



27 March 2025

Transport for NSW
PO Box K659
HAYMARKET NSW 1240
Via Transport for NSW Submission Portal

Contact: Cameron Clark
Our Ref: DOC2025/055052
Your Ref: Roads Act 1993 Review

Dear Sir/Madam

Roads Act 1993 Review - Submission

Cessnock City Council appreciates the opportunity to provide a submission on the review of the *Roads Act 1993* from the perspective of a roads authority exercising its many road infrastructure management functions within a vast and diverse LGA, that is experiencing significant population growth, resulting in exponentially increasing demands on our road network.

As a Council with approximately 80% of our community / customer request interactions relating to roads / traffic & transport matters, we consider that a review of the *Roads Act 1993* is a very worthwhile undertaking.

This review can be the catalyst for contemporising statutory language and definitions and formatting of the legislation to align it with companion legislation and regulations, such as the *Road Transport Act 2013*, *Heavy Vehicle National Law*, *Roads Regulation 2018* and *Road Rules 2014*.

We consider that the outcomes and actions arising from this review should not detract from the stated objects of the current *Act* as set out below:

3 Objects of Act

The objects of this Act are—

- (a) to set out the rights of members of the public to pass along public roads, and*
- (b) to set out the rights of persons who own land adjoining a public road to have access to the public road, and*
- (c) to establish the procedures for the opening and closing of a public road, and*
- (d) to provide for the classification of roads, and*
- (e) to provide for the declaration of TfNSW and other public authorities as roads authorities for both classified and unclassified roads, and*

t: 02 4993 4100 f: 02 4993 2500

p: PO Box 152 Cessnock NSW 2325

e: council@cessnock.nsw.gov.au w: www.cessnock.nsw.gov.au

ABN 60 919 148 928

(f) to confer certain functions (in particular, the function of carrying out road work) on TfNSW and on other roads authorities, and

(g) to provide for the distribution of the functions conferred by this Act between TfNSW and other roads authorities, and

(h) to regulate the carrying out of various activities on public roads.

In preparing this submission we set out to address some of the specific questions contained in the “Have your say” survey accompanying the TfNSW Roads Act 1993 Issues Paper – February 2025

How could the Act be changed to enable more community uses for roads and streets?

We consider that the primary objectives for roads and streets should remain consistent with the definition provided by clause 12 of the *Road Rules 2014*, in that except for specific civic functions / events, roads shall remain open for use by the public for both vehicles and pedestrians.

How can safety be better considered in the planning, administration and management of roads?

Improved safety outcomes is the primary focus for all Councils who manage road reserves and the infrastructure within, based on the technical standards (as they exist at present) the financial burden of achieving strict compliance with the technical standards can only be considered a wish or a dream.

The strongest positive influence on safety (Improved safety outcome or compliance) in a road reserve/infrastructure upgrade project can be made in the investigation, planning and design stages of a project. It is imperative for the legislation to support local government organisations (as the primary group who inherit responsibility for the risk associated with the operation and use of road reserve infrastructure) by facilitating/supporting/endorsing a risk based approach that can be applied across LGA's or regions that reduce consequential exposure to “non-compliance” and the flow on effect of potential legal, financial and reputational damage that have long lasting impacts on communities.

How can the Act better recognise the public health and environmental benefits of roads and streets?

The *Act* can better recognise the public health benefits of roads and streets by mandating that road design and construction facilitate the provision of safe multi-modal transport networks, including active transport infrastructure with adequate facilities to manage interfaces between pedestrians and vehicles.

The *Act* should also enable roads authorities to regulate the carrying out of various activities on public roads in a manner that prioritises community safety and appropriately balances the needs of all road users.

What other community issues would you like to raise in relation to the Act?

The *Act* is not intended to be the panacea for achieving community desires, outside of its stated objectives. It should be read, interpreted and administered with reference to relevant technical directions and guidelines. As an example, the Austroads Guide to Temporary Traffic Management provides exhaustive guidance and commentary on best practice temporary traffic management, appropriate to

condition the conduct of community events within the public road reserve, as well as providing for the safe traffic management around work sites.

It is important that those charged with administering the *Act* are mindful of their responsibility to the general community and all users of the public road network, when assessing applications for use of the public road reserve for works and activities.

An example of where the well-intentioned relaxation of approval requirements and laissez-fair reliance on voluntary compliance from applicants resulted in undesirable outcomes was the streamlining of applications for footway restaurants, as a post covid-19 economic stimulus measure, which in some areas resulted in instances of unreasonable general pedestrian access obstructions and inappropriately placed dining furniture, posing a risk to vision impaired persons, simply attempting to safely navigate foot paths.

What issues have you experienced due to overlapping classification systems that determine roles and responsibilities for NSW roads?

A recurring issue with respect to overlapping classification systems is the processing of applications for works and structures in the public road reserve, under section 138 of the *Act*, which requires councils to obtain concurrence from TfNSW prior to the issuing of such consent on a classified (state) road. The problem often encountered seems to result from a reluctance of TfNSW staff to become actively involved in the process, only to later insert themselves in the event there is a disputed decision or negative outcome. TfNSW staff generally confine themselves to matters relevant to the carriageway or within 1 metre from road edge lines, which excludes consideration of applications relevant to footpaths and nature strips.

Describe issues you've experienced with parallel approval processes under the NSW planning system and the Act?

The main issue we experience is a general lack of understanding by many stakeholders of the fact that the planning approval process does not in and of itself authorise the regulation of traffic on public roads and that the approval / installation of prescribed traffic control devices is carried out under delegation from TfNSW, usually involving the Local Traffic Committee process.

This important distinction should remain in the *Act* to ensure uniformity of decisions and most importantly that installed traffic control devices and traffic facilities have been duly considered from a technical perspective.

In a rapidly growing LGA with significant forecast residential population growth we manage and determine a large volume of residential DA's that include driveways that do not require assessment within the DA process however the current wording in the *Act* is ambiguous as it only refers to erection of a structure in section 138. Simple clarification is this section provides planning approval for the structure (not recorded by any Council's as an asset) or is this section facilitating the assessment of the proposed works to ensure they are being implemented safely and the road reserve will be left in a safe and useable state?

The pain points around this for home owners and contractors are that Occupancy Certificates are being withheld potentially unfairly on the grounds of a "non-compliant" asset that in reality for Council's is not actually an asset.

Describe your experience of using the Delegation to Councils and any improvements which could be made.

We have had no difficulty in using the Delegation to Councils for the regulation of traffic, given that we have developed a good rapport with our State Member of Parliament, TfNSW and NSW Police representatives to our Local Traffic Committee and have adopted the practice of conducting pre-meeting site inspection visits to relevant locations to fully discuss and understand LTC agenda items. This practice has streamlined the LTC meeting process, in that a consensus has generally been reached in the field on LTC items prior to the formal LTC meeting.

The removal (in December 2023) of the prohibition on a sub-delegate from carrying out a function under Division 2 of Part 8 of the *Act* further streamlined the process.

Being a roads authority in a busy LGA with a vibrant tourism industry (Hunter Valley Wine Country) we process a large number of applications for events with significant traffic generating impacts, such as major outdoor concerts featuring world famous artists. The operation of Division 2 of Part 8 of the *Act*, whilst procedurally onerous, provides us with the vital precaution of requiring technical review of proposed Traffic Management Plans and Traffic Guidance Schemes for proposed events through the LTC process, as an essential component of the approval process.

In addition, the general community, as well as competing commercial operators, are safeguarded by the public notice and ensuing 28-day public submission period, mandated by the above provision, which ensures that duly lodged public submissions are reviewed prior to the issuing of consent to regulate traffic, which may otherwise have entailed restrictions to access to neighbouring venues and locations, to the detriment of other persons' existing rights and genuine interests. We often use the example of a wedding, planned well in advance, having guests' access frustrated by the implementation of road closures for an event within the same locality. Such situations are inequitable and undesirable and can be avoided by the public notice and submissions provisions under Division 2 of Part 8 of the *Act*.

Any change to the *Act* that would result in a streamlining of the operation of Division 2 of Part 8, such that councils would be authorised to unilaterally approve the regulation of traffic / installation of traffic control devices without the protections provided by the LTC process would likely be susceptible to actual or perceived undue influence or dishonest conduct, particularly involving dealings with well-connected developers. The overarching role of TfNSW should not be removed as TfNSW management and staff are not as susceptible to local political influence.

What improvements can be made to the Act to increase flexibility in response to natural disasters?

We consider that the *Act* in its current form is not an impediment to appropriate responses to natural disasters.

How could compliance and penalty frameworks be changed to better meet the objects of the Act and to address environment and safety compliance?

Penalties need to be increased significantly so as to provide an enforceable meaningful deterrent to non-compliance with conditions of consent. As an example, we have had numerous incidents where proponents of major traffic generating events have chosen to refrain from implementing conditioned traffic control measures, on the basis that adherence to the approved Traffic Guidance Scheme /

Traffic Control Plan is more expensive than the penalty for breaching the relevant conditions.

In conclusion, we are supportive of efforts to modernise the *Roads Act 1993* to ensure its efficacy and applicability to current times, however caution should be observed to ensure that any legislative changes emanating from the review do not amount to a diminution in the community protections afforded by the *Act* in its current form.

If you require any further information, please do not hesitate to contact me on telephone 02 4993 4281 via email council@cessnock.nsw.gov.au.

Yours faithfully



Cameron Clark
Infrastructure Manager