



From the Ministers

Tasmania's roads play a vital role in connecting communities and facilitating economic growth. Our cities, towns and regions cannot function without them – they are relied upon by commuters in public and private vehicles, provide access to services including health and education, and are the backbone of our freight system. They are also critical for economic activity ranging from agriculture to tourism.

For these reasons, it is crucial that our road management framework, is robust, modern, and efficient.

Currently, Tasmania's road management legislation is a patchwork of common law and various pieces of legislation. While these provisions have served us well over the years, the time has come for a thorough review to address any gaps, inconsistencies, and inefficiencies. This review will be the first holistic review of the framework in Tasmania's history. Our aim is to create a cohesive and streamlined legislative structure that is easier to understand and administer. The review will look at both State and local roads and consider the option to consolidate the framework into a single piece of legislation rather than the current three.

This discussion paper outlines the key focus areas for the review and seeks input from a wide range of interested parties to inform the development of a new framework. Its contents have been informed by initial discussions with local government as well as analysis and comparison with the frameworks in other jurisdictions.

Importantly, the Government is seeking feedback on how the overall framework should be structured, as well as on more specific issues. We encourage interested parties to make their views known both on the high-level structure as well as on the detail.

Feedback will be used to guide the drafting of new legislation. There will be further opportunities to provide feedback as the review progresses, including on a draft exposure Bill.



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Glossary of terms

Head, Transport for Victoria is a single member statutory corporation in Victoria established by the *Transport Integration Act 2010* (Vic) with responsibility for numerous transport-related functions including the management of many State roads and the public transport system.

Highway refers to the legal meaning of the word – ‘a way over which every member of the public has a right to pass’ – rather than common meaning of a main road between major cities or towns.

Highways Act means the *Highways Act 1951*.

LGH Act means the *Local Government Highways Act 1982*.

Local roads and **local highways** means those roads or highways which are not State highways per section 4 of the *Local Government Highways Act 1982*.

R&J Act means the *Roads and Jetties Act 1935*.

RMLR and **the review** means the Road Management Legislation Review.

State roads and **State highways** means those roads and highways which are proclaimed as such under Part II of the *Roads and Jetties Act 1935*, and, where the context requires it, also includes subsidiary roads for the purposes of the same Part.

TfNSW means Transport for New South Wales, an agency of the New South Wales government.

Purpose and background

The Tasmanian Government's Road Management Legislation Review (the review) is a review of the State's entire framework of road management legislation for public roads. It is expected to result in major amendments to, or replacement of, the *Roads and Jetties Act 1935 (R&J Act)*, which is the primary statute for State roads. Depending on the findings, it may also lead to changes to other acts such as those governing local roads. It will consider whether a consolidated statute covering both State and local (council) roads, like those in other jurisdictions, would be better than the current model of separate acts.

Purpose of this discussion paper

This paper has been prepared by the Department of State Growth based on historic legal advice, practical experience of administering the legislation, and comparison of Tasmania's framework with those in other jurisdictions. It has also been substantially informed by feedback provided by representatives from local government during, and after workshops held in early 2023, as well as initial input from some other government stakeholders.

The paper is the first major opportunity for interested parties to have a say in the review. It puts forward the Government's initial views on the direction of the review and many of the known issues with the framework. Feedback is sought regarding the direction of the review, as well as known, and yet to be identified issues.

While some issues have a relatively clear direction or options, others do not. In these cases, we may seek feedback on whether the issue is genuine, options for rectification, or case studies. We have included feedback prompts to assist with this.

This review covers many topics, some of which may not be relevant to all stakeholders. This document has a contents table and headings to help find the relevant sections.

There are feedback prompts in blue boxes to help those responding to the paper.

Feedback prompts

The 'feedback prompts' in blue boxes are not designed to be restrictive. Other feedback is welcome.

All are welcome to provide responses to the paper. Responses will be used to inform the development of new legislation. There will be other opportunities to provide feedback over the course of the project.

Review scope and principles

The scope of the review is limited to legislation which relates to the management of public roads. This does not include 'road user' functions such as licensing, registration, road safety, or public transport. Some 'traffic control' functions (such as traffic signs, lights, controlled parking and speed bumps) will be considered in-scope where they fit naturally with the rest of the subject matter.

The review aims to implement a contemporary road management framework which:

1. **Is more efficient** – streamlined processes, reduced bureaucracy, and optimised resource allocation, resulting in a more cost-effective and time-efficient framework.

2. **Promotes better outcomes** – improvements to the framework should ensure it is modern, fit-for-purpose, and consistent with contemporary road management practices. They should focus on improving road-user satisfaction and safety by focusing on outcomes.

Feedback prompt – principles

Do you agree with the draft principles? If not – why?

3. **Is easier to understand** – a focus on clarity and simplicity by reducing convoluted processes and complex language.

Providing feedback

Feedback can be provided in writing by **6 November 2023**:

- Via email to: rmlr@stategrowth.tas.gov.au
- Via post to: Road Management Legislation Review
Department of State Growth
GPO Box 536
Hobart TAS 7001

To discuss the review before making a submission, or to discuss options for providing it in a manner other than writing, please call the Department of State Growth on 03 6166 3228.

Important information to note:

- In the absence of a clear indication that a submission (or parts of the submission) is intended to be treated as confidential, the Department will treat a submission as public.
- No personal information other than an individual's name will be published. Further information on confidentiality and the *Right to Information Act 2009* can also be found [here](#).
- If you would like your submission treated as confidential, whether in whole or in part, please indicate this in writing at the time of making your submission, clearly identifying the parts of your submission that you want to remain confidential, and the reasons why. In this case, your submission will not be published to the extent of that request.
- Copyright in submissions remains with the author(s), not with the Tasmanian Government.
- Defamatory or offensive material will not be published.

Next steps

Once submissions close, the Tasmanian Government will review feedback and use it to inform a policy position which will form the basis of draft legislation. There will be further opportunities to provide feedback, including on a draft exposure Bill. Precise dates are not currently known, but this is expected to occur in late 2023 or early 2024.

Stakeholders and people who made submissions will be notified of feedback opportunities when they arise. Alternatively, progress of the review can be tracked on the [webpage](#).

The statutory framework generally

Many of the issues with Tasmania's current road management framework stem from the fact that it is made up of a patchwork of legislation. The framework is made up of three key pieces of legislation, each of which was passed by Parliament at a different time over a period spanning 47 years, as well as some other relevant functions in other statutes.

As a result of the framework's gradual introduction, the acts have different drafting styles and cannot be fully understood without referring to the other acts. This makes it hard to interpret the law.

While the review will be considering solutions to specific issues, a key consideration will be how to structure the framework to further the review principles.

The current framework

Tasmania's road management legislation is a patchwork of different acts introduced over the course of nearly 50 years and is layered over the top of common law surrounding highways (sometimes referred to as 'right of user roads' or similar). The oldest of the key statutes, the *R&J Act*, is nearly 90 years old.

The three key statutes which relate to public road management are:

- *Roads and Jetties Act 1935*

The *R&J Act* is the primary piece of legislation governing Tasmania's State road infrastructure and forms a key part of the broader statutory framework for the management of roads. It also deals with jetties and aerodromes, although those are beyond the scope of this review.

- *Local Government (Highways) Act 1982*

This act focuses on the role of local councils in managing highways within their respective municipalities. It outlines the powers and functions of councils in relation to the planning, construction, and maintenance of highways. The act also addresses matters like land acquisition for road purposes and controlled parking.

- *Highways Act 1951*

The *Highways Act* deals with the proclamation of new highways and some other related functions.

There are also some relevant road management functions in other statutes such as the *Traffic Act 1925*, *Local Government Act 1993* and the *Vehicle and Traffic Act 1999*. Many of these functions relate to traffic control, which straddles the line between road management (in-scope for this review) and road user (out-of-scope). For example, some functions relating to the closure of roads are found in the *Vehicle and Traffic Act 1999*. These functions are within scope for the review, to the extent that they relate to road management

Some other acts deal with the management of private or quasi-public roads – for example, Forestry, Parks, or Hydro roads. These are not currently considered in-scope for the review. For further discussion on these roads, refer to the 'Other categories of road (private or quasi-public roads)' section at page 8.

The complicated Tasmanian framework contrasts with the equivalents in other jurisdictions, particularly Victoria, which has the most modern legislation in Australia.

Victorian framework

Victoria's *Road Management Act 2004* introduced a new, consolidated statutory framework for the management of state and local roads in that state. The following principles informed the development of the framework when it was introduced:

- clear allocation of ownership of road assets
- corresponding allocation of responsibility for managing road assets
- development of effective decision-making processes and accountabilities for policy decisions and the setting of performance standards
- provision of adequate operational powers to achieve targets and performance standards
- corresponding accountability for the exercise of those operational powers

In Victoria, rather than separate acts governing State and local roads, both are managed under the same act. The 'responsible road authority' and their powers and obligations are defined according to the category of road. Responsibility for certain functions can be transferred between road authorities by agreement.

Besides the method for assigning responsibility, the Victorian framework has numerous other features including provisions relating to the rights of road users and a more coordinated approach to managing utilities within road corridors. Some of these are discussed further below, in the context of relevant issues.

Option of a consolidated act

The option of a single statute to deal with all road management functions, like that in Victoria, is being actively considered as part of this review. If this option is pursued, a single act would replace most, or all functions from the *R&J Act* (excluding jetties and aerodromes), the *LGH Act*, the *Highways Act*, and potentially some functions in related acts. It would make the framework easier to understand and less ambiguous. Further, it would ensure that local government also gets the benefits of a contemporary act. However, it is the most ambitious and complicated option being considered, and the Government is interested to hear views on potential risks or pitfalls with the approach.

A single act is not the only option being considered. At a minimum, the expectation is that the *R&J Act* will be replaced or substantially modified. Updating or replacing all the acts at the same time but keeping them separate is also an option, and it would allow the new acts to be drafted in a consistent manner and that all road managers could benefit from the modern framework. However, given it would still be necessary to read several pieces of legislation to understand how they piece together, this option would be limited in its ability to improve the ease of understanding. It may also make it harder to fix issues with ambiguity about responsibility for certain functions.

Feedback prompts – framework structure:

Do you support moving to a single, consolidated road management act? If not, why, and what option would you prefer?

Regulations and removing detail

Neither the *R&J Act*, nor the *LGH Act* have subordinate regulations. They both contain a level of detail that modern legislative drafting might leave to regulations, or possibly omit entirely. Moving some detail to regulations may reduce some administrative burden and make the framework more responsive to changing circumstances. Both acts, particularly the *R&J Act*, are currently the subject of relatively frequent amendments. Moving detail to regulations may make the process of updating the framework easier and save Parliament time. It is possible that some details in the legislation are better left to codes and standards.

It is too early in the review to confidently identify potential options for provisions to move to regulations, because much of this will depend on decisions about the structure and the detail of the new framework. However, submissions on early views about options are welcomed.

Governance and responsible authorities

The implementation of a new framework presents an opportunity to consider the most appropriate person, office or agency to have responsibility for road management functions.

For State roads, the current system has the relevant Minister as the responsible authority. This is consistent with Westminster conventions of responsible government, but it does have two key disadvantages:

1. Responsibility in practical terms usually must be delegated to public servants, which requires maintaining an up-to-date instrument of delegation and makes it harder for the public to understand who is making decisions in practice.
2. It can significantly add to the workload of Ministers, often with matters which are administrative in nature. This can slow down decision making.

The Tasmanian Government does not propose to remove the management of State road assets from the control or influence of Ministers. It is appropriate that elected members have ultimate control and responsibility because it ensures accountability to the electorate. However, there may be other more efficient ways to achieve this. For example, in Victoria the road manager for their equivalent to State roads is the Head, Transport for Victoria, who is, by virtue of section 64T of the *Transport Integration Act 2010* (Vic), subject to directions of the Minister.

The management of local roads by municipal councils is not proposed to be changed at a high level, but initial discussions with representatives from local government have indicated that their specific responsibilities could benefit from refinement. Examples include the management of bridges, footpaths, drainage, and retaining walls. These are discussed further in the management and maintenance section commencing at page 13.

Other categories of road (private or quasi-public roads)

The scope of the review is currently limited to public roads. However, there are other types of roads in Tasmania which are open to the public to varying degrees – for example, Forestry, National Parks, and Hydro roads – and it may make sense to consider how a new framework could be useful for the management of these assets. In Victoria, for example, the framework has been adopted for the management of forestry roads through the *Forests Act 1958* (Vic). If a consolidated act ends up being the preferred option in Tasmania, it may be useful to draft the act flexibly enough that other road managers can adopt and adapt the framework for their own uses.

The legal status of roads

Roads in Tasmania are created, and their managers are defined, with several different legal mechanisms. These span from common (judge made) law to being based in legislation, and each has different processes and requirements. The Tasmanian Government is interested in opportunities to simplify or improve these processes through the review.

Creating a road

The mechanisms by which highways are created can generally be sorted into two categories – common law highways (sometimes called ‘right of user roads’), and highways created under legislation (by proclamation on reserved roads or acquired land, or by dedication on subdivisions). A highway can then be made into a State road by proclamation under the *Roads and Jetties Act 1935*.

Common law highways (‘right of user roads’)

The process for creating common law highways is based on pre-colonial English law. There are two elements:

1. Dedication of the land comprising the road to the public, by a person competent to do so; and
2. Acceptance by the public of the dedication.

The dedication of a highway does not change the underlying ownership of the land.

Both the dedication and acceptance elements can be inferred from behaviour and practice – it can be enough for there to have been unhindered usage by the public over a long period of time. Because common law highways are not always based in a legal instrument, their existence can be difficult to prove. The review will be considering opportunities to improve this.

While there are not currently any specific proposals, some of the opportunities to be investigated are:

- Creating a sensible statutory process for transitioning common law highways to an appropriate statute-based instrument.
- Ensuring the process for permanently closing a common law highway (so that the property rights re-vest in the owner) is fit-for-purpose.

Views on other issues or opportunities are welcomed.

Proclaimed roads

The Government can create new highways on land reserved or acquired for that purpose by making a proclamation under the *Highways Act 1951*. A proclamation is a document signed by the Governor on the advice of the Executive Council, which consists of the Premier and the Ministers of Government.

The proclamation process has been identified as an area for improvement. The process is slow, requiring input from numerous individuals and organisations which, depending on the purpose of the proclamation, might include:

- Departmental officers
- The Office of Parliamentary Counsel (drafting of the proclamation)
- The Minister and their office (in submitting documents to Cabinet and the Executive Council)

- Cabinet (who must be provided an Executive Council Explanatory Note)
- The Executive Council and Governor (in making the proclamation)
- Crown Law to draft the documents to be lodged with the Land Titles Office and Registrar of Deeds
- The Land Titles Office and Registrar of Deeds

The amount of time that this process takes can vary widely based on the complexity of the proclamation and competing priorities within the broader legislative drafting program.

Much of the feedback received in early consultation questioned how much value is added by all these processes, particularly Cabinet and the Executive Council. Other jurisdictions have simpler approaches – in Victoria, roads are ‘declared’ in the Gazette by the road authority (on land owned or managed by them), requiring no involvement from their

Governor/Executive Council, Minister, Cabinet or possibly even the Office of Parliamentary Counsel. Similarly, in New South Wales, land can be dedicated as a public road by notice in the Gazette by the relevant road authority (TfNSW, the Minister, or local councils, depending on the road type).

It is important that the process for creating new highways is legally robust given it affects the rights of landowners and occupiers. A well-designed process should make it easy to understand the location of a road, its boundaries and other attributes, and the responsible authority. Some alternatives to proclamations which might still achieve these goals include declarations by the road authority (similar to those used in Victoria) or using a spatial/electronic mapping system. This is discussed further at page 25.

A related issue is how to deal with existing/legacy roads if a new process is created. Transitioning all roads to a new instrument or process would likely be administratively burdensome, but it may be desirable to have a mechanism to do this gradually or on a case-by-case basis. A process to transition roads would need to be robust, possibly including review or appeal rights for affected landholders.

Subdivisions

Sections 10, 11 and 12 of the *LGH Act* deal with the creation of highways as part of subdivisions, and the transfer of those highways to the local council. The current arrangements can lead to significant compliance issues and ongoing costs for local government and can facilitate inefficient road design. These issues go beyond the scope of the review, but the Government is interested in hearing about opportunities to make improvements to the way subdivisions are dealt with in the road management framework. It is important, however, that the framework does not unduly add to the cost of development and disincentivise supply.

Feedback prompts – proclaimed roads:

Do you agree that the proclamation process should be simplified?

What would be a better process? Consider:

- Who should be the responsible authority
- How to make location and boundaries clear and legally certain
- How the creation of a road is documented and searchable

Feedback prompts – subdivisions:

How could the way subdivisions are dealt with in the framework be improved?

Consider how changes might:

- Reduce financial impost for councils
- Incentivise better design
- Maintain or improve the supply of land

Defining the road manager

Councils are responsible for the management of local roads. The local road network makes up the vast majority of the state's overall road network.

The State Government manages roads that have been proclaimed as a 'State highway' or 'subsidiary road' under section 7 of the *Roads and Jetties Act 1935*.

Any road can be made a State highway by proclamation under the *Roads and Jetties Act 1935*. This process has similar issues to those discussed for the creation of highways by proclamation discussed above. It is technically separate to the proclamation process under the *Highways Act 1951*, although the proclamations can be made jointly.

State highways can also be 'unproclaimed' to become a local highway. However, they are only maintainable by the relevant local council if the council has agreed to maintain it, or if an alternative State highway route has been constructed. Bridges are also treated differently – see page 14.

The Victorian model

In Victoria the 'responsible road authority' is defined according to the category of road. Roads are generally categorised by declaration of the Head, Transport for Victoria in accordance with established principles. The Head, Transport for Victoria can also issue a revocation of a previous declaration, which must specify whether the road is to change category or cease to be a road altogether. Declarations and revocations are published in the Government Gazette and are subject to notice requirements and appeal to the Minister.

The table below summarises the responsibility of each road authority in respect to different road categories. It does not include special roads managed by corporations (i.e., toll roads such as the West Gate Tunnel) as these are not relevant in the Tasmanian context. It also does not include ancillary areas, although these are discussed later in this paper – refer to page 21.

Road type	Responsibility of authorities	
	Head, Transport for Victoria	Municipal council
Freeway	Manages the entire road reserve	Not applicable
Arterial road	Manages: <ul style="list-style-type: none"> • The part of the roadway used by through traffic • The roadside in non-urban areas 	Manages: <ul style="list-style-type: none"> • Any part of the roadway not used by through traffic • Service roads • Median strips and pathways • Roadside in urban areas
Non-arterial State road	Responsible if prescribed or declared as such. Otherwise managed directly by the Crown or by another instrumentality of the Crown. Depending on the circumstances, this might be an agency like Parks Victoria or Melbourne Water Corporation.	Not applicable
Municipal road	Not applicable	Manages the entire road

The *Road Management Act 2004* also includes processes for delegating or transferring certain road functions between authorities. The Tasmanian Government is interested in opportunities to formalise these processes in legislation rather than relying on contracts, service agreements or informal arrangements.

Feedback prompt – defining the road manager:

Would the Victorian model work in Tasmania? Do you have any concerns with how it operates?

Permanently closing a road

As with creating new roads, the review will be looking at opportunities to improve the process for permanently closing roads. The starting point is likely to be that the process should align with whatever is the preferred statutory model for creating roads (i.e., proclamations or whatever replaces them). It is important that the process balances administrative burden with legal robustness, and factors in the rights and needs of road users. It should also consider the particular needs of different road categories, including common law highways which have a more complicated legal status.

Management and maintenance

In addition to providing for the creation of roads and assigning a responsible manager, the road management framework sets out the functions of a road manager and their relationship with other parties such as road users and utility companies. Where more than one road manager has responsibilities in the same road corridor, it sets out their respective roles. However, the current framework does not always do this clearly or sensibly. A new framework presents an opportunity to significantly improve this.

Allocation of responsibility between authorities

There are some situations where it is ambiguous which road authority is responsible for a certain road management function. If road authorities disagree it can lead to poor community outcomes such as a failure to maintain an asset, or legal disputes, which have time, cost, and reputation implications.

Ambiguity and appropriateness

Sometimes it can be unclear which authority is responsible for certain management and maintenance activities. Footpaths and other road-related installations such as median strips, road furniture and bus stop infrastructure are just a few examples. Even when responsibility for a given road management function is clear, it may not be sensible or efficient. Specific examples are discussed below in more detail.

Ambiguity creates administrative burdens and poor outcomes for road users. A new road management framework should be designed to improve this. A single road management statute rather than the current three may inherently resolve some ambiguity by providing a more cohesive framework with consistent language.

It may also be useful to set principles which underly the allocation of responsibility, either for the purposes of this review generally or for inclusion in any new legislation that results from it.

Feedback prompts – ambiguity:

1. Can you think of an example of a time when:

- it was unclear or ambiguous which authority (local government or the State government) was responsible for a road management function?
- it was clear who was responsible for a road management function, but it seemed inefficient or not sensible?

Examples of road management functions include, maintaining a footpath, culvert, drainage, road surface or retaining wall.

2. Do you think a single statute would help resolve ambiguity?

Another consideration is how to achieve efficiencies where two authorities manage different parts of the same road corridor. For example, where there are State roads with certain characteristics (see section 11 of the R&I Act) running through towns, the State is only responsible for maintaining a certain portion of the road surface. The local council is responsible for maintaining the remainder, which usually includes footpaths and may include parking areas. The rationale and reasonableness of this is discussed at page 17, but it can theoretically lead to the assets being maintained or improved in an uncoordinated way, which can be inefficient. Road managers often try to resolve this through agreements, but there may be an opportunity to formalise these arrangements in the framework, negating the need for bespoke and potentially inconsistent agreements.

One option might be to specify a ‘co-ordinating road authority’ according to road type, who would be responsible for coordinating development and works on the road reserve generally, like the approach taken in Victoria.

Transferring responsibility

There are several instances where the maintenance of local roads is either heavily subsidised or directly contracted for by the State government. Examples include the annual line marking program which is delivered by the State and declared bridges (discussed below). There are various reasons why this kind of arrangement can exist, but it generally comes down to the financial constraints of local governments and/or the strategic importance of a road. These arrangements should be considered in updating the legislative framework to ensure that the process is principle-based, suitably flexible, efficient, and appropriately manages liability risks.

The Victorian legislation gives more structure to these kinds of arrangements and may be an appropriate model to consider. Section 15 of the *Victorian Road Management Act 2004* provides for the transfer of discrete road management functions between road authorities by agreement. There may also be opportunities to modernise this using spatial systems or other instruments which could both simplify the process and improve transparency.

Bridges on local roads

Because a bridge is considered part of the road under the *R&J Act*, but is not under the *LGH Act*, responsibility for the management and maintenance of a bridge is not automatically transferred to the council on transfer of the road. Without a specific agreement to transfer control of a bridge along with the road, only the road that runs over the bridge (but not the bridge itself) vests in the council. Schedule 2 of the *Local Government (Highways) Order 1994* also provides a list of bridges on local government highways that are maintainable by the State due to an order of the Governor.

There is some logic in treating bridges differently. Bridges are complicated and expensive to maintain, so transferring them to a council can have a big impact on their asset register and costs. On the other hand, it means that the State is responsible for assets in corridors that they do not otherwise inspect or maintain, which can be inefficient.

Feedback prompt – bridges:

The Tasmanian Government is interested in hearing views on how a new framework should deal with bridges on local roads. Any changes to the current approach should be fair, efficient and ensure safe outcomes.

A related issue is that when the State manages a bridge on a local highway, the best interpretation of the current framework (and the practice) is that the council remains responsible for the road surface. There are differing views on whether this is sensible. To some, the surface is an integral part of the bridge and should be maintainable by the owner/manager of the asset. Others think it would be impractical or inefficient for councils to stop road surface upgrades or repairs at each end of the bridge and leave it to the State to contract separately for largely similar kinds of works. Often the most efficient option would depend on the circumstances – for example, usually, normal resurfacing as part of a broader work program for the road is probably most efficiently done by the council, whereas making good the road surface after structural works may not be. Whether or not the allocation of responsibilities is changed, it should be made less ambiguous in the legislation.

Statutory duties, liabilities, and indemnification

Liability of road authorities and contractors

The liability of road managers and people working in road corridors is a complex area of law. It is important that the rights of road users are carefully balanced with the cost to taxpayers and ratepayers. The review will consider whether the current balance is reasonable and look at opportunities to improve processes, noting that much of this sits outside of the framework.

In 2001, the High Court of Australia overturned what was known as the ‘highway rule’¹ – a common law rule which stated that public road authorities are immune for liability in negligence for failing to repair or maintain a highway under their control (‘non-feasance’). As a result of the decision, road authorities became obliged to take reasonable care in exercising their powers to remedy risks of harm to users within a reasonable timeframe. This also required a minimum level of inspection of the road network to identify issues which might cause a risk of harm, and which might reasonably be expected to exist.

The High Court’s decision was seen to create untenable financial risks for road authorities (and, by extension, taxpayers and ratepayers), and all Australian states at least partially reinstated the protection from liability in legislation. This was seen as a recognition that public authorities “...carry out what is often a limitless task with necessarily limited resources and must make judgments based on social and political factors about how to spend those resources.”²

There is no suggestion that this protection should be removed. However, the review provides a timely opportunity to consider whether the balance is right and review associated processes. A particular area of interest is the liability of and for third parties including contractors working in road corridors.

Statutory duties

Unlike in Victoria, the *R&J Act* does not include an explicit statutory duty for the State road authority to inspect, maintain and repair its roads, although such a duty might be implied. The only exception is the obligations contained in section 11 concerning the maintenance of State highways in cities, towns and villages which imposes a positive duty on the Minister to maintain.

Conversely, section 21 of the *LGH Act* does contain a duty for maintenance of local highways by the relevant municipality, and the Victorian framework includes a duty for road managers to inspect, maintain and repair ‘public roads’ to a standard specified in a relevant road management plan. The Victorian duty is limited because the definition of ‘public road’ excludes certain roads which are not required for use by the general public, and liability is limited (including by provisions relating to knowledge, reasonableness and policy), with a floor of \$1 000 for any property damage claims.

Feedback prompt – liability:

Should there be an explicit statutory duty for road managers to inspect, maintain and repair?

If so, should there also be a framework for establishing the standard to which a road manager will maintain a road, taking into consideration its strategic importance?

¹ *Brodie v Singleton Shire Council* (2001) 206 CLR 512.

² Refer to the second reading speech for the *Civil Liability Amendment Act 2003*.

The review will consider whether a statutory duty should be included in a new framework, including how that might affect the liability of road managers in various circumstances. It will also consider whether the current civil liability settings are appropriate, noting that civil liability is currently mostly dealt with outside of the framework and at this stage there is no intention to change that.

The duties in section 11 of the *R&J Act* relating to the maintenance of State highways in cities, towns and villages are themselves the subject of some confusion. Much of this is a consequence of dated or ambiguous terminology – for example, the terms “carriageway” and “village” are not defined in the statutes and have historically required legal advice to interpret. There is also general agreement that the widths in the section are too prescriptive – see the ‘Footpaths, retaining walls and other similar infrastructure’ section on page 17.

Service authorities and utilities

Road corridors have a vital function in the movement of vehicular and pedestrian traffic, but they are also widely used by other services and utilities. Electricity, gas, water, sewerage, and telecommunications are the most prominent examples. In some ways they are better described as ‘infrastructure corridors’ rather than ‘road corridors’ given these other important functions.

The number of asset managers working in the same corridor can create significant complexity. This is compounded by the fact that they are regulated so differently and across all three levels of government. Road managers often have little or no control or influence over how utilities undertake work in their corridors and can find it frustrating when their assets are not reinstated to an adequate standard. However, complicated or burdensome regulations for utilities can significantly increase the cost and time for them to deliver their services. A functional and efficient framework should balance the competing needs of road managers and utility managers, all of whom need to deliver their functions as efficiently and effectively as possible.

The review is interested in opportunities to improve the way road managers and utility owners interact. Any changes should seek to ensure works in road corridors are coordinated wherever possible to minimise interruptions and improve efficiency.

Feedback prompt – service authorities:

How could the model for service authorities working in road corridors be improved?

Consider the need to balance the competing needs of road managers and service authorities, and for the efficient installation and maintenance of all infrastructure in the corridor.

The Victorian model

Victoria’s framework contemplates utilities in more detail than in Tasmania. This is partially achieved by the establishment of an Infrastructure Reference Panel (IRP) comprised of 16 representatives covering State and local government, all major utilities, public transport, rail, and the environment. The IRP advises government on the effective coordination of the use of road corridors, and acts as a forum for the various bodies to coordinate their work.

Under the Victorian framework, coordinating road authorities must consent to works on roads that may affect road safety, road infrastructure or traffic management. It is possible for road authorities and utilities to negotiate ongoing consent, and exemptions can be set out in regulations. These powers are counterbalanced by a set of responsibilities – in fulfilling their functions, road authorities:

- must consult with utilities in exercising their functions (often through the Infrastructure Reference Panel)

- have responsibility for coordinating works in a way that minimises impacts on utilities
- must facilitate the appropriate use of road reserves for the effective and efficient delivery of utilities

There are also mechanisms for resolving disputes between road authorities and utilities.

Policies and standards

Some road authorities have already provided details on the policies, standards and practice notes they use to better manage utilities in their road corridors. These might offer a practical alternative or partner to legislative changes, but also might benefit from a firmer legislative basis. Standardisation of policies and practices between authorities might be beneficial, particularly for utility companies who deal with numerous road authorities.

Permission to carry out works generally

Section 46 of the *LGH Act* provides councils with the power to permit certain works on their roads, but it is much more prescriptive on the types of works than the equivalent section in the *R&J Act*. The review will be considering whether the level of prescriptiveness appropriately balances the needs of councils as road managers, and of road users or those conducting work.

Footpaths, retaining walls and other similar infrastructure

Section 11 of the *R&J Act* essentially provides that, where a State highway or subsidiary road running through a city, town or village has a footpath on one or both sides, the State is only responsible for maintaining the carriageway and associated median strips, overtaking lanes, culverts, or bridges. This includes the so-called 4.3 metre and 7.4 metre rules, which sets maximum widths for the portion of the carriageway maintainable by the State in certain circumstances. The local council is responsible for maintaining the remainder, which usually includes footpaths and parking areas but can also include other infrastructure such as retaining walls, noise walls and embankments.

The rationale for requiring councils to maintain footpaths and areas reserved for parking is essentially that the infrastructure is primarily used for local benefits, either by local people or for patrons of local business. They are also usually better placed to maintain the infrastructure. However, councils have raised three key concerns:

- It can be inefficient in cases where a State contractor stops works at the edge of the carriageway rather than the curb (noting that this can be managed by maintenance agreements between road authorities).
- Councils can end up with responsibility for assets that they did not design or choose to build.
- Some infrastructure, like retaining walls, is expensive to maintain and can often be integral to the road structure itself.

The Tasmanian approach is reasonably consistent with other jurisdictions in principle, although the way it is set out in legislation is more complicated. In Victoria there is a distinction between “freeways” where the entire road corridor is maintained by the State, and “arterial

Feedback prompt – footpaths and other infrastructure:

What is the best way to fairly apportion responsibility between road authorities for State roads running through urban areas?

Are there any examples where the current framework has had poor outcomes?

roads” where the only portion of the road used by through traffic and the roadside in non-urban areas is maintained by the State. Drawing a similar distinction in the Tasmanian framework might be one option for improving on the concerns mentioned above.

Victoria has also implemented a Code of Practice for ‘Operational responsibility for public roads’ which goes into detail about the respective responsibilities of relevant parties depending on the road type and the specific layout of the road reservation. Something like this may be a useful supplement to the statute.

The review will be considering options to improve the function of the current section 11, including:

- Where the line should be drawn in determining responsibility between authorities (i.e. ‘carriageway’, ‘portion used by through traffic’, ‘curb’, etcetera).
- Whether a distinction should be made between different categories of roads, as in Victoria.
- How best to deal with supporting infrastructure such as retaining walls and embankments without being too prescriptive.

Drainage

Drainage onto and from roads is dealt with in provisions across the *R&J Act*, the *LGH Act* and the *Urban Drainage Act 2013*. This can make it complicated to interpret the law. It also contributes to differences between the road authorities in terms of their responsibility for drains and culverts under and adjacent to their road assets. In early consultation some councils were particularly concerned about situations where they were responsible for drainage that drained a State road.

The review will consider opportunities to make responsibility for drainage and related assets clearer and fairer. Feedback and suggestions of options are welcomed.

Limited access roads

The current framework provides for the proclamation of ‘limited access roads’ by the Governor. Access to adjoining properties from limited access roads is only permitted from specified access points. This is designed to improve the flow and safety of key routes, but it does impact on the ability of adjacent property owners to develop their properties. Owners can apply for compensation in recognition of this.

As with the creation of roads (see page 9), the review will consider whether proclamations are the best tool for this given their complexity. In Victoria ‘controlled access roads’ are created by declaration of the coordinating road authority in the Government Gazette. This model may be preferable. Another option might be to use spatial systems – see page for 25 for further discussion.

Driveways

Early discussions with councils found that there are some issues with how the current framework deals with vehicle crossings such as driveways. While there is an explicit power for councils to direct that a property owner construct or repair a crossing, or to do the work and recover costs in certain circumstances, there is no equivalent power to direct the removal of redundant crossings. Removing redundant crossings can improve the operation of infrastructure – for example, it makes footpaths more accessible. However, introducing a new

power to direct property owners to do this would need to be carefully considered to ensure it is fair and does not impose undue costs.

There is also no explicit general duty for property owners to maintain their crossings (including not obstructing drainage) except when directed by council. Some councils have expressed a view that this should be made more specific.

Temporary road closures and permitting activities

The current powers for temporary road closures are disparate and inconsistent, and do not always provide for sufficient consultation. Recent amendments to the Minister's powers in relation to temporary road closures of State roads have improved this, but there remain some concerns.

An example of a possible issue is the police power in part 7A of the *Vehicle and Traffic Act 1999* to temporarily close roads. The power does not include a requirement to consult with the road authority, which can cause difficulties for traffic flow given the interconnectedness of the road network. Anecdotally it appears that the police do consult before closing State roads, but not always for local roads even when their closure could have a significant impact on the operation of an adjoining State road. Similarly, there is no obligation on the police to consult (or even consider the impact) on public transport before closing a road.

There is also no general obligation in either the *R&J Act* or *LGH Act* for road managers to consider the efficient delivery of public transport in exercising their functions.

Local government has raised concerns with the operation of sections 19 and 20 of the *LGH Act*, particularly in relation to the limits placed on which days roads can be closed for the sale of goods. It is important that the legislative framework accounts for the rights of the travelling public, particularly property owners and tenants, to access roads. Road closures can also affect the operation of public transport and emergency services. However, it may be possible to achieve these public benefits while creating more flexibility for local government in the management of their roads by being less prescriptive. Consultation requirements also need to achieve a sensible balance between ensuring the delivery of public transport and emergency services, and flexibility for local authorities to get the most utility from their roads. This could include adequate notice to consult with public transport providers and operators to plan alternative routes and give bus passengers adequate notice.

In Victoria, temporary road closures are managed by the relevant road authority. The *Road Management Act 2004* sets out the principles that must be considered in the management of road assets which includes “the avoidance or minimisation of disruption to the effective and efficient delivery of utility and public transport services”. Furthermore, section 34, which details the general functions of road authorities in Victoria, lists as one of those functions “to coordinate the installation of infrastructure on roads and the conduct of other works in such a way as to minimise, as far as reasonably practicable, adverse

Feedback prompts – temporary road closures:

How could the temporary road closure process be optimised to balance flexibility for road authorities with other needs?

Consider:

- The needs of property owners and tenants
- Access for emergency services
- Operation of the public transport network
- Differing community needs
- Methods for communicating closures

impacts on the provision of utility of public transport services”. A similar principles-based approach may be a good model for Tasmania.

Notice requirements are also an important consideration. It is important that road closures are known by the public in advance so they can plan accordingly, but the current legislative framework is very prescriptive in how this should be achieved. Local newspapers are not always an effective or efficient method for advertising in the modern world, and it may be desirable to make the framework more flexible to allow for alternatives such as social media, letter drops, street notices and/or online spatial systems (refer to page 25 for further discussion on spatial systems).

Currently temporary road closures by the Commissioner of Police for public events, or by a police officer in the case of danger, are dealt with in the *Vehicle and Traffic Act 1999*. This is both a road management and a traffic management function. Moving it to an act focused on road management may not be desirable as the *Vehicle and Traffic Act 1999* is a more natural home for police powers, but the review is open to alternative views or concerns about the operation of the provisions.

A similar issue is the permitting of activities on roads that would normally be prohibited, such as stalls for businesses. Again, the issue straddles ‘road management’ (in-scope) and ‘traffic management’ (out-of-scope). It is also dealt with in the *Vehicle and Traffic Act 1999*, but the power to issue permits sits with the relevant council, even if the roadside vendor operates on the side of a State road. The section does, however, have some provisions relating to the police, including their right to be consulted before a permit is issued and their right to demand that a permit holder produce their permit.

Trees, hedges, and other obstructions

Trees and other vegetation are important considerations in the management and maintenance of the road network. They provide wind breaks for the road, have significant environmental and biodiversity values, and contribute to the landscape and general aesthetics. However, they can also present hazards and risks, including by impacting sightlines and falling onto the road. Tree roots can impact the road surface, and overhanging branches need to be kept clear of the roadway.

Trees can also impact the road corridor whether they are located within the corridor or an adjacent private property, which creates issues around who is responsible for managing them and the competing interests of the property owner and road manager. The same can also be true in reverse, where trees within the road corridor affect private properties.

Other legislative areas such as utilities and forestry will also need to be considered within framework, as they may manage trees beside the corridor for different purposes from road managers.

The *R&J Act* and *LGH Act* vary significantly in the way they deal with trees, particularly in relation to distances and appeal rights. It may be practical to bring them in line with one another, particularly if the road management framework is to be consolidated.

Some specific issues which have been identified for further consideration are:

- Whether the distinction between “indigenous” and other timbers in the *LGH Act* is the best way of preserving decorative trees.
- Whether the current sections dealing with the obligations of occupiers in relation to vegetation are robust enough and how best to make them consistent (if at all).

- The meaning of “plantation” in section 30 is ambiguous and may benefit from clarification.

Views on these issues and others are welcomed.

Ancillary areas

Areas which are ancillary to roads such as heavy vehicle rest areas, tourist facilities including lookouts, and park-and-ride facilities are not generally recognised under the current legislative framework. These are mostly Crown- or council-owned land, but some may form part of the road reservation.

Consideration ought to be given to formally recognising the importance of these ancillary areas to the functioning of the road, including who is responsible for their maintenance and related functions. The Victorian framework does this by providing that coordinating road authorities can designate an area to be an ‘ancillary area’. It then falls within the definition of ‘road’ within the act, thus conferring all the relevant public rights, road manager functions and powers, and liabilities.

Land use planning

Road maintenance and management functions (along with the creation of new roads) frequently have planning implications. All planning schemes contain exemptions for roadworks, and these have been updated most recently with the introduction of the State Planning Provisions to enable approval of Tasmanian Planning Scheme (TPS) for all planning authorities. These exemptions provide some level of certainty in relation to the functions of the State road authority; however, they are still subject to interpretation by individual planning authorities who may differ in their approach and interpretation of the planning scheme. Some of the exemptions are more restrictive than those under previous schemes.

The review will be considering the interaction between the road management framework and land use planning law. It is not within the scope of the review to change the planning scheme (although if desirable changes are identified, they might be recommended to the appropriate authorities as an outcome of the review), but there may be other opportunities to improve efficiency. One example which may be relevant is the *Electricity Supply Industry Act 1995* which provides that certain works are not considered a development for the purposes of the *Land Use Planning and Approvals Act 1993*. A similar model could be considered for certain roadworks, but only if there is a good reason to deal with it in the framework rather than the planning scheme.

Private roads and user-maintained highways

There are various kinds of roads (other than State roads) which are not maintainable by the relevant local council. Councils are frequently asked to take on responsibility for the maintenance of these roads. It is important to ensure the framework sets out a clear and principles-based process for taking over responsibility.

In cities and towns, section 7 of the *LGH Act* provides that land cannot be dedicated as a highway (the first element of creating a highway in common law – refer to page 9) without the approval of the council. Without that approval, it may be perceived as a highway, but it does not have the associated public access rights or maintenance responsibilities.

Outside of cities and towns, under section 8, an ‘owner’ (meaning a person who owns the land a highway passes over or adjoining it) can request council to take over maintenance. Council can refuse if they do not believe the highway is or will be useful enough to people living in the area. Council retains “care, control and management” of

local highways that are not maintainable by it under section 50 and may carry out works as if it was a maintainable highway.

Section 12 provides that councils can resolve to declare a road to be a highway maintainable by council.

The following concerns have been raised about how the current framework deals with these kinds of roads and will be considered by the review:

- The sections are complicated and difficult to understand, particularly for non-experts.
- Maintenance responsibilities for user-maintained highways (those not taken over under section 8) are not clearly articulated.
- The framework is not flexible enough – for example, it does not provide for shared maintenance funding models.

In Victoria, road authorities are required to keep a register of “public roads”. These are distinct from “public highways” (essentially common law highways) – it is possible to be a public highway with the associated public access rights, without being a public road. A road can stop being a public road simply by the road authority determining it is no longer reasonably required for public use and removing it from the register. It then no longer has a statutory duty to inspect, maintain and repair the road, or a common law duty to perform road management functions. The review will consider this and other models as options for resolving the issues identified for private roads.

Related issues

Various other issues relating to the framework have been raised in early consultation for the review. This section is not exhaustive, and the Government is interested in hearing about other issues too. Most of these issues are in-scope or might be depending on the preferred policy position. Others may not directly be resolved by a new framework but could lead to recommendations for future changes.

Traffic control including signs and line marking

Traffic control mechanisms such as traffic lights, signs, line marking and speed limiting devices straddle the line between road user and safety (out-of-scope) and road management (in-scope). They are mostly dealt with in other legislative instruments such as the *Traffic Act 1925*. For the purposes of the review they will be considered out-of-scope unless there is a clear logic or nexus with the review.

Two key areas – traffic signs and line marking – have been identified as possible areas for improvement.

The complicated interactions between the *Traffic Act 1925* and the *LGH Act* create some ambiguity about who out of the road authority and the Transport Commission is responsible for the installation and maintenance of traffic signs. This has been partially resolved by the issuance of *Transport Commission Direction 2022/1* and *Transport Commission Direction 2022/2* which effectively clarify that it is the responsibility of highway authorities to install signs (other than specified sign types like speed limits and traffic signals) in accordance with relevant standards. However, the early view of the Tasmanian Government is that it would be better to make this clear in the road management framework rather than through a direction. This would make the framework easier to understand and reduce ambiguity. It is assumed that the Transport Commission would continue to retain a power to issue directions to ensure safety and consistency.

The review will also consider whether to bring the responsibility for line markings in line with those for traffic signs, including making it clear that they are subject to directions of the Transport Commission.

Public transport infrastructure such as bus stops

Good quality, accessible (compliant with the *Disability Discrimination Act*) and well-maintained public transport infrastructure such as bus stops (including infrastructure such as the curb, shelters, signage and hard stand areas) is vital to make sure Tasmania's public transport system operates in a safe, accessible, and efficient way.

Considering the importance of this infrastructure, the review will consider options to ensure that the responsibility for installation, management, and maintenance of that infrastructure is clear and appropriate.

There is not a shared view of who is responsible for ownership, upgrading and maintenance of public transport infrastructure. Some councils believe that as the State Government is the provider of public transport services they are responsible in every case regardless of who is responsible for the relevant road or footpath on which the

Feedback prompts – public transport infrastructure

- What examples of models are there in other states for delivery and maintenance of bus stops that may work in Tasmania?
- What are councils' key concerns in relation to taking responsibility for the upgrade and maintenance of bus stops on local roads and ownership of the asset?

infrastructure is located. Currently there is a hybrid model with some councils installing infrastructure on local roads and the State providing infrastructure on state roads.

A bus stop has many different elements, including pole and blade, boarding point (hardstand area), tactile ground surface indicators, connecting paths (dependent on the existing footpath arrangement) and shelter (if required). It may be that there are different roles and responsibilities for the different bus stop elements. If treating elements differently, consideration should be given to how the most efficient outcome might be achieved. For example, on local roads, councils are already responsible for footpaths, so it may be most efficient if councils are responsible for the boarding point and any connecting access footpaths and ramps. Issues such as maintenance also need to be addressed. It would be difficult and inefficient for the State Government to maintain assets on roads and footpaths it does not otherwise maintain. It may also result in overlap with other work such as streetscaping being undertaken by a council.

As State Government is the provider of public transport, it requires certainty that bus stops will not be removed or relocated without consultation. Removing or relocating bus stops can reduce the attractiveness of public transport for passengers, particularly if the stop is removed to a less desirable location.

There may also be a need to treat some bus stops differently to others. Most bus interchanges in Tasmania are owned and maintained by councils. Bus interchanges are strategically important in the public transport network and can also contribute significantly to the placemaking of central areas. An example of this is the refurbished Devonport interchange at Rooke St.

The review will be considering opportunities to set responsibility in a way that balances the State's interest in offering high quality and consistent public transport services with local government's interests as the authority managing many of the roads and footpaths on which the infrastructure is built.

Besides the installation and maintenance of physical assets, the general management of roads can have significant impacts on public transport services. For example, permanently or temporarily closing roads or reconfiguring their layout can require changing routes or moving bus stops. The review will also be considering ways to ensure appropriate consultation with, or influence by, the State as a public transport provider in these circumstances, particularly on strategically important public transport corridors or CBD bus interchanges. One option might be to introduce specified public transport roads – see page 25 for further discussion.

Recovery of costs from particular users

While the tax and rating systems are generally considered appropriate mechanisms for funding the construction and maintenance of road assets for standard use, there are some specific uses which lead to significant costs for road managers. One example is the transport of very large or very heavy infrastructure assets such as wind turbine components which requires strengthening and/or widening of a road beyond what is needed for its normal use.

The current framework does not contemplate these situations and they have historically been dealt with in contract or other arrangements. It may be easier both for road managers and road users if this was dealt with through a legislated process such as a licensing model. Such a model would provide a mechanism for road managers to recover costs and protect their assets, and could underpin additional policy work which gives road users with special requirements upfront clarity on costs and processes.

Feedback prompts – cost recovery

Would a licensing model be an appropriate mechanism for cost recovery from road users with special requirements? Is there an alternative model that might work better?

Spatial systems

Use of spatial systems like online or digital mapping in legislative frameworks can be complicated to implement from a legal point of view, but they can also make the law much easier to apply and interpret. Some recent uses of spatial systems in legislation include the setting of taxi areas under the *Taxi and Hire Vehicle Industries Act 2008* or the maps used for heavy vehicle access.

It seems that none of the road management frameworks in Australia make much use of spatial systems at a legislative level. This is probably because the newest framework is almost 20 years old. Considering the advancements and widespread availability of these spatial systems in the past few decades, it would be sensible to think about how they could be used to enhance the current framework.

The review will consider opportunities to use spatial systems (either standalone or linked to LISTmap) in the framework. Some of the options being considered are listed below, noting that there is a good chance that not all of them will be able to be implemented:

- Using spatial systems to define special characteristics for certain roads – for example, limited access roads or priority roads for a given transport mode (discussed further in the ‘Special and emerging transport modes’ section).
- Requiring road authorities to maintain a spatial database or provide data for a central database which shows:
 - All public roads, the authority responsible for their management and maintenance, and other relevant attributes; and/or
 - Current, future, and potentially historic temporary road closures, including for maintenance or other uses like markets.
- Using spatial systems to replace some or all instruments which define roads, their boundaries and the relevant road authority (*this is considered to be by far the highest risk and hardest to achieve of the options listed*).

Feedback on these options and any other opportunities is welcomed.

Special and emerging transport modes

Transport modes such as Rapid Bus Transit, public transport priority corridors, trackless trams, and autonomous shuttle vehicles are not well considered by the existing statutory framework. Most of the legislation covering these transport modes would be considered traffic management and are mostly out of scope. However, it is important to ensure the framework is flexible and forward-looking enough to allow for special and emerging transport modes.

The Victorian framework allows for roads to be ‘specified roads’ with priority given to the specified mode/s. The following specified road types are provided for:

- Specified tram road
- Specified bus road
- Specified bicycle road

- Specified pedestrian road
- Specified freight road

The framework also provides for other modes of transport to be specified. This may be useful for emerging modes such as autonomous vehicles, which will likely require well maintained road marking and surfaces to operate safely for the foreseeable future. Whether this is better dealt with in the road management framework (possible under network operating plans developed for particular areas), road rules or some other part of the transport framework is a question for the future, but it can help road authorities to be responsive to changing needs if the framework is flexible.

In Victoria the prioritisation of modes on their respective specified road type is achieved by making it an objective and principle underlying the management of the road network. There may be opportunities to use specified road types to inform other specific needs. For example, if a road is a 'specified bus road' it might change the consultation requirements for temporary closures or other works to ensure they do not unduly affect the operation of public transport.

Thank you for reading this discussion paper for the Road Management Legislation Review

Please refer to page 5 for instructions on how to provide feedback.



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