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PARLIAMENT OF NEW SOUTH WALES

**STAYSAFE Committee
REPORT ON CAR SURFING AND THE CARRIAGE OF
UNRESTRAINED AND UNPROTECTED PASSENGERS ON
MOTOR VEHICLES**

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Terms of Reference

Self reference under the joint resolution of the Legislative Assembly and the Legislative Council that:

- (1) As an ongoing task, the Committee is to -
 - ...
(b) review and report on counter measures aimed at reducing deaths, injuries, and the social and economic costs to the community arising from road accidents.

Chairman's Foreword

Car surfing is the name given to the dangerous activity of passengers sitting or standing on moving cars and utes as though they were 'surfing'. People ride on the bonnet, roof, or boot lid of moving cars, stand up and balance in the tray of utes, or hold to or be towed by vehicles while skateboarding or roller blading. In some instances, people engaging in car surfing leap from one moving vehicle to another. The recklessness and dangerousness of such actions arises from the lack of occupant restraint devices to keep these persons on the vehicle, and the lack of protective clothing, such as helmets, to would minimise injury if these persons fell from the vehicle.

STAYSAFE's interest in this issue arose, in particular, from several areas:

- STAYSAFE had been aware, through discussions with investigating police, of difficulties in the prosecution of drivers for dangerous driving offences in the circumstance where a passenger riding on a motor vehicle fell and was killed or severely injured but was not struck by the vehicle. It seemed appropriate to review the elements of a dangerous driving offence under the Crimes Act 1900 s.52A
- STAYSAFE had been aware, through discussions with road safety workers, police, health and community workers that there was some perception of inconsistency in the Australian Road Rules regarding passengers being carried on motor vehicles. This inconsistency was highlighted by a recent road transport regulation that prohibited carriage of a passenger in or on the boot of a vehicle, but did not expressly prohibit the carriage of a passenger on other parts of a vehicle
- During 2003, STAYSAFE identified a series of reported deaths and injuries to passengers who had been riding on motor vehicles. This trauma series only included circumstances where the motor vehicle was being driven in a road or road related area, and did not include injuries arising from falls from vehicles in areas not usually used by, or accessible to, motor vehicles (farm paddocks, parks, beaches, etc.)
- A brief research literature review identified a study of head injury sequelae from 'ute surfing' by New South Wales medical researchers, highlighting the severe nature of injuries that can occur when unrestrained passengers fall off a moving motor vehicle.

In a roundtable hearing, STAYSAFE was able to confirm the need for reconsideration and amendment to both criminal and road transport legislation regarding the carriage of unrestrained or unprotected passengers on motor vehicles.

STAYSAFE also was able to place the incidence of an unusual activity—car surfing and the carriage of unrestrained or unprotected passengers on motor vehicles—within the more general context of passengers being conveyed by motor vehicles. STAYSAFE identified that there are permitted circumstances where passengers get into or out of moving vehicles, or travel on moving vehicles within a road environment—garbage collection, materials recycling, road and pavement maintenance, etc..

STAYSAFE is pleased that amendments to the Crimes Act 1900 s.52A have already been enacted.

Chairman's Foreword

STAYSAFE is concerned that the Roads and Traffic Authority's request for advice regarding the need for amendments to the road transport legislation is still unanswered, well over a year since it was forwarded to national authorities responsible for the Australian Road Rules.

Acknowledgements

I am grateful for the contributions of my colleagues on the STAYSAFE Committee, and note, in particular, the concerns of Mr David Barr MP, Member for Manly, and Mr Daryl Maguire MP, Opposition Whip and Member for Wagga Wagga, who brought their concerns to STAYSAFE following deaths from car surfing in their local areas in September 2003. The STAYSAFE Committee is at its best when it works in a collegiate and bipartisan way, and this inquiry has demonstrated this to the full.

The STAYSAFE Committee is grateful for the assistance of its secretariat, in particular, Mr Ian Faulks, Committee Manager, who arranged for the participation of the government agencies in the roundtable discussion and who prepared this report. Mr Faulks is assisted by his very capable staff: Mr Jim Jefferis, Project Officer, and Ms Millie Yeoh and Ms Ashika Cyril, Assistant Committee Officers.

List of Recommendations

RECOMMENDATION 1:

The Attorney General, in consultation with the Minister for Police and the Minister for Roads, continue to review the provisions of the Crimes Act 1900 s.52A to ensure that investigating police and prosecution authorities are able to deal with drivers of motor vehicles who have been involved in incidents where an unrestrained passenger riding on the vehicle has been killed or injured.

RECOMMENDATION 2:

The Minister for Roads ensure that advice is obtained regarding the effectiveness of the Australian Road Rules in dealing with incidents of car surfing and the carriage of unrestrained passengers on motor vehicles.

RECOMMENDATION 3:

The Minister for Roads document the nature of the delays in obtaining advice regarding the effectiveness of the Australian Road Rules in dealing with incidents of car surfing and the carriage of unrestrained passengers on motor vehicles, and forward a report to the Australian Transport Council.

RECOMMENDATION 4:

The WorkCover Authority, in consultation with the Roads and Traffic Authority, and other agencies and organisations, review the circumstances where persons engaged in work get on and off, or into and out of, moving vehicles, and develop interventions to minimise risk and improve safety, as appropriate (e.g., by redesign of the vehicle body and equipment, publication of educational materials, conduct of safety programs, etc.).

RECOMMENDATION 5:

The Roads and Traffic Authority, in consultation with New South Wales Police and other agencies and organisations, develop advisory materials to address the risks associated with car surfing and the carriage of unrestrained passengers on motor vehicles.

RECOMMENDATION 6:

The Minister for Roads and Chief Executive, Road and Traffic Authority, ensure that:

- (a) submissions forwarded to STAYSAFE are complete and unexpurgated; and
- (b) indicate where confidentiality of a document, or part of a document, included in a submission is to be considered.

INTRODUCTION

- 1.1 This report documents STAYSAFE's review of the criminal and road transport law relating to the practice known as car surfing, and assesses the implications for road safety policy and practice and the prosecution of criminal and traffic offences through the Courts.
- 1.2 Car surfing is the name given to the dangerous activity of young people that can cause severe injuries or death. Car surfers sit and hang on to, or stand on top of, moving cars and utes as though they were 'surfing'. We might call such people 'temporary Australians' because of the very recklessness and dangerousness of their actions. Sometimes this is done as a game or challenge to see who can stay on the longest and land on your feet when the car or ute suddenly stops or turns. People ride on the bonnet, roof, or boot lid of moving cars, stand up and balance in the tray of utes, or hold to or be towed by vehicles while skateboarding or roller blading. In some instances, people engaging in car surfing leap from one moving vehicle to another.
- 1.3 Injuries from car surfing occur so quickly that there is no time to try to break the impact, and typically include severe head injuries such as skull fractures and intracranial haemorrhage, as well as major bruising and abrasions to the face, hands and legs. The outcomes of head injury are such that the individuals involved, and the community, bear a significant cost in treatment, rehabilitation, and long term disability.
- 1.4 Car surfing has been a feature of hoon behaviour at Bachelor & Spinster (B & S) balls and such like in the country for some time, but seems to have been given a new lease of life as a result of stunt depictions in movies such as *Matrix Revisited*, *Jackass* and *Teen Wolf*. Some popular computer games on PlayStation and xBox also feature characters that can be played to engage in car surfing behaviours.
- 1.5 In a brief review by STAYSAFE—which by no means is comprehensive—several deaths and instances of severe head injury were identified in New South Wales for just 2003.
- 1.6 In 1999, several medical researchers in the Hunter area wrote a paper published in the Medical Journal of Australia reporting on the potential head trauma consequential to car surfing (or 'ute surfing' as they termed it). This seems to be the only Australian study that has been reported (see Allan, Spittaler, & Christie, 1999). Prior to that report, only other reports on car surfing were published, both during the 1990's (Hooft & van de Voorde, 1994; Kohr, 1992).
- 1.7 STAYSAFE's action follows individual STAYSAFE Committee Member's concerns about inappropriate behaviour that has resulted in deaths and injuries. In particular, the deaths of two men in September 2003, one at Balgownie Heights in the Manly area, and the other at Wagga Wagga in the Riverina, prompted the expression of concern by local members in those areas.

Introduction

- 1.8 The issue of car surfing will be examined in the context of the effective dealing with unrestrained passengers in or on motor vehicles. The safety benefits of providing for, and ensuring, the use of passenger restraints in motor vehicles are well known. Equally well known is the incidence and severity of injury to unrestrained passengers in motor vehicle crashes, either where no restraints are available, or where passengers do not use restraints.
- 1.9 STAYSAFE requested that the Attorney General, the Minister for Roads, the Minister for Police, and the Special Minister of State and Minister for Commerce, nominate representatives to attend a public hearing and give evidence on this matter in a general, round-table format. STAYSAFE has used this format on a number of occasions where the matter at hand is a discrete issue and where benefit can be gained by providing a forum where all of the parties can listen and respond to the evidence of their colleagues.
- 1.10 The representatives provided expert comment regarding car surfing, including discussion of issues such as:
 - youth and the use of motor vehicles
 - traffic policing and crash investigation
 - criminal and traffic law regarding car surfing and unrestrained vehicle passengers
 - insurance issues associated with car surfing and the carriage of unrestrained passengers
 - the challenge of dealing with unrestrained passengers in or on motor vehicles
 - the circumstances where vehicle passengers may be required to work on platforms or open trays of vehicles without a restraint, and
 - social equity issues associated with carriage of more passengers than the available number of restraint devices, particularly with regard to rural and remote communities.
- 1.11 Prior to the round-table hearing, STAYSAFE had discussions with the Government on the issue of car surfing.
- 1.12 The following chapters examine the matters addressed in the roundtable hearing:
 - The criminal law relating to car surfing and riding unrestrained on a motor vehicle;
 - The road transport law relating to car surfing and riding unrestrained on a motor vehicle;
 - General issues of risk and safety related to car surfing and riding unrestrained on a motor vehicle
- 1.13 It was STAYSAFE's expectation that amending legislation with supportive public education was to be expected following the public hearing.

THE CRIMINAL LAW RELATING TO CAR SURFING AND RIDING UNRESTRAINED ON A MOTOR VEHICLE

- 2.1 The primary source for criminal law relating to car surfing and riding unrestrained on a motor vehicle is Section 52A of the Crimes Act 1900. This section defines offences that are specific to the driver of a motor vehicle. Under its provisions, an accused person may be liable to be convicted of the offence if the death of another person occurred as a result of a collision with the vehicle driven by the accused, in circumstances where the driver was under the influence of alcohol or a drug or was driving in a manner dangerous to the public.
- 2.2 Section 52A of the Crimes Act 1900 s.52A provides that a person is guilty of the offence of dangerous driving occasioning death or grievous bodily harm if the vehicle driven by the person is, first, involved in an impact occasioning the death or grievous bodily harm of another person, second, at the time of the impact the person was driving the vehicle, and third, the person was driving the vehicle in a manner dangerous to another person or persons. In terms of the element that there be an impact, "impact" is defined as a situation where there is an impact between any object and the vehicle, person in the vehicle, or in a situation where the vehicle overturns or leaves the road while the person is being conveyed in or on that vehicle.
- 2.3 Where death or serious injury arise from car surfing, the definition of impact restricts the prosecution of the driver involved, as noted by witnesses representing the Attorney General's Department and the New South Wales Police:

Mr GIBSON MP (CHAIRMAN): So section 52A only applies if there is impact?

Mr DARMODY: Yes.

Mr GIBSON MP (CHAIRMAN): If the third person falls off and there is no impact, there is no breaking of the law?

Mr DARMODY: There has to be an impact between the vehicle and the person or object, or "impact" is also defined to include a situation where a vehicle leaves the road or overturns.

....

Mr BARR MP (STAYSAFE): Impact would include, I take it, running over a person who has fallen off the vehicle. Would that be correct? Would that be an impact?

Senior Sergeant JENKINS: That would certainly be deemed an impact because there is a physical impact between the vehicle and the person. If the person just fell off and impacted with the road it is not covered under the six definitions as per section 52A. That is a problem that has been experienced in the past. What we have to do then is look at other legislation that we may have and unfortunately the degree of criminal negligence may not meet the standard required for, if

there was a death, a manslaughter charge, if there is grievous bodily harm, a negligent act causing grievous bodily harm. We may then only have to revert to a summary offence, which is negligent driving occasioning death or grievous bodily harm, but then we need the incident to have occurred on a road or a road related area. If it does not occur on a road or road related area there is no deemed impact and there is insufficient evidence to support a further criminal charge, no action can be taken.

Mr BARR MP (STAYSAFE): So we need to tighten up things in relation to location as well as the whole issue of impact?

Senior Sergeant JENKINS: Location, impact. Impact is certainly an area that needs to be reviewed.

Mr GIBSON MP (CHAIRMAN): So if the police are called to a situation in which there has been an accident, what is the procedure if somebody has been car surfing? How do you define, I suppose, if somebody is going to be charged?

Senior Sergeant JENKINS: Basically what occurs is that the local police will attend the scene and they will make an assessment. In an area that is covered or serviced by a crash investigation unit, they may be called to the scene and we conduct a full investigation into the collision. Now if a person is on the vehicle, and it may not have originally started out as a deliberate car surfing incident, there may have been someone just sitting on the vehicle at a party, whatever, and the driver decides to leave, we have to then look at the manner in which they drove their vehicle so that we can satisfy the courts that the person was driving in a manner dangerous or at a speed dangerous or under the influence of alcohol or drugs and that that directly related to the person falling from the vehicle. (Evidence before STAYSAFE, Monday 5 December 2003, pages 6-7)

2.4 Police witnesses further commented:

Mr BARTLETT MP (STAYSAFE): Given we make recommendations for things to change, what would you like to change?

Senior Sergeant JENKINS: From a crash investigation perspective, and I suppose therefore a police enforcement perspective, sir, the amendments to section 52A, which may actually have already started, I am not sure, including impact. At the moment, if I am a pedestrian and something falls off a vehicle and hits me and kills me, I can charge the driver because I have had an impact with something falling from the vehicle. I could not charge the driver if it was a person falling from the vehicle. So certainly a broadening of the definition or adding the definition of impact by a person falling, and even another one of body protruding, which I believe has been recommended at this stage. This Committee's backing of those would certainly assist us and at least give us a little bit more to look at to cover these instances.... (Evidence before STAYSAFE, Monday 5 December 2003, page 17)

2.5 Later, it was stated:

Mr DARMODY: I might just indicate in relation to the question of impact that it is a matter which has been raised with the Attorney General by the Director of Public Prosecutions at an earlier stage. I understand the Attorney General does

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have a proposal in relation to it. I cannot go any further in relation to it at the moment, but the matter has received some consideration and there is a proposal in existence.

Mr Gibson (CHAIRMAN): The problem has been there for 20 years and when we raise it everyone has a proposal in the pipeline. If there is nothing further that anyone wishes to raise, I would like to thank everyone for their attendance. It has been enlightening to find that we have a problem here that we can hopefully clear up fairly quickly for the benefit of young people who we can, through education and enforcement, discourage from continuing the practice of car surfing. (Evidence before STAYSAFE, Monday 5 December 2003, page 18)

- 2.6 In March 2004, the Crimes Legislation Amendment Act 2004 Schedule 4 introduced the changes discussed in the round table hearing before STAYSAFE:

[1] Section 52A Dangerous driving: substantive matters

Insert after section 52A (5) (f):

- (g) the person falling from the vehicle, or being thrown or ejected from the vehicle, while being conveyed in or on the vehicle (whether as a passenger or otherwise),
(h) an impact between any object (including the ground) and the person, as a consequence of the person (or any part of the person) being or protruding outside the vehicle, while the person is being conveyed in or on the vehicle (whether as a passenger or otherwise).

(These changes also applied to dangerous navigation offences under Section 52B of the Crimes Act 1900.)

- 2.7 Section 52A of the Crimes Act 1900 now reads:

52A Dangerous driving: substantive matters

(1) Dangerous driving occasioning death A person is guilty of the offence of dangerous driving occasioning death if the vehicle driven by the person is involved in an impact occasioning the death of another person and the driver was, at the time of the impact, driving the vehicle:

- (a) under the influence of intoxicating liquor or of a drug, or
(b) at a speed dangerous to another person or persons, or
(c) in a manner dangerous to another person or persons.

A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

(2) Aggravated dangerous driving occasioning death A person is guilty of the offence of aggravated dangerous driving occasioning death if the person commits the offence of dangerous driving occasioning death in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.

(3) Dangerous driving occasioning grievous bodily harm A person is guilty of the offence of dangerous driving occasioning grievous bodily harm if the vehicle driven by the person is involved in an impact occasioning grievous bodily harm to another person and the driver was, at the time of the impact, driving the vehicle:

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- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to another person or persons or
- (c) in a manner dangerous to another person or persons

A person convicted of an offence under this subsection is liable to imprisonment for 7 years.

(4) Aggravated dangerous driving occasioning grievous bodily harm A person is guilty of the offence of aggravated dangerous driving occasioning grievous bodily harm if the person commits the offence of dangerous driving occasioning grievous bodily harm in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 11 years.

(5) When vehicle is involved in impact—generally For the purposes of this section, the circumstances in which a vehicle is involved in an impact occasioning the death of, or grievous bodily harm to, a person include if the death or harm is occasioned through any of the following:

- (a) the vehicle overturning or leaving a road while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise),
- (b) an impact between any object and the vehicle while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise),
- (c) an impact between the person and the vehicle,
- (d) the impact of the vehicle with another vehicle or an object in, on or near which the person is at the time of the impact,
- (e) an impact with anything on, or attached to, the vehicle,
- (f) an impact with anything that is in motion through falling from the vehicle,
- (g) the person falling from the vehicle, or being thrown or ejected from the vehicle, while being conveyed in or on the vehicle (whether as a passenger or otherwise),
- (h) an impact between any object (including the ground) and the person, as a consequence of the person (or any part of the person) being or protruding outside the vehicle, while the person is being conveyed in or on the vehicle (whether as a passenger or otherwise).

(6) When vehicle is involved in causing other impacts For the purposes of this section, a vehicle is also involved in an impact occasioning the death of, or grievous bodily harm to, a person if:

- (a) the death or harm is occasioned through the vehicle causing an impact between other vehicles or between another vehicle and any object or person or causing another vehicle to overturn or leave a road, and
- (b) the prosecution proves that the vehicle caused the impact.

(7) Circumstances of aggravation In this section, "circumstances of aggravation" means any circumstances at the time of the impact occasioning death or grievous bodily harm in which:

- (a) the prescribed concentration of alcohol was present in the accused's blood, or
- (b) the accused was driving the vehicle concerned on a road at a speed that exceeded, by more than 45 kilometres per hour, the speed limit (if any) applicable to that length of road, or
- (c) the accused was driving the vehicle to escape pursuit by a police officer, or
- (d) the accused's ability to drive was very substantially impaired by the fact that the accused was under the influence of a drug (other than intoxicating

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liquor) or a combination of drugs (whether or not intoxicating liquor was part of that combination).

(8) Defences It is a defence to any charge under this section if the death or grievous bodily harm occasioned by the impact was not in any way attributable (as relevant):

- (a) to the fact that the person charged was under the influence of intoxicating liquor or of a drug or a combination of drugs, or
- (b) to the speed at which the vehicle was driven, or
- (c) to the manner in which the vehicle was driven.

(9) Definitions In this section:

"drug" has the same meaning as it has in the Road Transport (Safety and Traffic Management) Act 1999 .

"object" includes an animal, building, structure, earthwork, embankment, gutter, stormwater channel, drain, bridge, culvert, median strip, post or tree.

"prescribed concentration of alcohol" means a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood.

"road" means:

- (a) a road or road related area within the meaning of the Road Transport (General) Act 1999 (other than a road or road related area that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act), or
- (b) any other place.

"vehicle" means:

- (a) any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by volatile spirit, steam, gas, oil, electricity, or by any other means other than human or animal power, or
 - (b) a horse-drawn vehicle,
- whether or not it is adapted for road use, but does not mean a vehicle used on a railway or tramway.

2.8 STAYSAFE is pleased with the response of the Attorney General to the identification of a need to amend the Crimes Act 1900 s.52A to enable investigating police and prosecution authorities to deal with drivers of motor vehicles who have been involved in incidents where an unrestrained passengers riding on the vehicle has been killed or injured. However, as noted in evidence heard before STAYSAFE, it has taken a number of years for these amendments to be enacted.

2.9 Accordingly, STAYSAFE recommends that the Attorney General, in consultation with the Minister for Police and the Minister for Roads, should continue to review the provisions of the Crimes Act 1900 s.52A, on a regular basis, to ensure that investigating police and prosecution authorities are able to deal with drivers of motor vehicles who have been involved in incidents where an unrestrained passengers riding on the vehicle has been killed or injured.

RECOMMENDATION 1:

The Attorney General, in consultation with the Minister for Police and the Minister for Roads, continue to review the provisions of the Crimes Act 1900 s.52A to ensure that investigating police and prosecution authorities are able to deal with drivers of motor vehicles who have been involved in incidents where an unrestrained passenger riding on the vehicle has been killed or injured.

THE ROAD TRANSPORT LAW RELATING TO CAR SURFING AND RIDING UNRESTRAINED ON A MOTOR VEHICLE

- 3.1 The road transport law relating to travelling in or on motor vehicles is contained in the Australian Road Rules Part 16 (Rules 263-272).

Australian Road Rules

- 3.2 For many years traffic law was principally found in the Traffic Act 1909 and its regulations: the Motor Traffic Regulations 1935; the General Traffic Regulations 1916 and the General Traffic (Pedestrian) Regulations 1937.
- 3.3 On 1 December, 1999 (the nationally agreed commencement date for the Australian Road Rules), the Traffic Act 1909 and its regulations were repealed by the Road Transport Legislation Amendment Act 1999 and replaced in New South Wales by new traffic legislation including the adoption of the Australian Road Rules by reference.
- 3.4 The Australian Road Rules were developed as part of the national road transport law. As the power to make laws regulating road transport falls within the constitutional power of State and Territory Parliaments, the Heads of State and Territory governments and the Commonwealth entered into Road Transport Agreements in 1991 (Heavy Vehicles Agreement) and 1992 (Light Vehicles Agreement). The objective of the Agreements was to develop uniform or consistent national road transport law to improve road safety, transport efficiency and reduce the costs of administration of road transport.
- 3.5 With the commencement of the new traffic legislation in 1999, the adoption of the national road transport law developed to that date was effectively completed in New South Wales.
- 3.6 Current traffic legislation can be found in the Road Transport (General) Act 1999 and the Road Transport (Safety and Traffic Management) Act 1999 and the regulations made under those Acts:
- The Road Transport (General) Act 1999 and the Road Transport (General) Regulation 1999 provide general administrative arrangements for safety and traffic management and enforcement and compliance powers. The Road Transport (General)(Short Descriptions and Penalty Notice Offences) Regulation 1999 provides short descriptions for the issue of infringement notices or court prosecutions and prescribes offences as penalty notice offences and the authorised officers to issue the notices.
 - The Road Transport (Safety and Traffic Management) Act 1999 and the Road Transport (Safety and Traffic Management)(Road Rules) Regulation 1999 and the Road Transport (Safety and Traffic Management)(Driver Fatigue)

Regulation 1999 contain the rest of the traffic legislation, in particular the adoption of the Australian Road Rules and New South Wales road rules.

The new regulations were first published in the New South Wales Government Gazette on Friday, 26 November 1999.

3.7 Rule 268 states:

268 How persons must travel in or on a motor vehicle

(1) A person must not travel in or on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods.

(2) A person must not travel in or on a part of a motor vehicle that is a part designed primarily for the carriage of goods if the part is:

- (a) not enclosed (*Note Enclosed* is defined in subrule (7)); or
- (b) declared under another law of this jurisdiction to be a part of the vehicle in or on which persons must not be carried.

(3) A person must not travel in or on a motor vehicle with any part of the person's body outside a window or door of the vehicle, unless the person is the driver of the vehicle and is giving a hand signal:

- (a) for changing direction to the right in accordance with rule 50; or
- (b) for stopping or slowing in accordance with rule 55.

(4) The driver of a motor vehicle (except a bus) must not drive with a passenger if any part of the passenger's body is outside a window or door of the vehicle.

(5) This rule does not apply to a person who is:

- (a) in or on a police or emergency vehicle; or
- (b) on a motor bike;
- (c) engaged in the door-to-door delivery or collection of goods, or in the collection of waste or garbage, in or on a motor vehicle that is not travelling over 25 kilometres per hour.

(6) This rule also does not apply to a person if:

- (a) the person is exempt from this rule under another law of this jurisdiction and is complying with the conditions (if any) of the exemption; or
- (b) the vehicle is exempt from this rule under another law of this jurisdiction.

(7) For this rule:

enclosed, for a part of a vehicle, means enclosed by:

- (a) the structure of the vehicle; or
- (b) a canopy, cage or other device fitted to the vehicle that is approved, for the *Australian Road Rules*, under another law of this jurisdiction.

3.8 Rule 269, relating to persons travelling in or on vehicles states:

269 Opening doors and getting out of a vehicle etc

The Road Transport law relating to Car Surfing and riding Unrestrained on a Motor vehicle

- (1) A person must not get off, or out of, a moving vehicle, unless the person is engaged in the door-to-door delivery or collection of goods, or in the collection of waste or garbage, and the vehicle is not travelling over 5 kilometres per hour.

Note 1 Vehicle is defined in rule 15.

Note 2 Rule 237 deals with persons getting on, or into, a moving vehicle.

- (2) Subrule (1) does not apply to a person getting off a bicycle or animal.

- (3) A person must not cause a hazard to any person or vehicle by opening a door of a vehicle, leaving a door of a vehicle open, or getting off, or out of, a vehicle.

- (4) The driver of a bus must not drive the bus unless the doors of the bus are closed

while the bus is moving.

Note Bus is defined in the dictionary.

- 3.9 While Rule 237, relating to pedestrian behaviour, states:

237 Getting on or into a moving vehicle

- (1) A person must not get off, or out of, a moving vehicle, unless

(a) the person is engaged in the door-to-door delivery or collection of goods, or in the collection of waste or garbage, and is required to get in or out of the vehicle, or on or off the vehicle, at frequent intervals; and

(b) the vehicle is not traveling at a speed over 5 kilometres per hour.

- (2) This rule does not apply to a person getting on or off a bicycle or animal.

Note 1 Bicycle is defined in the dictionary.

Note 2 Rule 269(1) prohibits a person getting off, or out of, a moving vehicle.

- 3.10 STAYSAFE also notes that it could be reasonably held that a passenger riding on the bonnet of a vehicle while it is being driven, is in breach of Australian Road Rule 272:

272. Interfering with the driver's control of the vehicle etc

A passenger in or on a vehicle must not:

- (a) interfere with the driver's control of the vehicle; or
(b) obstruct the driver's view of the road or traffic.

- 3.11 STAYSAFE notes that this Rule does seem, in its construction, to acknowledge the likelihood of a person being carried on a vehicle in such a way as to obstruct the driver's view of the roadway or of other motor vehicles or road users.

Road Transport (Safety And Traffic Management) (Road Rules) Regulation 1999

- 3.12 The Road Transport (Safety And Traffic Management) (Road Rules) Regulation 1999 - Section 28 defines how persons must travel in or on a motor vehicle:

28 How persons must travel in or on a motor vehicle

- (1) For the purposes of rule 268 (6) of the *Australian Road Rules*, a person is exempt from rule 268 if:
- (a) in all the circumstances, there is no reasonable danger of the person falling or being thrown from the vehicle or being injured because of the person travelling in a manner prohibited by that rule, or
 - (b) the person is authorised not to comply with that rule under subclause (2).

(2) The Authority may:

- (a) authorise a person, by order in writing, not to comply with rule 268 of the *Australian Road Rules* for the purpose of allowing sporting or similar events to be filmed or facilitating any other special event, and
- (b) impose conditions on any such authorisation.

(3) For the purposes of rule 268 (2) (b) of the *Australian Road Rules* the boot of a motor vehicle is declared to be a part of the motor vehicle, in or on which a person must not be carried.

(4) Despite subclause (1), a person is not exempt from rule 268 (2) of the *Australian Road Rules* if the person is in or on the boot of a motor vehicle.

Note: Clause 47D sets out an additional provision to rule 268 of the *Australian Road Rules* prohibiting a driver from driving certain motor vehicles on a road with a person in or on the boot of such a vehicle.

3.13 The Road Transport (Safety And Traffic Management) (Road Rules) Regulation 1999 - Division 3 - Driver and passenger safety (specifically Sections 45, and 47B-47D) further defines aspects of the carriage of passengers in or on motor vehicles:

45 Safety of persons on trailers

(1) The driver of a trailer on a road must not permit or allow any person to travel in or on any part of the trailer that is not a part designed primarily for the carriage of passengers or goods.

Maximum penalty: 20 penalty units.

(2) A person must not travel in or on any part of a trailer that is a part designed primarily for the carriage of goods if the part is not enclosed.

Maximum penalty: 20 penalty units.

(3) This clause does not apply to a person:

- (a) who is in or on an emergency vehicle, or
- (b) engaged in the door-to-door delivery or collection of goods, or in the collection of waste or garbage, in or on a trailer that is not travelling over 25km/h, or
- (c) if in all the circumstances, there is no reasonable danger of the person falling or being thrown from the trailer, or being injured, because of the person travelling in a manner prohibited by this clause.

(4) In this clause:

"enclosed", in relation to a part of a trailer, means enclosed by:

- (a) the structure of the trailer, or
- (b) a canopy, cage or other device fitted to the trailer that is of a kind approved for the purposes of this clause by the Authority.

47B Driving with unrestrained passengers

(1) The driver of a motor vehicle must not drive the vehicle on a road if any person (including the driver when there is more than one person in the vehicle) travelling in the vehicle is not wearing a seatbelt, or is not otherwise restrained, in accordance with the requirements (if any) applying to the person under this Regulation or Part 16 of the *Australian Road Rules*.

Maximum penalty: 20 penalty units.

Note: Rule 264 of the *Australian Road Rules* requires the driver of a motor vehicle to wear a seatbelt, but that offence will only apply to the driver when the driver alone is not wearing a seatbelt.

(2) Subclause (1) does not apply to the driver of a taxi or bus.

(3) Subclause (1) does not apply to a driver of a motor vehicle to whom clause 47C applies.

47C Restraint of drivers who are holders of learner licences or provisional P1 or P2 licences and their passengers

(1) This clause applies to the driver of a motor vehicle (other than a motor bike) who is the holder of a learner licence (within the meaning of the Road Transport (Driver Licensing) Act 1998) or a provisional P1 or P2 licence.

(2) The driver of a motor vehicle to whom this clause applies must not drive the motor vehicle on a road unless:

(a) the driver and each passenger who is 16 years old or older occupies a seating position fitted with a suitable seatbelt and is wearing the seatbelt properly fastened and adjusted, and

(b) each passenger who is at least 1 year old but under 16 years old occupies a seating position that is fitted with an approved child restraint or suitable seatbelt and is restrained by the approved child restraint, or is wearing the seatbelt, properly fastened and adjusted,

(c) each passenger who is under 1 year old occupies a seating position that is fitted with an approved child restraint and is restrained by the suitable approved child restraint properly fastened and adjusted.

Maximum penalty: 20 penalty units

(3) A person who is 16 years or older must not travel in or on a motor vehicle (other than a motor bike) driven by the driver of a motor vehicle to whom this clause applies unless the person is occupying a seating position to which a suitable seat belt or approved child restraint device is fitted and the person is using the seat belt or restraint properly fastened and adjusted.

Maximum penalty: 20 penalty units.

(4) Subclauses (2) and (3) do not apply to a driver or a passenger of a motor vehicle if the driver or passenger belongs to a class of persons exempted from the application of the subclause by an order of the Authority.

47D Persons must not travel in the boot of a motor vehicle

The driver of a motor vehicle must not drive the motor vehicle on a road if any person is in or on the boot of the motor vehicle.

Maximum penalty: 20 penalty units.

- 3.14 These latter provisions of the Road Transport (Safety And Traffic Management) (Road Rules) Regulation 1999 were introduced following a multiple fatality crash in northern Sydney in mid-April 2003. A driver allowed seven passengers into her vehicle, a Volkswagen Golf hatchback, which became dangerously overloaded. The driver lost control of the vehicle in slippery conditions. The driver had travelled through a left hand bend and straightened out, preparing to enter a right hand bend, when she lost control and the vehicle left the road, bounced off a rock wall and crashed into a power pole, rear end first, in a cutting on Mona Vale Road at Ingleside. Two passengers travelling in the boot area were killed impact—one was thrown out of the vehicle—and the driver and five other passengers received varying injuries ranging in severity.
- 3.15 Following this crash, the Minister for Roads, the Hon. Carl Scully MP, indicated that he would bring in amendments to the road transport law in New South Wales that would forbid learner and provisional drivers from carrying unrestrained passengers, and also the road transport law for specifically ban drivers carrying passengers in the boots of cars. Under the current law, a person could travel in the goods compartment of a car if there is “no reasonable danger” of that person falling, being thrown or injured.
- 3.16 Interestingly, it was widely reported following the Ingleside crash that Mr Paul Gibson MP, STAYSAFE Chairman, had been advocating changes to seat belt legislation and laws relating the carriage of unrestrained passengers since at least 1998. Mr Gibson was quoted as saying:
- “... when he asked the Roads and Traffic Authority to change the law, it replied the law was quite adequate.
- “I remember making the point, ‘what if people wanted to sit on the bonnet or the roof or in the boot?’ It was a terrible anomaly”.
- 3.17 The Hon. Carl Scully MP, Minister for Roads, on 3 July 2003, in an answer to a Question Without Notice in the Legislative Assembly, commented:
- I believe that more needs to be done, as I said in the House the earlier this week. We need to do much more for road safety and we intend to do it. Recently I announced two decisions—one concerning the strengthening of the prohibition on passengers travelling in the boots of vehicles, and another concerning a restriction on the number of passengers that learners or P1 or P2 licence holders could carry relative to the number of available seatbelts. Those restrictions will commence on 11 July, and I think they are important initiatives. (Minutes of the Proceedings of the New South Wales Legislative Assembly, 3 July 2003, p.2857)
- 3.18 To conclude, the road transport law in New South Wales concerning the carriage of unrestrained passengers generally, and incidents of car surfing specifically, is somewhat unclear, both for the driver of a motor vehicle and any passenger

travelling in or one that vehicle, depending on the location where the vehicle is being driven, the conditions under which the vehicle is being used, and the part of the vehicle where the passenger is being conveyed.

Discussion during the roundtable hearing

- 3.19 STAYSAFE queried witnesses regarding the application of the road transport law to incidents of car surfing:

Mr GIBSON MP (CHAIRMAN): ... What is the law now regarding the carriage of unrestrained passengers in the passenger compartments of motor vehicles?

Inspector EVANS: Obviously it depends on whether the driver is a novice driver or a fully-fledged driver. We have at present legislation which insists that novice drivers and L-plate drivers have any people within their vehicles restrained by a seat belt. At this point in time the legislation does not make that same restriction on fully-fledged drivers. There is also the ability to carry people within the goods section of vehicles and indeed the restriction is that they are properly encased within the vehicle. There is no mention of any restraint being required.

Mr GIBSON MP (CHAIRMAN): Would anyone like to add to that?

Dr JOB: That is also my understanding.

Mr GIBSON MP (CHAIRMAN): Can you review the law as it now applies to the carriage of unrestrained passengers in the boot or luggage compartments of motor vehicles?

Inspector EVANS: In regards to what sort of review, sir?

Mr GIBSON MP (CHAIRMAN): Well, as far as unrestrained passengers sitting in the boot or on the top of a motor vehicle or on the bonnet?

Inspector EVANS: I can do that. Rule 268 talks about parts of persons' bodies protruding from the vehicle, the extremities. However, it would appear that it only talks about parts of bodies, it does not talk about the whole body, and it talks about protruding from windows and doors.

The Hon. GEORGE SOURIS MP (STAYSAFE): And it is only when they protrude that it is of any relevance, so standing on the back of a ute or standing up in a ute but not protruding outside the ute--

Inspector EVANS: I believe, sir, if someone is standing up in the back of a ute the provision of the rule does not cover them. It talks about them being encased. If you are standing and you are of a reasonable height, your head would obviously be above the roof of the vehicle, so operationally police would certainly take some sort of action. However, if that person was sitting down in the back of the ute, I do not believe we would.

The Road Transport law relating to Car Surfing and riding Unrestrained on a Motor vehicle

The Hon. GEORGE SOURIS MP (STAYSAFE): So the proviso you made earlier about windows and so on does not restrain police interpreting the back of a ute as not being inside the vehicle?

Inspector EVANS: No.

Dr CARSELDINE: To further clarify that, what we are talking about here is Rule 268 of the Australian Road Rules, which is of course a national rule, and there is some doubt and conjecture about precisely what that rule means. It talks about it being an offence to have parts of the body protruding from the vehicle and there is some conjecture that having the whole body protruding from the vehicle is indeed covered under this law, as opposed to a limb, for example, protruding from the vehicle, and New South Wales has sought to have this clarified at a national level. At a meeting of the maintenance group of the Australian Road Rules, that is a group that looks at updating the Australian Road Rules nationally, in July last, New South Wales asked that this be clarified and the decision of that national meeting was that the Office of Legislative Drafting, that is the Federal body that drafts this law, should either confirm that Rule 268 does cover a person who is entirely outside the vehicle or, if it does not, amend that rule so that it would cover that and that is where the matter lies at the moment. We have not heard from the Office of Legislative Drafting yet what its opinion on that is, but it is being dealt with at the national level to clarify that point.

Mr GIBSON MP (CHAIRMAN): As the law stands today, it is apparent that it could be quite legal to stand on the bonnet of a car or on the boot of a car or on the roof of a car?

Dr CARSELDINE: Well, let me say, it is certainly not legal to stand on the boot of a car because an amendment that we made some time ago made it clear that it is an offence to stand on the boot of a car. You will recall that it was not that long ago that we made an amendment to the rules that made it an offence to carry a person in or on the boot of a vehicle, so that certainly is an offence. As for other parts of the vehicle, there is some doubt about whether Rule 268 does apply to a person whose body is entirely outside the vehicle and it is just a matter of interpreting the words that are in the law as to whether having the entire body outside the vehicle is covered by the wording of the legislation.

Mr GIBSON MP (CHAIRMAN): So when we change the law to make it illegal to stand on the boot, why would we not have included the bonnet and the roof of the car at the same time?

Dr CARSELDINE: The direction that we had at the time was to deal with the boot issue. It was specifically to deal with the issue of carrying people in or on the boot, so that is as far as the amendment went at that time. The roof and other parts of the vehicle were not included in that amendment.

Mr BARR MP (STAYSAFE): Inspector Evans, I think you were suggesting that someone at the back of a ute who was not standing up and whose head was not over the roofline you would not take action on. Is that correct?

Inspector EVANS: Basically, sir, that is the position. We are looking at it from the way the legislation is worded.

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Mr BARR MP (STAYSAFE): We do require, for instance, dogs in the back of a ute to be restrained, but with unrestrained humans nothing happens. You would not take action against the driver of such a vehicle?

Inspector EVANS: I believe the legislation, as it is written at present, would preclude us from taking action because they are encased within the back of the vehicle. The legislation does talk about encasing the body of the person.

Mr BARR MP (STAYSAFE): So we value dogs more than humans, do we, in the back of a ute?

Inspector EVANS: Most certainly the New South Wales Police do not do that. We value everybody.

Mr GIBSON MP (CHAIRMAN): I suppose the question has to be: Is it legal? In a work-related sense, is it legal for people to transport other people to and from a site in the back of a ute?

Inspector EVANS: I believe, as long as they are encased within the construction of the vehicle, yes, sir.

Mr GIBSON MP (CHAIRMAN): One or 100?

Inspector EVANS: Obviously, sir, it would have to be determined how many people could be safely positioned in the vehicle, but if it was capable of 100, more than likely.

Ms THOMAS: If I can interject, it may be legal under the road traffic legislation, but it is not legal under the occupational health and safety legislation in terms of employees or workers in the back of utes.

Mr BARR MP (STAYSAFE): But the police would not be covering that aspect, would they?

Ms THOMAS: No.

The Hon. GEORGE SOURIS MP (STAYSAFE): So the two laws that conspire against that are, firstly, the one where there are no protrusions and, secondly, the seat belt law which is that they are to be employed where fitted, so if they are not fitted in the back then you do not have to have a seat belt, therefore you do not have to be restrained in the back tray of a ute?

Inspector EVANS: That is correct and, by the legislation specifically talking about windows and doors, we also drop out. I take note of the Chairman's reference in regard to some films that have come out recently. No doubt we have all seen the Hollywood film where the sunroof of the vehicle slides back and people stand out through the top. I do not think that a sunroof could be construed as a door or a window.

Mr GIBSON MP (CHAIRMAN): And that is called a "doggy", I believe. Is it legal to do a "doggy"?

Inspector EVANS: From my reading of that legislation, I think that it is not a door or a window, so therefore they could carry out that practice.

The Hon. GEORGE SOURIS MP (STAYSAFE): Why do you not deem it a window, because it is horizontal instead of vertical?

Inspector EVANS: Exactly that. Under the definition of the different types of configurations of a vehicle, I do not believe it falls within the definition of a door or a window, particularly when you look at what manufacturers call it. They do not call it a door or a window, they call it a sunroof.

The Hon. GEORGE SOURIS MP (STAYSAFE): And it is anything but a roof, of course.

Inspector EVANS: Exactly, it is a hole.

Dr JOB: I think there is one caveat on this. My understanding is that if there is an available restraint and a seating position with a restraint then you have to occupy that, so I suppose if you are correct in identifying that this does not constitute a door or a window and you had enough occupants in the rest of the vehicle to have all of the restraints taken up - but that would be a requirement. Someone in the vehicle with only one other person could not do it; they would be obliged to use the available restraint.

Mr GIBSON MP (CHAIRMAN): Surely that is part of the law that we should clear up, though, once and for all. Could I get on to the matter that brought us here today: What do we know about the incidence of car surfing from a police point of view?

Inspector EVANS: Clearly, sir, it seems to be a practice that is becoming prevalent in some areas. Indeed, I note where you talk in your release about practices at B & Ss [Bachelors and Spinsters Balls] and those types of things. It would appear that this type of occurrence does happen at different types of gatherings like that and that is why police have stepped up where B & Ss are in progress, we certainly pay very close scrutiny to those types of things. Also ute musters and those types of things. For the ute muster that was held in October [2003] we put a particularly strong task force in to cover the activities because of occurrences that had happened in the past.

Mr GIBSON MP (CHAIRMAN): Do they actually jump out of the back of one ute into another when they are driving at 100 km/h and that type of thing?

Inspector EVANS: I have had incidents like that related back to me, yes; that is the case.

Mr GIBSON MP (CHAIRMAN): Is that legal under the law? Are there any specifics in law which cover that?

Inspector EVANS: I think that is open to conjecture insofar as where the occurrence occurs. If it is not on a road or road related area it certainly could cause difficulty for the police to carry out any type of enforcement action.

Mr GIBSON MP (CHAIRMAN): Can I throw in a hypothetical: Driving down Parramatta Road or on the M2, you have got two vehicles and the police actually see somebody jump from the back of a ute into another car. Do you say the police cannot take any action, or can they?

The Road Transport law relating to Car Surfing and riding Unrestrained on a Motor vehicle

Inspector EVANS: Hypotheticals are always hard to answer because obviously police have to gather the evidence to formulate an offence. Clearly, if police saw a practice like that, they would stop both vehicles and certainly speak to both drivers and, depending on what the ingredients were of that, police may very well take action. It may be action under other bits of legislation; it could be negligent driving or whatever. There is just no hard and fast answer I can give you in regards to a hypothetical question.

Mr GIBSON MP (CHAIRMAN): If you have a 50 km/h speed limit and the police see somebody doing 60 km/h, he gets booked, he is pulled up, but there is no black and white if somebody is jumping from the tray of one car into another car?

Inspector DUNCAN: Could I say there may in fact be. Rule 269 says a person must not get off or out of a moving vehicle, so that may in fact cover that situation, or at least some of those situations.

Mr GIBSON MP (CHAIRMAN): Does Rule 269 also cover somebody, say, on roller blades or a skateboard being towed behind a car or a motorbike?

Inspector DUNCAN: I am sorry, offhand I cannot say, but if skateboards and roller blades are not vehicles, no, it would not cover them, then probably they are not, but I just have not checked the definition of vehicles.

The Hon. GEORGE SOURIS MP (STAYSAFE): Are they prohibited from using a road?

Inspector DUNCAN: Sorry sir, I cannot answer that offhand either. I think so, but I cannot say.

The Hon. GEORGE SOURIS MP STAYSAFE): Specifically being towed is one thing, but is it not illegal to simply use a skateboard on a road? Forget the other vehicle, just yourself?

Inspector EVANS: It depends on the type of road, sir. If the road has markings on it, lines delineated on it, you cannot use a skateboard.

The Hon. GEORGE SOURIS MP (STAYSAFE): What would be the toll on the M4 if I skateboarded through the tollgate?

Inspector EVANS: I do not know, sir, you would have to ask the Roads and Traffic Authority that.

Mr BARR MP (STAYSAFE): Just to come back to Rule 269, are there any penalties for breach?

Inspector DUNCAN: Yes, there is a general penalty for breach of the rules and the general penalty for a breach of the rules is 20 penalty units. (Evidence before STAYSAFE, 5 December 2004, pages 4-7)

3.20 Later in the hearing, the following discussion occurred:

Mr BARTLETT MP (STAYSAFE): Given we make recommendations for things to change, what would you like to change?

The Road Transport law relating to Car Surfing and riding Unrestrained on a Motor vehicle

Senior Sergeant JENKINS: From a crash investigation perspective, and I suppose therefore a police enforcement perspective, sir, the amendments to section 52A, which may actually have already started, I am not sure, including impact. At the moment, if I am a pedestrian and something falls off a vehicle and hits me and kills me, I can charge the driver because I have had an impact with something falling from the vehicle. I could not charge the driver if it was a person falling from the vehicle. So certainly a broadening of the definition or adding the definition of impact by a person falling, and even another one of body protruding, which I believe has been recommended at this stage. This Committee's backing of those would certainly assist us and at least give us a little bit more to look at to cover these instances. Maybe if they are there then the deterrent aspect might get out.

The Hon. GEORGE SOURIS MP (STAYSAFE): Amend the seat belt laws as well, the restraint laws?

Senior Sergeant JENKINS: Yes. I am not au fait with those, I am highly specialised in this area, but I think any amendment to a law that can assist in promoting safety has certainly got to be of benefit to anyone.

Dr CARSELDINE: From the Roads and Traffic Authority's perspective, clearly we are interested in having the matter cleared up. We have already asked the Office of Legislative Drafting to either confirm that the behaviour that we describe as car surfing is already covered under Rule 268 or draft an amendment if it is not, so we are eager to have that cleared up, and if the office, for whatever reason, cannot provide that information within a reasonable period of time I understand that the Government is prepared to clarify that rule so that that would clear up that problem.

Mr GIBSON MP (CHAIRMAN): What is a period of time that you think is okay? It has been six months now.

Dr CARSELDINE: We would have to get back to the Office of Legislative Drafting.

Mr GIBSON MP (CHAIRMAN): And during that time there have been another two people killed.

Dr CARSELDINE: We could contact the office and find out where they are with consideration of that information.

The Hon. GEORGE SOURIS MP (STAYSAFE): Which office, Parliamentary Counsel?

Dr CARSELDINE: No, we are talking about a Federal office which is more or less the equivalent of our Parliamentary Council, this being a national law that we are talking about, but we have been considering how this law could be tidied up so that it would put beyond doubt the issues that we have been discussing to date, so that there would be clarity both in the case of the car surfer and the driver of the vehicle, and here I am talking about Rule 268 sub-rules (3) and (4) which deal with that.

Mr GIBSON MP (CHAIRMAN): What are your thoughts as far as utilities and so on are concerned?

Dr CARSELDINE: This should help to clarify that because it talks about people who are external to the vehicle, so I think it would go some way to clearing up that.

Mr GIBSON MP (CHAIRMAN): And skateboarding behind cars and so on?

Dr CARSELDINE: I am not sure what the position is regarding that. I have not researched that particular area. I am not sure whether the Australian Road Rules already deal with somebody being towed. I would need to get some advice on that.

Mr BARR MP (STAYSAFE): It seems to me that we have to tighten up very considerably this issue of location and impact. It seems to me that those are the two major elements in this that need much closer scrutiny and much better tightening up.

Mr BARTLETT MP (STAYSAFE): Does anyone know of any other State's legislation in terms of this area? Is someone doing it better than we are now?

Dr CARSELDINE: All States have adopted the Australian Road Rules in one manner or another and so all States have been involved in these negotiations I am talking about of overcoming perceived problems with the Australian Road Rules.

Mr GIBSON MP (CHAIRMAN): In general?

Dr CARSELDINE: In general, but this is a specific issue that New South Wales raised, as I said before, in the July meeting and the National Road Transport Commission who oversees this work has asked the Office of Legislative Drafting to come back with a response.

Dr JOB: I think that what we are identifying is that it is a national road rule and ideally, of course, it would be better for all of Australia if we had a rule which covered it in every State. Nonetheless, there is a motivation within New South Wales to cover it given that we are not going to get a national designed law, as you say, with the speed we would like and I think this inquiry is a good first step towards sorting out how New South Wales takes the lead and handles this. (Evidence before STAYSAFE, Monday 5 December 2003, pages 17-18)

- 3.21 Earlier, STAYSAFE indicated that the road transport law in New South Wales concerning the carriage of unrestrained passengers generally, and incidents of car surfing specifically, was somewhat unclear, both for the driver of a motor vehicle and any passenger travelling in or one that vehicle, depending on the location where the vehicle is being driven, the conditions under which the vehicle is being used, and the part of the vehicle where the passenger is being conveyed.
- 3.22 STAYSAFE is concerned that despite the Roads and Traffic Authority requesting advice in July 2003 from the maintenance group of the Australian Road Rules—the group charged with updating the Australian Road Rules nationally—no response had been received six months later.

Mr GIBSON MP (CHAIRMAN): ... It is quite obvious that there is a flaw either in the law or in the interpretation of the law. The national body was contacted in June or July and still has not come back to the Roads and Traffic Authority at this stage. It is quite obvious that there is a problem. Some people would suggest that it is legal to car surf, it is legal to have 10 people riding in the back of a ute, it is legal to ride a skateboard down any main road, it is legal to hook up to the back of a truck on a surfboard and be pulled all over the highway. There are grey areas and they are areas that we should close up once and for all. If somebody is doing a "doggy" through the roof of a motor car, surely there has to be a law which says it is legal to do it or it is illegal to do it, and it is the same in relation to car surfing. I find it ludicrous that we have not got a law which says you cannot drive at 100 km/h down a main highway and jump from one ute into the back of another ute. All those areas are very grey areas, I do not think there is any definition that says that it is illegal to do these things and, if we are trying to do the right thing by road safety to the fullest extent, all those little laws have to be tidied up so that we all know where we are going. Surely if you have somebody car surfing in your car it should be an offence straight away. There is no obvious good that comes from somebody car surfing. (Evidence before STAYSAFE, 5 December 2004, page 12)

- 3.23 STAYSAFE requested that New South Wales ask again that these issues be clarified, and to pass on the advice prior to this report being completed.
- 3.24 Nine months after a second request being made there is still no response, either from the maintenance group of the Australian Road Rules or the Commonwealth Office of Legislative Drafting.
- 3.25 STAYSAFE recommends that the Minister for Roads act to ensure that advice is obtained regarding the effectiveness of the Australian Road Rules in dealing with incidents of car surfing and the carriage of unrestrained passengers on motor vehicles. It should be confirmed that Rule 268 does cover a person who is entirely outside the vehicle or, if it does not, the Commonwealth Office of Legislative Drafting should draft an amendment to Rule 268 so that car surfing and the carriage of unrestrained passengers on motor vehicles is clearly identified as a breach of the road transport law.

RECOMMENDATION 2:

The Minister for Roads ensure that advice is obtained regarding the effectiveness of the Australian Road Rules in dealing with incidents of car surfing and the carriage of unrestrained passengers on motor vehicles.

- 3.26 STAYSAFE views the major delay in gaining a response from the bodies associated with the maintenance and development of the national road transport law to be unwarranted and of significant concern.
- 3.27 STAYSAFE recommends that the Minister for Roads document the nature of the delays in obtaining advice regarding the effectiveness of the Australian Road Rules in dealing with incidents of car surfing and the carriage of unrestrained passengers on motor vehicles, and forward a report to the Australian Transport Council for its consideration

RECOMMENDATION 3:

The Minister for Roads document the nature of the delays in obtaining advice regarding the effectiveness of the Australian Road Rules in dealing with incidents of car surfing and the carriage of unrestrained passengers on motor vehicles, and forward a report to the Australian Transport Council.

GENERAL ISSUES OF RISK AND SAFETY RELATED TO CAR SURFING AND THE CARRIAGE OF UNRESTRAINED PASSENGERS ON A MOTOR VEHICLE

The nature and extent of car surfing activities

- 4.1 An important aspect of the roundtable discussion was to identify the nature and extent of car surfing and the carrying of unrestrained passengers on motor vehicles:

Mr BARTLETT MP (STAYSAFE): What you are talking about here then is extreme behaviour by a certain profile. Do we have any profile in terms of the people who are doing this? Are they all young males?

Senior Sergeant JENKINS: Usually, the experience that I have had is that they fit the bracket that is the well-known category for road trauma victims, which is the 18 to 25 year-old bracket. They are predominantly male, but there have been a couple of recent incidents where we have had females who have not only been the driver but have also been the surfer, for want of a better word.

Mr BARTLETT MP (STAYSAFE): Do we have any statistics at all on the number of instances we are talking about?

Senior Sergeant JENKINS: I do not know how the statistics are actually collected in regards to that field. There is not a specific car surfing field that I am aware of.

Mr BARTLETT MP (STAYSAFE): Is there a geographic location?

Senior Sergeant JENKINS: I think it is quite evenly spread between country and city areas.

The Hon. GEORGE SOURIS MP (STAYSAFE): So if we were to ask how many car surfing incidents, how many car surfing incidents involving a crash, how many car surfing incidents involving fatality occurred in New South Wales last year, there are no statistics?

Senior Sergeant JENKINS: I could not give you one offhand.

Dr JOB: We collate the crash data for the Roads and Traffic Authority. We do not have a specific field that says were they car surfing or not, so that is not collected directly by the police. (Evidence before STAYSAFE, 5 December 2004, pages 8-9)

- 4.2 And later:

Mr BARTLETT (STAYSAFE): We were talking about profiles. Basically we have the profiles, but we do not have any statistics on the incidents at all?

Senior Sergeant JENKINS: No, I do not have any numbers I could give you, sir.

Dr JOB: That is what I was getting to. The Roads and Traffic Authority collate the data based on police reports. There is not a specific field that says whether they car surf or not, but the police would consistently comment if that were the case, so if the people in the relevant section notice that or can recall those incidents we can pull those out and we have been able to identify a number of such instances. They would only then come to our attention if a report of a crash occurs, so there may be various instances of car surfing occurring where, if no one is injured or it does not come to our attention, it would not show in our database.

The Hon. GEORGE SOURIS MP (STAYSAFE): Do the statistics only apply to the driver? In other words, for example, reckless behaviour would imply that it was the driver who was behaving recklessly, driving recklessly, not someone standing out on the tray of ute.

Dr JOB: The statistics for crashes would give us the detail of who was injured and what they were doing, so the police report might say there was a 21 year-old male riding on the bonnet of a car, the car went around a left-hand turn and he fell off.

The Hon. GEORGE SOURIS (STAYSAFE): So in all cases of car surfing the police, it would be imagined, would report that in one form or another. Whether there is a field or not, they would undoubtedly indicate if that was the case?

Dr JOB: This only applies if there is a report of a crash, so our crash database would not have that in it if they identified someone car surfing and--

Mr GIBSON MP (CHAIRMAN): There is no crash.

The Hon. GEORGE SOURIS MP (STAYSAFE): I realise that, but crash or fatality.

Dr JOB: It would not be in our database, but it certainly would be in the police report and that is something that would come to our attention as an odd case, so we have been able to identify a number of such cases:

The Hon. GEORGE SOURIS MP (STAYSAFE): Which have come to your attention as a growing trend?

Dr JOB: Well, we identified a number of cases to the Staysafe Committee as requested for this year. I cannot recall how many it was, but there are six there, including three fatalities I think, and I do not think that that has been the case in the past. So my impression, which is only an impression from the data, but we looked at a few previous years and I do not think we could identify much there, and I think rather than a gradual trend it has been a sudden occurrence.

Mr GIBSON MP (CHAIRMAN): Car surfing has not just evolved today, so in years gone by was there another name for it?

Senior Sergeant JENKINS: I think it has always been there, sir; I think just recently it has been getting more attention in the public eye. I have been a crash investigator for 16 years and it certainly has not been something where this year I have said, "I've never heard of this before". It has always been there, it just has not been getting the attention, I suppose because we have been finding some high profile ones where young people have lost their lives in these sorts of instances. I think it is probably getting more attention than just surfacing suddenly.

The Hon. GEORGE SOURIS MP (STAYSAFE): No one has ever been booked for car surfing, so police reports would not indicate that. If there has been an accident or a fatality we now know that the police would note somewhere that car surfing had been involved, but if the police simply stop a recklessly driven vehicle would they note somewhere and be able to collate whether or not there had been car surfing involved?

Inspector EVANS: It would come back to the offence that they were originally reported for and, if it falls within those definitions that I spoke about before, which is "body protrude", then clearly it has its own offence code and we could certainly track it through the infringement processing bureau.

The Hon. GEORGE SOURIS MP (STAYSAFE): "Body protrude" implies that the driver has his elbow out of the window as opposed to someone yahooing in the tray.

Inspector EVANS: Well, "body protrude" encompasses a whole range of offences and that is what I was trying to get to before. If you talk about car surfing here, each one of us at the table has a different definition of what car surfing is. Certainly if we talk about the offences of "body protrude" or those types of things, they are recorded now and, as I said, they are in the database maintained by the infringement processing bureau, so we could get those out, but they would encompass all types of that activity, not just car surfing.

The Hon. GEORGE SOURIS MP (STAYSAFE): Would the police be able to say that they have noted a growing incidence of body protruding (car surfing) quite apart from accidents and fatalities?

Inspector EVANS: I think it is a practice. Whether it is increasing or decreasing, I could not offer an opinion at this point in time, I would need to go back and talk to the people in the field, but certainly it does not seem at this point in time that, from the information that I have through interaction in the field, it is of epidemic proportions. (Evidence before STAYSAFE, 5 December 2004, pages 9-10)

- 4.3 The Roads and Traffic Authority submission provided the following information on reported instances where a fatality or injury resulted from activities identified as 'car surfing' during 2003 (see Table 1, next page).

TABLE 1: Reported instances where a fatality or injury resulted from activities identified as 'car surfing' during 2003. (From: Roads and Traffic Authority, Submission CSI 001)

DATE	LOCALITY	HARM	DESCRIPTION OF INCIDENT
2 January 2003	Pillar Valley	Fatality	22 year old male climbed through sunroof and sat on roof of vehicle driven by 21 year old female at 85 km/h. Passenger fell off.
29 March 2003	Emu Plains	Injury	18 year old male sitting on bonnet of vehicle driven by 17 year old male. Passenger fell off bonnet.
11 April 2003	Cronulla	Injury	28 year old male jumped on bonnet of taxi and threatened female passengers. Male fell off when taxi moved off at 5 km/h.
7 June 2003	Denistone East	Injury	18 year old female climbed onto bonnet of vehicle and requested the 21 year old male driver to 'Go'. Passenger fell off bonnet.
21 June 2003	West Ryde	Injury	24 year old male chased by youths jumped onto bonnet of moving taxi trying to evade them. Passenger fell from bonnet further down the road when vehicle stopped.
13 July 2003	Collaroy Plateau	Injury	21 year old male travelled on bonnet of vehicle driven by 21 year old male which collided with traffic island. Passenger fell off.
12 September 2003	Wagga Wagga	Fatality	18 year old male sat on bonnet of vehicle driven by 16 year old female. Passenger fell off when vehicle braked.
12 September 2003	Balgowlah	Fatality	17 year old male sat on boot of vehicle driven by 17 year old male at a speed of 30 km/h. Passenger fell off when vehicle braked.
15 September 2003	Cambridge Park	Injuries	41 year old female allowed 11 and 12 year old children to sit on car bonnet. She reversed the vehicle and the children fell off.
4 November 2003	Macquarie Fields	Injury	Woman sat on the boot of a vehicle being driven by unknown driver. Passenger fell off.

4.4 During the course of the inquiry into car surfing and riding unrestrained on a motor vehicle, STAYSAFE identified a number of general issues of risk and safety related to unrestrained passengers being carried on a motor vehicle, including:

- Insurance issues
- Workplace safety issues
- Travelling on vehicles away from road or road related areas
- Public education regarding car surfing and the carriage of unrestrained passengers on motor vehicles

Car surfing activities and compensation for injury

4.5 The Motor Accidents Authority (Submission CSI 002) also provided comment on incidents involving people injured in car surfing incidents. The Motor Accidents Authority advised that the New South Wales Motor Accidents Scheme is a negligence or fault-based compensation scheme. Only those injured through another person's fault can claim under the Scheme. To claim compensation, an injured person must claim against the owner or driver of the vehicle that was at fault in causing the crash or injury. The tort law reform package approved by the Parliament in 2002—in particular, the Civil Liability Amendment (Personal Liability) Act 2002—made a number of changes to the general law of negligence for personal injury, which apply to the motor accidents legislation. As a negligence or fault-based scheme, the Motor Accidents Compensation Act 1999 applies common law in relation to contributory negligence. That is, when assessing a claimant's entitlement to compensation, deductions can be considered in certain circumstances where the person's own actions or omissions are considered to have contributed to their injury or death.

4.6 Two particular issues are relevant to people injured in car surfing incidents:

Breach of duty of care

At face value, the driver of a vehicle involved in car surfing would be negligent for allowing another person to ride on the top of the vehicle whilst it is being driven.

Following the 2002 tort law reforms an injured person (adult or minor) is now presumed to have been aware of the risk of harm of obvious risks, unless the person proves on the balance of probabilities that s/he was not aware of the risk of injury from, for example, a high risk activity such as car surfing.

Query whether any duty of care exists between the driver and a car surfer given that the risk of injury should be obvious to the car surfer.

Contributory negligence

Even if breach of duty of care is established, the issue of contributory negligence arises.

The motor accidents legislation requires mandatory findings of contributory negligence in some circumstances. For example, where a seat belt is not worn, or where a voluntary passenger ought to have been aware of the driver's impairment due to intoxication (other than in cases involving minors).

Issues of contributory negligence and alcohol can also be raised in relation to circumstances not covered by mandatory finding requirements, for example, where the injured person was intoxicated.

Where contributory negligence is established, the damages recoverable are reduced by such percentage as the court thinks just and equitable in the circumstances of the case. Following the 2002 tort law reforms a court can now reduce a claimant's damages for contributory negligence by 100% in appropriate cases. The standard of care required of the claimant is that of a reasonable person and the standard is to be determined on the basis of what the claimant knew or ought to have known at that time. (Pages 1-2)

Workplace safety issues

- 4.7 While the focus of the roundtable discussion was on the effectiveness of the criminal law and road transport law to deal with incidents of car surfing and the carriage of unrestrained passengers on motor vehicles, STAYSAFE recognised that there are circumstances where getting on and off, or into and out of, moving vehicles is accepted as an appropriate activity.
- 4.8 Indeed, the Australian Road Rules make a number of specific provisions to permit such behaviour, allowing:
- a person to travel in or on a part of a motor vehicle that is a part designed primarily for the carriage of goods if the part is enclosed by a structure of the vehicle or a canopy, cage or other device fitted to the vehicle that is approved by a roads authority
 - (if the person is the driver of a vehicle) the giving a hand signal for a turn to the right or for stopping or slowing
 - a person to travel in or on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods if the vehicle is a police or emergency vehicle
 - a person to travel on a motor bike
 - a person to travel in or on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods if the person is engaged in the door-to-door delivery or collection of goods, in or on a motor vehicle that is not travelling over 25 km/h
 - a person to travel in or on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods if the person is engaged in the collection of waste or garbage, in or on a motor vehicle that is not travelling over 25 km/h.
 - a person to get onto or get off, or get into or out of, a moving vehicle if the person is engaged in the door-to-door delivery or collection of goods and the vehicle that is not travelling over 5 km/h
 - a person to travel in or on a part of a motor vehicle that is not a part designed primarily for a person to get off, or out of, a moving vehicle if the person is engaged in the collection of waste or garbage

4.9 Beyond these specific exemptions, the Australian Road Rules provide generally for:

Rule 268 How persons must travel in or on a motor vehicle

(6) This rule also does not apply to a person if:

- (a) the person is exempt from this rule under another law of this jurisdiction and is complying with the conditions (if any) of the exemption; or
- (b) the vehicle is exempt from this rule under another law of this jurisdiction.

4.10 STAYSAFE is aware of concerns associated with persons travelling on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods, notably regarding:

- garbage, waste removal, and materials recycling activities; and
- asphalt and road pavement activities

These concerns include persons falling from vehicles, persons impacting with power poles and other roadside objects during turning manoeuvres, and other motor vehicles striking the vehicle on which the person is travelling.

4.11 STAYSAFE notes evidence from Ms Jenny Thomas, representing the WorkCover Authority:

Ms THOMAS: ... Under our legislation, which is risk management-based and performance-based so achieving safety outcomes is one of the principles, we would be looking towards exactly that, not so much banning it legislatively but under our risk management approach you identify the hazard of sitting in the back of a truck or standing on the back of a garbage truck and, unless you have got appropriate assessments and controls in place, that would be unacceptable under our legislation.

I know Victorian WorkCover or WorkSafe are particularly targeting the riding on the back of garbage trucks by garbage contractors and what is happening is they are designing the garbage trucks so that that does not occur any more. (Evidence before STAYSAFE, Monday 5 December 2003, page 14)

4.12 STAYSAFE recommends that the WorkCover Authority, in consultation with the Roads and Traffic Authority, and other agencies and organisations, review the circumstances where persons engaged in work get on and off, or into and out of, moving vehicles, and develop interventions to minimise risk and improve safety, as appropriate. Actions could include redesign of the vehicle body and equipment, publication of educational materials, conduct of safety programs, etc..

RECOMMENDATION 4:

The WorkCover Authority, in consultation with the Roads and Traffic Authority, and other agencies and organisations, review the circumstances where persons engaged in work get on and off, or into and out of, moving vehicles, and develop interventions to minimise risk and improve safety, as appropriate (e.g., by redesign of the vehicle body and equipment, publication of educational materials, conduct of safety programs, etc.).

Travelling on vehicles away from road and road related areas

- 4.13 STAYSAFE has earlier noted that offences relating to car surfing and the carriage of unrestrained passengers on motor vehicles defined in the Crimes Act 1900 have far wider coverage than similar offences—if they exist currently—under road transport legislation based upon the Australian Road Rules. For offences associated with driving under the Crimes Act 1900, there is no requirement for the vehicle to have been driven on a road and road related area: it is simply the manner of driving by a person, and the nexus between driving and serious injury or death.
- 4.14 Although not investigated by STAYSAFE, it may be appropriate for police and roads authorities to examine approaches, policies and recommended practices developed to address risks associated with travelling on vehicles during:
- Farming activities
 - Industrial activities (particularly mining)
 - Tourist activities

- 4.15 STAYSAFE notes the concerns of Mr Bartlett MP:

Mr BARTLETT (STAYSAFE): I am the member for Port Stephens and I back on to Stockton Beach. If they are attached by a rope, as they often are, hanging off the back of a car and they are on some sort of board or something that they are sliding along the ground on, is that also car surfing? Can I be attached by a rope?

Inspector EVANS: It would be a form of car surfing, most definitely. However, it comes back to our original perspective as to whether it is a road or a road-related area. (Evidence before STAYSAFE, 5 December 2004, pages 10-11)

Public education regarding car surfing and the carriage of unrestrained passengers on motor vehicles

- 4.16 An important aspect in dealing with issues associated with car surfing and the carriage of unrestrained passengers on motor vehicles is the provision of accurate and appropriate public education on risks and safety.
- 4.17 Ms Bronwyn Steele, representing the New South Wales Police, commented:

Mr GIBSON MP (CHAIRMAN): Ms Bronwyn Steele, would you like to come in to the discussion with your thoughts?

Ms STEELE: Yes. I guess I would probably have to admit that I am not that familiar with the issue other than having a look at what we do have on the system. There is no doubt about it that the issue is very youth related and, as was said earlier, there is an emergence of women being involved in it, girls being involved in it, which is always distressing. There have been a couple of incidences where alcohol has been, quite clearly, a major player. I would suggest in a lot of cases - I guess this is anecdotal again, none of the agencies can provide solid data - the risk-taking may be through boredom and lack of

General Issues of Risk and Safety related to Car Surfing and riding Unrestrained on a Motor Vehicle

opportunity. I do know a case where a person was given advice in Walgett, a young Aboriginal youth, on motorcycle surfing—in this particular instance he was being towed behind a motorcycle—and of course the B & Ss [Bachelor & Spinster Balls] provide a different party again. I confess that I have seen, certainly over the years, plenty of activity of being towed behind the back of a ute, so there is probably a need to look very closely at the campaign advising people of the risks....

Mr GIBSON MP (CHAIRMAN): Can you tell us a little bit more about the boredom factor? I find it very hard, with everything you have around the place today, for anyone to be bored to the extent that you jump on top of a motor car to be a very temporary Australian.

Ms STEELE: I am probably with you on that, but I think, looking at the incidents that I have had a look at, they are in areas probably of peer pressure, alcohol, perhaps disadvantage. Certainly one of them I believe, the boys we are dealing with, shows clear disadvantage, you know, from homeless backgrounds. (Evidence before STAYSAFE, 5 December 2004, pages 14-15)

- 4.18 Dr Sarah Redshaw forwarded a submission that provided some insight into the behaviour of young drivers, although, as can be see from Table 1 in the preceding pages, car surfing behaviours are not necessarily associated with young people—several incidents involved older drivers and older passengers engaging in, or encouraging, risky behaviour by riding on bonnets, vehicle roofs, or the boots of vehicles. STAYSAFE has included Dr Redshaw's submission (Submission CSI 003) as an attachment to this report.
- 4.19 STAYSAFE recommends that the Roads and Traffic Authority, in consultation with New South Wales Police and other agencies and organisations, develop advisory materials to address the risks associated with car surfing and the carriage of unrestrained passengers on motor vehicles.

RECOMMENDATION 5:

The Roads and Traffic Authority, in consultation with New South Wales Police and other agencies and organisations, develop advisory materials to address the risks associated with car surfing and the carriage of unrestrained passengers on motor vehicles.

- 4.20 STAYSAFE believes that action to develop advisory materials about car surfing and the carriage of unrestrained and unprotected passengers on moving motor vehicles should include commentary in the material for learner drivers (the Road Users' Handbook, inclusion as test items within the Roads and Traffic Authority's bank of questions under computer-based testing for learner and provisionally licensed drivers), as well as items for discussion in programs of road safety education.
- 4.21 STAYSAFE notes that the Motor Accidents Authority's 'Arrive alive' program (see the website at: www.arrivealive.com.au) features an image of "29.4.04 - Todd Polglase speaks about the dangers of car surfing". The "Arrive alive" program is the youth road safety program of the Motor Accidents Authority. The Motor Accidents Authority is concerned about the over representation of 17 to 25 year olds in crashes and especially with the cost to the CTP Scheme of claims resulting from crashes caused

by young drivers. The Motor Accidents Authority's youth brand: "Arrive alive" was developed to cover a wide range of youth road safety activities funded or supported by the Authority.

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ATTACHMENT A: ‘Car surfing’, by Dr Sarah Redshaw, Centre for Cultural Research, University of Western Sydney.

- A.1 The central argument of this submission is that the problem of car surfing amongst young drivers must be put in the context of young driver behaviour with passengers. Young drivers have an elevated crash risk when they have passengers (Williams and Shabanove 2003, Chen, Baker, Braver & Li 2000). US studies have shown that young drivers and passengers are also less likely to wear seatbelts (Williams, McCartt & Geary 2003). Williams et al. found that young people are less likely to wear seat belts as passengers than as drivers, regardless of gender. Young people are likely to crowd numbers in to cars, often without the use of seat belts or by putting more than one into each seat belt.
- A.2 A study with young people aged 16-18 in New South Wales revealed many examples of behaviours such as these in their use of cars. The car is part of their social engagement and facilitates socializing with their friends. Having a licence is a real sign of independence for these young people. Many examples emerged in both city and country areas of dangerous activities with cars. These included people on the bonnet, in the boot or in the back of the ute. Activities such as passing notes between moving vehicles and calling out to people on the street, and the atmosphere of excitement and noise inside the car which was frequently mentioned.
- A.3 Car surfing is part of a broader context of activities engaged in by young people when they are enjoying, and perhaps parading, their independence together. The issue of passenger behaviour and liability is one that needs to be addressed. The study discussed below involved discussions about the responsibility of passengers where it became clear to young people themselves that as passengers they had a role to play in the safety of all involved.
- A.4 Niki Harré suggests that reduced risk perception and how it may operate in social contexts with young people is a key to considering young people’s understanding of risk. The social context itself, in which young people drive, arguably leads to a more reduced realization of personal risk (Harré 2000: 212). Distraction has been shown to be a major factor in crashes involving young people (Rothe 1987, Rolls and Ingham 1992). In these studies talking to passengers and listening to loud music were frequently reported as occurring immediately prior to the crash.
- A.5 Harré also cites evidence that “young drivers may be more *prone* to driving when experiencing intense emotion than older drivers” (2000: 213). The studies cited are concerned with driving to ‘let off steam’ (Jung and Huguenin 1992) and to ‘cool off after an argument’ (Farrow and Brissing 1990). The situations in which young people are together in cars often involve intense excitement and perhaps the joy of being independent, as the following examples show. Harré points out that in a similar way to

alcohol, intense emotion may serve to disinhibit risk seeking as well as to reduce risk perception (2000: 213-214).

- A.6 A total of 204 (121 male, 83 female) young people participated in critical discussion workshops around New South Wales. Of these, 32 held a provisional licence (20 males and 12 females) while 96 held a learner licence (60 males and 36 females). 61 participants in the Sydney area and 17 students from country areas did not have a licence.

Safety

- A.7 Participants were first asked to fill out a questionnaire about how and where they travel and what reasons they have for choosing a particular means of transport. They were asked whether it was for convenience, safety or fun as examples. While many travelled to school on buses and trains, walked or road bicycles, the car was the most common means of transport for all other activities, including work, leisure, and weekends. The car was regarded as the most convenient means of transport and the most fun. For many of the participants safety is not a priority. Getting where they want to go, with their friends where possible is more important. This may not be due to a lack of concern for their own safety but to a feeling of relative safety when in cars.
- A.8 About 15% of participants were concerned about travelling in cars with other young drivers who lacked experience for safety reasons. Their parents were given as the source of the concern by some, and this was accepted by these participants as an important consideration. This is an alarmingly small percentage of the total participants who are concerned primarily with safety in relation to cars.
- A.9 A majority of participants then, considered travelling in cars with friends preferable to many other means of transport, and did not regard it as a safety issue. Many regarded their friends as "good" drivers even though they recounted many tales of dangerous behaviour:

F Risky - One team member said that he was in a friend's car who was driving very fast because they were late. Another team mate said that her brother would drive in a risky and daring way because he was playing around. Dangerous - None of the members of our team have been in situations where they found themselves being driven around by a person dangerously.

F The car is really the most safest, funnest, best way to travel.

- A.10 Cars were generally regarded as a safe means of transport. Some participants noted that who was driving was an issue and they clearly had identified drivers who they did not regard as safe. The majority however, regarded their friends or mates as "good" drivers whom they could trust.

What's easy or convenient. Don't think about who's driving. I just think that the driver's safe.

I'll get in the car with just about anybody that I know. I choose the transport that is quickest and requires the least amount of effort.

Comfort/speed. I am a trusting person.

Don't think about it much, I trust all my friends' driving, just whatever is convenient.

I consider the time of the day because if it is getting really late it is not wise to walk around the streets, so I would use a car. Who is driving would not affect me very much, as long as I know they are responsible and I can trust them.

How convenient it is. I wouldn't consider who is driving provided they have a licence.

The safety issues related to cars are clearly not as strong in these young people's minds as the safety issues with public transport, walking and so on.:

Will the transport get me to my destination on time? What choice of driver do we get when we catch a bus? How do I know the bus driver isn't an alcoholic. At least I know I am being the safest as possible when I'm driving.

- A.11 The participants' statements indicated that they are judging who is a "good" driver by different standards – in some cases it is those who are most likely to stick to the rules and not do risky things. In others it is a view that a male is a "good" driver because he "knows what he is doing".
- A.12 Male participants commented on females not being as "good" drivers and not as safe. The males' standard of safety has more to do with being confident with speed, fast cornering and so on. In one all male group of participants a number claimed that the girls did not "pay enough attention" when they were driving. They felt that the girls were more concerned with what was going on in the car and felt less safe with them.:

Male drivers tend to talk with their friends while driving and also listen to music. Female drivers may do the same but also they do not tend to look where they are going.

I know of more males that have lost their licence or had crashes. But I have also been in a car with females that take risks.

Females I find tend not to look where they're going. I have had two experiences where this has occurred. Males, however, speed and like to show off.

- A.13 The female participants generally say they are more "careful" drivers than the males. Young males regarded themselves as "knowing what they are doing" and this is associated with the view that females in general do not know what they are doing because they do not have the same attitude to the car and confidence in their driving ability.

Being a passenger

- A.14 What went on in cars when there were a number of passengers was discussed at some length. Participants were given group discussion questions and activity sheets to fill in related to their experiences in cars with friends. During the study a newspaper front page from a recent crash in which 6 young males died, was used as a stimulus to ask participants to think about what was going on in the car before it crashed.
- A.15 Worksheet 2 asked the following questions: Have you have been in cars with friends driving lately? Give some examples of experiences with both males and females driving if possible. Have you been in a car with a friend/young person driving with a number of others in the car? What was the occasion? What was it like? (Fun, scary, didn't notice) What factors can you identify that made it as you describe it?
- A.16 Responses covered events such as sport and social activities and "just driving around" with many saying that they had not noticed whether it was scary or dangerous and many saying that it was "just fun", "normal". The fact that many had not thought a great deal about these experiences shows that the opportunity to reflect on them and assess them was valuable.
- A.17 Discussion of experiences of being in cars with friends led to consideration of what passengers contribute to the safety of all and who is ultimately responsible. After generally agreeing that the driver was responsible, participants then went on to suggest that the passengers were responsible for how they behaved and thus what was going on in the car. They realised that they could make things very difficult for the driver by creating distractions and noise:

Getting lifts to and from school from mates. Getting lifts if I'm going out to socialise, eg: party. I usually go with my girlfriend because she has her licence and we go driving and stuff. Yep, my mates and I were going to one of our friends houses after school. It was a five seat car, yet we had seven people packed with bags and stuff. It was hectic! It was like I didn't notice at all except I found it hard to breathe.

When you are with your friends it's a more open environment. You aren't held back by your parents so you have more freedom. It's a noisy environment with a great deal of socialising. It was a friend's party and we were going to the other's houses and trying to get them over. It was fun, it was noisy. The person driving was focused and drove safely.

Males yelled out at junkies with music blaring. Females – got with my ex in the back seat and my mate was driving. Parklea markets and Parramatta. Funny, and fun. Loud music. Yelling at people, especially junkies. Speed.

We were at a friend's place and nine of us packed into a small Laser. We didn't go too far and a few people had been drinking. Nothing happened but the driver didn't really have control, with someone sitting on his lap. Fun at first, we weren't really aware of the danger, but it did get a bit scary because we were all over the road at times.

Went to Parra and Penrith just cruzin. To and from school everyday. Coming home from camp, 6 people in 5 seater car backed with bags. Fun – listen to music, joke with mates. Uncomfortable too crowded, couldn't see.

Going to the drive in movies, going to the city with friends with all people noisy. Fun, safe, we didn't really notice at the time.

We went into the city to go to motor show, and drove around and wasted petrol. Fun, fun. Chilling out. Yelling at people. Loud music. Speed.

Yeah, driving to a party Sat night, then to the bottle'o, then back. Then home afterwards. Everyday home from school. Yes, there were 9 of us in a laser that sits 5. 2 in the boot. This was just a 200 m drive home. It was as a joke, not scary as I didn't get above 40 km per hour.

Going to the drive in, into the city with 5 people in the car, all being loud. It was fun because I was driving. I would have been scared if I hadn't been driving.

A couple of us was bored one Saturday night (Blacktown) and my friend came and so we jumped in and drove around Blacktown near the lakes, Woodcroft. There was 6 of us in a Corolla. A friend was meant to come to my friend's house, so we can go to Blacktown Club with two cars, he didn't come so we had to go with one car (even though it was about 2 km away and the road wasn't busy). Fun, scary because we didn't want to get pulled over by cops and then wreck the night.

Yeah, getting lifts to and from school from mates. Getting lifts if I'm going out to socialise e.g. party I usually go with my girlfriend because she has her licence and we go driving and stuff. My mates and I were going to one of our friends houses after school. It was a 5 seat car yet we had 7 people packed with bags and stuff. It was hectic! It was like I didn't notice at all except I found it hard to breath.

Risky and dangerous behaviours

- A.18 Participants were asked if they had been in any risky or dangerous situations in cars with friends. Risk and danger were discussed with the whole group. Each group considered whether risk and danger were the same or different by looking at specific examples from their own experience. Activity sheets were filled out with examples of experiences by the groups.
- A.19 The following examples are fairly typical of the kind of stories that were recounted:

M The car was sideways in middle of the night, speeding. Car ran into fence after circle work. Drunk driver driving a fair distance. Circle work getting a bit carried away and nearly hitting objects. Roo bashing and speeding. Driver trying to overtake on double lines. Crashing a car into a gully thing. Luckily no-one was hurt. Driving on road without a license . Driver aiming for rabbits and roos. Driver running off road because of loss of concentration. Rally driving, throwing bombs to each other, cars to cars along the back roads.

F Yes . Circle work, nearly hitting a tree. Rabbit and kangaroo chasing. Nudging cattle. Yes, handbrakes on dirt roads and speeding, fishes, circle work, speeding.

F Getting picked up by a friend who had no licence, then travelling back home on the backroads, all 3 people sitting on the back of the ute. Dangerous. 1. As above – people on back of ute could have fell off, hurt. 2. After a deb (party), drove around were drinking. 3. Riding an unregistered, unroadworthy motorcycle on dirt backroads.

M Yes, swerving, speeding. Yes, car was full, music loud – speeding. Loud music, swerving on the way home from school – swerving.

M Yes, dirt road, ripping up hand brake doing fishtails, the road was fairly thin, rough, lined by trees. Driving fast through 50 km zones trying to make car get sideways at corners, burnouts at stop signs. Driving too fast when wet on windy roads. Driving along freeway with 2 cars same lane. Throwing food scraps at other cars, then other car pulls in front and threw food at first car.

A.20 Young females find themselves in situations where they are not comfortable and even though they recognize the danger are unable to do much about it:

F They were speeding and had the music loud. They were taking the risk of speed and possibly killing someone else. Going too fast and not being able to stop in time in case of a distraction. Loud music prevents hearing anything outside such as an ambulance, etc.

F Speeding, drink driving, excessive people, burnouts, smooching, loud music. Speeding – the speeding was during school, students were on the road near the school. Excessive people – the more people that were in the car, there was more distraction to the driver. Smooching – the driver was kissing the passenger and the driver wasn't watching the road.

A.21 Males are more likely to drive in risky and dangerous ways and to regard it as fun:

M No, No, I have not, unless you call playing cool games risky. Yes, loud music, leaf grabbing, yelling at people.

M Yes, they went fast. I was in the boot.

M Yep, disobeying the law and road rules. Yeah. 1. Swerving into oncoming traffic. 2. Reversing down the road at 50 km. 3. Riding on the bonnet of the car down the highway.

M Daring – going around a bend and seeing what speed you can achieve when hitting the straight. Dangerous, seven people in the car with the driver stoned and a beer in hand. Driving in a car without a seatbelt on. Driving with persons on car.

A.22 The concepts of risk and danger are not something that many participants have thought about a great deal. They think of it as fun (especially males) to push the

speed, "rip" around corners, do burnouts, pack many into cars and not wear seat belts.

- A.23 Speeding was mentioned often, doing burnouts, "ripping it up" around corners, having too many passengers, in some cases putting people in the boot (usually only travelling very short distances), yelling out at people from the car, cruising into the city from western suburbs for something to do (males) with a car load of mates.
- A.24 Female participants reported going in cars to parties, the beach, friends places etc. Some are unaware of the driver's state, just being concerned about getting to the party. The question of who is driving, while it is an issue for some participants, is not as important to them as getting where they want to go with their friends – "you want to arrive at a party with your mates".
- A.25 The perceived danger threshold appears to be higher amongst country participants who feel they know a lot about driving and they thus appear less aware of the dangers on the road. It is difficult to push them to think sufficiently about what they are doing and the level of danger they are engaged in.
- A.26 Males generally are more tolerant and even encouraging of risk which they tend to see as separate from danger. They fail to take into account that risky practices are dangerous and that they lack experience of just driving on the roads. They think that engaging in dangerous practices gives them more skill and experience. These practices include doing "doughnuts" and burnouts, playing chicken, racing other cars, speeding and "ripping it up around corners". They often regard these as behaviours they need to engage in to be a good driver.
- A.27 Risk and danger tended to be seen as inseparable by females and some males whereas males and some females said things like – "it's risky to speed but dangerous in the wet"; "not wearing seat belts is risky unless you have an accident", then it is dangerous, risky driving entails the risk of getting caught more than being dangerous in itself, many practices are risky unless you lose control or get caught. They fail to notice that you cannot tell or may not be a good judge of when you are likely to lose control or have a crash.
- A.28 Participants tended to maintain the distinction based on what is legal, what happens etc but were unaware that what might happen is unpredictable and that the safest course is to regard all risky behaviour as dangerous. In one example a student said he thought not wearing a seat belt was risky unless you had an accident and then it was dangerous. Many regarded actions such as speeding and doing burnouts and doughnuts as risky but not dangerous, unless you lost control. Staying within the legal limits can be construed as meaning that you are free from danger and not taking risks but still involve risk and dangerous behaviour. There is a need to emphasise driving as involving risk and danger in itself and that staying within the legal limits minimises the danger.

Summary issues

- A.29 Safety appears to be less of an issue where cars are concerned for both sexes. Cars are seen as safer by parents and young people themselves – they are seen as being with people they “trust”. Driving is not considered as potentially dangerous, although there does seem to be more concern with this in the city. Outer western suburbs youth are more likely to be travelling in cars with friends than those in the inner city. Safety is more of an issue with walking at night, especially for girls, and travelling on public transport at night. Some commented on the driving ability of bus and taxi drivers while others assumed that they would be safe because bus, train and taxi drivers are well trained and skilled. Questioning the driving ability of bus and taxi drivers justifies the use of their own and friends cars as safer because they see themselves as with people “you can trust”.
- A.30 Male attitudes to female drivers are often that females are less confident and therefore not as good at driving. Young males generally regard themselves as superior in all things related to cars. Some males did occasionally mention having female friends who were “good” drivers. Females tend to say they are more careful and safer than young males who take too many risks. Many males see taking risks as evidence of their driving skill. Good driving is measured by this skill for them, which means that females are not often considered “good” drivers because they are less likely to engage in these practices.
- A.31 Males maintain that they are “good” drivers and safe with their mates. They do not easily question each others driving. They feel that because they know each other they are safe. Females are put in a position of not easily being able to question male attitudes to driving although some are becoming more confident at expressing their dislike of some male driving practices such as speeding and other forms of risk taking.

Conclusions

- A.31 The data from this study shows that the young people who participated are often in situations in cars that would be regarded as dangerous and that they themselves do not recognise as dangerous. They are often caught up in the excitement of having a licence, being with friends and getting out and about and fail to notice the dangers they are putting themselves in.
- A.32 Many males in particular judge their driving ability by the risks they are able to take and handle. Their view of driving is highly problematic and requires considerable work to reframe in terms of safety and reducing danger.
- A.33 The young people showed that when they talked about what they were doing in cars they could see that their behaviour as passengers was as important as the behaviour of the driver. Whether and to what extent this would impact on their behaviour is not known.

- A.34 There are certainly some very worrying activities involving young people and cars and a lack of awareness of potential harm. Cars are regarded as safe compared to other forms of transport and are also symbols of independence.
- A.35 The issue of car surfing is a behaviour in the context of a range of worrying behaviours that young people are engaged in with cars.

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SUBMISSIONS RECEIVED

- CSI 001 Ms Sue Sinclair, Director, Road Safety and Road User Management, Roads and Traffic Authority.
- CSI 002 Ms Gillian Brown, Manager, Road Safety, Motor Accidents Authority.
- CSI 003 Dr Sarah Redshaw, Centre for Cultural Research, University of Western Sydney.
- CSI 004 Dr Malcolm Vick, Senior Lecturer, School of Education, James Cook University

WITNESSES APPEARING BEFORE THE COMMITTEE

Monday 5 December 2003

Inspector David John Evans
Inspector Ian Murray Ross Duncan
Senior Sergeant Peter Joseph Jenkins
Ms Bronwyn Steele
New South Wales Police

Dr Raymond Franklin Soames Job
Dr Donald Clement Arthur Carseldine
Roads and Traffic Authority

Mr Michael Joseph Darmody
Attorney General's Department

Ms Gillian Elizabeth Browne
Ms Abigail Hall
Motor Accidents Authority

Ms Jennifer Frances Thomas
WorkCover Authority

EXTRACTS FROM THE MINUTES OF THE STAYSAFE COMMITTEE REGARDING THE INQUIRY INTO CAR SURFING AND THE CARRIAGE OF UNPROTECTED PASSENGERS ON MOTOR VEHICLES

This appendix contains relevant extracts from the minutes of ICAC Committee meetings of:

- 20 November 2003
- 10 March 2004
- 12 May 2004
- 23 September 2003

regarding the inquiry into car surfing and the carriage of unprotected passengers on motor vehicles.

No. 53/08

STAYSAFE

PROCEEDINGS OF THE JOINT STANDING COMMITTEE ON ROAD SAFETY

10:30 A.M., THURSDAY 20 NOVEMBER 2003
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Mr West
Mr Tingle
Mr Colless

Legislative Assembly

Mr Gibson
Mr Souris
Ms Saliba
Mr Bartlett

Also in attendance: Mr Faulks, Manager of the Committee, Mr Jefferis, Project Officer, and Ms Wenitong, Assistant Committee Officer.

The Chairman presiding.

1. Apologies

Apologies were received from Ms Saliba, Mr Barr, Mr Hunter and Mr Maguire.

...

5. Inquiry into car surfing

The Chairman indicated that following recent reports of deaths and severe injuries he would like to initiate an inquiry into car surfing.

Car surfing is the name given to the dangerous activity of young people that can cause severe injuries or death. Car surfers sit and hang on to, or stand on top of, moving cars and utes as though they were 'surfing'. Sometimes this is done as a game or challenge to see who can stay on the longest and land on your feet when the car or ute suddenly stops or turns. Kids ride on the bonnet, roof, or boot lid of moving cars, stand up and balance in the tray of utes, or hold to or be towed by vehicles while skateboarding or roller blading.

On the motion of Mr Tingle, seconded Mr West:

The Committee conduct an inquiry into the practice of car surfing – standing or sitting unrestrained on the bonnet, roof or boot of cars and utes that are being driven.

Passed unanimously.

It was agreed that a roundtable meeting involving police, road safety and other government officials, and community and youth representatives, would be held on Friday 5 December 2003.

...

8. General business

There being no further business, the Committee adjourned at 10:55 a.m..

Chairman

Committee Manager

No. 53/09

STAYSAFE

PROCEEDINGS OF THE JOINT STANDING COMMITTEE ON ROAD SAFETY

10:00 A.M., FRIDAY 5 DECEMBER 2003
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Mr West
Mr Colless

Legislative Assembly

Mr Gibson
Mr Souris
Mr Barr
Mr Bartlett

Also in attendance: Mr Faulks, Manager of the Committee, and Ms Wenitong, Assistant Committee Officer.

The Chairman presiding.

1. Apologies

Apologies were received from Mr Tingle, Mr Hunter, Mr Maguire and Ms Saliba.

...

8. Inquiry into car surfing and the carriage of unrestrained passengers on motor vehicles

The public were admitted.

Inspector David Evans
Inspector Ian Duncan
Senior Sergeant Peter Jenkins
Ms Bronwyn Steele
New South Wales Police

Dr Soames Job
Dr Don Carseldine

Roads and Traffic Authority

Mr Michael Darmody
Attorney General's Department

Ms Gillian Browne
Ms Abigail Hall
Motor Accidents Authority

Ms Jenny Thomas
WorkCover Authority

were called and sworn.

The Chairman and Members examined the witnesses.

Evidence completed, the witnesses withdrew.

9. General business

There being no further business, the Committee adjourned at 12:00 p.m..

Chairman

Committee Manager

No. 53/10

STAYSAFE

PROCEEDINGS OF THE JOINT STANDING COMMITTEE ON ROAD SAFETY

10:30 A.M., THURSDAY 19 FEBRUARY 2004
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Mr Colless

Legislative Assembly

Mr Gibson

Mr Souris

Mr Barr

Mr Hunter

Also in attendance: Mr Faulks, Manager of the Committee.

The Chairman presiding.

1. Apologies

Apologies were received from Mr Tingle, Mr West, Mr Bartlett, Mr Maguire and Ms Saliba.

...

6. Inquiry into car surfing

The Chairman and Members discussed the inquiry into car surfing. The Chairman reported that a report was being drafted. The Roads and Traffic Authority has advised that it is awaiting information from the National Transport Commission and Federal Parliamentary Counsel regarding interpretation of relevant parts of the Australian Road Rules. The Committee Manager was asked to proceed with the preparation of the report.

...

10. General business

There being no further business, the Committee adjourned at 11:10 a.m..

Chairman

Committee Manager

STAYSAFE

PROCEEDINGS OF THE JOINT STANDING COMMITTEE ON ROAD SAFETY

10:00 A.M., THURSDAY 23 SEPTEMBER 2004
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Mr West
Mr Tingle
Mr Colless

Legislative Assembly

Mr Gibson
Mr Maguire
Mr Souris
Mr Bartlett

Also in attendance: Mr Faulks, Manager of the Committee, Mr Jim Jefferis, Project Officer, and Ms Yeoh and Ms Cyril, Assistant Committee Officers.

The Chairman presiding.

1. Apologies

Apologies were received from Mr Barr, Ms Saliba and Mr Hunter.

...

5. Report on car surfing and the carriage of unrestrained and unprotected passengers on motor vehicles

The Chairman presented the draft report: "Report on car surfing and the carriage of unrestrained and unprotected passengers on motor vehicles". (Report 2/53).

The draft report was accepted as being read.

The Committee proceeded to deliberate on the draft report:

Chapter 1
(Paras 1.1 – 1.13) Read and agreed to

Chapter 2

(Paras 2.1 – 2.9)	Read and agreed to
Chapter 3 (Paras 3.1 – 3.27)	Read and agreed to
Chapter 4 (Paras 4.1 – 4.11)	Read and agreed to
(Paras 4.12)	Read, amended and agreed to
(Paras 4.13 – 4.19)	Read and agreed to
(Para 4.20 – 4.30)	Deleted

Insert after Para. 4.19:

“4.20 STAYSAFE believes that action to develop advisory materials about car surfing and the carriage of unrestrained and unprotected passengers on moving motor vehicles should include commentary in the material for learner drivers (the Road Users’ Handbook, inclusion as test items within the Roads and Traffic Authority’s bank of questions under computer-based testing for learner and provisionally licensed drivers), as well as items for discussion in programs of road safety education.

4.21 STAYSAFE notes that the Motor Accidents Authority’s ‘Arrive alive’ program (see the website at: www.arrivealive.com.au) features an image of “29.4.04 - Todd Polglase speaks about the dangers of car surfing”. The “Arrive alive” program is the youth road safety program of the Motor Accidents Authority. The Motor Accidents Authority is concerned about the over representation of 17 to 25 year olds in crashes and especially with the cost to the CTP Scheme of claims resulting from crashes caused by young drivers. The Motor Accidents Authority’s youth brand: “Arrive alive” was developed to cover a wide range of youth road safety activities funded or supported by the Authority. “

Appendix A (Paras A.1 – A.35)	Read and agreed to
Recommendation 1	Read and agreed to
Recommendation 2	Read and agreed to
Recommendation 3	Read and agreed to
Recommendation 4	Read, amended and agreed to
Recommendation 5	Read and agreed to
Recommendation 6	Deleted

On the motion of Mr Colless, seconded Mr Maguire:

That the draft report: “Report on car surfing and the carriage of unrestrained and unprotected passengers on motor vehicles”, be read and agreed to.

Passed unanimously.

On the motion of Mr Colless, seconded Mr Maguire:

STAYSAFE Committee

Extracts from the Minutes of the STAYSAFE Committee

That the draft report: "Report on car surfing and the carriage of unrestrained and unprotected passengers on motor vehicles" be accepted as a report of the STAYSAFE Committee, and that it be signed by the Chairman and presented to the House.

Passed unanimously.

On the motion of Mr Colless, seconded Mr Maguire:

That the Chairman and Director be permitted to correct any stylistic, typographical and grammatical errors in the report.

Passed unanimously.

...

7. General business

There being no further business, the Committee adjourned at 10:30 a.m..

Chairman

Committee Manager



SIC 392
COS/3731 Special Minister of State
Csee Cos/2974 Minister for Commerce
Minister for Industrial Relations
Minister for Ageing
Minister for Disability Services
Assistant Treasurer
Vice President of the Executive Council

Ref: WC01149/05
A35156

STAYSAFE	COMMITTEE
21 OCT 2005	
RECEIVED	
20 OCT 2005	

Mr Ian Faulks
Committee Manager
STAYSAFE Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Faulks

I refer to your letter of 24 November 2004 regarding Recommendation 4 of the STAYSAFE Committee's *Report on car surfing and the carriage of unrestrained and unprotected passengers on motor vehicles*.

I am pleased to advise that WorkCover and the Roads and Traffic Authority have conducted discussions regarding the issues identified and have developed a range of intervention activities to minimise risk and improve safety in identified areas.

You would be aware that under the provision of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*, waste or garbage collectors are legally permitted to travel on the rear of waste collection vehicles provided that vehicle does not exceed 25 kilometres per hour and to get onto or off of the rear of waste collection vehicles, provided that vehicle does not exceed 5 kilometres per hour.

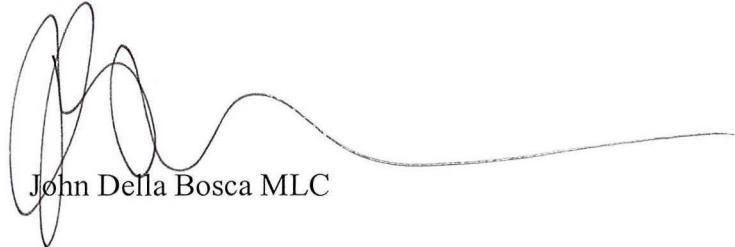
Occupational health and safety legislation places a duty on employers to ensure the health and safety and welfare at work of all the employees of the employer. These obligations extend to ensuring that the waste collection vehicles are safe when used properly and that the system of work is without risks to health.

WorkCover has met with key industry stakeholders to review the circumstances in which waste collection workers conduct their work and has developed a *Code of Practice for the Collection of Domestic Waste* to assist in minimising the risks associated with work in the waste industry. The Code of Practice highlights the need to conduct risk assessments and put in place control measures and specifically draws attention to the need to control hazards associated with riding on and alighting from moving vehicles.

The *Code of Practice* is due for release shortly and will be promoted in media releases, public information sessions and workshops. It will also be available on the WorkCover website (www.workcover.nsw.gov.au).

I would like to take this opportunity to thank the STAYSAFE committee for its ongoing commitment to increasing safety for all New South Wales road users, including the State's workers.

Yours sincerely



A handwritten signature in black ink, appearing to read "John Della Bosca". Below the signature, the text "MLC" is written in a smaller, sans-serif font.

John Della Bosca MLC



51C392
COA/3813

Minister for Police

Mr Ian Faulks
Committee Manager
Staysafe Committee
Parliament of NSW
Macquarie Street NSW 2000

MT 1076

Dear Mr Faulks,

I write to provide a response to the Staysafe Committee report into car surfing.

A number of the Committee's recommendations are not matters for my Portfolio, however I would like to offer the following comments.

Recommendation 1

NSW Police advises me that the Government's amendment to the car surfing offence at section 52A of the *Crimes Act*, which made it clear that a collision between the victim and a motor vehicle was not required to make out the offence, is effective.

Recommendation 2

While this matter is in the hands of the Minister for Roads, I support a clarification of how much of a person's body may lawfully project from a vehicle.

Recommendation 5

The production of educational materials warning person of the dangers of car surfing is the responsibility of RTA as the Committee notes.

NSW Police would be able to use any such materials to augment existing educational programs with young persons.

Yours sincerely,


John Watkins MP
Minister for Police

- 8 DEC 2004





The Hon. John Della Bosca MLC
Minister for Industrial Relations
Level 30, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Our ref.: STC392

Dear Minister,

I refer to my previous letter regarding the STAYSAFE Committee report:

"Report on car surfing and the carriage of unrestrained and unprotected passengers on motor vehicles. Sydney, NSW: Parliament of New South Wales."

The STAYSAFE Committee has received the response of the Hon. Carl Scully MP, Minister for Roads, to the findings and recommendations made in the report. Concerning Recommendation 4:

The WorkCover Authority, in consultation with the Roads and Traffic Authority, and other agencies and organisations, review the circumstances where persons engaged in work get on and off, or into and out of, moving vehicles, and develop interventions to minimise risk and improve safety, as appropriate (e.g., by redesign of the vehicle body and equipment, publication of educational materials, conduct of safety programs, etc.).

the Minister advises that the Roads and Traffic Authority is available for consultation with the WorkCover Authority with regard to this recommendation.

Yours sincerely,

Ian Faulks
Committee Manager

STC 392
CO4/3575

M04/8011



NEW SOUTH WALES

*Minister for Roads
Minister for Housing
Leader of the House*



Mr Ian Faulks
Committee Manager
STAYSAFE Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

18 NOV 2004

Dear Mr Faulks

I refer to your letter (STC 392) concerning the "Report on car surfing and the carriage of unrestrained and unprotected passengers on motor vehicles. Sydney, NSW: Parliament of New South Wales."

As detailed in the attached documentation, the Joint Standing Committee on Road Safety deleted Recommendation 6. Recommendations 2, 3 and 5 have been addressed and will continue to be progressed as necessary. My Office and the Roads and Traffic Authority are available for consultation as required in Recommendations 1 and 4.

I have provided comment on the individual recommendations in the attachment.

Thank you for the opportunity to provide comment on the findings and recommendations made in the Report.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Scully".

CARL SCULLY MP
Minister for Roads

Report on car surfing and the carriage of unrestrained and unprotected passengers on motor vehicles.

COMMENTS

Comments regarding each recommendation are as follows.

Recommendation 1:

The Attorney General in consultation with the Minister for Police and the Minister for Roads continue to review the provisions of the Crimes Act 1900 s.52A to ensure that investigating police and prosecution authorities are able to deal with drivers of motor vehicles who have been involved in incidents where an unrestrained passenger riding on the vehicle has been killed or injured.

Amendments made to the Crimes Act 1900 s.52A are acknowledged. The Minister for Roads *Policy Advisers* and the Roads and Traffic Authority (RTA) are available for consultation with the Attorney General in relation to this recommendation.

Recommendation 2:

The Minister for Roads ensure that advice is obtained regarding the effectiveness of the Australian Road Rules in dealing with incidents of car surfing and the carriage of unrestrained passengers on motor vehicles.

The Roads and Traffic Authority is a participant on the Australian Road Rules Maintenance Group.

The RTA raised the issue of car surfing with this Group to ensure that the rules concerning the carriage of unrestrained passengers on motor vehicles prohibit all forms of this activity.

The RTA raised the issue of car surfing for this Group

In the December 2003 hearing, the following issues were raised:

- Australian Road Rule 268 (1) (see Box 1, next page) creates an offence for a person (surfer) standing on any part of the vehicle that is not designed for carrying people or goods. A person standing on a roof rack or in the tray of a utility or truck, however, would not be covered by this rule because those areas are designed for carrying goods (another rule applies, however; see below).
- Subrules 268 (3) and (4) (see Box 1, next page) may create an offence for the surfer and the driver of the vehicle. These subrules prohibit a person travelling with *part* of their body outside a window or door of the vehicle and a driver from driving a vehicle while part of a person's body is outside a window or door. However, there has been doubt expressed as to whether the precise wording of these subrules is adequate to cover car surfing. The doubt surrounds whether having *the whole of a person's body* outside a window or door is an offence under these provisions.
- Following a request by the RTA for clarification, in October 2003, the Australian Transport Commission (ATC) approved amendments to ARR 268 (see Box 2, next page) that make it an offence to drive a vehicle where a passenger under the age of 16 years is travelling on a part of the vehicle not designed for the carriage of passengers or goods. However, if the part of the vehicle for the carriage of good is not enclosed, the driver also commits an offence.

BOX 1**PREVIOUS Australian Road Rule 268**

How persons must travel in or on a motor vehicle

- (1) A person must not travel in or on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods.

Offence provision.

Note Motor vehicle is defined in the dictionary.

- (2) A person must not travel in or on a motor vehicle with any part of the person's body outside a window or door of the vehicle, unless the person is the driver of the vehicle and is giving a hand signal:

- (a) for changing direction to the right in accordance with rule 50; or

- (b) for stopping or slowing in accordance with rule 55.

Offence provision.

- (3) A person must not travel in or on a motor vehicle with any part of the person's body outside a window or door of the vehicle, unless the person is the driver of the vehicle and is giving a hand signal:

- (a) for changing direction to the right in accordance with rule 50; or

- (b) for stopping or slowing in accordance with rule 55.

Offence provision.

- (4) The driver of a motor vehicle (except a bus) must not drive with a passenger if any part of the passenger's body is outside a window or door of the vehicle.

Offence provision.

Note Bus is defined in the dictionary.

- (5) This rule does not apply to a person who is:

- (a) in or on a police or emergency vehicle, or

- (b) on a motor bike, or

- (c) engaged in the door-to-door delivery or collection of goods, or in the collection of waste or garbage, in or on a motor vehicle that is not travelling over 25 kilometres per hour.

Note. *Emergency vehicle*, *motor bike*, and *police vehicle* are defined in the dictionary.

- (6) This rule also does not apply to a person if:

- (a) the person is exempt from this rule under another law of this jurisdiction and is complying with the conditions (if any) of the exemption, or

- (b) the vehicle is exempt from this rule under another law of this jurisdiction.

- (7) For this rule:

enclosed, for a part of a vehicle, means enclosed by:

- (a) the structure of the vehicle, or

- (b) a canopy, cage or other device fitted to the vehicle that is approved, for the *Australian Road Rules*, under another law of this jurisdiction.

BOX 2**REVISED Australian Road Rule 268**

For section 4:

- (4) The driver of a motor vehicle (except a bus) must not drive with a passenger if any part of the passenger's body is outside a window or door of the vehicle.

Offence provision.

Note Bus is defined in the dictionary.

- (4A) The driver of a motor vehicle must not drive with a passenger who is under 16 years old in or on a part of the vehicle that is not a part designed primarily for the carriage of passengers or goods.**

Offence provision.

- (4B) The driver of a motor vehicle must not drive with a passenger who is under 16 years old in or on a part of the vehicle that is a part designed primarily for the carriage of goods if the part is:**

- (a) not enclosed; or**

- (b) declared under another law of this jurisdiction to be part of the vehicle in or on which persons must not be carried.**

Offence provision.

Progress to address car surfing with the Australian Road Rules includes the following:

- Changes to Australian Road Rules 268 (4A) and (4B) (see Box 2, previous page) were nationally agreed by the Australian Road Rules Maintenance Group, drafted by the (Federal) Office of Legislative Drafting, voted on by the Australian Transport Council, and agreed by all jurisdictions to implement in 2004. NSW is currently in the process of adopting this Regulation.
- At a meeting of the Australian Road Rules Maintenance Group in October 2003 the RTA proposed further amendment of ARR 268 that would make the offence apply irrespective of the passenger's age. The meeting agreed to refer the matter to the Office of Legislative Drafting. The National Transport Commission included this proposed amendment in a package of amendments to the Office of Legislative Drafting. This amendment has been drafted (see Box 3, below) and accepted by the Australian Road Rules Maintenance Group. The Transport Agency Chief Executive (TACE) will table this amendment at the Ministers Meeting of the Australian Transport Council, and if approved it will be tabled by the National Transport Commission and each state's jurisdictions will adopt the amendment into their law.
- In the abovementioned drafting instruction by the National Transport Commission, clarification was sought from the Office of Legislative Drafting to ensure that Regulations are sufficient to address the issue of car surfing. No amendments were proposed by the Office of Legislative Drafting, to the Regulation, therefore indicating that the current ARR 268 is sufficient to "include circumstances where the driver permits a person to travel outside the vehicle, for example 'vehicle surfing'". This will be tabled at the next meeting of the Australian Road Rules Maintenance Group in December 2004.

The current status in NSW is:

- It has been confirmed by the Office of Legislative Drafting that car surfing is addressed by the proposed changes to ARR 268 Regulations.
- The amendment to ARR 268 to include subrules (4A) and (4B) has not yet been adopted into NSW law.
- The Australian Road Rules are being integrated with NSW Road Transport Law next year.
- The Roads and Traffic Authority is in the process of adopting ARR 268 amendments (as in Box 3) to NSW law.
- As necessary, further changes, which are feasible for NSW, will be identified and progressed.

BOX 3

FURTHER REVISED Australian Road Rule 268

For section 4:

- (4) The driver of a motor vehicle (except a bus) must not drive with a passenger if any part of the passenger's body is outside a window or door of the vehicle.
 Offence provision.
 Note Bus is defined in the dictionary.

- (4A) The driver of a motor vehicle must not drive with a passenger **who is under 16 years old** in or on a part of the vehicle that is not a part designed primarily for the carriage of passengers or goods.
 Offence provision.

- (4B) The driver of a motor vehicle must not drive with a passenger **who is under 16 years old** in or on a part of the vehicle that is a part designed primarily for the carriage of goods if the part is:
 (c) not enclosed; or
 (d) declared under another law of this jurisdiction to be part of the vehicle in or on which persons must not be carried.

Offence provision.

Recommendation 3:

The Minister for Roads document the nature of delays in obtaining advice regarding the effectiveness of the Australian Road Rules in dealing with incidents of car surfing and the carriage of unrestrained passengers on motor vehicles and forward a report to the Australian Transport Council.

The process of working with the Office of Legislative Drafting is through the National Transport Commission. This process was followed, as detailed above under Recommendation 2, and clarification regarding car surfing and the carriage of unrestrained passengers on motor vehicles gained. The issues of delays in the process will be raised at the next Australian Road Rules Maintenance Group in December and future progress will be monitored.

Recommendation 4:

The WorkCover Authority, in consultation with the Roads and Traffic Authority, and other agencies and organisations, review the circumstances where persons engaged in work get on and off, or into and out of, moving vehicles, and develop interventions to minimise risk and improve safety, as appropriate (eg. by redesign of the vehicle body and equipment, publication of educational materials, conduct of safety programs, etc.).

The Roads and Traffic Authority is available for consultation with the Work Cover Authority in regards to this recommendation.

Recommendation 5:

The Roads and Traffic Authority in consultation with New South Wales Police and other agencies and organisations develop advisory materials to address the risks associated with car surfing and the carriage of unrestrained passengers on motor vehicles.

Issues of risks associated with car surfing are explored in the recently developed Driver Education materials for Stage 4 high-school students entitled ‘Shifting Gears’. The context of the material developed is within risk assessment and informed decision-making. Whilst there is a need to provide information to the community about the risks and dangers resulting from car surfing, it is important to develop strategies to do this without promoting the idea of car surfing.

The Roads and Traffic Authority develops all curriculum-based road safety education resources in conjunction with its education program partners, The Association of Independent Schools, NSW, Catholic Education Commission NSW, and the Department of Education and Training.

the *to be available ...*
Within newly revised version of the Road Users' Handbook (draft October 2004), the issue of the carriage of unrestrained passengers on motor vehicles, is addressed. As part of the Graduated Licensing Scheme, drivers “must not drive with any passengers in the boot or on the vehicle” and “must ensure that all occupants are properly restrained by seatbelts or approved restraints”.

It is acknowledged that youth are not the only target group for car surfing and therefore there may be a need to seek avenues of reaching other target groups, whilst not promoting the practice of car surfing.

Recommendation 6:

The Minister for Roads and Chief Executive, Roads and Traffic Authority, ensure that:

- (a) submissions forwarded to STAYSAFE are complete and unexpurgated; and
- (b) indicate where confidentiality of a document, or part of a document, included in a submission is to be considered.

The Roads and Traffic Authority understands that the Committee decided to delete this recommendation.

It should be noted that the Minister and the Roads and Traffic Authority give full and frank information. However, some information is protected under the Privacy and Personal Information Protection Act 1998 and the Health Records and Information Privacy Act 2002.