

28 March 2025

Feedback for Roads Act Review

Total number of comments: 3

Issue 1 – Does the Roads Act allow anyone other than a road authority to regulate traffic for their independent purposes? For example, utility provider, private developers.

Comment 1: Recent legal advice (below in red) highlighted legal uncertainty whether anyone other than road authorities can regulate traffic or use prescribed traffic control devices.

However, in practice, third parties (utility companies and others) need to be able to (and do) regulate traffic and use prescribed traffic control devices for their own independent purposes.

See legal advice provided below (in red) by Sean O'Dwyer – LEX 45298 and my highlighted (yellow) text

1. ... when council is approving the use of a prescribed traffic control device by a third party.

- Does the council issued road access permit (approval) to a third party authorise them to use the prescribed traffic control devices?

Council have been approved under the main delegation to install/use etc. prescribed traffic control devices, where the Signs Register published by TfNSW says 'yes' for Councils. When Council is issuing a ROL [road occupancy licence] for a third party to do so, we have to look at the third party as merely an agent of Council doing so on its behalf. The third party can only ever do what Council could do (and no more) because in effect, they are simply an agent/contractor of Council.

Note: A legal issue arises where either TfNSW or Council issues a ROL [allowing a proponent to 'regulate traffic' on its own behalf (as opposed to doing so to give effect to TfNSW or Council works)]. In my view, there is a legal uncertainty as to whether anyone other than a roads authority can actually regulate traffic for their own independent purposes. Example might be developers. Even the use of

traffic controllers doesn't resolve this – arguably the Roads Act simply doesn't allow it (same goes for use of prescribed traffic control devices) – this needs to be looked with high level legislation/policy however. I understand that both TfNSW and Councils issue ROLS purporting to allow third parties to regulate traffic for their own purposes (whether be means of prescribed traffic control devices or otherwise) as a matter of general routine business.

Issue 2 – Section 87 Traffic control facilities

Comment 1: Clause 4 is ambiguous. Does it mean the installation of permanent traffic control lights (signals) and/or the use of portable traffic signals on road work sites?

(4) However, the construction, erection, installation, maintenance, repair, removal or replacement of a traffic control light may not be carried out otherwise than by or with the consent of TfNSW.

Portable traffic lights should be excluded from s.87 as they are a 'prescribed traffic control device' and the approval to use them is covered by s.122(b) of the Road Transport Act 2013. Hence there appears to be a duplication of approval requirements between the two Acts.

Also, the descriptive / comprehensive list of the actions in Clause 4 suggests that it is referring to (and the intent is) permanent infrastructure, not a portable device. See example portable traffic signal.



Comment 2: the title of section 87 Traffic control facilities is misleading. The first three clauses refer to traffic control work while clause 4 refers to a traffic control facility (that is a traffic control light, i.e. an item of infrastructure).

The title of this section should be expanded to 'Traffic control work and facilities' so it is more inclusive of the four clauses or alternatively Clause 4 should be relocated elsewhere, and the section then renamed to 'Traffic control work'.