

Brief submission on the review of the Roads Act 1993

I have not explored the full scope of issues raised in the review as many are outside my field of expertise and interest. However, I submit that s.88 of the Act should be amended to clarify that its intent is limited to exempting a roads authority from prosecution under other Acts when it removes or trims vegetation that has a) fallen onto a road, b) is at imminent risk of falling onto a road (e.g. a suspended or broken tree limb or partially uprooted tree or large shrub), c) or has grown over the edges of a road or associated drain and requires suppression to provide for safe use of the road. At present, this section could be used by a roads authority to claim exemption from prosecution under the NSW Biodiversity Conservation Act for work that was not maintenance and was not related to an emergency of any kind but was instead caused by road widening. The Court has upheld prosecutions of Councils that harmed or killed threatened species (primarily threatened flora or ecological communities) during road works that were not subject to any or proper ecological assessment. So clearly, s.88 is not a blanket exemption, but in its current form, councils or other roads authorities could self-servingly interpret it as such. I suggest the following amendment:

S.88 (currently entitled Tree Felling, but better worded as 'Vegetation Management')

Currently reads: A roads authority may, despite any other Act or law to the contrary, remove or lop any tree or other vegetation that is on or overhanging a public road if, in its opinion, it is necessary to do so for the purpose of carrying out road work or removing a traffic hazard.

Should read: A roads authority may, despite any other Act or law to the contrary, remove or lop any tree or other vegetation that is on or overhanging the trafficable portion of a public road if, in its considered opinion, it is necessary to do so for the purpose of removing an imminent or current traffic hazard, or for carrying out routine maintenance road work. This section does not relate to new or expanded road works such as widening or realignment and that are not routine maintenance.

