



NSW & ACT

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NSW Roads Act Review Team
Transport for NSW

By email roadsactfeedback@transport.nsw.gov.au

Dear NSW Roads Act Review Team,

REVIEW OF THE NSW ROAD ACT – ISSUES PAPER

I write with reference to the Review of the *NSW Roads Act* and the subsequent call for initial feedback from interested parties to the issues paper.

As you are aware, the Institute of Public Works Engineering Australasia (NSW & ACT) (“the Institute”), has a long history of engaging with government on matters relating to roads and transport, noting that the Institute represents a significant number of public works professionals who are responsible for the local government road network and transport sectors.

Following the call for submission to the issues paper relating to the review of the *NSW Roads Act*, please see the Institute’s feedback enclosed.

If you have any further questions regarding the feedback provided, please do not hesitate to contact the Institute. We would welcome any opportunity to discuss our recommendations in more detail in person.

Yours sincerely,

The Hon David Elliott
Chief Executive Officer
IPWEA NSW and ACT

Mr Joshua Devitt
Chief Engineer
IPWEA NSW and ACT

Does the Act adequately consider key community issues?

- The review of the Act should consider the potential conflicts that arise in the use of main streets as both key access corridors and for public events. The Act should align with best practice planning approaches to encourage separation of the access function away from areas of high public or pedestrian activity.
- The Act should enshrine the responsibility of local government to consider road safety in design, planning and management of their duties as a Roads Authority. It should also provide appropriate mechanisms to support funding of these initiatives, which could include improving access for councils to the community road safety fund available within TfNSW.
- Whilst it is important to protect areas of high environmental value and biodiversity within the road corridor, such as areas of remnant native bushland, increasing the density of flora within the road corridor can lead to increased vehicle / animal interactions, reducing road safety. This issue needs to be considered holistically as part of integrated network plans at the local, regional and state level.

Does the Act sufficiently accommodate all road users?

- IPWEA NSW & ACT are supportive of an increased focus on active transport users within urban parts of the network but identify that there is limited practical applicability of such an approach in regional or rural areas. The Act should be fit for purpose for all roads in NSW, and not preference one part of the network over another.
- The definition of 'traffic' in the Act should be updated to reflect the variety of different types of traffic on the network (e.g. pedestrian, bicycle, car, e-bike, freight), along with guidance on which types of traffic should be prioritised on different parts of the road network, ideally linking to a standardised classification system.
- Caution should be given to ensuring that reforms to the Act do not preference one particular mode of traffic over another. Such priorities should remain in government policy, not state level legislation.
- Review the legislation on 'Closing of a road' to clarify this process and remove legal ambiguity.
- Consideration should be given to mandating the inclusion of public transport and freight vehicle movements as part of integrated network planning processes under the Act.

Is the way we classify NSW roads under the Act still useful?

- The Act should outline a clear standard classification system for all NSW roads, aligning to the National Service Level Standards and which meets the needs of all road authorities and road users.
- The Act should provide clarification on the management of state roads by TfNSW to clearly define the extent of responsibility between State and Local government. This is a common source of contention between State and Local Government. For example, in rural areas, does the limit of

responsibility for TfNSW end at the edge of seal, edge of formation, or edge of road reserve? Who manages structures outside of the formation area which support the pavement (e.g. drainage structures, retaining walls)? Similarly, in urban areas: does the limit of responsibility end at the edge of seal, back of kerb, footpath or road reserve? Who manages structure located within the roadway (e.g. medians, street trees and garden beds)? This clarification should consider the resources of the relevant Roads Authorities to deliver these services, alongside who is best placed to make decisions with respect to management and maintenance of these locations.

- As part of this review, the current split in regional roads between classified and unclassified should be reevaluated, with a view to standardising the treatment of such roads and removing unnecessary administrative burdens.
- Accompanying the review of the Roads Act, the current funding arrangements for councils should be reviewed to move away from competitive grants programs to an increase in baseline funding. This will increase certain of funding, allowing greater investment in maintenance activities and result in a more equitable distribution of funds across NSW councils.
- It is currently unclear how the review of the Roads Act will be impacted by the draft Road Recategorisation framework, particularly considering potential changes to the classification system of roads in NSW.

Does the Act work well with the *Environmental Planning and Assessment Act 1979*?

- IPWEA NSW & ACT are supportive of network level planning being a requirement for all Roads Authorities in NSW, as a means of encouraging proactive management of the network and to assist in strategic decision making. However, such a process should not be solely confined to streamlining the process for development approvals and should adopt a holistic approach to the road network, with a focus on road safety, disaster resilience, and the efficient movement of all forms of traffic. This would, for example include consideration of the requirements for bush fire mitigation through activities such as clearing of road corridors to the tree line.
- Development of a clear legislative framework to help streamline the planning approvals process is supported but should consider the needs of all Roads and Planning Authorities. Such a review may well be beyond the scope of the Roads Act alone and could require amendments to the NSW Planning System.
- Remove the requirement under section 138 of the Act for Road Authorities to require approvals from themselves to undertake works, or to require approval from TfNSW to undertake activities on the local road network.

Could roles, responsibilities and decision-making processes under the Act be clearer and more streamlined?

- IPWEA NSW & ACT are strongly supportive of clearly outlining the powers of NSW councils in the Roads Act, and in ensuring they have equal standing with other Roads Authorities. This would include, for example, providing council with similar powers to TfNSW to require consent for any transfer of Crown Roads to a council, as per section 152I of the existing Act.

Are there ways to improve the operation of certain parts of the Act?

- IPWEA NSW & ACT agree there is a need to reduce the administrative burden of processes under the Act, and that the responsibility to manage a process should be the localist level of government suitably resourced to undertake this task. However, it is noted that following this line of logic may constitute moving away from delegations to a fixed categorisation. That is, the activities of a Roads Authority would not be based on their responsibility to manage a certain type of road but would instead be based on their suitability and ability to have the most impact at a local level. This would in turn necessitate a wholesale review of the support and funding arrangements relating to particular activities of all Roads Authorities.
- Section 175 of the Act needs review and revision to facilitate more practicable and flexible powers for Roads Authorities to deal with the impacts of extreme weather events in a timely manner, and which balances the liability attached to such activities.
- Road Occupancy Licences (ROLs) and Works Authorisation Deeds (WADs) should be formalised and standardised, whilst ensuring that they are fit for purpose for all NSW Roads Authorities.
- The ability for council to charge and recoup costs for services they provide under the Act should be reviewed in light of limitations on the existing funding structures of local government. One option would be to decouple the costs of managing and maintaining the roads network from general council expenditure, allowing councils the freedom to set charges in order to deliver the service levels their communities desire, in a similar manner to local water utility access charges.
- The commentary regarding the limited capacity for TfNSW to recoup costs is noted, however any reforms relating to this, including potential avenues for TfNSW to increase their cost recovery ability, should consider internal efficiency gains that TfNSW could achieve to reduce their internal costs. It is not appropriate that cost recovery be sought from other Roads Authorities, or external parties, of costs incurred due to internally inefficient processes within TfNSW.
- Clarification is required in section 142 of the Act on the maintenance responsibility for roadside verges being that of the adjoining private landowner.
- The current compliance and penalty frameworks in the Act do not provide support to assist local Councils in managing criminal conduct in the road reserve. For example, encroachments into the road reserve in the form of illegal filling of drainage swales, erection of carports, addition or removal of retaining walls etc., carry a maximum penalty of \$1100. This is often less than the cost of applying for permission with Council's user charges so is effectively useless. The offence provisions in the Act should be revised significantly to reflect the seriousness and costs associated with these activities, and to act as an effective deterrent to such behaviour.

Looking to the future, could we do more to ensure that the Act keeps pace with change?

- IPWEA NSW & ACT have identified the following emerging issue for consideration during the review of the Roads Act:
 - The increasing prevalence of electric vehicles (EVs) both in the light and heavy vehicle fleet. Widescale adoption of this technology will require amendments to the Roads Act to manage this shift; including installation of and access to charging infrastructure within

the road reserve, or the ability to recoup the costs of damage by heavier vehicle loads on road pavements.

- The rise of last mile delivery service and accommodating these on the existing network as a part of any integrated network planning process.
- Planning for an increase in autonomous or semi-autonomous vehicles and the responsibilities of Roads Authorities to facilitate this transition.

Additional Commentary

- The Act should require all other parties, particularly utility providers, who wish to access or conduct work in the road reserve to gain the approval of the relevant Roads Authority.
- Significant reform is required in relation to Crown Roads and the ability to transfer such assets to local government. Clear guidance is required on the circumstances under which a Crown Road can be transferred, and the right of refusal provided to the impacted council. Additionally, consideration should be given to streamlining the process and costs for councils to acquire Crown Roads or Crown Land for the purpose of road improvement or widening.
- Similarly, the review of the Act should consider the role of the Forestry Corporation of NSW as it relates to the quality and standard of forestry roads that connect to the public road network, and the ability for councils to directly recoup costs associated with logging transportation activities that impact the local road network.