

# **SELECT COMMITTEE ON PERSONAL CHOICE AND COMMUNITY SAFETY**

**INQUIRY ON PERSONAL CHOICE AND COMMUNITY SAFETY**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 27 FEBRUARY 2019**

**SESSION THREE**

## **Members**

**Hon Aaron Stonehouse (Chairman)**

**Hon Dr Sally Talbot (Deputy Chair)**

**Hon Dr Steve Thomas**

**Hon Pierre Yang**

**Hon Rick Mazza**

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**Hearing commenced at 1.51 pm**

**Mr RICHARD SELLERS**

**Director General, Department of Transport, sworn and examined:**

**Mr RAYMOND BUCHHOLZ**

**General Manager, Marine Safety, Department of Transport, sworn and examined:**

**Mr ASHLEY McCORMICK**

**Manager, Cycling, Department of Transport, sworn and examined:**

**Mrs MICHELLE PRIOR**

**Acting Director, Transport Planning, Major Urban Centres, Department of Transport, sworn and examined:**

**Mr CHRISTOPHER DAVERS**

**Assistant Director, Policy and Knowledge, Driver and Vehicle Services, Department of Transport, sworn and examined:**

**Mr DAVID HOSIE**

**Technical Policy and Services Coordinator, Department of Transport, sworn and examined:**

**The CHAIRMAN:** On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you all to take either the oath or affirmation.

[Witnesses took the affirmation.]

**The CHAIRMAN:** You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

**The WITNESSES:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to speak into them and ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement to the committee?

[1.50 pm]

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**Mr Sellers:** Only, Chair, on the basis that we have brought a few people along because there are various aspects in the business that we thought you might touch on, and given our limited time we might just get straight to questions, thank you.

**The CHAIRMAN:** We appreciate it. Thank you. What is the process for applicants who wish to modify their vehicle? Can you talk the committee through the entire process, including any information provided to applicants prior to applying and what information is provided during the assessment period?

**Mr Sellers:** Chris and David will answer that for you.

**Mr Davers:** I will talk about the general process. Just to set the context, Australia has a national approach to vehicle safety standards at the point of importation and first licensing. This is agreed between the states and territories. It is administered by the commonwealth Department of Infrastructure, Regional Development and Cities. The legislation is the Road Vehicle Standards Act, which is currently in the course of replacing the previous Motor Vehicle Standards Act. This sets some national standards, such as the Australian design rules which are referenced in the relevant road laws of the states and territories.

At the point of first registration or licensing, vehicles need to comply with these national standards. So a Toyota Corolla coming into the country has been certified to meet these Australian design rules. Once a vehicle has been licensed, the registration authority for each state and territory can grant approval to modify from that state, and this approval is generally known as a modification permit. This gives permission for somebody to alter a vehicle from the condition it was supplied to market.

I will go on a little bit about our aims, which are to provide proportionate regulation so that there is a fair balance between community safety and the impact on the individual who is applying for the licensing function change. So this is taken to mean using the powers proportionately, providing procedural fairness and information to customers, and considering the harm to society that can occur through us not acting. In general, regulation is necessary when the market or the societal norms do not provide sufficient control to maintain community expectations. For example, the average person does not know enough about how vehicles work to safely make those sorts of judgements, so we need to make sure that there is sufficient expertise and oversight of changes made to the vehicles.

In general terms—I might ask Dave to provide more detail in a moment—our regime excludes minor modifications from requiring particular approval, so minor things like fitting a towbar does not necessarily require approval. But generally more serious changes to the way the vehicle is going to behave, steer, perform and act in a crash, these things require a greater level of expertise to approve of the changes there.

This operates under a cost-recovery model, so we are required to set fees and charges that represent the true cost of managing those functions. In general we give recognition to national codes of practice and standards in making these decisions, but ultimately it is a delegate officer who is delegated by the director general's powers who makes that decision as to whether a vehicle is suitable for change or that the work has been carried out to certain standards. We publish information on the policy in external publications that are available on the DOT internet site for download, and there is information on the website as well about how to go about carrying out modifications. I can go on and give some context of the volume, work and staff involved, if you would like.

**The CHAIRMAN:** Sure, that would be helpful. Thank you.

[2.00 pm]

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**Mr Davers:** We process about 3 000 vehicle modification requests per year. The most common types of modification are engine performance enhancements and lifting up four-wheel drive vehicles so that they are sort of jacked up. Two staff are predominantly assigned to carrying out this work, and they are supported by a number of other staff in the customer service delivery directorate that supports that work there. The current contentious issues are around the reclassification of mass limits for vehicles, and also the power-to-weight ratios of vehicles.

We are currently carrying out some work around amending the legislation on vehicle modifications, and this is aimed to provide good governance, which takes a risk-based approach to focus our efforts on the most serious risks while making it easy for customers to apply for modifications in most cases. The other point I would make is that we deal with a full spectrum of customers. We have a significant number of very reputable customers who invest a lot of money into the work that they want to have approved. We also have to deal with people who will have, either through ignorance or recklessness, placed the community at risk. We aim to have a regulating regime that matches that entire spectrum satisfactorily.

**Mr Sellers:** Chair, you asked for specific processes. Maybe David can run through that.

**The CHAIRMAN:** What I am looking for is: if I want to modify my vehicle, what are the steps I take to have that approved?

**Mr Hosie:** Probably 12 months ago the department put in an electronic application form through the website so that the customer can log into the website and basically place a request to modify a vehicle. They list all the modifications that they wish to make and, at the transmission of the “send” button, that comes electronically through to the technical policy and services section, which I administer. It is basically logged into our correspondence-tracking database, which is Objective. It is assigned a number and then at that stage a technical analyst looks at the application. Generally they compare it against the national code of practice to see if it conforms. Basically they run through the specifications of the vehicle. They run through the Australian Design Rules. They check to see that the vehicle can be modified and still continue to comply with the prescribed standards, and if it does, they will then send out an approval in-principle to modify that vehicle. The reason it is in-principle is because without seeing the vehicle, you cannot actually be sure that that modification has been carried out in accordance with the prescribed standards. At the end of the day, we request an engineering signatory or an engineer to verify that the vehicle has been modified and that it does meet those prescribed standards. They then send in an engineering report and the report is perused to see if they have covered off the things. Sometime they fail to address something, in which case we will go back to them and say that we need more information: “You haven’t supplied the full information.” If that is all okay, then the CEO’s delegate will then issue an approval to go and get the vehicle inspected, and modification permit issued.

**The CHAIRMAN:** The initial electronic application would be, for lack of a better word, a wish list of “how I want to modify my vehicle”. I lodge that. It is assessed by your team. In-principle approval is given. I then have to seek an engineer to get his report and then there are approved engineers, I suppose —

**Mr Hosie:** The engineering signatory is an approved person.

**The CHAIRMAN:** But I would do that myself.

**Mr Hosie:** Yes, that is correct.

**The CHAIRMAN:** Then I come back. How frequently is in-principle approval given to the same vehicle that is then not approved when the engineering correct is handed to the department?

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**Mr Hosie:** I can honestly say I have not collated those statistics, but I would think it is probably in the order of five per cent.

**The CHAIRMAN:** Could more accurate information be provide on notice?

**Mr Hosie:** Possibly on notice. It is all in the database. It depends on whether you are talking about one year or five years—what sort of spectrum of time.

**Mr Sellers:** Chair, if you give us a time frame we will provide that for you.

**The CHAIRMAN:** I would be interested in stats on the last five years. If that can be provided that would be helpful, thank you.

**Mr Sellers:** Sure.

**The CHAIRMAN:** Thank you for clarifying the process there. It was mentioned that information about vehicle modification and the standards is published on Department of Transport's website.

**Mr Davers:** That is right, yes.

**The CHAIRMAN:** If somebody wants to find out if their wish list of modifications to their vehicle can be approved, they can lodge this electronic application. Is there a fee to lodge the electronic application?

**Mr Davers:** Yes, there is. I do not know what it is off the top of my head, but I can find out.

**Mr Hosie:** Sorry, Chris. I will correct you there. There is not a fee to actually make the application. There is no charge for that.

**The CHAIRMAN:** For a budding car enthusiast who wants to modify their vehicle, they could find out fairly quickly, without a fee, if their ideal modifications would be given in-principle approval before they embark on actually paying for modifications.

**Mr Hosie:** That is correct.

**The CHAIRMAN:** Okay, interesting. Is there any communication beyond the approval or otherwise of the electronic initial application with the applicant? If somebody is looking to upgrade their engine and goes past a certain power-to-weight ratio that is outside the national standard, would that be communicated to the applicant?

**Mr Hosie:** Yes, that would be done in writing.

**The CHAIRMAN:** Is there a possibility for an applicant to then have a dialogue about what would be suitable and what modifications they could make or scrap to get that in-principle approval?

**Mr Hosie:** Yes, we have done that in the past.

**The CHAIRMAN:** You have a customer care team for applicants to talk to do you?

**Mr Hosie:** The technical analysts that assess it would be responsible for responding to a customer then saying, "What can I do?" The reason for rejection is usually put on the electronic copy that is stored in our database. If anybody picked it up, you could see that "this does not comply because it does not meet this Australian Design Rule" or "the engineering on it does not fit" and so on. It is all recorded, and certainly the customer can talk to the analyst.

**The CHAIRMAN:** Thank you for clarifying that. I ask because the committee has heard evidence that the department does not make it clear that modifications require pre-approval, so people are spending large sums of money and undertaking the work before submitting their applications, which are then refused. Can you comment on this statement and suggest how to avoid this situation occurring?

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**Mr Davers:** We regularly review the material that is in our printed materials and on the website. We can certainly review that to make it clear. Our advice generally to people is to seek advice before you do costly work. It would be the same with building an extension to your house—you would check with what the council is likely to approve before you carry it out. Our approach is generally to work with people. If they do present us with work, we will try to find a way to approve modifications or at least to rectify them to point at which they are safe. I can certainly provide details of what we do provide on our website materials, but we can certainly look at the content in there to make it really clear to people to please seek advice first. A number of experienced people in the industry will advise people along these lines as to what the Department of Transport and what the standards will approve first.

**Mr Hosie:** Can I just add that the legislation has been there since 1975. It was amended in 2002 to be regulation 69 of the vehicles standards regulations. That was redone again to be regulation 235 of the Road Traffic (Vehicles) Regulations. The regulation has always been there. It has always been written into law. It is not a policy. It is a law.

**Hon PIERRE YANG:** Which act is that?

**Mr Hosie:** The current one is the Road Traffic (Vehicles) Regulations 2014, regulation 235.

**Hon PIERRE YANG:** Thank you.

**Hon RICK MAZZA:** Are these regulations, not policies of the department?

**Mr Hosie:** That is correct.

**Hon RICK MAZZA:** Some of the evidence we heard from those who are into modifying vehicles substantially, is that there is an 180-kilowatt-per-tonne limit for these vehicles. Is that something that is actually a regulation or is that a policy of the department?

[2.10 pm]

**Mr Hosie:** No; that would be a policy.

**Hon RICK MAZZA:** A policy? Is this policy something that is consistent across all states of Australia?

**Mr Hosie:** No, that is not consistent across all states of Australia.

**Hon RICK MAZZA:** So where has this 180-kilowatt-per-tonne policy been derived from?

**Mr Hosie:** The engineering section, which is not one that I supervise, went back historically through hundreds of vehicle specifications over the years. Basically, there were no-high performance vehicles in the early days, in the 1980s, that came anywhere near that sort of power output. There is concern that if you look at the occupant protection and the safety of earlier vehicles, they have poor brakes and poor handling, and they do not perform very well in accidents. In fact, there have been many reviews. ANCAP did a review between the two Corollas. They are inherently unsafe compared with a modern vehicle, but they are not unsafe, obviously, because we all drive around in them. On the basis of that, we looked at what we considered to be a reasonable safety limit.

**Hon RICK MAZZA:** Right. If I caught you correctly, you said that in the 1980s, vehicles did not have that performance of 180 kilowatts per tonne?

**Mr Hosie:** That is correct.

**Hon RICK MAZZA:** So vehicles like a 1970s GTHO Falcon I would have thought was at least 180 kilowatts per tonne?

**Mr Hosie:** No.

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**Hon RICK MAZZA:** And the Torana GTR XU-1 was not 180 kilowatts per tonne? Interesting. Just on that, if someone had a vehicle that they wanted to modify beyond 180 kilowatts per tonne, are they able to appeal that, or is that a very hard and fast rule in Western Australia?

**Mr Hosie:** Every application is considered on its merits, and it can be appealed. It is not my position that that appeal goes to.

**Hon RICK MAZZA:** Right—appeal within the department?

**Mr Hosie:** Correct.

**Hon RICK MAZZA:** If someone was looking to get a vehicle registered at a higher horsepower and they went to another state, like South Australia, and had it approved there and licensed, and then brought that back to Western Australia—which my understanding is that after a few months, they have to have it registered here if they are domiciled here—would the department consider the licence approval in South Australia; or, if it did not comply, they could not licence it in Western Australia?

**Mr Hosie:** As I said, it would be considered on an individual basis, so you would have to look at the circumstances.

**Hon RICK MAZZA:** Thank you.

**Mr Sellers:** Member, if we get away from power and look at some of the roo bars, for example—you are well aware of those, I think—there are people who have inadvertently bought a big four-wheel drive, say, in the Northern Territory that has had a specific type of roo bar fitted to it that sits outside the vehicle, and they bring it over three months later or whenever it is they come to have it registered, they will not get it registered here because it does not fit the standard requirements. So it does happen where it is rejected. But, as Dave said, on the power-weight and the modifications on the car itself, each individual case is looked at on its merits.

**Hon RICK MAZZA:** I appreciate that.

**The CHAIRMAN:** Just a moment ago you said that there was a way for applicants to appeal a decision made on seeking a modification permit. What is that appeal process?

**Mr Davers:** I can talk to that one, Chair. In general terms, some road rule provisions have statutory appeal processes built into reviewable decisions; others do not. But the general process is that it is open for somebody to go to the Driver and Vehicle Services general manager. So occasionally you will hear a complaint through either the general manager or to our managing director or DG, or to the minister's office. The general approach, although all cases are considered on their individual merits, is we will have another look at the approval, particularly if they can provide further evidence as to—if they believe we have got something wrong, our general approach is to engage with the individual and say we are aware that we got it wrong, and review it. Sometimes there is a formal process. My colleague, the assistant director governance, has a delegated role to review driver licensing decisions, so away from the area that talks about cancellations of licence. In that case, a formal review will go to his position, he will review that as a fresh set of eyes, as a sort of de novo consideration. In other cases, the director general's office or the minister's office might ask us to look again at a decision and to reconsider it.

**Mr Sellers:** In summary, Chair, there is an escalation. For example, if David's team looked at a review and still there is some dissatisfaction in it—the general manager and that process that Chris described—in my experience in two and a half years I have not had any come to me as director general, so it is probably a rare thing that it makes it up that high, and they are resolved in some way, shape or form along that way.

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**The CHAIRMAN:** There is no statutory right of review for a decision made under regulation 235, so in lieu of that—I suppose first of I would like to know if there is a reason why. Are you aware of why there is no right of review under regulation 235?

**Mr Davers:** I think you will find the current Road Traffic (Vehicles) Regulations 2014 are a conglomeration of several previous pieces of legislation which have existed. So generally the contents of those regulations do not differ that much from what existed in previous versions. Some of them had statutory review of the decision processes. Regulation 235 is an approval power as opposed to an exemption power. Generally, the Road Traffic (Vehicles) Regulations have a number of licensing and exemption-making powers provisions. They are generally reviewable. That is not in the part of the act that has that. But having said that, there is a general principle that decisions made by public officers are subject to administrative review. That could be internally within the department; it could be through the ombudsman's office; or it could be —

**Mr Sellers:** Through SAT.

**Mr Davers:** Yes. Our aim would always be to resolve those sorts of issues internally, just because it is quicker for the customer, it is easier, and it gives a better outcome.

**The CHAIRMAN:** Unless I am mistaken here, without a right of review for regulation 235, is there any capacity for an applicant to take their issue and escalate it to SAT?

**Mr Sellers:** Dave described the process of how we deal with our clients. If you were to take it to a legal status and check it, I think we will take that on notice and give you an answer so that we do not confuse you today

**The CHAIRMAN:** As I understand it, they cannot escalate it to SAT. If I am mistaken, I would like to know, but that is my understanding if it.

**Mr Sellers:** Sure. We will check that for you.

**The CHAIRMAN:** If they can escalate it to SAT, I would also be interested to know if anybody who has had a refusal for a modification permit has gone to SAT. We can take that on notice.

**Mr Sellers:** Sure, and remember that SAT looks at the administrative process, not the law component of it, so it is unusual for a legal issue to get anywhere near SAT. It is the process that was undertaken about natural justice, whether we followed our own procedures and policies. We will get that answer for you, Chair.

**The CHAIRMAN:** Thank you. The current review process that you are following and that you outlined a moment ago I suppose is an internal policy that you currently follow for escalating disputes and requests for review around modification permits. It is an internal policy that you have. Is that right?

**Mr Davers:** I do not know whether it is written up as a policy as such. My understanding is that that is just the —

**The CHAIRMAN:** Standard practice?

**Mr Davers:** Yes.

**The CHAIRMAN:** Okay. Do you treat vehicle modifications and vehicle restoration applications in the same way? Do they go through the same team for approval? Is there a similar process through getting engineering to sign off before an application is granted?

[2.20 pm]

**Mr Hosie:** Not really. A vehicle restoration, presumably, is just a restoration of the original equipment. If you are talking about an early model vehicle that has been restored and a lot of modifications have been made, yes, it goes through the same process as a vehicle modification. If

you are just talking about restoring a vehicle to its original condition, the department is not interested in looking at that or being involved in that. It is just a restoration of its original equipment.

**Mr Sellers:** If we have one of the early model muscle cars and they want to put modern brakes and that on it, would that be enough to tip it over?

**Mr Hosie:** That would not be a restoration; that would be a modification.

**The CHAIRMAN:** You mentioned earlier that minor modifications do not require approval. Can you give us examples of what might count as a minor modification? You mentioned towbar holes. What about a different colour, a different coat of paint, different headlights, a hood scoop or something like that—cosmetic changes, I suppose? I am wondering if those would be included.

**Mr Hosie:** The department had a gazettal notice around the 2004 mark that listed—I do not have it with me, unfortunately—all the modifications that the CEO or the director general did not want to see. Painting and things of that nature were in that exemption. Things like aerials, stereos, protection around headlights and guards and things of that nature—all of those were listed as modifications that the CEO did not want to see. Chris alluded to the fact that we are trying to expand that list legislatively to make it a lot easier for people. We want to publish all the things that really do not affect the vehicle in any way so that will make it easier. Currently there is a gazetted notice of the things that we exempt.

**The CHAIRMAN:** We have heard about the national standard that is administered by a federal agency. I cannot recall which agency that was.

**Mr Davers:** The Department of Infrastructure, Regional Development and Cities.

**The CHAIRMAN:** It is a national standard, presumably with input from the states. If I have it correctly, the standard for vehicle modification is VSB14. Is that right?

**Mr Davers:** That is for light vehicles, and there is a VSB6 for heavy vehicles.

**The CHAIRMAN:** Okay. That is what the committee has received in testimony—light vehicle modifications and this VSB14 standard. The committee was provided with a refusal letter by another witness. That refusal letter—a refusal for a modification permit—refers to the Department of Transport having adopted VSB14. I am wondering if you can help us understand how the department has adopted the code if it has no legal effect in WA. Do you explain this adoption and the risks that are relying on VSB14 alone to applicants? It seems to me as a layperson perhaps you might look at the national standard VSB14 and think, “Okay, I can modify my vehicle and comply with this”, go ahead and do the modification and then make the application and be knocked back because we are exercising in this state a certain level of discretion that is not necessarily what is prescribed in VSB14. How have we adopted VSB14 and how is that then communicated to applicants?

**Mr Davers:** I can provide some commentary on how it works and Dave may be able to provide some more practical examples. The WA road law has provisions that a delegated officer on behalf of the director general can approve alterations, so essentially that officer is turning their mind to whether this vehicle can be safely altered and there are some guidelines within the regulations as to the sorts of things that need to be considered. The states and territories have generally adopted the vehicle standards bulletins but there is no requirement to consider whether this can be approved. It is a tool to reach a decision. It is not something that requires the input of a public officer to complete the implementation of the law. They are standards referred to making decisions.

**The CHAIRMAN:** There are two people at the department assessing applications. Do these technical experts—I cannot remember the word you used to describe them—have an engineering

background? Are they engineers themselves? Are they subject matter experts? What are the qualifications of these people?

**Mr Hosie:** They are all qualified motor mechanics. They have generally been government vehicle examiners for 10, 12 years so have inspected a lot of vehicles along the way. They have seen the pitfalls of badly maintained vehicles and so on.

**The CHAIRMAN:** You may need to take this on notice but I am wondering if you can you tell us how many modified vehicles are currently registered in Western Australia as of February 2019. I am mostly interested in light modified vehicles. If you want to provide the number for heavy modified vehicles too, that is fine.

**Mr Hosie:** The problem is that a lot of people do not seek approval first and do the modification. They invariably end up coming to us when the defect notice is issued because they have modified the vehicle and a policeman finds that it is noncompliant so it is not actually possible to know how many illegally modified vehicles there are out there.

**The CHAIRMAN:** Noted. Thank you. I have one more question on vehicle modification before we move on to some other topics. This may be a difficult one to answer. We do have the option to hear testimony in closed session if need be. The committee has heard evidence that the department's refusal of modification permits began to increase when there was a change of management in 2016. Would you like to make any comment on this statement or do you have a view on this statement?

**Mr Sellers:** Just to put on the record that we are in 2019. I have been in the department for about two and a half years. I have not had a letter over my desk talking about anything like that that I have seen. It might have come to the department in some other way but I have not heard that.

**Hon Dr SALLY TALBOT:** This is about mandatory bike helmets, so we will switch the focus onto the other end of the table. I notice on your website you have a huge section devoted to cycling, so you are obviously committed to delivering policies and programs and things that encourage people to cycle. I wondered whether you have a view about the claims that a lot of people do not cycle because bike helmets are mandatory. They hate wearing helmets so much that they would prefer not to cycle than wear a helmet. You may have seen some evidence that the committee received, I think last week, on this subject where the same sort of questions were asked.

**Mr Sellers:** I think my colleagues talk regularly with cyclists and others and might have a view.

**Mrs Prior:** Firstly, both Ash and I work with the Department of Transport. The Department of Transport is the lead agency within the cycling portfolio that looks after the management and guides the provision of cycling infrastructure across the state. Yes, we do support and encourage people to cycle because of the broad environmental, transport, health and economic benefits that it provides. The Road Traffic Act 1974 and the Road Traffic Code 2000 do require cyclists to wear an approved helmet.

In specific reference to your comment about evidence that you heard last week, I cannot comment. However, I do know that we have not seen any recent robust evidence to suggest that repealing or changing any mandatory helmet legislation would result in increased participation in cycling. I can take that up and refer to the RAC cycling survey from 2015 which suggests that the main barriers to cycling that they see is actually a fear of sharing the roads with vehicles, and also 31 per cent of people state a lack of bike routes. That is the domain of the Department of Transport. We believe that providing safe separating infrastructure will provide that incentive for people to trial cycling.

[2.30 pm]

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**Hon Dr SALLY TALBOT:** Do you know whether that figure has changed over the years so that people's objections to helmets are not being raised now as much as they might have been, say, 10 years ago?

**Mrs Prior:** I am not aware of that.

**Hon Dr SALLY TALBOT:** Do you want to take that on notice? Would you have access to that information? I do not want to give you unnecessary work, but if you have it somewhere where you can dig it out.

**Mrs Prior:** I am not aware of any evidence—recent evidence.

**Mr Sellers:** What we might be able to do, member, we would probably have to look back a little bit and see if we can find something. We will have a look for you.

**Hon Dr SALLY TALBOT:** That would be interesting to know; you would be the people to have efforts in that sort of thing.

**Mr Sellers:** It might be hidden in some of our reports and things of the past, so we will put in a little time to have a look for you.

**Hon Dr SALLY TALBOT:** That was the suggestion made to us last week, that it was an old response but it is not coming up as much now, which would be of interest to the committee.

**Mr Sellers:** Thank you.

**Hon Dr SALLY TALBOT:** Do you have a view about the approach that says that there should be certain contexts where it is not mandatory to wear a bicycle helmet—that is, I think, called the segmented approach?

**Mrs Prior:** I have heard of a proposal put forward by the Bicycle Network in Victoria. They suggested, I believe, a five-year trial they have proposed which looks at encouraging those aged 17 and above to trial to ensure that they do not use helmets on, I believe, shared paths and on off-road paths. Now, of course, that is a slightly complicated position, because to access a shared path or an off-road path, you need to more than likely be on a road in order to access it, so suddenly you are in a situation where you need to have a helmet and then you do not need to have a helmet. It is quite confusing for the public, so we would not recommend or support this kind of position.

**Hon Dr SALLY TALBOT:** Just two more quick questions on the same topic. You may not be able to comment on this because it is sort of a policy question. But a \$50 fine, it seems fairly low. Have you looked at suggestions that it should be raised or if there is any correlation between the amount of the fine and people's behaviour?

**Mrs Prior:** That is really not our space.

**Mr Sellers:** The infringement, fine—across government there is an approach to try to standardise what a certain level of infringement is. Whenever we do a review, we go to that part—within finance or state solicitors—that deal with that and get a level given to our infringement notices. So when it is reviewed, it is likely to be reviewed and given whatever the consistent level that it will be at the time. When it was first put together—I do not know when that was; obviously, it was \$50. But, you are right, community standards alter over time. What government is trying to do, as a holistic basis, is make the same sort of level of infringement, in a sense, the fine payable for that, the same amount, but it is a slower process as you review these things across government.

**Hon Dr SALLY TALBOT:** And a bit of an unquantifiable thing, is it not, to compare not wearing a helmet with some other form of traffic violation?

**Mr Sellers:** Yes. They all have context and are difficult decisions, but there would still be, when we review this, an attempt to try to make it consistent with other misdemeanours.

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**Hon Dr SALLY TALBOT:** My final question is about the data. Obviously, if you are advocating a continuation of mandatory helmet laws, the more data you have to support that, the stronger your case gets. There are some suggestions by advocates as well as opponents of the law that the data could do with some improvement. For instance, perhaps we cannot tell when someone has a head injury and they were admitted to hospital whether they were wearing a helmet or not. I understand that that data might not be collected.

**Mr Sellers:** I am not sure; we will ask.

**Mrs Prior:** There are two sources of data that we use. We look at the police data, which they collect—information at crashes—and also hospital data. You will have to ask WA police for the specifics in terms of the information that they collect. But what I will say, though, is it is quite incomplete. The information that we collect at police incidents and police crashes—the police need only to attend fatal and serious crashes, which includes serious bodily harm or where property damage to all involved parties exceeds \$3 000. So there is a range of incidents or accidents that might occur where the value is less than \$3 000 or perhaps there is not a fatality or a seriously injured component to the crash as well. We would say that it is not 100 per cent reliable, but it is certainly a space that we are looking to try to work on and lead.

**Hon Dr SALLY TALBOT:** How would you collect that data? Would it involve individual cyclists submitting data?

**Mrs Prior:** Yes; I can talk to that. The office of the Attorney General did a report on safe and viable cycling in 2015. One of the recommendations within that was identifying this issue around the data collection for cycling, and, particularly from our perspective, it is how we use that data to inform where we plan for our cycling infrastructure or how we plan policy to promote cycling. There was a recommendation which we are acting upon to create what we call a “cycling incident reporting facility”. We are working with the Road Safety Commission on that at the moment and we are seeking funding to support that. It essentially will be a real-time, web-based application whereby road users can report cycling incidents or fatalities anywhere on the network. It provides us at least an opportunity to identify who the asset owner is so we can inform them of what incidents have occurred on the network, but also to collect the quantitative data to inform future decisions around investment.

**Hon Dr SALLY TALBOT:** That is very useful information for the committee. What is your time frame on this recommendation?

**Mrs Prior:** We are seeking funding at the moment, so we should find out through the current budget processes whether we receive funding in 2019–20. To clarify, we are expecting that to take about two years for it to be created just in terms of the quite extensive information that we need to map the network. As you can imagine, cycling occurs on local roads, various paths and various networks which have various owners. We have 144 local governments in Western Australia that own parts of the network and that also upgrade those networks, so it is extremely important to have, essentially, what we call the “map” correct, updated regularly, and a strong understanding of who the owners are of those various assets in order to inform accurately where the issues are in the network.

**Mr McCormick:** I might add to that. We are also very conscious about not just collecting data, but actually using it. In a general sense, the office of Auditor General recommended that we collect that data, but then use it to rectify the issues. So, if it is an issue with infrastructure or design or behaviour that is a trend, then we can act upon it.

**Hon Dr SALLY TALBOT:** This is the new system that once it is in place will enable you to really refine the data collection?

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**Mr McCormick:** Correct.

**The CHAIRMAN:** I had one last question on vehicle modification. I think it is something that you raised Mr Davers. You mentioned that you are currently undertaking work to amend the legislation around vehicle modification.

**Mr Davers:** That is right.

**The CHAIRMAN:** Can you give me an idea of what has been done and what time frame we have?

**Mr Davers:** It is ongoing work, Chair. At the very high level what it is aiming to do is just to do a refresh. This is involving looking at regimes in force in other jurisdictions; tying in some particular national standards, such as the VSB6 and 14 into the processes; and to provide greater clarity for customers as to what they need to seek approval for. We do not really see it as being a major change, but it is just due for a refresh, the process there. There may be some features in there which we do not think work as well as they could have done; or, conversely, there are some things in there that we think may actually cause confusion and needlessly end up in litigation, so it is to provide some greater clarification in the community about what is required.

**The CHAIRMAN:** The time frame for that?

**Mr Davers:** We anticipate the work being done during the course of this calendar year. There is also a need to carry out some other amendments to the same set of regulations to keep up with national work around heavy vehicles and other work like that, and commonwealth standards. That could delay it because the preference is to seek one Exco package rather than several in the same regulations. I think this calendar year is a sort of reliable, achievable figure.

[2.40 pm]

**Hon RICK MAZZA:** We could not finish the hearing without asking a maritime question. In relation to life jackets, there has been a lot of commentary around life jackets in recent times. My understanding at the moment is that when using certain watercraft, life jackets have to be carried and there is talk of making life jackets mandatory when fishing from rocks. To me, fishing from rocks is not in a vessel, so is this something that the Department of Transport is going to be able to enforce?

**Mr Buchholz:** They are two separate initiatives. The trial resulting from the incidence of rock fishing is going to be dealt with under different legislation and a different government agency, so the Department of Transport is not involved either legislatively or on an enforcement side of the house. Obviously, it is of interest to us in terms of the current review that we have underway and what the linkages may be.

**Hon RICK MAZZA:** Is there any move for people to have to wear life jackets when in a boat rather than when stable?

**Mr Buchholz:** We have a review underway at the moment which will, among other things, look at the mandatory wearing of life jacket provisions in Western Australia. Currently in Western Australian law, it is only required to wear a life jacket if you are operating a personal watercraft or a jet ski or are a kitesurfer or a windsurfer beyond 400 metres offshore. But in other jurisdictions, it is a requirement to wear life jackets while operating other types of vessels in certain instances. There is no jurisdiction that we are aware of where it is a requirement to wear it all the time regardless of what vessel and where you are. The other states state that when operating vessels less than 4.8 metres, you must wear a life jacket. In Tasmania, it is vessels less than six metres and operating. Western Australia currently does not have an equivalent law to that.

**Hon RICK MAZZA:** My understanding is in protected waters you do not need to.

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**Mr Buchholz:** Correct. In protected waters, there is no requirement to wear a life jacket unless you are operating a personal watercraft or jet ski, or carry it for that matter. But there are requirements to carry life jackets in unprotected waters for pretty much all vessel types.

**Hon RICK MAZZA:** If we can just come back to the beginning of that question, if laws are put in place where it is mandatory to wear a life jacket when fishing from rocks and someone is not, is the Department of Transport going to be able to enforce or prosecute somebody who is not wearing a life jacket?

**Mr Buchholz:** At this stage, there has been no request from another government agency for the Department of Transport's officers to be cross-authorised. Our powers to enforce the law derive from the Western Australian Marine Act. At this stage, we would not be authorised. It is not every rock; it is certain specified locations. It would not be safe for our vessels to approach those areas anyway to do enforcement, so I would not be jumping to that.

**The CHAIRMAN:** I think that might be all we have time for. Thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript of evidence. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thank you.

**Hearing concluded at 2.43 pm**

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