cyclist at risk of having an accident given the volume and size of the traffic using it.

Queensland's *The Courier Mail* ran a story about an elite triathlete cyclist called Taylor Charlton and 20 of her friends who were each fined \$330 for rolling through a Stop sign at Deagon around 7.30 am on a Sunday. As a police officer handing out an infringement to an errant driver, I have been asked so many times, "Haven't you got a better job to do at 6.30 on a Sunday morning? Why don't you go and catch a real criminal?" That is not the point. The law is the law, and people tend to use the law—or not use the law—by talking on mobile phones and things like that. We are not talking here about going out to catch a real criminal; we are talking about saving people's lives, basically, by people paying attention when they are driving a vehicle.

Taylor Charlton is quoted in the article as follows —

"We would've gone through there at less than 5km an hour. It's not like we fly through it not looking. It's a quiet backstreet and then as soon as we rolled around the corner we heard sirens," she said.

That was her version of it. I have heard that before.

The article goes on to state —

But Indooroopilly Road Policing Unit Acting Senior-Sergeant Michael Stevens denied police were trying to sabotage the new laws.

“That’s definitely not true,” he said.

“Our main priority is road safety and keeping all road users safe but that requires everybody to abide by the laws.”

He also encouraged any cyclist who felt they had a complaint to come and see him.

The article goes on to state —

Sen-Sgt Stevens, who is also a cyclist, said police had been out across Brisbane on Sunday patrolling to check that motorists were obeying the 1m rule.

When we talk about motorists obeying the one-metre rule, the law is that it must be proved beyond a reasonable doubt. Therefore, in order to be successful in court, it must be proved beyond a reasonable doubt. I used to ask people, “How far away was the vehicle?”, and they would say it was about 20 or 25 metres away, and I would ask them how they knew that, and they would say they play cricket, or they swim, so they know how long one metre is. So I know that when my witness goes to court, a defence counsel is not going to dispute the fact that the person knows the distance, because I have established that. Sometimes we can do that and sometimes we cannot do that. But in enforcing this and handing out an infringement, I could not say beyond a reasonable doubt, having sworn on the Bible, that it was less than one metre, because it happens quickly, and I cannot judge a metre. We have heard that this should be in the Traffic Code, and I do not necessarily agree with that, but I will talk a bit later about how we can get around that problem in legislation.

The article goes on to state —

“Unfortunately cyclists do feel they’re being victimised but they have to remember that they have to abide by the road rules the same as they expect everybody else to.”

Hon Ken Travers talked about that. We have heard that cyclists cannot ride on the roads in a peloton, because it is not legal, and they cannot ride three or four abreast —

Hon Ken Travers: Or two abreast.

Hon DAVE GRILLS: Yes, depending on the carriageway that they are on. We also cannot expect drivers to cross to the incorrect side of the carriageway, because that puts the driver in danger. However, that is what Queensland has done with its laws. It has negated those rules so that drivers can overtake bicycles.

Hon Lynn MacLaren: Exactly.

Hon DAVE GRILLS: I do not agree with allowing cars to be on the wrong side of the road, unless they need to be there and it is controlled.

The article goes on to state that a Queensland police spokeswoman said that police from Boondall, the city, Capalaba, Indooroopilly, Mt Ommaney, North Lakes and Upper Mt Gravatt carried out this planned Operation Bicycle Safety patrol on that Sunday to see how this rule was working and what issues were arising. A total of 78 traffic infringement notices were issued, including 24 to bicycle riders. The offences included the 20 tickets that were issued to the athletes for failing to stop at a stop sign at an intersection. But no tickets were issued in relation to failing to maintain the one to 1.5-metre rule when passing a bicycle.

The article also states —

Transport and Main Roads Minister Scott Emerson said a number of fines have been issued to motorists for breaching the 1m rule.

...

“This year, we’ve issued motorists with 139,012 infringements for speeding alone, compared to 1,074 total offences issued to cyclists in the same period,” Mr Emerson said.

It has been said that when Queensland Police present these cases in court, the first thing the person will do is say, “Prove it wasn’t one metre.” This happens with motorcycle riders all the time. They will be wearing their helmet, and they will get off their bike and say, “Prove it was me”, because the police could not tell who it was because the person was wearing a helmet. So there are some flaws in the laws.

In 2013, the Transport, Housing and Local Government Committee of the Queensland Parliament inquired into cycling issues and produced a report titled, “A new direction for cycling in Queensland”. That inquiry, which was chaired by Howard Hobbs, the member for Warrego, received 106 formal submissions from individuals,

bicycle user groups, local councils, RACQ, the Amy Gillett Foundation and other interest groups. The inquiry found, somewhat surprisingly, that although Cycling Queensland was involved in the process, few, if any, submissions were listed as coming from registered cycling clubs.

Some of the research that I have read states that not everybody agrees that this rule is working. That comes from cyclists as well.

Hon Ken Travers raised a point about the signs. I know exactly what the sign says, because I have a picture of it in front of me. It says, “Stay wider of the rider”. Hon Simon O’Brien said that signs are a good thing. There is a song *Sign, Sign, Everywhere a Sign*.

Hon Simon O’Brien: I’m old enough to remember that one!

Hon Ken Travers: I’m afraid it’s too early in my life! But tell us, grandpa—what was it like?

Hon DAVE GRILLS: Thanks for bringing that up!

The sign says, “Stay wider of the rider”, and it gives drivers the idea of what one metre is. A sign can contribute to raising the awareness that we talked about.

Hon Ken Travers: And the little signs on the lampposts as well.

Hon DAVE GRILLS: Yes. It is all about awareness. I heard it mentioned that it does not cost much, so there is an opportunity there.

I have talked about some of the challenges that Queensland Police are facing in enforcing this law. Another article that I have states that Ben Wilson from Bicycle Queensland has hinted that this rule does not work, saying that from the perspective of many cyclists, the new laws are yet to make any real difference. The article goes on to state —

When asked why he suggested it lay in enforcement: “It’s proving a challenge for Queensland Police”, he told The Courier Mail on July 4. Wilson’s view is backed up by several Brisbane lawyers who have publicly (and Police figures anonymously) suggested the laws may struggle to hold up in court should they be challenged by errant motorists.

We have talked about that, and that is true, because it does need to be proved beyond a reasonable doubt.

I find it a bit ironic that one of the more controversial recommendations in that report of the Queensland committee—a recommendation that has not been adopted—is that the mandatory helmet laws should be relaxed. Some laws are always guaranteed to create division—we know that. The same people who are asking for this one-metre sign are talking about relaxing the helmet laws—which is the law in Western Australia—for people riding in a 60-kilometre-an-hour or lower speed zone and on bike paths.

Hon Simon O’Brien: Is that being lobbied for by those people?

Hon DAVE GRILLS: That was a recommendation in the report from people who ride bicycles. I always wear a helmet when I am on a pushbike, because I have seen the result of a crash where someone has fallen off a pushbike and sustained a head injury. That recommendation does not make much sense to me. But, all in all, the Amy Gillett Foundation, the Queensland government and RACQ should be applauded for what they have done in trying to bring about change. It is often said that change is constant; development is optional. I have said it. Hon Ken Travers talked a couple of times today about bipartisanship. We will get to whether this is a law that should or should not be implemented. One of the objectives outlined by the committee chairman, Howard Hobbs, was to significantly improve the interaction between cyclists and motorists on Queensland roads, thereby improving the human, economic and environmental outcomes. I agree with that 100 per cent. This committee report is 202 pages long. The bottom line is that we all use the roads. All good European governments would say that we should keep pedestrians, bicycles and motor vehicles away from each other as much as possible. It is not a good thing to keep them together. We have pedestrian zones in Northbridge and places like that, and on the Rottnest Island jetty, where the speed limit is 10 kilometres an hour. That shows an improvement. That shows that we are taking a “Let’s save lives on our roads” attitude by doing something beneficial like that. Eventually, as I said, we have got to the part where we are talking about the laws, and there are lots of things we can do. A person was quoted in a Perth newspaper as having said that they did not see why the government would hesitate to implement a simple road rule that could prevent serious injury and save lives. We have heard it said that the Road Traffic Act would require the law to be changed for people to be charged because no infringements are issued under the Road Traffic Act, which applies to roads. The Road Traffic Code, on the other hand, applies to carriageways, which is the black surface of the roads and what have you, so there is a distinct difference between those two laws.

I have issued this infringement on a few occasions; it is regulation 124 under the Road Traffic Code 2000, “Keeping safe distance when overtaking”. It reads —

A driver overtaking a vehicle —

- (a) shall pass the vehicle at a sufficient distance to avoid a collision with that vehicle or to avoid obstructing the path of that vehicle; and
- (b) shall not return to the marked lane or line of traffic where the vehicle is travelling until the driver is a sufficient distance past that vehicle to avoid a collision with that vehicle or to avoid obstructing the path of that vehicle.

I do not see why we should concern ourselves with putting another regulation into the Road Traffic Code when we do not have the ability or the capacity to enforce the laws we already have. We know that there are people who drive down the road talking on phones, and we do not have the ability to enforce those laws, so I do not really see why we should put another regulation in place to try to make it better, because it is just not going to work. We already have this regulation in the Road Traffic Code, and I think that is it.

I studied the case of the young fellow who unfortunately was killed by a concrete truck. Having driven concrete trucks, I know that they are six-wheel vehicles. The driver actually said that he thought he had enough room; I have been to court in a case like that, and irrespective of a good defence counsel, there is an opportunity for the driver to do that because he may have thought he had the distance. What would happen in that case is that the driver would not return to the lane, keeping a safe distance. I guess that regulation covers it, but with the law the way it is, there are lots of definitions. When reference is made in the code to a “vehicle”, there is a difference between a vehicle and a motor vehicle. A “motor vehicle” is a car; anything that is not on rails and is self-propelled. A “vehicle” is a pushbike, as opposed to a Gopher which, under the Road Traffic Code, is defined as a pedestrian. We need to look at all these things, because I know people who actually use Gophers on roads, and they are committing an offence because pedestrians are not allowed to walk on roads. The whole issue here is about the way we apply the law and how we look at it.

Having worked in major crash investigations, I can tell members that section 59 of the Road Traffic Act, “Dangerous driving causing death or grievous bodily harm”, and all the other laws we have actually allow us to charge people who have not given sufficient room when overtaking a pushbike or something like that. The act in that instance provides for people driving a motor vehicle in a dangerous manner. That is where we take away the terminology of people on the road who do not drive safely. We should take it out of the Road Traffic Code and put it into the Road Traffic Act, because the Road Traffic Act takes over from the code in that instance. The charge would be dangerous driving causing death. Going back to the legislation, I really do not think we need to include this provision. Although the penalties may not be as strong as everybody would like, the law is already in place, and we have the capacity to deal with this issue with what we already have. The intent is to save lives, which is a good thing, and as a road safety practitioner I agree. However, I do not think the intent is to keep adding more legislation that we will struggle to enforce. When we look at it closely, people do not pay fines and we end up with outstanding fines and all the rest of it.

Hon Ken Travers asked how we can do this. Straightaway I thought, “What are we going to do about regional WA?” There is currently \$70 million to \$80 million sitting in the road trauma trust fund. I would say that the Road Safety Council, which is responsible for making recommendations to the Minister for Road Safety, who measures the fund, and the Office of Road Safety, which supports the council and administers the account, should coordinate a number of projects funded by the account, and cabinet should make the final decision on how the funds are spent. I say we should take some of this money and put it back into road safety. After I worked at major crash investigations I thought, “This is all too hard; let’s go and save some lives”, so I went and worked in the police road safety section, and we used to run bike ed. That was a good thing, but we do not do that anymore. I agree that government and police should outsource things that are not necessarily their task, and that they should be out policing, but I also say we should take some of this money and put it back where it belongs—in educating people and enforcing the point that we need to be better on the roads. We need to teach children and young people how to ride bikes better, because the road safety rules they learn at that point they will take into their adult lives and actually utilise to better drive cars.

I have some crash statistics; I talked to Hon Jim Chown yesterday about these. In the 10 years to 2013, the number of cyclists killed on WA roads has averaged three per year; however, in 2013 there were six people killed, and we recently learnt of the tragic death of another cyclist. The number of people seriously injured while cycling on WA roads has averaged 109 per year over the same period, with 131 people seriously injured in 2013. If we look at fatalities—I do not mean this in a bad way—a fatality is a terminal thing; that is it. When we look at the 131 people who have been injured and who are now obliged to modify their houses to make them accessible by wheelchairs, that is where the costs are and that is where the heartache is because those people are now living with that injury.

I thank members; sorry for taking up so much time, but you did say I could!

Hon Jim Chown: You can come back next week!

Hon DAVE GRILLS: Thank you!

I seriously hope that we get together as a Parliament and look at this issue and say, “Yes, some of that fund should be spent on that”. It is not other people we are talking about; how many members’ kids, family and friends ride pushbikes? Members should consider that, and then ask themselves whether spending money on that is not a valuable way of utilising those funds.

HON JIM CHOWN (Agricultural — Parliamentary Secretary) [11.27 am]: I commence by congratulating Hon Lynn MacLaren for introducing the Road Traffic Amendment (Keeping Safe Distances from Bicycles) Bill 2014 and for showcasing some initiatives, as she has done for some time, for Western Australian roads. As the Attorney General said earlier, the phenomenon of people taking to pushbikes has increased fivefold in recent times; in fact, I have heard that up to 800 000 Western Australians ride pushbikes on a weekly basis in one form or another, whether they are going great distances or just down to the corner shop and back. The reality is that it is an exciting thing to see happen in our community. I think we have all been on a pushbike at some stage in our lives and we have all been out there pedalling and enjoying the freedom of being under our own propulsion.

Debate adjourned, pursuant to standing orders.