



Commissioner for
Better Regulation
Red Tape Commissioner

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14 May 2019

Mr Paul Salter
Director - Regulation, Road Safety and Evaluation
Policy and Reform Division
Department of Transport
Level 21, 1 Spring St,
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Dear Mr Salter *Paul*

REGULATORY IMPACT STATEMENT FOR ROAD SAFETY (TRAFFIC MANAGEMENT) REGULATIONS 2019

I would like to thank staff at Transport for Victoria for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the Road Safety (Traffic Management) Regulations 2019 (the proposed Regulations).

As you know, under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to clearly be written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 3 May 2019 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

Background

The current Traffic Management Regulations will sunset later this year and therefore a RIS is required to assess the effectiveness of the current Regulations and consider options for improvement. These Regulations sit under the *Road Safety Act 1986* (the Act).

The primary objective of the proposed Regulations (as explained by Transport for Victoria) is to provide safe and efficient use of the public road network for road users during periods of interference from works and certain activities conducted on the road. The proposed Regulations prescribe requirements for:

- the installation and management of traffic control devices;
- 'non-road' activities on roads such as bicycle/foot races and highway collections;
- traffic management plans;
- memoranda of authorisation (MoAs) and non-road activity permit fees; and
- miscellaneous matters.

The proposed Regulations make relatively minor changes to current requirements. The proposed Regulations streamline some existing requirements, set two new fees and increase penalties related to bicycle and foot races from one penalty unit to two.

Options considered, and their assessment

In the RIS, options are considered and assessed for four different issues (discussed below). Options are assessed against three criteria:

1. road safety (road users, road workers and people participating in non-road activities on roads);
2. operational efficiency (to minimise congestion and delays for all road users); and
3. cost to third-parties undertaking works or non-road activities.

Third-party rights to use traffic control devices

The current Regulations prescribe which traffic control devices various parties can use and whether permission from Transport for Victoria or another road authority is required.

There are three broad categories of traffic control devices, reflective of risk — major devices, minor devices and works advisory devices. Non-observance of major devices (e.g. traffic signals) pose the greatest risk to safety and operational efficiency.

Two options are considered in the RIS:

1. the current arrangements; and
2. streamlined authorisation and exemptions, which will allow local councils rather than Transport for Victoria to authorise the use of minor traffic control devices on municipal roads (preferred option).

Transport for Victoria argues that option 2 is the preferred option because local councils already provide consent for the conduct of works and non-road activities on municipal roads so allowing councils to also authorise the use of minor traffic control devices on municipal roads reduces regulatory burdens for third parties using traffic control devices. Transport for Victoria states that there are no real or perceived risks of option 2 relative to current arrangements.

Permission for bicycle and foot races

Organisers of bicycle and foot races on roads currently require two permits:

1. A non-road activity permit from the coordinating road authority (local councils or Transport for Victoria); and
2. A race permit from Victoria Police (required for races with at least 30 competitors).

It is noted in the RIS that the non-road activity permit application process is currently far more comprehensive than the race permit process undertaken by Victoria Police and a review of this dual process found duplication. However, under the current Regulations exemptions from certain road rules can only be provided through a race permit from the Chief Commissioner of Victoria Police. Exemptions from road rules enable cycling races to be conducted under 'race conditions', for example, allowing riders to ride more than two abreast and form a 'peloton'.

Five options are considered in the RIS:

1. Victoria Police permission for bicycles and foot races with more than 30 competitors (current Regulations);
2. Victoria Police permission for all bicycle and foot races (preferred option);
3. Victoria Police two-tiered permission for all bicycle and foot races;
4. Non-road activity permits to replace Victoria Police race permits; and
5. One-stop shop service for race organisers.

A non-road activity permit from the coordinating road authority would be required under all of these five options.

Transport for Victoria notes that while option 5 appears to reduce regulatory burden and be the superior option, it is currently not feasible because it would require an amendment to the Act to provide coordinating road authorities with the power to exempt certain road rules. The costs and feasibility of a one-stop shop would also need to be investigated further.

Transport for Victoria argues that option 2 is the next best option because Victoria Police permission will be required for all races, which helps ensure that cycling events can be conducted under race conditions and that Victoria Police will be aware of and have the ability to control events. There are other minor differences between option 2 and the current Regulations. Under option 2, documentation that race organisers are required to provide will be prescribed in the Regulations, whereas under current arrangements it is not prescribed. Transport for Victoria considers that this would increase transparency and provide certainty to race organisers. Under option 2, the time for the lodgement of an application prior to the proposed date for the race will increase from two to three months. Transport for Victoria considers that this will give authorities sufficient time to liaise with race organisers and, where appropriate, propose amendments to the conduct of the race.

Permission for highway collections

A fundraiser seeking to conduct a highway collection on a road is currently required to obtain two permits:

1. A highway collection permit from the local council under its local laws; and
2. A highway collection permit from Victoria Police.

Transport for Victoria notes that a review of this dual process revealed significant duplication. However, similar to the issue of permission for bicycle and foot races, only Victoria Police can exempt highway collectors from certain road rules. It is important that highway collectors are exempted from certain road rules such as the ability to access and remain on a road when traffic has come to a stop. Without this exemption, highway collectors would have to remain on the kerb and could only collect money from cars in the lane nearest to the kerb.

Three options are considered in the RIS:

1. Victoria Police permission (current regulations);
2. Stream-lined Victoria Police permission (preferred option); and
3. One-stop shop permission.

A non-road activity permit from the coordinating road authority would be required under all of these five options.

Transport for Victoria argues that while a one-stop shop (option 3) appears to be the superior option it is not feasible because it would also require an amendment to the Act. Transport for Victoria considers that option 2 is the next best option because it does not impose any additional requirements on highway collectors relative to the current regulations (option 1), removes the requirement for an applicant to obtain a statutory declaration (reducing an applicant's cost) and improves transparency and certainty for applicants by prescribing in Regulation documentation that race organisers are required to provide

Traffic management plans

Under the Act, a traffic management plan is required for all roadworks and non-road activities (e.g. bicycle/foot races and highway collections). The current Regulations contain requirements for traffic management plans including that they outline the nature,

location and expected duration of the activity, risk assessment undertaken and the arrangement of traffic control devices during the activity.

Transport for Victoria notes in the RIS that the current Regulations outline three types of traffic management plans, which help applicants reduce costs by allowing them to use similar plans for subsequent roadworks or non-road activities.

Organisers of roadworks and non-road activities are already required to provide information contained in traffic management plans to Transport for Victoria as part of the Memorandum of Authorisation (MoA) process for seeking permission to use traffic control devices. Transport for Victoria argues that the requirements should be (and are currently) identical to information provided by applicants as part of the MoA process as well as the risk assessment and mitigation measures in the Code of Practice for Worksite Safety – Traffic Management. Therefore, Transport for Victoria argues that the only feasible option is the current Regulations.

Fees and penalties

As part of the RIS, Transport for Victoria explored fee options for:

- MoAs for traffic control devices;
- Non-road activity permits;
- Stock control crossing permits for arterial roads; and
- Victoria Police highway collection and race permits.

The options were assessed against the criteria of efficiency, level of cost recovery, simplicity, administration costs and compliance incentives.

Currently, there is only a fee for non-road activity permits but Transport for Victoria does not collect fees for this activity because most applicants are not-for-profit organisations. Transport for Victoria notes in the RIS that under the proposed Regulations it will:

- set fees at full cost recovery for MoAs to Transport for Victoria to use traffic control devices;
- set fees at full cost recovery for non-road activity permit fees but only charge fees for commercial events (fees will be waived for registered charitable bodies and a provision will be made to waive fees for other applicants);
- not set fees for stock crossing permits for arterial roads because there have been fewer than 10 applications since July 2015; and
- not set fees for Victoria Police highway collection and race permits because most of these activities are non-commercial in nature and Victoria Police has a policy of waiving fees for non-commercial activities. In addition, Victoria Police would need to establish an electronic payment system to collect fees from applicants.

In the RIS, it is explained that under the proposed Regulations the offence provisions in regard to bicycle and foot races being conducted without Victoria Police permission will be amended. While it will remain an offence for an organiser to conduct a race without permission, a competitor will now only commit an offence if they *knowingly* compete in a race that does not have Victoria Police permission or *knowingly* contravene any Police imposed conditions on the race. Under the proposed Regulations penalties for these offences will be increased from one penalty unit to two penalty units.

Implementation and Evaluation

Transport for Victoria notes in the RIS that, prior to the commencement of the proposed Regulations, it will advise key stakeholders of the amendments to the current Regulations.

Transport for Victoria notes that while the proposed Regulations do not impose significant burdens on the community in its view, monitoring and evaluation are still valuable. Transport for Victoria notes that the evaluation strategy will:

- monitor the rate of non-compliance with MoAs and permits;
- give further consideration to introducing a 'one-stop shop' for race and highway collection permits;
- assess the effectiveness and red-tape reduction to third parties of the proposed transfer of some MoA responsibilities to local councils related to traffic control devices on municipal roads;
- investigate providing guidance material to advise third parties regarding the appropriate timing of works and how to appropriately use traffic control devices, particularly in peak hour periods; and
- investigate options for introducing a cost-effective special event traffic marshal scheme to encourage people to volunteer to be traffic controllers in community and sporting events.

The evaluation is planned to commence in late 2019 and be completed by early 2021.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



Anna Cronin
Commissioner for Better Regulation

