

I am an IPWEA Member. Over the past 8 years I have been working as a stormwater investigations Engineer, Road Maintenance and Investigations Engineer and Road Asset Engineer in the Road Reserve.

Previous to this I was a civil contractor and also a NSW Police Officer conducting criminal investigations and prosecutions for 10 years. I have both an understanding and formal training in law and Civil Engineering.

I note the late comments, however I have had considerable issue as an Engineer and Acting Manager of the Roads Team of a large Council in the Regulatory part of the Roads Act.

In short:

1. The Act is incompetent in providing the right level of support to assist local Councils in managing criminal conduct in the road reserve.

EXAMPLES: Encroachments in the road network where I have been working. Currently the team I am in (Engineers) are investigating a backlog of over 100 encroachments. These range from serious issues like filling in stormwater swales outside properties. Illegally excavating and building retaining walls, illegal filling of sections of the road, destruction of property, trees, plants, excavating private electrical conduits in the road (Private), illegal carports, structures, stairs, bin storage, changing landforms. Also illegal planting of trees for screening and private landgrabs of the public space, fences etc.

S138 of the Roads Act prohibits working in the road without approval. The offence provides for a maximum penalty of \$1100. **Of serious concern is that this is not in the fixed penalty handbook so no fine can be issued.** A summons to court is required which needs Council to engage solicitors to form the appropriate prosecution and represent Council in Court – making the provision only useful in the most grave and serious circumstance - which for \$1100 fine maximum penalty – is never used. So, the offence is effectively useless.

With an \$1100 fine (if a fine was issued on the spot if it was possible) it would 10% so \$110. This is less than the cost of applying for permission with Council's user charges so effectively it would be useless.

Council is the landowner and manager of this critical public space and we need the capacity to manage criminality in this space. Encroachments in some Councils are significant in both volume and significance.

Provisions relied upon such as section 107 and 238 - provide some pathway to remove obstructions, however this is a slow pathway and flips the script where the victim (Council) has to find money to remove the obstacle and then hope to regain the amount in court. This comes with some risk and outlay and so will only apply to the most grave and serious circumstances.

Also the argument that we have orders under the local government act is weak. These orders are normally used for larger structures that pose a risk to public safety and also do not address the criminality directly (which is failure to request permission to build or construct works on Council property) – a basic concept that you request permission

from a landowner before doing things. S138 needs to stand on its own two feet and not be vacuous in capacity requiring other Acts and offence provisions to manage it.

What the Council needs is for the offence provision of s138 to have some value and teeth.

Firstly the offence needs to be in the fixed penalty handbook so the SEINS system is engaged (Self Enforcing Infringement Notice System). This allows Rangers or Council staff to issue on the spot fines for people doing encroachments which places authority (and perceived authority) in the hands of the land owner.

Secondly the provision needs to have much higher in penalties as some encroachments are in the \$100,000 or more dollar range. Most are \$0 – 20,000, however some are larger.

Thirdly the penalties should be structured to account for the range of seriousness in the encroachments.

Example:

For works less than \$20,000 the penalty should be maximum \$11,000 (\$1,100 fine from the fixed penalty handbook)

For works greater than \$20,000 the maximum penalty is \$55,000 or (\$5,500 from the fixed penalty handbook)

(this is just a guess – probably could be better structure)

The value of works is determined on the balance of probabilities.

There are many issues with the Roads Act – but I believe this absolutely has to be changed as it is completely deficient and we are struggling to appropriately manage the road reserve. It is not written in a way that effectively and practically supports the Council.

If you break the law there should be a capacity for an immediate punitive action (fine) not a 2 year drawn out request after letter request that goes unanswered by the persons of interest in the matter.

Offence Code	Reg. code	SL	Short Title	Issue To	\$	DP	Section/ Clause
97198	LBJ	6	Display scheme authority in or on vehicle contravening condition	N	818		114(1)
97199	UXY	6	Permit possession/access to scheme authority to another if suspect contravention	N	818		114(2)
97200	OLK	6	Reproduce/copy/deface/alter or destroy a scheme authority	N	818		115
97201	APL	6	Scheme authority holder fail to return scheme authority if cease to be disabled	N	818		116
97202	DWE	6	Not immediately comply with s 117(1) direction to remove authority	N	818		117(2)
97203	BSO	6	Individual or organisation fail to return expired authority	N	818		118(3)
97205	HFI	6	Individual or organisation fail to return revoked authority	N	818		119(4)
97206	BKQ	6	Unincorporated association fail to return revoked authority	N	818		119(5)
97207	ABJ	6	Falsely represent goods vehicle is parked lawfully in controlled loading zone	N	320		123(1)
97208	NAG	6	Damage a loading zone device	N	320		124(a)
97211	MPL	6	Deface a loading zone device	N	227		124(b)
97212	GET	6	Affix anything to a loading zone device	N	227		124(c)
97209	DDD	6	Unlawfully interfere with proper working of loading zone device	N	320		124(d)
97210	HSZ	6	Unlawfully interfere with proper working of loading zone device	N	320		124(e)
Road Transport Act 2013							
100818	KLN	12	Stand unregistered registrable Class A motor vehicle on road	R	320		68(1)
100819	QZJ	12	Stand unregistered registrable Class A motor vehicle on road -camera	R	320		68(1)
100817	KLE	12	Stand unregistered trailer being a part of a combination	R	227		68(1)
Registration offences							
85252	BJL	12	Stand unregistered trailer not being a part of a combination	R	227		68(1)
Negligent Driving, speed evasion articles, speed limiter compliance							
84712	IZE	6	Refuse to produce Aust drivers licence/state name/address	N	136		175(2)(a)
79305	RXQ	6	Driver or rider state false name or home address	N	136		175(2)(b)
Roads Act 1993							
Roads authority may regulate traffic in connection with road work etc							
18667	NWL	6	Drive contrary to light traffic thoroughfare notice	R	136		115(4)(a)
54127	YFF	6	Willfully contravene/disregard notice/barrier	R	136		115(4)(a)
Roads Regulation 2018							
Traffic controllers							
92796	AWR	6	Disregard reasonable direction of traffic controller	N	672		6(4)
Protection of roads and traffic							
92797	SWW	6	Place on road thing likely to injure person or damage vehicle	N	672		8(1)(a)

Matthew Holt

BE Civil (Hons) MIEAust RPEng (Civil)
Dip Policing Practice (Distinction)

CertIV WHS
CertIV Workplace Assess Training

To Whom It May Concern,

I note this is a late response, however the Your Say period was not very long given the significance of the Act. Could you please consider this feedback.

Council acts as the land manager, road authority and road manager for the majority of the road network. This requires management of not only the carriageway but adjacent land between the formed carriageway and adjacent private property boundaries.

As part of this, Council is required to allow / consent to private accessway structures from the carriageway to the the adjacent property boundary to allow private access to properties.

This is normally achieved by the construction of a private access way in the form of a driveway from the wearing course across the adjacent landform to the private boundary. Where the landform is steep, the driveway is usually 'cut' into the side of the land either on the low side of the road or high side of the road. Invariably this 'cut' produces a steep slope or steepens the natural slope requiring either a batter, or in many cases a retaining wall.

The retaining walls are purely private structures on Council land for the sole benefit of the private owner or owners that the accessway/ driveway services. There is no benefit to Council or the public for these structures.

The Roads Act needs to support Council as the landowner and recognise the financial capacities of Councils to provide services with rate taxes and manage public infrastructure. In that aim, it is essential to have support in the Act to clearly outline private owner maintenance responsibilities for private structures in the road reserve.

By not providing this basic information and support in the Act to manage the "road reserve" it places Council in the position of incessantly having to defend and provide argumentation to private interests on responsibilities of infrastructure management in the road reserve. This burdens Council by directing unnecessary resources to constantly explain basic responsibilities. It also clouds responsibilities and emboldens private owners to reject their asset maintenance responsibilities. The risk to public safety is increased in the road reserve due to the increased risk of collapse of poorly maintained retaining walls.

In a plain reading of S142 (3) the section effectively carves out all the retaining structures for driveways from the Section. This makes S142 oblivious to the majority of structures that are in the road requiring private maintenance.

Subsection 3 limits the operation of the section to generally utility infrastructure and some other isolated forms of infrastructure and not the majority of private infrastructure that Council is having to deal with.

This is not helpful and is a burden on Council. It furthers the theme of Council as 'victim' instead of Council as Road Authority.

In my opinion it is a weak argument that Positive Covenants and orders under the Local Govt Act can bridge the gap. The Roads Act needs to be legally competent in and of itself and be the primary tool to manage land in the Road Reserve. It has dubious teeth and should clearly outline maintenance requirements for ALL structures in the road reserve.

Ensuring S142 captures retaining structures etc for private accessways that only benefit private interests would be a major step in assisting Councils to manage the public land in the road reserve. It will also increase safety.

Finally, this offence needs to be in the fixed penalty handbook so that fines can be issued by the Council instead of the only pathway being a Summons. For a max penalty of \$3,300 - a summons is onerous and costly and the cost to Council would be more than the max penalty to just get a solicitor to attend on first mention.

ROADS ACT 1993 - SECT 142

Maintenance of works and structures

142 Maintenance of works and structures

(1) A person who has a right to the control, use or benefit of a structure or work in, on or over a public road--

(a) must maintain the structure or work in a satisfactory state of repair, and

(b) in the case of a structure (such as a grating or inspection cover) located on the surface of the road, must ensure that the structure is kept flush with the surrounding road surface and that the structure and surrounding road surface are so maintained as to facilitate the smooth passage of traffic along the road,

and the person is, by this section, empowered to do so accordingly.

: Maximum penalty--30 penalty units.

(2) Subsection (1) applies to all structures and works in, on or over a public road, including structures and works for which there is no consent in force under this Division.

(3) Subsection (1) does not apply to a person whose right to the control, use or benefit of a structure or work consists merely of a right of passage that the person has as a member of the public or a right of access that the person has as the owner of adjoining land.

(4) If--

(a) a roads authority has granted a consent under this Division to the doing of anything, and

(b) that thing has been or is being done otherwise than in accordance with the consent,

the roads authority may direct the holder of the consent to take specified action to remedy any damage arising from the doing of that thing otherwise than in accordance with the consent.

Matthew Holt

BE Civil (Hons) Dip Policing Practice

MIEAust RPEng (Civil)