



CITY OF MELBOURNE

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20 March 2018

Local Government Act Review Secretariat
C/o Local Government Victoria,
PO Box 500, Melbourne VIC 3002

Dear Sir/Madam

LOCAL GOVERNMENT BILL – EXPOSURE DRAFT

Thank you for the opportunity to make a submission on the *Local Government Bill Exposure Draft*.

We attach the Council administration's submission (including comments entered into the template provided by Local Government Victoria) for your consideration. The submission has not been endorsed by Council.

Overall we are pleased that many of the recommendations we have made in our earlier submissions have been included in the draft Bill.

Thank you again for the opportunity to make a submission and I look forward to our continued involvement in the development of the new Act and any Guidelines issued by Local Government Victoria.

Please contact me or Keith Williamson, Manager Governance and Legal, should you wish to discuss our submission further.

Yours sincerely

Ben Rimmer
Chief Executive Officer

CoM reference

#11472861

<p style="text-align: center;">CITY OF MELBOURNE SUBMISSION</p> <p style="text-align: center;">LOCAL GOVERNMENT BILL – EXPOSURE DRAFT</p>

EXECUTIVE SUMMARY

In our previous submission dated December 2015 the City of Melbourne administration identified five main priorities for change to the current *Local Government Act 1989*. These are restated below in italics with our updated comments in relation to each of the priorities following consideration of the Local Government Bill – Exposure Draft (draft Bill).

Firstly, in order to achieve a more responsive regulatory system, we suggest a system of ‘differential oversight’ for local government be established under the Act. This system would provide higher levels of autonomy for those councils that have demonstrated they are able to sustain high ongoing levels of governance, accountability and stability. It would also provide for higher levels of support for some other councils experiencing governance challenges or where their small size creates challenges.

We note that the draft Bill provides that a Council can apply to the Minister for a compliance exemption from a regulatory requirement under the Act or the regulations on the proviso that the Council is providing good governance.

Secondly, and in the context of outdated references to newspaper advertising and rapidly changing technology, the Act needs a comprehensive refresh to ensure that it is supporting councils to embrace digital technology.

We welcome the changes proposed in the draft Bill which will no longer require newspaper advertising or the need to advertise senior officer positions.

Thirdly, all employment related provisions need to be modified to the extent necessary to enable employees to pursue flexible working options, to allow administrations to adapt and change to meet new priorities, and to enhance gender equity and especially pay equity.

We welcome the removal of most employment matters from the Act and believe that this will assist the organisation in achieving greater mobility within the organisation to allow for a more dynamic, responsive, skilled and flexible workforce without restrictions. Removing restrictions on persons acting in senior positions for more than 12 months will also assist in allowing greater flexibility when people take parental leave and to better reflect parental leave practices.

Fourthly, the role of the CEO and administration in supporting councils needs to be far better defined. In particular, it is important to recognise the crucial role of the CEO and council administrations in providing impartial and professional advice to Council.

We don't believe the draft Bill has fully addressed this aspect. We suggest a more expansive description of the functions of the CEO that includes:

- **provide impartial and professional advice to Council**
- **manage on-going programs and services**
- **support good local governance in the community**
- **build partnerships and advocate in the best interests of the community, consistent with Council priorities**
- **lead the organisation and its people, including stewardship, for the future.**

Fifthly, the Act needs to ensure, encourage and enable much greater level of collaboration across the local government sector on service delivery, procurement, boundary interface issues and other projects of common significance.

We are supportive of the draft Bill's proposal that councils will have the autonomy to develop an appropriate Procurement Policy that considers the Council's local context.

In developing the policy, it would be preferable for Council's to be able to leverage off the procurement efforts of other Councils where a recent (perhaps within 12 months) competitive process has been undertaken. There should be legislative provision to allow councils to effectively 'piggy back' off other councils who have followed appropriate procurement practices and achieved a desirable tender outcome without the need to go to tender themselves.

This approach has the potential to enable smaller councils to access more competitive pricing and or services and to enhance procurement outcomes at scale. It also has the benefit of avoiding administrative costs associated with tendering

In addition to the five points above we made other suggestions (below in italics) in our December 2015 submission and make the following comments on those suggestions.

In relation to the City of Melbourne's distinct franchise, this model is sound and functions well to represent the interests of all constituents within the municipality. The vote of both property owners and occupiers and non-property interests recognises the valuable role of both personal and corporate interests in Melbourne. A balance that protects the interests of all constituents and a right to participate through voting is important.

We acknowledge that the draft Bill does not propose any change to voter entitlement.

In relation to the appointment of the CEO, there is value in the mandatory adoption of an 'Employment Matters Committee' established with an independent chair to oversee the process of appointment and ongoing performance management. The CEO contract details should be made available on council websites, and we suggest the use of independent advisors to support the Employment Matters Committee with appointments and negotiations.

We welcome the inclusion of a requirement for a 'Chief Executive Officer Employment and Remuneration Policy' and the requirement for Council to obtain independent professional advice in relation to the matters dealt with in the Chief Executive Officer

Employment and Remuneration Policy. We also welcome the removal of the need to give public notice of intention to offer a new employment contract to the incumbent CEO.

However, we are still of the view that there is value in the mandatory adoption of a 'CEO Employment Matters Committee' established with an independent chair.

Overall, the role and functions of councils are well set out within the Act, but would benefit from a refresh. Specifically, we suggest consideration be given to:

- *the addition of specific stated role of local government engagement with State, Commonwealth and other local governments*
- *emphasis on the provision of services for all those who live, work and visit the municipality – not just the local community*
- *a specific stated objective of collaborating with other local governments on service delivery, boundary issues and projects of significance that would benefit the community and drive cost savings*
- *emphasis on the important role of local government in driving local innovation and responsiveness to new and emerging issues*
- *the addition of an explicit role in promoting and informing the community about the Aboriginal heritage within each municipality, as a legislative recognition of the first peoples of this state.*

We recommend further consideration of including the following suggestions in the role and functions of councils:

- **emphasis on the important role of local government in driving local innovation and responsiveness to new and emerging issues**
- **the addition of an explicit role in promoting and informing the community about the Aboriginal heritage within each municipality, as a legislative recognition of the first peoples of this state.**

Consideration should be given to amending the definition of rateable property to include 'occupancies that have not been separately valued but form part of another rateable valuation'.

To avoid disenfranchising people, the practice adopted by the City of Melbourne has been to automatically enrol occupiers even where their office isn't separately rated (e.g. where a ratepayer is issued one rate notice for the whole building or floor, as opposed to individual occupancies). It is our view the legislation should be changed to reflect this practice.

We welcome the change in the definition of rateable property contained in the draft Bill to include property which is *capable* of being rateable.

Consideration could be given to a four-year budget for a Council adopted in its first year that it reviews annually to facilitate longer term planning.

We welcome the inclusion of this suggestion in the draft Bill.

In relation to section 98(1)(d) of the Act and the prohibitions on delegating the power to approve expenditure not contained in a budget approved by council, in order to facilitate more efficient processes and speed in decision making, it would be desirable for the CEO to have the ability to approve any expenditure necessary for the operation of the council so long as that expenditure lies within the current budget forecasts.

We welcome the removal of this section.

Councils need broad powers of investment. While it is appropriate that council investments are not too speculative, the current provisions regarding entrepreneurial powers act as a disincentive to innovation. Section 193 is unwieldy and difficult to interpret, and in practice this provision deters innovation and collaboration, especially with other councils. The approval process can be time consuming and cumbersome for all concerned, including multiple state departments.

We welcome the proposed removal of the cumbersome provisions in the current Act regarding ‘entrepreneurial powers’ and welcome the greater powers for councils to engage in beneficial enterprises.

ATTACHED TEMPLATE SUBMISSION

We have only populated commentary on clauses of the draft Bill that we have specific comments or suggested changes. Where specific clauses are not mentioned this can be interpreted as support for the clause.

Submission Template

Local Government Bill – Exposure Draft

Name	Ben Rimmer
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If you work in an organisation or council, please provide the following information:

Organisation or council name	City of Melbourne
Position	Chief Executive Officer
Are you providing this submission on behalf of the organisation or council?	Organisation

Key information about making a submission

What feedback should I provide on the exposure draft bill?

Following an extensive consultation process that considered the policy issues that underpin the Local Government Act, we are now seeking feedback on the Local Government Exposure Draft Bill to inform the final draft legislation before the Government reviews it to present to the Victorian Parliament. We strongly encourage you to read the explanatory document (*A New Local Government Act for Victoria*) to assist you to navigate the draft legislation.

What is the closing date for submissions?

The closing date for submissions is **5:00 pm, Friday 16 March 2018**. Given that the draft bill is subject to parliamentary timeframes, submissions received after this date will be considered at the Government's discretion.

How do I make a submission?

Submissions can be made in three ways:

- **Online** by uploading your submission to the www.yourcouncilyourcommunity.vic.gov.au website
- **Emailing** your submission to local.government@delwp.vic.gov.au
- **Posting** your submission to:
Local Government Act Review Secretariat
C/o Local Government Victoria,
PO Box 500, Melbourne VIC 3002

How do I complete this template?

To complete this template:

- (1) Locate the part of the Draft Bill you wish to comment on.
- (2) Insert the clause number, your level of support for the clause, the proposed change and any other comments into the table.

Can I provide a submission in another format?

It is strongly preferred for submissions to be made by completing this template. However, if another format suits your needs or the requirements of your organisation you are welcome to use another format.

Will submissions be made publicly available?

Written submissions and the name of the author will be published on the www.yourcouncilyourcommunity.vic.gov.au website unless confidentiality is requested and the Executive Director of Local Government Victoria grants it, or if it is determined your submission should remain confidential. Submissions that are defamatory or offensive will not be published.

Please contact the Local Government Act Review Secretariat if you have any questions on (03) 9948 8518 or local.government@delwp.vic.gov.au

Part 1: Preliminary

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 3, Definitions	Suggested change	The definition of 'capital improved value' is the same as currently appears in the <i>Valuation of Land Act 1960</i> . Why not cross refer to the latter Act?	
Section 3, Definitions	Suggested change	The definition of rateable property in both the Draft Bill and <i>City of Melbourne Act 2001</i> refers to a number of exclusions. It is becoming increasingly difficult to separate these out and we suggest they be removed from the definition altogether. They are: <ul style="list-style-type: none">• parking a single motor vehicle within the meaning of section 3(1) of the <i>Road Safety Act 1986</i>; or• mooring a single vessel within the meaning of section 3(1) of the <i>Marine Safety Act 2010</i>; or• storage, being a single lockable unit with a floor area not exceeding 25 square metres.	

Do you have any overall comments on Part 1 of the Exposure Draft Bill?

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Part 2: Councils

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 10(2)(a)	Suggested change	We suggest this section should be amended to mirror the wording in section 98(1)(a) of the current Act, which is 'this power of delegation'.	
Section 40(2)	Suggested change	We suggest sections 40 and 41 which address Councillor expenses and resources and facilities to be made available to Lord Mayor, Deputy Lord Mayor and Councillors – should include a reference to maternity and paternity leave.	
Section 43(4)	Comment	Unless the position of the Chief Executive Officer is vacant for a period of more than two months, the Chief Executive Officer should be able to determine who acts in his/her role, as opposed to the Council needing to appoint an Acting Chief Executive Officer.	
Section 44	Comment		We note the comment made by Local Government Victoria in relation to Chief Executive Officer remuneration incentive payments. We do not support incentive payments.
Section 45	Comment		How does the Chief Executive Officer, who has responsibility for workplace health and safety and a statutory obligation to maintain a safe workplace, exercise that power in relation to Councillors over who the Chief Executive Officer has no authority?
Section 45(2)(d)	Comment		We repeat our earlier comment that the Chief Executive Officer should not have to consult the Mayor when setting the Council agenda.
Section 45(4)(a)	Comment		We repeat our earlier comment that this requirement seems to be at odds with removing all matters about employing staff and does not allow for flexibility and agile response to changing circumstances.

Section 45(4)(c)	Comment		We repeat our earlier comment that this requirement seems to be at odds with removing all matters about employing staff and is not required, as it is contained within Enterprise Agreements. It is also out of step with contemporary organisation management practices.
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Do you have any overall comments on Part 2 of the Exposure Draft Bill?

Part 3: Council decision making

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 54	Comment		It will be important that Guidelines be provided by Local Government Victoria to assist councils and we suggest consideration be given to creating a model Community Engagement Policy with minimum standards that councils must adopt.
Section 56	Comment		It will be important that Guidelines be provided by Local Government Victoria to assist councils and we suggest consideration be given to creating a model Public Transparency Policy with minimum standards that councils must adopt and key documents a council must make available.
Section 58	Comment		It will be important that Guidelines be provided by Local Government Victoria to assist councils and we suggest consideration be given to creating a model set of Governance Rules for councils to consider.
Section 62	Suggested change	For the avoidance of doubt, we suggest section 62 expressly provides a Community Asset Committee is not a delegated committee as defined in section 61.	
Section 63 and/or the definition of 'confidential information' in section 3.	Comment		<p>We repeat our earlier comment recommending the retention of the existing provision of 'any other matter which the Council or special committee considers would prejudice the Council or any person'. By way of example, organisations seeking support (financial or in-kind) from Council should be able to do so without being named in an open report. If support is agreed to then the identity of the organisation and quantum of support provided should be made public. However, to require the details of the request, prior to a decision of Council, to be aired in public is considered unreasonable in many instances.</p> <p>We also suggest retaining provision 89(2)(i) in the current Act which allows Council to close a meeting to members of the public to discuss the purpose of the confidentiality of the</p>

			matter.
Section 64(4)	Comment		<p>We understand the reason for enabling other people to be appointed to a delegated committee where a quorum cannot be maintained, but question why those Councillors with the conflict (who are the majority) effectively decide the composition of the delegated committee?</p> <p>Further, the <i>Planning and Environment Act 1987</i> will need to be amended to allow a delegated committee of Council to determine on adopting a Planning Scheme Amendment.</p>
Section 74	Comment		<p>We note the comment made by Local Government Victoria that consequential amendments will be made to the <i>Sentencing Act 1991</i> to allow for indexation of local law penalty units.</p>

Do you have any overall comments on Part 3 of the Exposure Draft Bill?

Part 4: Planning and financial management

Clause (No.)	Suggested change/Comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 88	Comment		Councils will require guidance in respect to what is an acceptable rating plan.

Do you have any overall comments on Part 4 of the Exposure Draft Bill?

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Part 5: Rates and charges

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 109	Comment		<p>We suggest consideration be given to changing the current occupancy based assessment to an ownership based assessment for the following reasons:</p> <ul style="list-style-type: none">• Ownership information provided to Council via acquisition notices is both current and reliable, as opposed to occupancy information which is collected via physical survey by Council, frequently changes and is merely a snapshot at a particular point in time.• The liability to pay rates rests with the owner of a property.• Consolidates all the information so that the owner of a large multi-storey commercial building could be issued with one notice, but still have the option to request a schedule of the breakdown of each individual occupancy if so required.• Aligns with other property tax regimes, such as land tax and fire services and property levy etc.• Would streamline the election process.• Would remove ambiguity, as 'ownership' is clearly defined in legislation.
Division 5	Comment		<p>Query why environmental upgrade agreements are limited to buildings and not rateable land? It is not difficult to see cases where a change of use of land could result in a significant reduction in carbon emissions but come at a cost to the landowner.</p>

Do you have any overall comments on Part 5 of the Exposure Draft Bill?

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Part 6: Council operations

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 147(3)(c)	Comment		<p>We are supportive of Council's having the autonomy to develop an appropriate Procurement Policy that considers the Council's local context. In developing the policy, it would be preferable for Council's to be able to leverage off the procurement efforts of other Councils where a recent (12 months) competitive process has been undertaken.</p> <p>This approach has the potential to enable smaller councils to access more competitive pricing and or services and to enhance procurement outcomes at scale. It also has the benefit of avoiding administrative costs associated with tendering.</p>
Section 152	Suggested change	There is no longer any requirement to reference the <i>Local Government Act 1958</i> .	

Do you have any overall comments on Part 6 of the Exposure Draft Bill?

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Part 7: Council integrity

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 165	Comment		The current Act specifies the circumstances in which Councillors are deemed not to have a conflict of interest. We suggest similar provisions be included in the Draft Bill/regulations.
Sections 166 and 167	Comment	We propose that a Councillor, member of staff or a delegated committee should be required to declare a conflict of interest if they received a gift over the threshold value in the five years preceding the decision on the matter, regardless of whether they were a Councillor, member of staff or a delegated committee at the time of receiving the gift.	We repeat our previous submission that removing rules may create more 'grey'. The provisions in the current Act provide clarity around conflicts of interest.
Sections 178 and 179	Suggested change/comment	We are of the view Occupational Health and Safety issues, including sexual harassment, need to be expressly dealt with in either the legislation or regulations.	<p>As already noted, we also recommend where there are allegations involving serious Occupational Health and Safety issues, an independent person such as the Chief Municipal Inspector, should have a power to immediately issue interim directions to the alleged perpetrator (without testing the evidence or forming any view of guilt), that will make the workplace safe and protect the alleged victim eg not attend (be 'stood down') the workplace for a defined period of time.</p> <p>Serious Occupational Health and Safety issues would include where an allegation is made of sexual harassment, the threat of violence and/or serious intimidatory behaviour. This is similar to an employer standing down an employee on full pay, where the nature of the allegation poses a serious Occupational Health and Safety risk, or the like.</p>
Section 179	Suggested change	We believe it should be prescribed in the Draft Bill that the declaration to abide by the Councillor Code of Conduct (and all future validations) be integrated into the Oath/Affirmation of Office.	

Section 206	Comment		We would recommend that the Draft Bill expressly provide that when the VCAT is considering an application in relation to gross misconduct it can make lesser findings of serious misconduct or misconduct.
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Do you have any overall comments on Part 7 of the Exposure Draft Bill?

Part 8: Ministerial oversight

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 243	Suggested change/comment		<p>As already noted, we also recommend where there are allegations involving serious Occupational Health and Safety issues, an independent person such as the Chief Municipal Inspector, should have a power to immediately issue interim directions to the alleged perpetrator (without testing the evidence or forming any view of guilt), that will make the workplace safe and protect the alleged victim eg not attend (be 'stood down') the workplace for a defined period of time.</p> <p>Serious Occupational Health and Safety issues would include where an allegation is made of sexual harassment, the threat of violence and/or serious intimidatory behaviour. This is similar to an employer standing down an employee on full pay, where the nature of the allegation poses a serious Occupational Health and Safety risk, or the like.</p>

Do you have any overall comments on Part 8 of the Exposure Draft Bill?

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Part 9: Electoral provisions

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 276	Suggested change	We repeat our previous submission that given 60 per cent of the City of Melbourne voters don't live in the City of Melbourne postal voting is currently the most appropriate voting method. Can the method of voting (postal or electronic) be enshrined in the <i>City of Melbourne Act 2001</i> ?	
Section 320	Suggested change	We suggest that 21 days is too long during the election period for voters to be able to access campaign donation information about prospective candidates. Why not apply seven days consistent with donations received prior to nomination day?	
Section 320(2)	Comment		We believe this section requires clarification. Does this mean there is no end date by which to submit election campaign donations?

Do you have any overall comments on Part 9 of the Exposure Draft Bill?

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Part 10: General provisions

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Sections 326(1) and 326(10)	Suggested change	We suggest these sections be amended to include 'any other Act and regulations'.	
Sections 340 to 342	Comment		It will be important that the regulations are issued well before the Act commences to allow councils time to update their processes.
Section 102 (and section 346 of Part 11)	Suggested change	Section 102 should be included in the new section 5 of the <i>City of Melbourne Act 2001</i> (added by section 346 of Part 11).	The Explanatory Document accompanying the Draft Bill discusses the requirement for all councils, with the exception of Melbourne City Council, to apply capital improved value as the single uniform valuation system for raising municipal rates. This is not reflected in the Draft Bill.

Do you have any overall comments on Part 10 of the Exposure Draft Bill?

Part 11: Consequential amendments and repeals

Clause (No.)	Suggested change/comment	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Section 346	Suggested changes	<p>There are no sections 204(d) and (e) in the Draft Bill, as referred to.</p> <p>The new Section 5 in the <i>City of Melbourne of Act 2001</i> should include sections 254 and 255 (in addition to sections 256 to 270).</p>	
Section 350	Suggested changes	<p>Reference to ‘entitlement date’ has been left in section 9(3) of the <i>City of Melbourne Act 2001</i> (there were two references to entitlement date and only one has been substituted).</p> <p>There is still a reference to ‘entitlement date’ in section 9B(4) of the <i>City of Melbourne Act 2001</i>.</p> <p>For clarity, the reference to ‘entitlement date’ in section 11C(4)(a) of the <i>City of Melbourne Act 2001</i> needs to be substituted.</p>	
Section 354	Suggested change	<p>For the avoidance of doubt and to ensure consistency with other local governments, it should be made clear that the Victorian Electoral Commission is the Registrar for the purposes of the inspection of the certified voters’ roll.</p>	
Section 357	Suggested change	<p>The repeal of section 25A of the <i>City of Melbourne Act 2001</i>, means the Council can no longer delegate to the Lord Mayor the power to approve:</p> <ul style="list-style-type: none"> • The appointment of Councillors to represent the Council on external organisations, committees and working parties. • Travelling arrangements relating to Councillors. <p>These delegated powers have been used at the City of Melbourne to deal with urgent circumstances and we suggest they be retained in the <i>City of Melbourne Act 2001</i> and, in the case of travel arrangements, allow for the inclusion of travel arrangements relating to the Chief Executive Officer (as it is inappropriate for the CEO to approve their own travel).</p>	

Section 363(1)	Suggested change	The proposed amendment to section 24(1) of the <i>City of Melbourne Act 2001</i> does not make sense when read in its entirety. It appears there are words missing.	
None	Comment		In the event of both the position of Lord Mayor and Deputy Lord Mayor becoming vacant, and where practicable, rather than running two by-elections, a combined leadership team by-election is conducted.
None	Comment		We note the comment by Local Government Victoria that Schedules 10 and 11 (Roads and Traffic) will be transitioned into the <i>Road Management Act 2004</i> in consultation with the sector and VicRoads over time. This must include the power to maintain a residential parking scheme.
None	Comment		Exclusion of the definition of 'road' from the Draft Bill (which currently captures private roads for the purpose of discontinuance under the <i>Local Government Act 1989</i>) will need to be addressed by appropriate changes to the <i>Road Management Act 2004</i> , to ensure Councils can deal with private road issues.
None	Comment		The Draft Bill does not address the implications of the removal of the role of Council in respect to drains and sewers. Will this be dealt with in the same way as Schedules 10 and 11 of the <i>Local Government Act 1989</i> and put into another Act?
None	Comment		As the Draft Bill will result in councils relying on the <i>Road Management Act 2004</i> , could consideration be given to amending clause 9 of schedule 5 of the <i>Road Management Act 2004</i> by deleting the references to 'VicRoads' and replacing them with 'a coordinating road authority'?
None	Comment		While a staged implementation will ensure that councils have sufficient time to understand and comply with the new statutory requirements, we believe the sector should be consulted and have an opportunity to participate in the development of supporting resources (such as guidelines) and regulations, well in advance.

Do you have any overall comments on Part 11 of the Exposure Draft Bill?

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