

Submission to: Review of the Roads Act 1993, Part 9, Division 7 in line with section 144H of the Act.

MAY 2024

Foreword

The New South Wales Nurses and Midwives' Association (NSWNMA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes registered nurses; enrolled nurses and midwives at all levels including management and education, and assistants in nursing and midwifery.

The NSWNMA has approximately 78,000 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNMA are also deemed to be members of the New South Wales Branch of the Australian Nursing and Midwifery Federation.

NSWNMA strives to be innovative in our advocacy to promote a world class, well-funded, integrated health system by being a professional advocate for the health system and our members. We are committed to improving standards of patient care and the quality of services of all health and aged care services whilst protecting and advancing the interests of nurses and midwives and their professions.

It is that commitment that led to the NSWNMA to adopt a position in support of peaceful protest at our 2023 Annual Conference (see attached).

We welcome the opportunity to provide a submission to this Review.

This response is authorised by the elected officers of the New South Wales Nurses and Midwives' Association

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Purpose and Scope

Transport for NSW is undertaking an official review of the *Roads Act 1993*, Part 9, Division 7 and is seeking feedback on whether:

- the policy objectives remain valid
- the terms remain appropriate for securing these objectives.

The NSW Parliament passed the *Roads and Crimes Legislation Amendment Act 2022* and updated section 144G of the *Roads Act 1993*.

This strengthened the rules for damaging or disruptive behaviour on the Sydney Harbour Bridge and other major bridges, tunnels, and roads.

Updates were also made to the *Roads Regulation 2018* to specify other major bridges, tunnels, and roads. Clause 48A of the Regulation lists the specified locations.

The Department of Communities and Justice, on behalf of the Attorney General will be reviewing updates to the *Crimes Act 1900*.

BACKGROUND

In 2022 the then Perrottet Government, introduced the *Roads and Crimes Legislation Bill 2022* [the Bill] to restrict unauthorised conduct that disrupts roads and major facilities. Penalties for breach of this law increased to \$20,000 and/or two years imprisonment. The Bill was a reaction to a series of climate change protests that resulted in the obstruction of major thorough fares including the Spit Bridge and roads leading into and around Port Botany and Sydney Airport.

The Bill was passed with an amendment from the ALP that carved out industrial action from being an offence under Part 9, Division 7 of the *Roads Act 1993*. Part 9, Section 144G of the Act (with the amendments highlighted) are set out in Appendix A, Table 1. At the same time the *Roads Regulations 2018* (see Appendix A, Table 2) was updated listing specific locations that the new penalties apply.

The Association notes that the right to protest in NSW is based on common law with, with a range of legislation restrictions that aim to control that common law right. In addition to S.144G of Act that is specifically discussed in this submission, they include the *Summary Offences Act 1988*, *Crimes Act 1990*, *Inclosed Lands Protection Act 1901*, *Mining Act 1992*, *Law Enforcement (Powers and Responsibilities Act 2002* and *Forestry Act 2012*.¹

DO THE POLICY OBJECTIVES REMAIN VALID?

The *Roads and Crimes Legislation Amendment Bill 2022* was read a second time on 30 March 2022. The then Attorney General, Mr Mark Speakman speaking in support of the Bill outlined that it was a reaction to “illegal protestors [who] participated in activities that caused major disruptions to the New

¹ Gotsis, T., & Johns, R. (March 2024, version 2). *Protest law in New South Wales*. Parliamentary Research Service, Parliament of NSW

South Wales transport network.” He identified incidents that occurred at Port Botany and the Spit Bridge that resulted in major traffic delays. The Attorney General argued that while he agreed that freedom of assembly and speech are important to a democratic system, “the right to protest must be weighed against the right of other members of the public to move freely”.²

When referring to the proposed amendments to the *Roads Act 1993* he argued that existing penalties for obstructing traffic were not sufficient in acting in a deterrent to protesters., with the *Summary Offences Act 1988* and the *Road Rules 2014* carrying a maximum fines of \$440 and \$2,200 respectively and that higher penalties of \$22,000, two years imprisonment or both, to enter, remain on, climb, jump from or otherwise trespass on the Sydney Harbour Bridge, or any other major bridge or tunnel prescribed by the regulations. The purpose of the Bill was to amend the *Roads Act 1993* to extend these higher penalties to also apply to major roads as prescribed by the regulations.³

The Attorney General explained that whilst the “Government took swift action to amend the regulations to ensure that every bridge or tunnel in Greater Sydney is captured by the offence”, it could not apply to roads until the Act was passed through Parliament.⁴

It is with concern that the NSW Parliament quickly and quietly amended the *Roads Regulations 2018* to expand the locations of where the new penalties now apply.

The NSWNMA disagrees with the policy objectives outlined by the Attorney General. At our 2023 Annual Conference the NSWNMA adopted the *Position Statement on the Right of Peaceful Assembly* that strongly supports the right of peaceful assembly as a critical civil and human right in a fully functioning democratic society. In particular, the Position Statement states.

In response to increasing protests drawing attention to the climate emergency in 2022 the Perrottet Coalition Government passed the Roads and Crimes Legislation Amendment Act 2022. The Act criminalised all unauthorised protests that obstructed major roads or facilities, punishable by a fine of up to \$22,000 per offence and/or 2 years imprisonment.

*These penalties are excessive to the problem they seek to remedy and are fundamentally undemocratic. They put those that undertake civil disobedience for causes supported in good faith at significant risk of losing their freedom.*⁵

The NSWNMA did not agree with the policy objectives then, let alone now. It is our view it has created greater uncertainty around the legality of peaceful protests, while diminishing a fundamental democratic process.

DO THE TERMS REMAIN APPROPRIATE FOR SECURING THESE OBJECTIVES?

As identified earlier, the NSWNMA believes that increasing penalties for protesting on major roads as defined by the *Roads Regulations 2018* is excessive and undemocratic. The right of peaceful assembly, the right to organise and collectively bargain, and the freedom of association are universal moral rights codified in international law and hallmarks of free, functioning, democracies. These rights underpin the very existence of unionism.⁶

² Legislative Assembly Hansard – 30 March 2022, p.1

³ Ibid, pp 2-3.

⁴ Ibid, p.2

⁵ NSWNMA Position Statement on the Right of Peaceful Assembly

⁶ Ibid

Along with participating in industrial action, the NSWNMA and many members have participated in numerous peaceful civil protests that align with our values. It is in our members interest that they can freely participate in peaceful public assemblies such as Marriage Equality, the Reconciliation March across the Sydney Harbour Bridge, May Day march, International Women's Day march, and anti-war protests.

The Nursing and Midwifery Board of Australia's (NMBA) professional standards highlight that nurses and midwives should promote health and wellbeing and understand and apply the principles of public health. Nurses and midwives should also participate in health advocacy for community and population health in a way that addresses health inequality.⁷ The Code of Ethics for Nurses specifically calls on nurses to: contribute to achieving the United Nations Sustainable Development Goals; recognise the significance of the social determinants of health and contribute to, and advocate for, policies and programmes that address them; collaborate with other health and social care professions and the public to uphold principles of justice by promoting responsibility in human rights, equity and fairness and by promoting the public good; and to act on local and global issues that affect health, such as poverty, food security, shelter, immigration, gender, class, ethnicity, race, dignified work, environmental health and education.⁸

Accordingly, the amendments made to the *Roads Act 1993* undermine our members professional requirement to advocate for various social justice issues that directly relate to and impact upon the social determinants of health, nurses and midwives are directly advocating for population health in a way that addresses health inequality.

The NSWNMA is a signatory to the NSW Council of Civil Liberties open letter calling on a repeal and review of the legislation. That letter explains the adverse effect that these laws have had on peaceful protest in NSW.

*Two years on from the introduction of the draconian 2022 anti-protest laws, these laws are creating a chilling effect on civil movements and social progress. The barriers for a diverse range of groups to participate in protest action have been raised to an unattainable height due to risk of police interaction and escalated police violence, especially for groups such as First Nations people and individuals on temporary visas.*⁹

In summary, the NSWNMA does not support the objectives of the 2022 anti-protest laws and seeks that they be repealed.

RECOMMENDATION

That the amendments to the *Roads Act 1993* be repealed.

⁷ Nursing and Midwifery Board of Australia, 2024, *Professional Standards*

⁸ International Council of Nurses, 2021, *ICN Code of Ethics for Nurses*

⁹ Council for Civil Liberties. Open letter: Civil Society demands an open review of Anti-Protest Laws

References

Gotsis, T., & Johns, R. (March 2024, version 2). *Protest law in New South Wales*. Parliamentary Research Service, Parliament of NSW
<https://www.parliament.nsw.gov.au/researchpapers/Pages/Protest-law-in-NSW.aspx>

International Council of Nurses, 2021, *ICN Code of Ethics for Nurses*
https://www.icn.ch/system/files/2021-10/ICN_Code-of-Ethics_EN_Web_0.pdf

Legislative Assembly Hansard – 30 March 2022
<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-123848>

NSW Council for Civil Liberties. Open letter: Civil Society demands an open review of Anti-Protest Laws
https://www.nswccl.org.au/civil_society_demands_an_open_review

NSWNMA Position Statement on the Right of Peaceful Assembly <https://www.nswnma.asn.au/wp-content/uploads/2023/11/Position-Statement-on-Right-of-Peaceful-Assembly.pdf>

Nursing and Midwifery Board of Australia, 2024, *Professional Standards*
<https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx>

Appendix A

TABLE 1

Roads Act 1993 Division 7 Trespassing on Sydney Harbour Bridge and other major bridges, tunnels and roads 144G Damage, disruption or obstruction of Sydney Harbour Bridge and other major bridges, tunnels and roads (1) A person must not enter, remain on, climb, jump from or otherwise trespass on any part of the Sydney Harbour Bridge or any other major bridge, tunnel or road if that conduct— (a) causes damage to the bridge, tunnel or road, or (b) seriously disrupts or obstructs vehicles or pedestrians attempting to use the bridge, tunnel or road. (c) (Repealed) Maximum penalty—200 penalty units or imprisonment for 2 years, or both. (2) Without limiting subsection (1) (b), a person seriously disrupts or obstructs vehicles or pedestrians attempting to use the bridge, tunnel or road if, as a result of the person's conduct, the bridge, tunnel or road (or any part of the bridge, tunnel or road) is closed or vehicles or pedestrians are redirected. (3) Nothing in this section prohibits conduct in accordance with the consent or authority of TfNSW, the NSW Police Force or other public authority. (4) It is a defence to the prosecution of an offence against this section if the person charged proves that the person had a reasonable excuse for the conduct concerned. (4A) A person does not commit an offence under this section if the conduct occurs— (a) at the workplace at which the person works, or (b) at a workplace owned, occupied, operated or used by an employer of the person. (4B) This section does not apply to the extent that it prohibits conduct in relation to— (a) Parliament House, or (b) an office of a member of parliament. (5) For the purposes of subsection (4) but without limiting that subsection, a person has a reasonable excuse if the conduct arose from a mechanical fault or breakdown of a motor vehicle. (5A) A person does not commit an offence under this section if the conduct forms part of the following— (a) industrial action, (b) an industrial dispute, (c) an industrial campaign. (6) In this section— major bridge, tunnel or road means a bridge, tunnel or road prescribed by the regulations for the purposes of this section. vehicle includes a train.

TABLE 2

Roads Regulation 2018 48A Major bridge, tunnel or road (1) For the Act, section 144G, definition of <i>major bridge, tunnel or road</i>, the following are prescribed for the purposes of that section— (a) a main road, (b) a highway, (c) a freeway, (d) a tollway, (e) a bridge or tunnel that joins a road referred to in paragraphs (a)–(d), (f) a bridge or tunnel in— (i) the Greater Sydney Region, or (ii) the City of Newcastle, or (iii) the City of Wollongong. Example— the Spit Bridge across Middle Harbour (2) In this clause— Greater Sydney Region has the same meaning as in the Greater Sydney Commission Act 2015, as in force on the commencement of this clause.

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