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**Road Management**

**(General) Regulations 2016**

**Regulatory Impact Statement**

Date: 28 October 2015

**Prepared for VicRoads by Niskin Enterprises Pty Ltd**

(VicRoads Ref No: n3207356)

## brand strip185mm.jpgConsultation Period

Public comments are invited on this Regulatory Impact Statement (RIS) and accompanying proposed Regulations.

Copies of the RIS may be obtained:

* from the VicRoads webpage at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au/) by selecting:
* ‘About VicRoads’ tab; then
* ‘Acts, regulations & policies’; then
* ‘Road Management Act, regulations & codes’;
* then scroll down that web page to the section ‘What Regulations have been made under the Act?’;
* then select ‘Remaking of the Road Management (General) Regulations’ for more information and a link to download the RIS document; or
* by sending an email to [RMBresponses@roads.vic.gov.au](mailto:RMBresponses@roads.vic.gov.au) requesting that copy be provided; or
* by telephone: (03) 9854 2182 requesting that copy be provided.

Written submissions will be received up to **5:00 pm on Friday, 22 December 2015** at the following address:

Director – Network Policy and Standards,

VicRoads,

Level 10, 1 Spring Street,

Melbourne Vic 3000

or by email to: [RMBresponses@roads.vic.gov.au](mailto:RMBresponses@roads.vic.gov.au).

All submissions will be treated as public documents.

### Letter from the Commissioner for Better Regulation

29 October 2015

A copy of the letter from the Commissioner advising that this Regulatory Impact Statement meets the adequacy requirements of section 10 of the **Subordinate Legislation Act 1994** is included on the next page.

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## Executive Summary

### Overview

The proposed remaking of the **Road Management (General) Regulations 2005** will deliver the following key benefits:

* the removal of the requirement to advertise, in the Government Gazette and newspapers, the road authority’s intention to commence a review its road management plan (while still retaining the later public and stakeholder consultation requirements);
* the removal of fees for written permits issued for interference with roads and interference with construction zones operated by VicRoads;
* the introduction of a consent application and application fee for the installation of a structure, device, hoarding, advertisement, sign or bill that is being proposed to be located on, or over a road reserve; and
* the ability of an authorised officer to give a written direction to a person to remove objects, substances and materials from a road.

### Introduction

The proposed **Road Management (General) Regulations** (see **Appendix 2**) prescribe the requirements for the following areas:

* Discontinuance of a Road
* Road Management Plans
* Notices of incident and condition reports
* Protection of roads, property and public safety
* Property enquiry fee
* Consent application fee for signs requiring consent under section 66 of the Act (e.g. signs in road reserves for tourist attractions, services and facilities of interest to road users, where such signs are not permitted by or under another Act)
* Road management infringements

The **Road Management (General) Regulations 2005** were made on 21 June 2005 and were due to sunset on 21 June 2015. However approval has been given under section 5A of the **Subordinate Legislation Act 1994** to extend the operation of the existing regulations until 20 March 2016 with the making of the Subordinate Legislation (Road Management) (General) Regulations 2005) Extension Regulations 2015.

In addition to the substantive amendments mentioned in the overview, a number of minor amendments have been proposed to improve the clarity and effective application of the existing regulations.

### Nature and Extent of the Problem

**Periodic Review of Road Management Plans**

The **Road Management Act 2004** (the Act) establishes principles and a statutory framework for the management and maintenance of the road network to be undertaken by road authorities. Road authorities have a statutory duty to inspect, maintain and repair “public roads” and ensure they are reasonably safe for use having regard to the considerations set out in the Act. The Act and the Code of Practice for Road Management Plans encourages, amongst other things, a risk based approach to the inspection of public roads and the maintenance and repair of those roads within the resources available to a road authority. The intervention levels for road hazards and maintenance are detailed in a road management plan prepared by each road authority.

While road authorities have a statutory duty to inspect, maintain and repair the public roads that they are responsible for under their jurisdiction, the purpose of the road management plan is to facilitate road safety and to prevent road authorities from being exposed to unlimited liability for the condition of those public roads. By making a road management plan, a road authority has committed to undertaking the inspection, maintenance and repair of its public roads within specified inspection and response times for specified hazard thresholds. Provided the road authority complies with its published inspection, maintenance and repair regime, the road management plan, via the Act, provides a defense against claims from any person seeking compensation from property damages, personal injury or other damages that has arisen as a result of an incident that is related to the condition of the road.

#### The Act requires that a road management plan needs to be reviewed within a prescribed period. This is to ensure the inspection and responses times and hazard definition and intervention levels are still relevant and effective in meeting the purposes of the plan.

The need for periodic reviews is supported by the Auditor-General’s (2008) findings that with ageing road assets (particularly bridges), road maintenance budgets had not kept pace with inflation, changing road uses (increased freight, bicycle commuting) and greater public expectations in the quality of road and pathway condition. Austroads (the association of Australasian road transport and traffic agencies) also claims that the development of management and maintenance measures have led to a decline in the overall number of claims brought against road authorities and advises road authorities to keep up-to-date with developments through their local legal representatives.

Since the commencement of the Act, road authorities should have conducted at least two reviews after making their initial road management plan in 2004/05. About 20 percent of road authorities had previously not complied with the current requirement to review their road management plan every five years. In several cases, some road authorities only undertook or completed their first review up to ten years after the making of their road management plan.

Based on the advice from a sample of municipal council road authorities, it would appear that despite the legislative emphasis on public consultation, municipal council road authorities tend to receive no submissions during the public consultation associated with periodic reviews of their road management plans.

The current requirement to undertake two consultations adds significantly to the time taken by road authorities to undertake reviews and amendments of their road management plans within the current 5 year review cycle. The burdens (cost and time) for the first consultation (i.e. advertising and seeking submissions on the intention to commence a review) are disproportionate to the material benefits from the first consultation. The proposed regulation removes the requirement for the first consultation but retains the second consultation by which time the road authority has reviewed its road management plan in consultation with key affected stakeholders. In this way, the road authority can provide details of any actual change proposals under consideration by the road authority together with its review report on which the community and stakeholders can make submissions.

It would appear from consultations with a sample of municipal council road authorities that the periodic reviews are not leading to substantive amendments to the road management plans, which may mean that those plans set appropriate standards. It is difficult to determine whether substantive changes have occurred given that some municipal council road authorities do not appear to include an amendments register in their road management plans or publish the review report on their websites.

It is not clear whether road authorities have incurred claims arising from incidents that have prompted those road authorities to make specific changes to their road management plans or whether these changes have occurred as a result of the road authorities’ continuous improvement initiatives or as a result of working with their insurers or for other reasons. Several municipal councils that had not previously complied with the prescribed review period remarked that as a result of working with their insurers they had initiated and completed a review and amendment of their road management plan. It is also unclear whether the councils (and their insurers) were prompted by increased claims or from funding, resources or risk management or other perspective, having regard to good asset management practices. It is likely that insurers would be aware of the standards and improvements that had been made to most road management plans, and would from a risk management perspective seek consistency across all road authorities.

In terms of the effectiveness of road management plans, VicRoads had for example accepted liability for about $27,000 out of about $2.8 million of compensation claims lodged in 2012/13.An analysis of the 2012/13 claims reveals that about $1.2 million of the $2.8 million in claims were within the threshold amount (the amount that the Act states must be deducted from the amount of the agreed property damage claim). Given that the threshold amount is exercised regardless of whether a road authority is liable or not, the threshold amount cannot be claimed as a benefit of the road management plan. In the case of VicRoads, the $1.2 million threshold amount is excluded, leaving a balance of $1.6 million that can be attributed to the existence of VicRoads’ road management plan.

It is difficult to ascertain the amount of claims that are refused that relate to specific changes to the inspection and maintenance regime that have occurred as a result of the periodic review of road management plans. This data is not kept by road authorities. Given that recent periodic reviews have resulted in relatively minor changes to the inspection and maintenance regime (the core part of the road management plan that road authorities draw upon to provide a defense against claims) it is reasonable to consider that most of the $1.6 million of claims referred to above in relation to VicRoads (other than the $27,000 in claim payments) that were not paid out is attributable to the initial road management plan prepared in 2004/05. It is unclear what proportion of the property damage claims (above the threshold amount) that are not paid by road authorities are attributable to specific changes to the inspection and maintenance regimes that occur as a result of the periodic review or other reasons.

**Notices of Incident and Condition Reports**

Section 115 of the Act requires any person proposing to commence a proceeding in a court in relation to a claim against a road authority to submit a notice of the incident to the responsible road authority. Section 116 enables a responsible road authority to respond to the notice and inspect the condition of the road and prepare a condition report.

In the absence of these requirements, the later subsequent assessments of claims by road authorities and the claims process in either a court proceeding (if a claim proceeds to that stage) or a non-court-based claims management process would become inefficient and difficult to determine whether the claim was warranted if the full scope of relevant information pertaining to the incident was not reported to the responsible road authority. The information provided in the notice of incident is also required to enable the responsible road authority to investigate the site of the incident and to prepare a condition report, which is an input to the separate assessment of the claim. Very few claims proceed to court. Claims are either rejected or paid by the road authority.

**Protection of Roads and Property**

Most of the current provisions in the regulations seek to protect roads and property by restricting the public from access to, uses of or certain activities on a road (e.g. for interference with roads and climbing bridges) and impose penalties, including where appropriate by way of an infringement notice. While these restrictions are intuitively sensible, VicRoads (in the case of regulations that apply only to VicRoads) has not issued any infringement notices under Part 5 of the existing regulations but has successfully used the regulations to persuade persons to cease activities that would interfere with or damage roads. In addition, it is often difficult to identify who has damaged a road or interfered with a road or construction zone. Accordingly, there is no enforcement data on the extent of the problem relating to the way in which some persons have put VicRoads (or other road authorities’) property at risk or public safety at risk. Notwithstanding this, VicRoads considers that the Part 5 regulations do not impose a material burden or unreasonable restriction on public access and are still an effective and important tool in having interfering or damaging activities cease.

The Act prescribes a requirement that road authorities must make take all reasonable steps to notify the owner of the vehicle before it can sell or dispose the vehicle that has been removed on the grounds that it is unregistered, abandoned or causing an obstruction or danger. VicRoads removes an estimated 150 vehicles per annum.

The Act also enables a road authority to remove objects, substances and materials deposited or left on the road. Other than refuse or rubbish, owners of objects (particularly personal belongings of significant value) that have accidently left the objects on the road or the objects have fallen from their vehicle will incur the loss of objects. In cases, where an object has the identity of the owner and is of significant value, VicRoads considers that it is appropriate that the road authority notify the owner that the object will be sold or disposed of within a specified period to enable the owner to collect the object.

### Funding the Administration for Property Enquiries

Section 32 of the **Sale of Land Act 1962** requires an owner who is proposing to sell land to give a Vendor’s Statement to a prospective purchaser and include that Statement with any subsequent contract for the sale of the land. In addition to other details and information, the Vendors Statement is required to include information as to whether any public authority or Government Department (specifically VicRoads for the purposes of the scope of the existing and proposed regulations) has any approved proposals directly and currently affecting the land, such as for works requiring the purchase or compulsory acquisition of land (section 32D of the **Sale of Land Act 1962**).

Any person can make a property enquiry to VicRoads requesting advice on whether a property is affected by an approved proposal for future road works that would require, for example, the purchase or compulsory acquisition of any part of that property.

The cost of VicRoads providing this information needs to be funded either by those that directly benefit from the information or from Government tax payer funds.

VicRoads has processed an average of 28,284 property enquiry applications per annum over the past several years.

As can be seen from the Table below, VicRoads administers the property enquiry service effectively on a full cost recovery basis with a slight surplus of $3,394 that represents 0.7 percent of the $485,071 cost of administration. The slight over-recovery of $3,394 per annum represents a net present value of $27,529 over the ten year life of the regulations. The revenue of $488,465 from property enquiry fees represents a present value of $3,961,888 over the ten year life of the regulations.

**Property Enquiry Fee Revenue and Costs**

|  |  |
| --- | --- |
| Revenue | $488,465 |
| Costs | $485,071 |
| Surplus/Deficit | $ 3,394 |

Source: VicRoads

### Funding the Administration of Hoardings and Advertising On or Over the Road Reserve

Section 66 of the Act requires a person to obtain the written consent of the coordinating road authority for placing hoardings and advertisements on or over the road reserve, unless those things are otherwise appropriately authorised. This generally applies mostly to tourism, services and facility signage of interest to road users.

Tourism operators such as for bed and breakfast stays, wineries, galleries etc and community facility operators are eligible to apply for consent to install tourism, service or facility signage on the road reserve. VicRoads is responsible for providing consent on freeways, arterial roads and non-State arterial roads for which it is responsible and municipal council road authorities are responsible for providing consent on municipal roads and the Department of Environment, Land, Water and Planning (DELWP) is responsible for providing consent on the non-arterial State roads it manages.

VicRoads estimates that it receives about 70 consent applications for tourism signs and about 30 consent applications for service and community facility signs on an annual basis. It is assumed that municipal council road authorities collectively would receive a similar number of consent applications. Accordingly, an extrapolated figure of 200 consent applications per annum would be received statewide. Given the absence of data on consents provided for signage across all road authorities it is difficult to provide a definitive total cost for the administration of the consent application process.

The current regulations do not prescribe application requirements or an application fee and hence road authorities do not achieve any cost recovery for processing consent applications.

The time taken to assess consent applications ranges from one to three hours depending on the type of sign and the location of the sign. Community facility signs tend to be located within a township whereas tourism signs tend to be located outside of townships. Part of the consent application process involves a site visit of the proposed location of the sign. As a result, the cost of a site visit will be greater in most circumstances for tourism signs compared to community facility signs. According to VicRoads, the assessment for most consent applications would take on average about 2 hours.

The Table below shows the estimated level of cost under-recovery based on the number of hours taken to assess each application. The cost under-recovery ranges from $15,368 (one hour assessment) to $46,104 (three hours assessment). The average hourly cost of $76.84 is based on the calculation of salary, on costs and indirect costs incurred by road authorities. The maximum under-recovery of $46,104 represents a present value of $373,945 over the ten year life of the regulations.

**Hoardings and Advertisement Consent Application Costs**

|  |  |  |  |
| --- | --- | --- | --- |
| Number of hours to assess each application | Cost to assess each application | No of applications per annum | Total cost |
| 1 | $ 76.84 | 200 | $15,368 |
| 2 | $153.68 | 200 | $30,736 |
| 3 | $230.52 | 200 | $46,104 |

Note:

As noted above, it is estimated that 200 consent applications would collectively be received per annum by all road authorities, statewide. The table above illustrates the cost under-recovery for road authorities in assessing those 200 applications in three scenarios having no application fee and the time taken for each assessment being 1, 2 and 3 hours.

### Objectives

The primary objective of the proposed regulations is to provide for a safe and efficient road network.

The secondary objective is to fund the efficient and equitable regulation of property enquiries and signs requiring consent under section 66 of the Act (e.g. tourist, service and facility signs of interest to road users).

### Assessment

**Periodic review of road management plans**

Given that recent periodic reviews of road management plans have overall resulted in relatively minor changes to the inspection and maintenance regime the following options were considered and assessed:

Option 1: Periodic reviews every five years

Option 2: Periodic reviews every ten years

Option 3: Self-regulation

As the costs and benefits of these options could not be fully quantified, multi-criteria analysis (MCA) was undertaken for all options using the following criteria:

* Road safety
* Claim payments by road authorities
* Cost to road authorities
* Insurance costs

Option 1 was found to have the highest score followed by Option 3. With self-regulation, the savings to municipal road authorities would be about $4,000 per annum for every year the review was deferred beyond the current five year cycle. These savings are not considered significant and may not provide much of a financial incentive to change the current regulated approach. Even so, the self regulation option could not be implemented without changes to the Act.

**Notices of incident and condition reports**

MCA was applied to the notice of incident and found that more information given in the notice provided a superior option than the minimal information currently prescribed in the regulations. However, the option with more information would first require amendment to the Act. The assessment of condition reports considered there were no feasible alternatives and that the current regulatory approach was satisfactory.

**Removal of vehicles**

For the method of notification to registered operators and owners of removed vehicles, several options were considered and assessed using MCA:

Option 1: Notification by post;

Option 2: Notification by phone;

Option 3: Notification by email/SMS

Option 1 was found to have the highest score due to the fact that other notification methods such as mobile phone/SMS and email take-up rates for the elderly and unemployed are not as high as the rest of the community and because there are no available records of the phone numbers and email addresses for registered operators or owners.

VicRoads acknowledges that an alternative would be for the proposed regulations to provide discretion as to how notice can be served, such as by specifying that notification be ‘in writing’, as is done in regulations 6 and 24, or that ‘effective notification’ be provided. Although this approach would be more flexible, VicRoads considered there were also disadvantages of such an approach that outweigh its potential benefits.

**Hoardings and advertisements**

For the consent application process for hoardings and advertisements the following options were considered and assessed using MCA:

Option 1: Prescribe the consent assessment criteria

Option 2: Prescribe the consent assessment criteria and the particulars in the consent

application

Option 2 was found to have the highest score as it reduced the costs to applicants.

**Removal of objects, substances and materials from roads**

For the notification process to owners of removed objects, substances and materials the following options were considered and assessed using MCA:

Option 1: Notify owners of removed objects of any value

(other than refuse or rubbish)

Option 2: Notify owners of removed objects valued at $500 or more

(other than refuse or rubbish)

Option 2 was found to have the highest score as it reduced the costs to road authorities but still provided consumer protection to owners of objects with a reasonable value.

### Fee Options

**Property enquiry fee**

The current prescribed fee for a property enquiry effectively achieves full cost recovery. No other feasible options other than the current approach were considered given that the prescribed fee of $17.27 (1.27 fee units) per application is relatively low compared to the other costs associated with preparing a Section 32 vendors statement.

**Consent application fees for hoardings and advertisements on or over the road reserve.**

The variation in the number of hours taken to assess the different type of signs is mostly attributed to the method used by a road authority to undertake a site inspection of the proposed location of the sign. The method used will depend on the size of a road authority’s jurisdiction and where signs are proposed to be located. A site inspection for a consent application can be combined with other traffic management inspections, and in other cases, a site inspection is undertaken solely for a particular consent application. This has a significant impact on the time and cost associated with the different methods of site inspection. Accordingly, several options with a standard flat fee and a maximum fee regime were considered and assessed:

Option 1: Standard flat fee

Option 2: Maximum fee

Option 3: Fee based on advertising fees under the Planning and Environment (Fees)

Interim Regulations 2014

Option 2 was found to provide the necessary flexibility to road authorities to set their consent application fees to recover their costs whereas Options 1 and 3 were considered to under-recover costs.

### Competition Assessment

A competition assessment was undertaken and found the proposed regulations do not act to restrict competition.

The various exemptions in respect to the discontinuance of a road and road management plans apply to all road authorities. The consent application process for tourism and tourist services signage applies to all tourist attraction businesses.

### Comparison of Current and Proposed Fees

As can be seen below, the current fees for permits in respect to the interference with roads or construction zones are proposed for revocation. The property enquiry fee remains the same and the consent application fee for certain signs is a maximum fee. A fee unit for 2015/16 is valued at $13.60.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Current Fees | Current Fee units | Proposed Fees | Proposed Fee units |
| Permit for interference with roads | $68 | 5 | 0 | 0 |
| Permit for interference with construction | $68 | 5 | 0 | 0 |
| Property enquiry | $17.27 | 1.27 | $ 17.27 | 1.27 |
| Consent application for hoardings and advertisement | 0 | 0 | $243.85 | 17.93 |

### Summary of annual and Present Value of revenue from fees

The property enquiry fee will generate $488,485 in revenue per annum.

The hoardings and advertisement consent application fee will generate a maximum of $46,101 in revenue per annum.

This represents $534,569 in total revenue per annum or a present value of $4,335,833 over the ten year life of the regulations.

## Stakeholders Questions

While preparing this Regulatory Impact Statement (RIS), VicRoads has undertaken consultation with a range of stakeholders, to help inform the options examined, the possible effects of these options, and the choices about the preferred approach. The views expressed by stakeholders and how VicRoads has responded to them, is outlined in section 9 of this RIS.

Notwithstanding this consultation, some uncertainties remain. Thus, without limiting the matters about which stakeholders may wish to comment, stakeholder feedback is sought specifically on several matters as listed below.

### Periodic review of road management plan (refer to section 5.3)

Regulation 8 requires a road authority to complete a review of its road management plan, in the case of road authorities that are not municipal councils (e.g. VicRoads), every five years, and in the cases of municipal council road authorities, within the period referred to in section 125(1) **Local Government Act 1989** (i.e. within 6 months after each council general election, which are held every 4 years).

**Question A –**

Should the current review periods (i.e. five years or 4 years and 6 months for municipal councils) for road management plans be retained in the regulations or be extended for a longer period?

**Question B –**

Should the review period, in the case of municipal council road authorities, continue to be aligned with the periodic review of Council Plans in accordance with section 125(1) of the **Local Government Act 1989** (i.e. within 6 months after each council general election, which are held every 4 years)?

If yes, what are the key reasons and benefits for retaining that current alignment?

**Question C –**

Are affected stakeholders including responsible road authorities supportive, subject to possible future legislation changes\*, of self regulation (i.e. no prescribed review periods) and if not, specify the type of harms that would arise from self-regulation.

\* Note: There is no current proposal to amend the **Road Management Act 2004**

in that regard.

### Removal of vehicles (refer to section 5.6.2)

Regulation 22 requires that if a road authority removes a vehicle in accordance with clause 4 or 5 of Schedule 4 of the Act, the road authority must serve a notice by post on the registered operator (if any) or owner of the vehicle informing them that the vehicle has been removed. An alternative option is for the regulation to provide discretion as to how that notice can be served, such as by specifying that notification be ‘in writing’ and not specifically by ‘post’. That alternative approach would allow road authorities to use post if this continues to be the most efficient or effective way to achieve the outcome and would also allow them to adapt to the changing communications landscape over the next 10 years without requiring further legislative amendment. Nonetheless, VicRoads considers there are also disadvantages of such an approach that outweigh its potential benefits. Both options are discussed in further detail towards the end of section 5.6.2.

**Question D -**

Should Regulation 22 allow notification by methods other than post?

Please provide reasons for your response.

### Removal of objects, substances and materials (refer to section 5.6.4)

Regulation 25 requires a road authority to notify the owner of an object, substance or material (other than refuse or rubbish or a thing that is of a low value) that has been deposited or left on the road.

**Question E –**

Should road authorities be allowed to not notify owners, where known, of low value objects, substances and materials?

If yes, is the proposed definition of ‘low value’ appropriate?

Should the monetary value be higher or lower than the proposed $500?

Is there the potential for unintended consequences that might result from the proposed approach to the removal of objects, substances and materials from roads?

For example, do road authorities anticipate that some owners of low value objects (that have been sold or disposed of in accordance with the regulation) may tend to challenge road authorities over how they have formed the opinion that an object is of low value or that the cost of removal is greater than the low value threshold.

## 1. Background

### 1.1 Overview

The proposed **Road Management (General) Regulations** prescribe the requirements for the following areas:

* Discontinuance of a Road
* Road Management Plans
* Notices of incident and condition reports
* Protection of roads, property and public safety
* Property enquiry fee
* Consent application fee for signs requiring consent under section 66 of the Act (e.g. signs in road reserves for tourist attractions, services and facilities of interest to road users, where such signs are not permitted by or under another Act)
* Road management infringements

The Department of Treasury and Finance’s ‘Victorian Guide to Regulation’ requires that a Regulatory Impact Statement (RIS) be prepared for the remaking of statutory rules (regulations) that impose a significant economic or social burden on a sector of the public.

The parts of the proposed regulations that impose an economic burden and that are evaluated accordingly are:

* Periodic review of road management plans;
* Fees for property enquiries; and
* Fees for consent applications for signs requiring consent under section 66 of the Act.

Note:

The exemption in respect to the process associated with the discontinuance of a road does not impose a burden as such but seeks to remove a burden.

The proposed regulations do not apply in the same way to all road authorities. The application of each regulation is as shown in Table A below.

Note:

* The regulations do not directly apply to the operators of CityLink.
* The abbreviations in the table below, ARMBs and DELWP respectively mean Alpine Resort Management Boards and Department of Environment, Land, Water and Planning.

**Table A: Application of the proposed regulations**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Regulation | Road Authority to which each proposed regulation applies | | | | |
| Municipal councils | VicRoads | DELWP  & ARMBs | EastLink Fwy  (operator) | Peninsula Link Fwy (operator) |
| Reg. 6 | Exemption from consultation requirements for discontinuance of certain roads | | | | |
| ✓ | ✓ | ✓ | × | × |
| Reg. 7 | Matters that must be included in Register of public roads | | | | |
| ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 8 | Road authority must conduct review of road management plan | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 9 | Conduct of reviews of road management plans | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg 10 | Procedure for amendments to road management plans | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 11 | When notice of proposed amendment is not required | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 12 | Date of effect of plan or amendment | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 13 | Availability of amendments to road management plans | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 14 | Particulars of notice of incident | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 15 | Contents of condition report | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 16 | Interference with roads | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 17 | Interference with construction zones | | | | |
|  | × | ✓ | × | × | × |
| Reg. 18 | Damage to roads | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 19 | Entry to and conduct on VicRoads’ property | | | | |
|  | × | ✓ | × | × | × |
| Reg. 20 | Prohibited uses of bridges | | | | |
|  | × | ✓ | × | × | × |
| Reg. 21 | Camping | | | | |
|  | × | ✓ | × | × | × |
| Reg. 22 | Removal of vehicles | | | | |
|  | × | ✓ | ✓ | ✓ | ✓ |
| Reg. 23 | Hoardings and Advertisements | | | | |
|  | ✓ | ✓ | ✓ | × | × |
| Reg. 24 | Direction to remove objects, substances and materials from road | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 25 | Removal of objects, substances and materials from road | | | | |
|  | ✓ | ✓ | ✓ | ✓ | ✓ |
| Reg. 26 | Offences under the regulations for which a road management infringement may be issued. | | | | |
|  | Applies as applicable to the relevant regulation. | | | | |
| Reg. 27 | Fee for property enquiries | | | | |
|  | × | ✓ | × | × | × |
| Reg. 28 | No charges for certain uses of road reserves | | | | |
|  | × | ✓ | × | × | × |
| Sch. 1 | Road management infringements | | | | |
|  | Applies as applicable to the relevant regulation | | | | |

## 1.2 Road Management Act 2004 (Act)

The primary object of the Act *“is to establish a coordinated management system that will promote a road network at State and local levels that operates as part of an integrated and sustainable transport system under the* ***Transport Integration Act 2010*** *and the responsible use of road reserves for other legitimate purposes”*.

The **Road Management Act 2004 (Act)** is based on the following key principles:

* clear allocation of road asset ownership and management;
* established processes and accountabilities for policy decisions and performance standards;
* provision of operational powers to achieve targets and performance standards; and
* clarification of civil liability laws for the management of roads.

## 1.3 Other Relevant Legislation

There are several pieces of legislation that directly interact with the **Road Management Act 2004** in respect to the management of roads. These are specifically the **Local Government Act 1989**, **Alpine Resorts (Management) Act 1997**, **Crown Land (Reserves) Act 1978**, **Forests Act 1958**, **Land Act 1958**, **National Parks Act 1975**, and **Road Safety Act 1986**.

To ensure a single road management system for municipal roads operates consistently across the State of Victoria, section 205(2) of the **Local Government Act 1989** was amended during the passage of the **Road Management Act 2004** to make it clear that the care and management of all roads for which councils were responsible were to be subject to the **Road Management Act 2004** and the related Codes of Practice and regulations made under this Act.

*Section 205 Councils to have the care and management of certain roads*

*(1) A Council has the care and management of—*

*(a) all public highways vested in the Council; and*

*(b) all roads that are the subject of a declaration under section 204(2); and*

*(c) all public highways on Crown land and roads vested in a Minister (other than freeways and*

*arterial roads within the meaning of the* ***Road Management Act 2004*** *and public highways and*

*roads vested in a public authority); and*

*(d) all roads that the Council has agreed to have the care and management of.*

*(2) This section is subject to the* ***Road Management Act 2004****.*

Clause 2(i) of Schedule 8 in the **Local Government Act 1989** ‘Provisions with respect to Local Laws’, also makes it clear that *“A local law must not duplicate, overlap or conflict with other statutory rules or legislation”*.

The **Alpine Resorts (Management) Act 1997**, **Crown Land (Reserves) Act 1978**, **Forests Act 1958**, **Land Act 1958** and **National Parks Act 1975** have similar provisions and provide that those Acts are subject to the **Road Management Act 2004** (refer sections 3A for the former and 4A for the latter of those Acts).

Section 5(1) of the **Road Management Act 2004** overrides any other Act if there is an inconsistency between the **Road Management Act** **2004** and any other Act in relation to the performance of a road management function, except in relation to the **Melbourne City Link Act 1996**, the **EastLink Project Act 2004** and other exceptions detailed in section 5.

## 2. Nature and Extent of the Problem

### 2.1 Overview

This section provides the nature and extent of the problem in respect to the:

* appropriate threshold exemption for the discontinuance of a road or part of a road;
* frequency of periodic reviews of road management plans;
* notices of incident and condition reports;
* protection of roads and property;
* the funding of property enquiries; and
* the funding of signs requiring consent under section 66 of the Act (e.g. tourist attractions, services and facilities of interest to road users).

### 2.1.1 Discontinuance of a Road

(Nature & Extent of the Problem)

The **Road Management Act 2004** (the Act) confers a right to the public to use and access a public road, subject to any restrictions, limitations or conditions, which may be specified by or under this Act or any other Act or law. From time to time, some roads or parts of roads are no longer required for road purposes and may be discontinued as a road (usually for the purpose of selling the land in the discontinued road or using that road land for some other non-road purpose).

To ensure a road or part of a road is not discontinued and unreasonably prevents public use or limits access to other landowners or infrastructure managers, the Act requires consideration and public consultation prior to making a decision to discontinue the road.

Section 12 of the Act sets out the process and this includes a requirement for road authorities to provide a public notice in a newspaper and the Victorian Government Gazette of the intent to discontinue the whole or part of a road.

The process for discontinuing a road or part of a road imposes burdens on the road authority and the affected stakeholders that may not always be proportionate to the risks of adverse impacts associated with a discontinued road or part of a road.

Some road discontinuances may have a low risk of adversely impacting existing and future use or access such as the discontinuance of part of a road made redundant by realignment and widening of the road and where the discontinued road land is to be sold to the adjoining landowner.

Hence, section 12(11) of the Act allows for certain exemptions from the process to discontinue a road or part of a road.

The factors that influence the extent of the risk (i.e. no public use and/or access to the road or part of the road) associated with a particular road, includes the nature and location of the road. The potential risks are likely to be lower in the following circumstances:

* the road or part of the road has no non-road infrastructure (e.g. utilities) and is not required for future infrastructure; and
* the road or part of the road is redundant (such as resulting from road improvements) and is not necessary to provide access to landowners (currently or in the future); and
* the ability of the public to pass and re-pass along the road is unaffected.

In the absence of regulations, road authorities would need to comply with the full process set out in the Act to discontinue a road or part of a road. This would require all proposed road discontinuances to be subject to public notices (daily newspaper and Victorian Government Gazette), prior to a road authority making a decision as to whether it should discontinue the road.

VicRoads appears to be the only road authority to routinely utilise section 12 of the Act to discontinue roads together with the exemption from notice/consultation provisions and a small number of those road discontinuances by VicRoads, also utilise the Ministerial exemption provisions in section 12(11)(b) of the Act (such as for major projects of state significance where there is a Government commitment to discontinue and sell a road or part of a road).

From 2012-2014, VicRoads undertook a total of 20 roads discontinuances and exercised the regulatory exemptions on six occasions (30%), Ministerial exemptions on six occasions (30%) and fully complied with the Act’s process (without exemptions) for discontinuance on eight occasions (40%).

There are a number of legislative powers available to road authorities to discontinue roads or parts of roads. In addition to section 12 of the Act, amongst other Acts, the **Local Government Act 1989**, the **Planning and Environment Act 1987** and the **Land Act 1958** also provide powers to discontinue (or close) roads or parts of roads.

A total of 93 road discontinuances were published by municipal councils in 2014, however in all instances section 12 of the Act was not used. Consultation with a sample of municipal councils revealed that municipal councils do not exercise the exemption provisions in the current regulations and in fact do not even use the Act to discontinue roads and parts of roads. Instead, councils appear to exclusively use the road discontinuance powers and provisions in the **Local Government Act 1989** (refer section 206 and Schedule 10 of that Act).

Based on the above data, it would seem that the current exemption provisions are only exercised by VicRoads in a relative small number of cases. Other road authorities have chosen to not utilise the exemption provisions (or in fact the section 12 of the Act road discontinuance powers) and instead use the discontinuance processes under their respective legislation. The reason for that is likely to be that those other road authorities use the discontinuance provisions of their individual Acts as a component of a broader process under those Acts (e.g. to dispose of discontinued road land).

The low usage of the current exemptions is due to the fact that VicRoads is essentially the only road authority that uses the road discontinuance powers in the Act and only around 30% of VicRoads road discontinuances qualify for an exemption.

In consideration of the proportionality principle the extent of the problem of road authorities (VicRoads specifically in practice) having to undertake unnecessary consultation for certain road discontinuances in specific circumstances is relatively minor and does not warrant extensive analysis as the impacts are likewise relatively minor.

### 2.1.2 Road Management Plans

(Nature & Extent of the Problem)

The rationale for the introduction of road management plans and the requirement for periodic review is directly related to a High Court judgement. By way of background, prior to 2001 Australian road authorities were protected by the ‘highway rule’ from road-related incident claims. Under the ‘highway rule’ road authorities could only be held liable in respect to misfeasance (undertaking maintenance in a negligent manner) and could not be held liable for nonfeasance (failure to act).

The ‘highway rule’ and in particular nonfeasance was abolished following the High Court judgements on 31 May 2001 in respect to the *Brodie v Singleton Shire (2001)* and the *Ghantous v Hawkesbury City Council (2001)* cases. In response to the High Court judgements, road authorities were required to demonstrate that they had established reasonable measures to managing and maintaining their road networks without requiring a road to be in a perfect state of repair.[[1]](#footnote-1)

Victoria responded with the passage of the **Road Management Act 2004** (the Act) that, inter alia, established principles and a statutory framework for the management and maintenance of the road network to be undertaken by road authorities.

Road authorities have a statutory duty to inspect, maintain and repair “public roads” and ensure they are reasonably safe for use having regard to the considerations set out in the Act. The Act and the Code of Practice for Road Management Plans encourages, amongst other things, a risk based approach to the inspection of public roads and the maintenance and repair of public roads within the resources available to a road authority.

Section 54 of the Act does not make it mandatory for a road authority to prepare a road management plan on how it will inspect, maintain and repair the various classes of roads within its jurisdiction. However, once a road authority has elected to prepare a road management plan, it is obligated to prepare the plan in accordance with section 54 of the Act and the Code of Practice for Road Management Plans made under the Act. Further, the Act mandates that the Regulations made under the Act must specify a period for review. All 79 municipal council road authorities and Department of Environment, Land, Water and Planning (DELWP) and VicRoads as the state road authorities have elected to make a road management plan.

VicRoads is responsible for maintaining freeways (excluding freeways that are toll roads). Toll road operators are responsible for maintaining tolled freeways (CityLink and EastLink). VicRoads and councils have shared maintenance responsibilities for arterial roads as set out in section 37 of the Act. Municipal councils are the road authorities responsible for maintaining municipal roads.

While road authorities have a statutory duty to inspect, maintain and repair the public roads that they are responsible for under their jurisdiction, the purpose of the road management plan is to facilitate road safety and to prevent road authorities from being exposed to unlimited liability for the condition of those public roads. By making a road management plan, a road authority has committed to undertaking the inspection, maintenance and repair of its public roads within specified inspection and response times for specified hazard thresholds. Provided the road authority complies with its published inspection, maintenance and repair regime, the road management plan, via the Act, provides a defense against claims from any person seeking compensation from property damages, personal injury or other damages that has arisen as a result of an incident that is related to the condition of the road.

Section 52 of the Act and clause 7 of the Code of Practice for Road Management Plans sets out the contents of a road management plan:

Clause 7 of the Code includes -

*….*

*(a) the inspection, maintenance and repair; and*

*(b) the prioritisation of inspection, maintenance and repair;*

*of roadways, pathways, road infrastructure and road-related infrastructure in respect of the public roads or classes of public roads to which the plan applies. Schedule 1 contains a diagram illustrating the basics of a management system for the inspection, maintenance and repair of road infrastructure.*

*To these ends, a road management plan may contain the following:*

*(c) a description of the types of road infrastructure;*

*(d) a description of the inspections required for different types of road infrastructure;*

*(e) the standard or target condition to be achieved in the maintenance and repair of different types of road infrastructure; and*

*(f) details of the management system, which is established or is to be established and*

*implemented by the road authority to discharge its duty to inspect, maintain and repair:-*

*for each of the public roads or classes of public roads for which the road authority is the*

*responsible road authority.*

*In addition, a road management plan may determine standards in respect of any other*

*matter referred to in section 41 of the Act.*

### The need for periodic review

A road management plan may need to be periodically reviewed to ensure the inspection and responses times and hazard definition and intervention levels are still relevant and effective in meeting the purposes of the plan (section 50 of the Act). In the Auditor-General’s report on “Maintaining the States’ Regional Arterial Road Networks (2008)” the emerging challenges for road asset management were noted: ageing assets (particularly bridges), road maintenance budgets had not kept pace with inflation, changing road uses (increased freight, bicycle commuting) and greater public expectations in the quality of road and pathway condition[[2]](#footnote-2). These challenges still remain.

Austroads (the association of Australasian road transport and traffic agencies) claims that the development of management and maintenance measures have led to a decline in the overall number of claims brought against road authorities (although it did not provide any supporting data for this assertion). Given there is still some uncertainty regarding liability and minimal case law since the new approach to management and maintenance of road networks, Austroads advises road authorities to keep up-to-date with developments through their local legal representatives.[[3]](#footnote-3)

Section 54 of the Act requires periodic review of the road management plan and provides that any person (e.g. a member of the public or an infrastructure manager) who is aggrieved by a proposed amendment to a plan may make a submission to the road authority.

All of the above factors suggest that road management plans need to be reviewed on a regular basis to make adjustments to address these emerging challenges and to ensure that road management plans can be taken to be reasonable in any legal proceedings (refer section 39 (4) & (5) of the Act). The key question is how often road authorities should undertake a review of their road management plans.

### Evaluation of periodic reviews

Since the commencement of the Act, road authorities should have conducted at least two reviews after making their initial road management plan in 2004/05. About 20 percent of road authorities had not previously complied with the current requirement to review their road management plan every five years. In several cases, some road authorities only completed their first review around ten years after the making of their road management plan.

Based on the advice from a sample of municipal council road authorities, it would appear that despite the legislative emphasis on public consultation, municipal council road authorities tend to receive no submissions during the periodic reviews of their road management plans. The Frankston City Council and the Melbourne City Council are on the record in their published review reports that no submissions were received.[[4]](#footnote-4)  Even in the case of VicRoads recent review, 3 submissions were received in the first round of public consultations (in 2009) and 11 submissions in the second round (in 2013). Most of these submissions were received from municipal councils. VicRoads road management plan was formally amended in 2014.

Notwithstanding Parliament’s intention for democracy and community participation for the development of road management plans, it would seem the community may be generally indifferent to the opportunity to participate in the review process. It is likely that a reason why there are very low levels of community participation in the first review phase (i.e. in response to the public notice that a road management is intended to be reviewed) is that there is no tangible information at that time about how the plan may be changed; as opposed to there being detailed proposals under consideration for possible changes, which are available when public notice for submissions is advertised at the time of the second consultation phase.

The current requirement to undertake two consultations adds significantly to the time taken by road authorities to undertake reviews of road management plans. The burdens (cost and time) for the first consultation (i.e. notice of intention to review: existing regulation 302) are disproportionate to the material benefits from the first consultation. The proposed regulation removes the requirement for the first consultation but retains the second consultation by which time the road authority has reviewed its road management plan in consultation with key affected stakeholders. In this way, the road authority can provide details of any actual change proposals under consideration together with its review report on which the community and stakeholders can make submissions.

It would appear from consultations with a sample of municipal council road authorities that the periodic reviews are not leading to substantive amendments to the road management plans, which may mean that those plans set appropriate standards. It is difficult to determine whether substantive changes have occurred given that most municipal council road authorities given that some of them do not appear to include an amendments register in their road management plans or publish the review report on their websites.

Substantive changes may need to occur to the inspection and maintenance regime in some road authorities’ road management plans in order to deal with possible future new or emerging road-related incident claims. For example, a review of the Greater Shepparton City Council Road Management Plan 2011 resulted in, amongst other things, a change to the defect intervention level for a defective footpath or pedestrian area to 35mm. [[5]](#footnote-5) In another case, Melbourne City Council made adjustments to its response times for its maintenance standards.[[6]](#footnote-6) VicRoads made several changes to hazard response times. For example, to achieve a quicker response time for tree limbs or trees that are in immediate likelihood of falling onto the roadway, changes were made to the response code for specific classes of roads.

Other municipal council road authorities have included other provisions such as an “exceptional circumstances’ or ‘force majeure’ clauses in the road management plan that describes the conditions under which the road authority can suspend its maintenance and inspection responsibilities under the road management plan due to the occurrence of events outside its control (e.g. floods and fires).

It is not clear whether these road authorities have incurred claims arising from incidents that relate to the specific changes that they have made to their road management plans or whether these changes have occurred as a result of the road authorities’ continuous improvement initiatives or as a result of working with their insurers. Several municipal councils that had not previously complied with the prescribed review period remarked that as a result of working with their insurers they had initiated and completed a review and amendment of their road management plan. It is also unclear whether the councils (and their insurers) were prompted by increased claims or from funding, resources or risk management or other perspective, having regard to good asset management practices. It is likely that insurers would be aware of the standards and improvements that had been made to most road management plans, and would from a risk management perspective, seek consistency across all road authorities.

### Effectiveness of road management plans and periodic reviews in reducing claim payments

Before discussing the amount of reduced compensation claims that are attributable to road management plans, it is important to understand the operation of the compensation framework. Section 110 of the Act provides a threshold amount (similar to the excess amount on an insurance policy) that must be deducted from the agreed amount of the property damage amount claim. The threshold amount is valued at $1,350 for 2015/16 and is indexed annually with the Consumer Price Index. Even if a road authority accepts liability for a claim, the payment is reduced by the threshold amount. For example, a person making a claim for $1,400 would have this amount reduced by $1,350 and would receive a payment of $50. In cases of claims below $1,350, the claimant does not receive any payment regardless of whether the road authority accepts liability. Accordingly, the threshold amount prescribed in section 110 of the Act operates separately from the defense features of the road management plan and is excluded from the claims amount that is attributable to road management plans.

In terms of the value of compensation claims, VicRoads accepted liability for about $27,000 out of about $2.8 million of compensation claims lodged in 2012/13.An analysis of the 2012/13 claims reveals that about $1.2 million of the $2.8 million in claims were within the threshold amount. Given that under the Act the threshold amount is exercised regardless of whether a road authority is liable or not, the threshold amount cannot be claimed as a benefit of the road management plan. In the case of VicRoads, the $1.2 million threshold amount is excluded, leaving a balance of $1.6 million that can be attributed to the existence of VicRoads’ road management plan.

It is difficult to ascertain the amount of claims that are refused that relate to specific changes to the inspection and maintenance regime that have occurred as a result of the VicRoads periodic review. This data is not kept. Given that recent periodic reviews have resulted in relatively minor changes to the inspection and maintenance regime (the core part of the road management plan that road authorities draw upon to provide a defense against claims) it is reasonable to consider that most of the $1.6 million of claims (other than the $27,000 in claim payments) that were not paid out is attributable to the initial road management plan prepared in 2004/05.

Data is not collected or is not available on the level of compensation claims from the 79 municipal council road authorities. Consultation with a sample of municipal council road authorities suggests that their road management plans are delivering similar benefits in terms of low pay-out rates for compensation claims (and is thereby achieving the objectives of the Act by not exposing road authorities to unlimited liability and not requiring roads to be in a perfect state of repair). Similar to VicRoads, it is likely that their initial road management plans have been effective in preventing the payment of most of their compensation claims.

In summary, the threshold amount prescribed in section 105 of the Act saves payment of about 43 percent of the claimed value of total property damage claims. The preparation of the initial road management plan by road authorities would tend to save the payment for most of the property damage claims (above the threshold amount) where road authorities have complied with their plans. It is unclear what proportion of the property damage claims (above the threshold amount) that are not paid are attributable to specific changes to the inspection and maintenance regimes that occur as a result of the periodic review.

### 2.1.3 Notice of Incidents and Condition Reports

(Nature & Extent of the Problem)

Section 115 of the Act requires any person proposing to commence a proceeding in a court in relation to a claim against a road authority to submit a notice of the incident to the responsible road authority. Section 116 enables a responsible road authority to respond to the notice and inspect the condition of the road and prepare a condition report.

In the absence of these requirements, the later subsequent assessments of claims by road authorities and the claims process in either a court proceeding (if a claim proceeds to that stage, which is infrequent) or a non-court-based claims management process (used for the majority of claims) would become inefficient and difficult to determine whether the claim was warranted if the full scope of relevant information pertaining to the incident was not reported to the responsible road authority. The information provided in the notice of incident is also required to enable the responsible road authority to investigate the site of the incident and to prepare a condition report, which is an input to the separate assessment of the claim.

Sections 115 and 116 of the Act, by design, do not deal with (nor require that the regulations will deal with) the requirements or process for assessing and processing claims for loss or damage due to the condition of a road. Section 115 makes reference to a proceeding in a court but in practice the vast majority of claims are dealt with in a non-court-based claims management process and very few claims proceed to court. Claims determined through the non-court-based claims management process are either rejected or paid by the road authority in accordance with the Part 6 Civil Liability provisions of the Act.

In cases where a person’s claim is before a court, the court requires evidence from the person making the claim and the responsible road authority that is defending the claim. To ensure members of the community are given a fair opportunity to present their claim, there is a need to provide the scope of relevant information that is required to allow the responsible road authority to investigate and report on the condition of the road. To ensure that road authorities are able to properly assess a claim, and if necessary for a court to make a decision on a claim that is not able to be settled, it is important that members of the community provide enough information to allow the responsible road authority to investigate and report on the condition of the road.

Cases that do not proceed to court (being the majority of cases) are dealt with under a non-court-based claims management process and the road authority requires ‘further information’ pertaining to the incident to make an assessment and determine whether it will accept or reject the claim in accordance with Part 6 of the Act. Again, by design, the Act does not set out or provide for the prescription in regulations of any non-court based claims management system. That ‘system’ for each road authority, in essence comprises the road authority assessing the claim (having regard to notice of incident, the condition report and the ‘further information’ provided by the claimant) as to compliance with its road management plan and how the civil liability provisions in Part 6 of the Act apply under the circumstances. Following that assessment the road authority advises the claimant in writing of its considered view as to questions of liability. The claimant continues to have the ability to pursue their claim in a court.

Provision of the ‘additional information’ referred to above relates to the assessment and processing of a claim and not to the giving of notice (under section 115 of the Act) or the preparation of a condition report (under section 116 of the Act). However in practice for reasons of efficiency for both the road authority and the claimant, VicRoads and other road authorities typically request that claimants provide both sets of information (i.e. information prescribed in regulations for the purposes of s.115 and the ‘additional information’ for the separate claims assessment and processing) at the same time using the same template form.

VicRoads’ “Notice of Incident and Claims” form on its website, like those of some municipal council road authorities, seeks the provision of the prescribed notice of incident information and also the ‘additional information’ for claims assessment on the same form but somewhat mix or merge those information requirements. Separate from the regulations, those template forms need to be revised to ensure that there is a clearer distinction between the two information components. It will also be made clearer that the notice of incident is required by the Act and is therefore compulsory but the information about the claim is designed by facilitate speedy resolution of any claim resulting from the incident and is optional.

The information required in a notice of incident is limited by the scope of power under section 115 of the Act (i.e. limited to information to enable the preparation of a condition report). The Act does not contemplate that the information provided in notice of incident should satisfy the ‘additional information’ requirements required to assess and process a claim, whether under a non-court-based claims management or court-based process.

A legislative/regulatory power is not necessary or required to request that ‘additional information’ for assessing and processing claims.

VicRoads considers that there are no problems to be addressed with current practices for assessing and processing claims that warrant changing section 115 of the Act, for example, to prescribe a non-court-based claims management process and/or ‘additional information’ requirements. The proposed regulations (consistent with the current regulations) therefore only respond to the requirement in the Act to prescribe the particulars of a notice of incident for the purpose of the road authority preparing a condition report.

### 2.1.4 Protection of Roads and Property

(Nature & Extent of the Problem)

The public has a statutory right to access and use the public road network throughout Victoria subject to restrictions, limitations or conditions under Acts or laws. Similarly, responsible road authorities have a statutory duty to inspect, maintain and repair public roads, and in so doing, protect roads and related property, to ensure that the public can access and use the public road network safely and efficiently. Road authorities also have a responsibility to protect road assets (public assets) against unreasonable interference and damage caused by persons or bodies.

Accordingly, the Act enables the making of regulations to allow responsible road authorities to:

* protect roads from interference other than infrastructure works that have been given consent by the road authority or are exempt from requiring consent.
* protect VicRoads construction zones from interference as the construction is conducted either:
  + on a road that under normal circumstances, the public has a statutory right to access and use; or
  + on other land, whether or not a road where VicRoads or VicRoads contractors are conducting road construction or maintenance works.

For safety reasons and to protect property (e.g. road making materials and machinery within the construction zone), the public cannot interfere with a construction zone.

* protect a road from damage where a vehicle is driven over a road or bridge and causes unreasonable damage to the road or the bridge (e.g. where an earth moving machine that moves on caterpillar tracks is driven over the road).
* protect road users such as motorists and pedestrians from persons climbing, jumping or rappelling from a bridge, such as the West Gate Bridge, on a freeway or arterial road.
* manage camping on road reserves where such uses pose or may pose a hazard, inconvenience or safety risk to the persons camping and to other persons such as road users, including motorists (e.g. inhibiting drivers from taking a break in roadside rest areas).

Camping on municipal roads is dealt with by council local laws (made under the **Local Government Act 1989**) and not under the existing or proposed regulations, which only apply to the freeways and arterial roads managed by VicRoads. Camping on the road reserves of freeways and arterial roads is generally not permitted. Camping poses certain public safety and health risks for campers and other road users. There are generally adequate alternative non-road based overnight camping grounds that are accessible to road users, which have appropriate facilities such as toilets, power, water, rubbish and waste-water disposal and security, that are not generally provided in roadside rest areas.

It is estimated that driver fatigue is a factor in about 20 percent of road fatalities due to sleep deprivation and driving when a person would normally be asleep. VicRoads has developed rest area facilities to encourage drivers to take a break or powernap.[[7]](#footnote-7) This activity does not constitute camping even where the driver takes a break and/or powernap in a caravan at a rest area or other roadside area.

Most of the current provisions in the regulations seek to protect roads and property by restricting the public from access to, uses of or certain activities on a road (e.g. for interference with roads, camping and climbing bridges) and impose penalties by way of an infringement notice. While these restrictions are intuitively sensible, VicRoads (in the case of regulations that apply only to VicRoads) has not issued any infringement notices for any of the Part 5 regulations but has successfully used the regulations to persuade persons to cease activities that would interfere with or damage roads. In addition, it is often difficult to identify who has damaged a road, or interfered with a road or construction site. Accordingly, there is no data on the extent of the problem relating to the way in which some persons have put VicRoads (or other road authorities’) property at risk or public safety at risk. Notwithstanding this, the Part 5 regulations do not impose a material burden or unreasonable restriction on public access and are still an effective and important tool in having interfering or damaging activities cease.

The Act also enables the making of regulations to allow responsible road authorities to address the following matters:

* Unregistered or abandoned vehicles, or vehicles causing obstruction or danger can lead to unnecessary traffic congestion and also can pose a road safety hazard to other motorists and other road users. The Act provides State road authorities (e.g. VicRoads, the Secretary to the Department of Environment, Land, Water and Planning (DELWP)) and EastLink Corporation and Peninsula Link Freeway Corporation with the power to remove unregistered or abandoned vehicles, and vehicles causing an obstruction or danger (clauses 4 & 5 of Schedule 4 to the Act). The Act also prescribes a requirement that those road authorities must make take all reasonable steps to notify the owner of the vehicle before it can sell or dispose the vehicle. Municipal council road authorities have similar powers and responsibilities under the Local Government Act 1989. VicRoads removes an estimated 150 vehicles per annum. The current provision in the regulations prescribes the means in which State road authorities (e.g. VicRoads, the Secretary to DELWP and EastLink Corporation and Peninsula Link Freeway Corporation must notify the registered operator or owner of the vehicle.
* Objects, substances and materials (and refuse and rubbish) that fall off a vehicle onto the road or are discarded on the road pose a road safety hazard to motorists and can cause an accident. The Act enables a road authority to remove objects, substances and materials deposited or left on the road. Other than refuse or rubbish, owners of objects (particularly personal belongings of significant value) that have accidently left the object on the road or the object has fallen from their vehicle incur the loss of object. In cases, where an object has the identity of the owner and is of significant value, it is appropriate that the road authority notify the owner that the object will be sold or disposed of within a specified period to enable the owner to collect the objects. While VicRoads and EastLink have advised that objects, refuse, rubbish, substances and materials deposited on the road or left on the road occurs on a daily basis, most objects are predominately materials (e.g. building materials) that invariably do not have the identity of the owner.
* Hoardings and advertisements located on the road reserve can potentially pose a road safety hazard to motorists, which is well documented. Hoardings and advertisements that require too long a period for a motorist to comprehend can lead to distraction and loss of concentration and potentially vehicle control. A number of studies cited in Austroads “Impact of Roadside Advertising on Road Safety” (2013) show that distraction is a significant contributor of crashes although there is limited direct evidence of the role roadside advertising contributes to distractive behaviour, loss of vehicle control and crashes.

The Act at section 66 requires that a person must obtain the written consent of the coordinating road authority for hoardings and advertising to be placed on or over a road reserve, unless they are authorised or permitted by or under the Act or another Act (which accounts for most advertising signs within road reserves).

While the current regulations prescribe high level criteria for consideration by a road authority when it assesses an application for consent for a sign, there is no provision for recovery of the road authority’s cost in undertaking that assessment and there is no information about the details to be provided in the application or in any consent issued by the road authority.

The types of signs in road reserves that need consent under section 66 are limited and mostly include:

1. Tourist attraction signs (e.g. ‘Winery’, ‘Gallery’, ‘Wildlife Park’, which are typically white lettering on a brown background),
2. Services signs (e.g. motel, B&B, Camping ground, restaurant, which are typically white lettering on a blue background),
3. Facility signs (e.g. golf course, leisure centre, private airport, which are typically white lettering on a blue background,
4. \* Motel or B&B ‘A-frame’ sigs in rural areas,
5. \* Promotion signs that are commercial in nature (rarely located in road reserves)

**\*** Denotes – if such signs are allowed by the relevant planning scheme zoning.

Further examples of non-advertising (community) type signs that typically require consent include:

1. Services signs (e.g. toilets, town centre, shopping centre, water stand-pipe),
2. Facility signs (e.g. school, hospital, police station, fire station, public park, civic centre/town hall),
3. \* ‘Welcome to’ signs (e.g. Welcome to Phillip Island) and ‘Municipal Gateway’ signs,
4. \* Promotion signs in the form of ‘community message signs’ (e.g. public campaigns by Government agencies, such as Driver Reviver, CFA, TAC and RoadSafe).

Signs of type **i** and **ii** (see above):

* make up the majority of signs for which a road authority would issue
* consent under section 66 of the Act; and
* generally require the most work by road authorities in considering, deciding and responding to applications for consent for signage within road reserves.

In addition to a person applying for consent for a tourist, services or facility sign, road authorities may also of their own volition install tourism, services and facility signs for the purposes of improving navigation for drivers.

Tourism, services and facility signs are viewed by road authorities as being primarily for navigational purposes and having a secondary purpose of advertising a tourism attraction or community facility. Decisions by a road authority about:

* sign content and design (e.g. the message, size, font size, number of characters etc) are based on road safety and operational efficiency considerations, including motorists’ comprehension abilities while driving a vehicle; and
* sign location is also based on road safety and operational efficiency considerations (e.g. visibility, clearance from the roadway, sight distance etc).

The factors influencing the needs, opportunities and requirements associated with tourist, services and facilities signs on roads vary extensively throughout the State and from site to site. Each application for consent for a sign needs to be assessed by the road authority on a case by case basis, having regard to a wide range of considerations, including road safety and operational efficiency criterion in the regulations and also the following guidelines and relevant technical standards (see below).

In consultation with relevant stakeholders (including Tourism Victoria) VicRoads has developed several related guidelines (see below) for tourism signing to provide general guidance to persons, businesses, agencies and road authorities.

The VicRoads Tourist Signing Guidelines (2009) and the two associated supplementary guidelines described below, inform the application and assessment process for consent for hoardings and advertisements under section 66 of the Act but adherence with the guidelines is not mandatory as road authorities are able to exercise some discretion in making their decisions (further details are provided in the Notes under option 2 in section 5.6.3).

Those guidelines include:

1. Tourist Signing Guidelines (TSG) which draw upon Australian Standard AS 1742.6

The purpose of these guidelines is to provide information about the eligibility, number, extent and location of signs, sign content, rationalisation of signs to remove clutter, making application and ongoing responsibilities for various types of signs. The guidelines seek to:

* + - provide quality signs to assist tourists with finding attractions, accommodation and visitor information centres;
    - provide signs that are of a high standard - simple, clear and readable;
    - restrict the number of signs at one location to ensure readability and avoid driver distraction;
    - reduce roadside clutter and visual pollution created by uncontrolled and inappropriate signs; and
    - provide consistent application and administration of tourist signing across the State.

1. Tourist Signing Guidelines – Information for Tourism Businesses

The purpose of these guidelines (supplementary to the TSG) is to explain the principles for signing for individual tourist attractions and accommodation establishments and includes information about the role of signage, eligibility, number, extent and location of signs, content, making application and responsibilities for various types of tourist attraction and facility signs.

1. Wine Tourism Signing Guidelines

The purpose of these guidelines (supplementary to the TSG) is to facilitate consistency and integration of signage associated with wineries and wine regions and includes information about eligibility, extent/location, content and making application for various types of signs and signing schemes.

The guidelines provide general guidance only. Individual signing proposals require detailed assessment by the relevant road authority having regard to the relevant factors, which will vary from site to site and region to region.

Note:

The three guidelines above are under review by VicRoads in consultation with key stakeholders and are expected to be substantially restructured. Some parts of the guidelines may become supplements to the relevant Australian Standards or National Guidelines relevant to signage on roads.

Hoardings and advertisements on private land abutting a road reserve require a planning permit and must meet road safety requirements under clause 52.05 of the Victorian Planning Provisions.

### 2.1.5 Funding the Administration for Property Enquiries

(Nature & Extent of the Problem)

Section 32 of the Sale of **Land Act 1962** requires that an owner who is proposing to sell land to give a Vendor’s Statement to a prospective purchaser and include that Statement with any subsequent contract for the sale of the land. In addition to other details and information, the Vendors Statement is required to include information as to whether any public authority or Government Department (specifically VicRoads for the purposes of the scope of the existing and proposed regulations) has any approved proposals directly and currently affecting the land, such as for works requiring the purchase or compulsory acquisition of land (section 32D of the **Sale of Land Act 1962**).

Any person can make a property enquiry to VicRoads requesting advice on whether a property is affected by an approved proposal for future road works that would require, for example, the purchase or compulsory acquisition of any part of that property.

The cost of VicRoads providing this information needs to be funded either by those that directly benefit from the information or from Government tax payer funds.

VicRoads has processed an average of 28,284 property enquiry applications per annum over the past several years.

As can be seen from Table 1 below, VicRoads administers the property enquiry service effectively on a full cost recovery basis with a slight over-recovery of $3,394 that represents 0.7 percent of the $485,071 cost of administration. The slight over-recovery of $3,394 per annum represents a net present value of $27,529 over the ten year life of the regulations.

**Table 1: Property Enquiry Fee Revenue and Costs**

|  |  |
| --- | --- |
| Revenue | $488,465 |
| Costs | $485,071 |
| Surplus/Deficit | $ 3,394 |

Source: VicRoads

### 2.1.6 Funding the Administration of Hoardings and Advertising On

## or Over the Road Reserve

(Nature & Extent of the Problem)

Section 66 of the Act requires a person to obtain the written consent of the coordinating road authority for placing hoardings and advertisements on or over the road reserve, unless those things are otherwise authorised. As stated previously in section 2.1.4, this generally only applies to tourism, services and facility signage of interest to road users.

Tourist operators such as bed and breakfast stays, wineries, galleries etc and community facility operators are eligible to apply for consent to install tourism, service of facility signage on the road reserve. VicRoads is responsible for providing consent on freeways, arterial roads and non-State arterial roads for which it is responsible and municipal council road authorities are responsible for providing consent on municipal roads and the Department of Environment, Land, Water and Planning (DELWP) is responsible for providing consent on the non-arterial State roads for which it is responsible.

VicRoads estimates that it receives about 70 consent applications for tourism signs and about 30 consent applications for service and community facility signs on an annual basis. It is assumed that municipal council road authorities collectively would receive a similar number of consent applications. Accordingly, an extrapolated figure of 200 consent applications per annum would be received statewide. Given the absence of data on consents provided for signage across all road authorities it is difficult to provide a definitive total cost for the administration of the consent application process.

The current regulations do not prescribe application requirements or an application fee and hence VicRoads and other road authorities do not achieve any cost recovery for processing consent applications under the current regulations.

The time taken to assess consent applications ranges from one to three hours depending on the type of sign and the location of the sign. Community facility signs tend to be located within a township whereas tourism signs tend to be located outside of townships. Part of the consent application process involves a site visit of the proposed location of the sign. As a result, the cost of a site visit will be greater in most circumstances for tourism signs compared to community facility signs. According to VicRoads, the assessment for most consent applications would take at least 2 hours.

Table 2 shows the estimated level of cost under-recovery based on the number of hours taken to assess each application. The cost under-recovery ranges from $15,368 (one hour assessment) to $46,104 (three hours assessment). The average hourly cost of $76.84 is based on the calculation of salary, on costs and indirect costs incurred by road authorities (refer to section 5.7.2).

**Table 2: Hoardings and Advertisement Consent Application Costs**

|  |  |  |  |
| --- | --- | --- | --- |
| Number of hours to assess each application | Cost to assess each application | No of applications per annum | Total cost |
| 1 | $ 76.84 | 200 | $15,368 |
| 2 | $153.68 | 200 | $30,736 |
| 3 | $230.52 | 200 | $46,104 |

# 3. Objectives of the Proposed Regulations

## 3.1 Overview

The Victorian Guide to Regulation states, *“The objectives should identify the ends to be achieved, or the broad policy outcomes desired, rather than the means by which they will be achieved”.*

## 3.2 Primary Objective

The primary objective of the proposed regulations is to provide for a safe and efficient road network.

## 3.3 Secondary Objective

The secondary objective is to fund the efficient and equitable regulation of property enquiries and signs requiring consent under section 66 of the Act (e.g. tourist, service and facility signs of interest to road users) by prescribing fees that fully recover the costs of administration.

## 3.4 Treasury Cost Recovery Guidelines

The Victorian Government’s policy is that fees and user charges should be set on a full cost recovery basis to ensure efficiency and equity unless there are exceptional circumstances.[[8]](#footnote-8)

As stated in the Department of Treasury and Finance’s *Cost Recovery Guidelines*, the adoption of cost recovery has the potential to advance efficiency and equity objectives. In respect to efficiency objectives, *“Appropriate cost recovery can improve the way that resources are allocated within the economy, thereby contributing to allocative efficiency (a situation where resources are allocated in a way that maximises the net benefit to society). By requiring payment for goods/services provided by government, cost recovery charges can give important signals to users about the costs of the resources involved in their provision. Full cost recovery ensures that all the relevant costs of bringing the good/service to market are incorporated in the relevant price signals”.*

In regards to equity objectives, *“horizontal equity refers to treating people in similar situations in similar ways. In the case of cost recovery, horizontal equity refers to those who benefit from government activities, or those that contribute to the need for government regulation, having to pay the associated costs. This improves equity because it avoids the situation where all taxpayers have to pay the associate costs regardless of whether or not they benefit from – or give rise to the need for – the government activity/regulation”. [[9]](#footnote-9)*

# 4. Nature & Effect of the Proposed Regulations

## 4.1 Authorising Provisions

Section 132(1) of the **Road Management Act 2004** (the Act) states, *“the Governor-in- Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act”.*

## 4.2 Proposed Regulations

The **Road Management (General) Regulations 2005** were made on 21 June 2005 and were due to sunset on 21 June 2015. However approval has been given under section 5A of the **Subordinate Legislation Act 1994** to extend the operation of the existing regulations until 20 March 2016 with the making of the Subordinate Legislation (Road Management) (General) Regulations 2005) Extension Regulations 2015.

The existing 2005 regulations have been reviewed and it is proposed to make the proposed new regulations in the general form of those existing regulations but having made several substantive amendments together with a few other minor amendments discussed below.

### Proposed amendments to the current regulations

**Substantive Amendments**

Regulation 9 – Conduct of reviews of road management plans

The substantive amendment is the removal of the requirement to advertise, in the Government Gazette and newspapers, the road authority’s intention to review its road management plan and that submissions may be made within 28 days. The road authority must still prepare a report of the findings of its review and make it available and the public and stakeholders continue to have the right to review proposed amendments and make any submissions when the road authority advertises its proposal for amendments to its road management plan (proposed regulation 10 / current regulation 303).

Regulation 23– Hoardings and advertisements

The substantive amendments include the introduction of a consent application and application fee for a written consent of the coordinating road authority for the installation of a structure, device, hoarding, advertisement, sign or bill that is being proposed to be located on, or over a road reserve. The fee for an application for consent is to not exceed 17.93 fee units ($243.85 in 2015/16).

Regulation 16 – Interference with roads; and

Regulation 17 – Interference with construction zones

The substantive amendments include the removal of fees for written permits issued for interference with roads and interference with construction zones operated by VicRoads. The current regulation 501 (4) allows a coordinating road authority to issue a permit not exceeding 5 fee units and regulation 502 (4) allows VicRoads to issue a written permit to interfere with a construction zone and charge a fee not exceeding 5 fee units. In respect to the interference with roads, the vast majority of consents are provided in relation to works under section 63 (1) of the Act or as non-road activity permits issued under section 99B of the **Road Safety Act 1986**.

The purpose of the current and proposed regulation is to enable other forms of interference such as placing obstacles on or making markings on the road, such as for a bicycle race. However, requests for written consent to interfere with a road occur rarely and it is deemed inappropriate by VicRoads to prescribe a fee to process occasional permit applications. In regards to construction zones, VicRoads rarely in practice provides written permits. Accordingly, the current prescribed fee is redundant and its continuance is not warranted. The continuation of regulations relating to interference with roads and constructions zones, even without provision for charging fees, is none-the-less is important for the ongoing protection of roads and property as discussed in section 2.1.4.

The penalties for interferences remain unchanged from the current regulations (10 penalty units).

Regulation 702– Charges for use of road reserves

Regulation 702 (1) (current regulation) states that the grant of a lease or license under Schedule 5 of the Act is subject to the payment of a charge approved by the Minister. The charges are not prescribed in the regulations. This regulation has been revoked as it was considered duplicative given that the terms of a lease or license of part of a road reserve are enforceable without recourse to regulation 702 (1). The terms of such leases and licenses remain subject to the requirements of relevant Government landholding guidelines.

**Minor Amendments**

Regulation 6: Exemption from consultation requirements for discontinuance of certain roads

The purpose of this regulation is to provide exemption to road authorities in conducting broad based public consultation for the proposed discontinuance of certain types of roads or parts of roads where there are unlikely to be any affected parties other than the proponent seeking the discontinuance.

Current regulation 201 provides a general exemption provision in relation to a proposed road discontinuance in certain specified circumstances.

Having regard to the importance of ensuring that consultation occurs where the interest of particular persons may be affected, the structure of the current regulation is considered to have had some deficiencies, which have been addressed in the proposed regulation.

Under proposed regulation 6 the rights and interest of certain landowners and key stakeholders to be consulted are addressed together with opportunity to make a submission on a proposed road discontinuance where appropriate. A person who makes a submission has a right to be heard under the existing process in section 12(6) to 12(10) of the Act. The proposed regulation has been drafted to enable a stakeholder who is given notice to make a ‘submission’ (as opposed to lodging an ‘objection’). A submission may be an objection, but it could also relate to another aspect of the proposal (e.g. the person may request a slight adjustment to the area of road to be discontinued). VicRoads considers that this approach provides greater flexibility for stakeholders and road authorities alike.

Regulation 8: Road authority must conduct review of road management plan

This regulation has removed the previous concept of a ‘first plan’, which while relevant when the Act commenced, is now not warranted and creates some uncertainty.

Regulation 11: When notice of proposed amendment is not required

This regulation describes more clearly the circumstances where notice of proposed amendment is not required.

Regulation 13: Availability of amendments to road management plans

The current regulation referenced section 55 in the Act in relation to the availability of amendments to road management plans, which was unclear. The proposed regulation instead, now states the availability requirements. The availability of the amendments has also been extended to include the internet website maintained by the road authority.

Regulation 16: Interference with roads; and

Regulation 17: Interference with construction zones

Regulations 16 and 17 clarify what constitutes interference with a road and interference with construction zones respectively compared to the current regulations 501 and 502. The application of this regulation to commercial roads and relevant corporations (both defined terms) is also clarified (also refer to regulation 5 (2)&(3)).

Regulation 16(2) also provides another amendment by stating that certain activities under the **Emergency Management Act 2013** or activities under the Act or under any other Act or activities that are a lawful and reasonable of the road does not apply to regulation 16(1). These are not considered material changes to current regulation 503.

The new defined terms of ‘commercial road’ and ‘relevant corporation’ are used to clarify the application of regulation 16 to commercial roads (i.e. CityLink, EastLink and Peninsula Link Freeway).

Regulation 18: Damage to roads

Regulation 18 (1) extends the scope of ‘damage’ to include *“drag or push over the surface of a road, any object or implement which is likely to cause damage to the road”.* This is in addition to the current provision for ‘damage to roads’ in regulation 503 that states, *“drive on a road a vehicle which is likely to cause damage to the road”.* The reason for extending the meaning of ‘damage’ to include drag or push is simply to broaden the scope of how a road may be damaged by inappropriate and unreasonable activities where the damage is not directly caused by the vehicle. For example, a person who pushes or drags timber logs or other heavy objects from one side of the road to the other and damages the road surface may be committing an offence under the proposed regulation. However, regulation 18 is qualified to ensure that it does not apply to a person who is authorised for the activity (refer to the paragraph below). This regulation would not apply to the normal use of roads by drivers, including persons using snow chain (which can cause damage to roads). It would only apply to a very small number of situations where the extraordinary damage is caused to a road by inappropriate use of roads (e.g. by driving a heavy tracked excavator on the roadway and breaking it up or dragging or pushing immovable objects across the roadway and damaging the road surface).

Regulation 18 (2) also provides another amendment by stating that regulation 18(1) does not apply to the following:

* a person who is engaged by a road authority or an alpine resort management board to perform snow clearing using a vehicle or machinery; or
* a breach of a mass, dimension or load restraint limit or requirement within the meaning of the Road Safety Act 1986, or
* a breach of a mass, dimension or loading requirement within the meaning of the Heavy Vehicle National Law (Victoria”), or
* certain activities under the Emergency Management Act 2013, or
* activities under the Act or under any other Act.

A definition of alpine resort management board is included in regulation 3.

These are not considered material changes to current regulation 503.

The penalty of 10 penalty units is unchanged.

Regulation 19: Entry to and conduct on VicRoads’ property

Regulation 19 extends the exemption, to a VicRoads contractor, from requiring VicRoads written consent to entry on to VicRoads property where a sign prohibiting entry has been erected. The regulation is also extended to prohibit a person, other than with VicRoads written consent, removing any plant growing on the land or placing or leaving refuse, rubbish or other material on the land. These are not considered material changes to current regulation 503.

Regulation 20: Prohibited uses of bridges

Regulation 20 extends the scope of bridges on or over an arterial road and a freeway to include “a non-arterial State road for which VicRoads is the coordinating road authority”. The penalty of 10 penalty units for an unauthorised person climbing, jumping or rappelling on, from or onto a bridge and has increased from 8 penalty units in the current regulations in accordance with Department of Justice and Regulation requirements.

A further amendment to regulation 20 also requires that *“before VicRoads grants an authorisation, it must consult with any other road authority that VicRoads considers may be affected by the granting of the authorisation”.*

Regulation 21: Camping

Regulation 21 extends the scope of camping restrictions on or over an arterial road and a freeway to “a non-arterial State road for which VicRoads is the coordinating road authority”. The penalty for an unauthorised camping has been increased from 1 penalty unit to 5 penalty units.

The definition of ‘camp’ has been extended to include, *“to erect, occupy or use, for accommodation, a movable dwelling within the meaning of the* ***Residential Tenancies Act 1997****”.* To ensurethis regulation does not prevent drivers from stopping at designated rest areas to take a break and to sleep if affected by driver fatigue, the regulation has been further amended to state, *“this regulation does not prohibit a person from resting or sleeping in a parked vehicle or movable dwelling in order to manage or avoid driver fatigue”*. Also, the regulation does not apply to persons undertaking works as defined in the Act.

Regulation 22: Removal of vehicles

Regulation 22 clarifies the requirements of a notice provided by State road authorities (e.g. VicRoads, the Secretary to the Department of Environment, Land, Water and Planning (DELWP)) and EastLink Corporation and Peninsula Link Freeway Corporation (being road authorities that have the powers in clause 4 & 5 of Schedule 4 to the Act) to the registered operator or the owner of a removed vehicle where there may be some difficulty in identifying the owner with the inclusion of, *“where notice is given to the registered operator, an instruction requiring the registered operator, where the registered operator of the motor vehicle is not the owner or sole owner of the motor vehicle, to take reasonable steps to serve a copy of the notice on any owner of the motor vehicle and to do so as soon as is reasonably practicable”.*

Regulation 23: Hoardings and advertisements

Regulation 23 clarifies the expression of matters to be considered in deciding whether to give consent to a structure, device, hoarding, advertisement, sign or bill for the purposes of section 66 (1) of the Act. Regulation 23 also prescribes the maximum consent application fee, the contents of a consent application and the content of a written consent issued by the coordinating road authority.

Regulation 24: Direction to remove objects, substances and materials from road

Regulation 24 is a new regulation and provides the power for a *“an authorised officer of a road authority that is the appropriate road authority to give notice to a responsible person to remove any object, refuse, rubbish, substance or other materials deposited or left on a road within a reasonable time specified in the notice and in accordance with any conditions specified in the notice”*. ‘Appropriate road authority’ is a defined term.

In the vast majority of situations road authorities will ordinarily remove objects, substances and materials from a road without taking any further action. However VicRoads experience is that when there are extreme or severe situations such as described in the second example given in proposed regulation 25, which may have road safety implications, it is necessary for the road authority to be able to act promptly and effectively. To pursue such matters and cost recovery through a court system is costly and time consuming.

The power proposed to be given to an authorised officer under proposed regulation 24 (which is consistent with the Act) will ensure that in such extreme or severe situations, the objects, substances or materials are removed from the road in a reasonable time having regard to the circumstances and subject to any conditions. The authorised officer power could also be used to deal with minor matters involving objects, substances and materials deposited or left on a road (e.g. waste timber pallets left piled on the roadside), however in all situations (extreme /severe or minor) the power is being used to address things that are left or deposited inappropriately on a road.

Note:

It is a defense for a person to have a reasonable excuse for failing to comply with the direction of an authorised officer. VicRoads considers that proposed regulation 24 would be rarely used and then only as a last resort after a person had first been asked informally to voluntarily attend to the objects, substances or materials and had not acted.

Regulation 25: Removal of objects, substances and materials from road

The notification provisions imposed on road authorities in current regulation 509 applied to all objects other than refuse or rubbish. Regulation 25 has been amended to expand the scope of object, refuse, rubbish or other material to *“other things that in the opinion of the road authority are of low value”*. Regulation 25 (5) defines ‘Low value’ to mean “less than $500 or $500 or more where the relevant road authority forms the opinion that the cost of removing and storing the object, substance or material would exceed the value of object, substance or material”. A new term, ‘appropriate road authority’ is also defined.

Regulations 602, 603, 604 and Schedule 2: As relate to road management infringements

These regulations and Schedule 2 were made redundant by the **Infringements Act 2006**.

Schedule 1: Road management infringements

The penalties have been reviewed and remain unchanged other than the following items:

Item 1 – Enter or remain on VicRoads’ property without consent – 2.5 penalty units (previously 3 penalty units).

Item 2 – Fail to produce written consent when entering or being on VicRoads’ property or fail to produce evidence of identity – 2.5 penalty units. This is a new infringement.

It is an offence (with a penalty of 10 penalty units) under the existing and the proposed regulations to not produce the written consent and evidence of identity to a police officer or an authorised officer under the Act if so requested. This offence was not a road management infringement under the existing regulations but would be under the proposed regulations. Infringements typically have lesser penalties (2.5 penalty units in this instance) and have the advantage to the enforcing agency of not needing to be prosecuted through a court and to the offender of being able to pay a lesser penalty than would apply through the alternative court process.

Item 3 – Damage or interference with VicRoads property, including removing, destroying or damaging plants and erecting or removing signs or notices on that land – 2.5 penalty units (previously 3 penalty units).

Item 4 – No change

Item 5 – No change

### Description of proposed regulations

**Part 1 – Preliminary**

Regulations 1 to 5 prescribe the objectives, authorising provision, commencement, revocation and definitions. Sub-regulations 5 (2) and (3) clarify the application of the regulations to commercial roads and relevant corporations both of which are defined terns.

**Part 2 – Management of Roads**

**Regulation 6 - Exemption from consultation requirement for discontinuance of certain roads**

Section 12 of the Act sets out the process for the discontinuance of a road. Specifically, section 12 (4) to (10) states that a coordinating road authority must publish a public notice of the proposed discontinuance of a road to allow written submissions, provide a copy of the public notice to each infrastructure manager which is responsible for any infrastructure installed in, on, under or over the road, consider any written submissions within 28 days, allow a person that has made a submission to request a meeting to be heard in support of the written submission, have regard to works and infrastructure management principles, and notify in writing each person that has made a submission the decision on the proposed discontinuance.

For the purposes of section 12(11)(a) of the Act, regulation 6 divides the consultation exemption requirements of the proposed discontinuance of part of a road that does not incorporate the full width of the road (regulation 6(1)) and the proposed discontinuance of a road or part of a road that incorporates the full width of the road (regulation 6 (4)).

The consultation requirements are exempt for a proposed road discontinuance under regulation 6(1) (involving the discontinuance of part of road, not being the full width of the road) if the use of any existing means of access to any land will not be denied and it will not prohibit or unreasonable restrict the passage along the road of persons, vehicles or other kinds of traffic. These proposed discontinuances require that the discontinued road land be sold to the abutting land owner or consolidated with their land and also still require notification to, and provide for submissions from, the relevant municipal council and each utility, provider of public transport, infrastructure manager and road authority who is responsible for infrastructure installed in, on, under or over the relevant part of the road. A person or body who makes a submission has a right to be heard in accordance with the existing process in section 12(6) to 12(10) of the Act.

The consultation requirements are exempt for a proposed road discontinuance under regulation 6(4) (involving the discontinuance of the full with of the road) if the road or part of the road is not in use for road-related purposes by any person and there are existing alternative means of access to all land abutting the road or part of a road. These proposed discontinuances still require notification to, and provide for submissions from, abutting property owners, the relevant municipal council, the Secretary to the Department of Environment, Land, Water and Planning (DELWP) in the case of certain Crown land and each utility, provider of public transport, infrastructure manager and road authority who is responsible for infrastructure installed in, on, under or over the road or part a road. A person or body who makes a submission has a right to be heard in accordance with the existing process in section 12(6) to 12(10) of the Act.

As noted above, the proposed regulation has been drafted to enable a stakeholder who is given notice to make a ‘submission’ (as opposed to lodging an ‘objection’), which VicRoads considers provides greater flexibility for stakeholders and road authorities alike.

**Regulation 7 - Matters that must be included in a register of public roads**

Schedule 1 (Register of Public Roads) to the Act sets out the matters which must be included in a register of public roads (e.g. road name, road classification, etc). Clause 1(k) of Schedule 1 to the Act states, *“any other matter which is prescribed for the purpose of this clause”.*

For the purposes of clause 1(k), regulation 7 prescribes the following matters which must be included in a register of public roads –

* a reference to any declaration under section 42 of the Act of a controlled access road, and
* a reference to any notice referred to in clause 5 (1) of Schedule 2 to the Act in relation to a controlled access road.

**Part 3 – Road Management Plans**

**Division 1 – Review of road management plans**

Section 54 of the Act sets out the procedure for making or amending a road management plan. The procedure requires a road authority to provide a notice published in the Government Gazette and in a daily newspaper circulating in the area in which the road management plan is to apply and allow at least 28 days for the making of submissions.

Section 41 of the Act empowers the relevant road authority to determine the standard to which it will construct, inspect, maintain and repair roadways, pathways, road infrastructure and road related infrastructure.

**Regulation 8 - Road authority must conduct review of road management plan**

Section 54(5) of the Act states, a road authority must in accordance with the regulations conduct a review of its road management plan at prescribed intervals.

For the purposes of section 54(5) of the Act, regulation 8 states a road authority other than a municipal council must commence a review of its road management plan, in the case of its first plan, not more than four years after the making, and in the case of subsequent plans, not more than four years after the making of that plan or the last review of that plan. The reviews must be completed not more than five years after the making or last review of that plan. Regulation 8 also permits the relevant Minister to fix the date for the commencement and completion of the review.

For a municipal council regulation 8 states that it must conduct a review of its road management plan within the period referred to in section 125(1) of the **Local Government Act 1989**, or if that period is extended in accordance with section 125(4) of that Act, within that extended period.

Section 125(1) currently requires each municipal council to prepare a Council Plan within the period of 6 months after each general election or by the next 30 June, whichever is later. This affectively provides for review period of 4 years and 7 months.

**Regulation 9 - Conduct of reviews of road management plans**

Regulation 9 states that in conducting a review of its road management plan a road authority must ensure that the standards in relation to, and the priorities to be given to, the inspection, maintenance and repair of the roads and classes of roads, to which the plan applies are appropriate. Regulation 9(2) requires a road authority to produce a written report once the review has been completed and to make the report available for copying or inspection, including on the internet site of the road authority.

**Division 2 – Amendment of road management plans**

**Regulation 10 - Procedures for certain amendments to road management plans**

Regulation 10 requires a road authority that proposes to amend a road management plan, and the amendment relates to the determination of standard of construction, inspection, maintenance or repair under section 41 of the Act: to provide a notice published in the Government Gazette and in a daily newspaper circulating in the area in which the road management plan is to apply and allow at least 28 days for the making of submissions. That notice must include prescribed details including a description of the proposed amendment, where a copy of the proposed amendment can be obtained, where the report of the review prepared by the road authority can be inspected and obtained and stating that a person who is aggrieved may make a submission to the road authority within 28 days.

**Regulation 11 - When notice of proposed amendment is not required**

Regulation 11 exempts a road authority from giving notice in respect to Regulation 10 if the Chief Executive office of the road authority certifies that the proposed amendment to the road management plan results in a standard that is higher than a previously determined standard, or the road authority has just become the road authority for the road, or the road has just become a public road, or the determination of the standard only deals with changes to administrative procedures or changes of a machinery or declaratory nature.

**Regulation 12 - Date of effect of plan or amendment**

Regulation 12 states that a road management plan or an amendment to a road management plan that does not specify the date on which it is to take effect, that it comes into effect on the day after it is made (by way of publication in the Government Gazette).

**Regulation 13 - Availability of amendments to road management plans**

Regulation 13 requires the application of the equivalent notification requirements as set out in section 55 of the Act (i.e. publication in the Government Gazette and relevant newspaper) where a notice of a proposed amendment has been given under regulation 10. Section 55 of the Act requires a road authority in its notice to inform where copies of the road management plan may be inspected or obtained, including at the internet website maintained by the road authority.

**Part 4 – Notices of Incident and Condition Reports**

**Regulation 14 - Particulars of notice of incident**

Regulation 14 prescribes the particulars to be included in an incident report that is required under section 115 of the Act where a person proposes to commence a proceeding in a court based on a claim in relation to an incident arising out of the condition of a public road or infrastructure.

The prescribed particulars are:

* the name and address of the person proposing to commence a proceeding in a court;
* the signature of that person or the name and address of another person giving notice on that person’s behalf;
* the date of the notice;
* a description of the incident;
* the date and time of the incident; and
* a description of the site of the incident and any relevant infrastructure to enable the responsible road authority to identify and inspect the site.

**Regulation 15 - Contents of condition report**

Regulation 15 prescribes the matters to be contained in a condition report prepared by a responsible road authority under section 116 of the Act. The responsible road authority is required under section 116 (3) of the Act to include in the condition report the following matters:

* a statement of the condition of the relevant part of the road or infrastructure and where appropriate photographs showing the condition of the site of the incident;
* a reference to any relevant road management plan, policy or policy decision relating to the construction, maintenance or repair of the road or infrastructure;
* a summary of, or reference to, any records relating to the condition of the road or infrastructure from inspections and reports;
* a summary of inspections, maintenance and repairs of that part of the road or infrastructure conducted in the period of 12 months before the incident.

In addition to above requirements, Regulation 15 prescribes the following matters to be contained in the condition report:

* the name of the road authority that has prepared the report;
* a statement or description of the site, road or infrastructure to which the report relates;
* date and time or approximate time on which any inspection on which the report is based was conducted;
* a statement, signed by a person authorised by the road authority, certifying that the report is a condition report for the purposes of section 116 of the Act.

**Part 5 – Protection of Roads and Property**

**Regulation - 16 Interference with roads**

Section 132 (2)(h) of the Act states that regulations may be made in respect to preventing interference with or damage to a roadway, pathway, road reserve, construction zone, ancillary area or infrastructure on a road.

Regulation 16 states that a person must not, without a written permit issued by the coordinating road authority:

* interfere with, damage or remove any road infrastructure in, on, under or over a road;
* interfere with or damage any roadside or ancillary area;
* conduct excavations on or under, or dig up a road;
* place or leave anything in, on, under or over a road that may pose a safety risk, adversely affect the operation of the road, encroach on or obstruct the road or reduce the breadth of the road;
* remove, destroy or damage any plant growing in a road reserve; or
* place or leave refuse or rubbish or other materials on the road.

This regulation does not apply to works (these are covered by consent applications under the Road Management (Works and Infrastructure) Regulations 2015) and other types of specified activities.

The regulation provides that the coordinating road authority may issue a permit for the interference with a road. A penalty applies to interference without consent.

**Regulation 17 - Interference with construction zones**

Section 132 (2)(h) of the Act states that regulations may be made in respect to preventing interference with or damage to a roadway, pathway, road reserve, construction zone, ancillary area or infrastructure on a road.

Regulation 17 applies to VicRoads only and states that a person must not without a written permit issued by VicRoads:

* damage or interfere with a ‘construction zone’ (a defined term), any works or undertaking on the land or machinery, materials or etc on the land; or
* place anything within the construction zone that may pose a risk.

The regulation does not apply to works (these are covered by consent applications under the Road Management (Works and Infrastructure) Regulations 2015 and other lawful and reasonable activities.

The regulation provides that VicRoads may issue a permit for the interference with a construction zone. A penalty applies to interference without consent.

**Regulation 18 - Damage to roads**

Section 132 (2)(h) of the Act states that regulations may be made in respect to preventing interference with or damage to a roadway, pathway, road reserve, construction zone, ancillary area or infrastructure on a road.

Regulation 18 states that a person must not without the consent of the coordinating road authority or a ‘relevant corporation’ (defined term) drive a vehicle on the road that is likely to damage the road or drag or push anything over the surface of the road that is likely to cause damage to the road.

The regulation does not apply to persons using snow chains, where reasonably required, or persons engaged by a road authority or alpine resort management board to undertake snow clearing on roads, certain breaches under the **Road Safety Act 1986** or heavy vehicle national law, a person engaged by a responder agency (a defined term) to carry out activities in an ‘emergency’ (a defined term), or activities authorised or permitted by or under any other Act.

The regulation provides that the coordinating road authority may issue a written consent for the driving of vehicles that may damage a road or dragging or pushing any object or implement over a road that may cause damage to the road. A penalty applies to interference without consent.

**Regulation 19 - Entry to and conduct on VicRoads’ property**

Section 132 (2)(g) of the Act states that regulations may be made in respect to regulating the conduct of anyone in or on any land or premises, or vehicle, owned or under the control of a road authority, or on a public road or in a construction zone.

Regulation 19 applies to VicRoads only and states that VicRoads may place a sign at or near the boundary of ‘VicRoads property’ (defined term) advising that entry is prohibited without VicRoads written consent. A penalty applies to entry without such consent.

Further, regulation 19 states that a person must not, without the written consent of VicRoads interfere with the land or any machinery, any works, materials etc on the land or remove plants, affix signs etc or leave refuse or rubbish etc on the land. A penalty applies to any such action carried out without such consent.

The regulation does not apply to certain specified activities requiring access to VicRoads property.

A person must show that written consent to an authorised officer or police officer. Penalties, including some road management infringement penalties apply for non-compliance with parts of this regulation. See Schedule 1 in the proposed regulations

**Regulation 20 - Prohibited uses of bridges**

Section 132 (2)(s) of the Act states that regulations may be made in respect to prohibiting climbing, or prohibiting or regulating jumping or rappelling, on, from or onto, a bridge on or over a freeway or arterial road.

Regulation 20 states that a person, other than a person authorised by VicRoads, must not climb, jump or rappel on onto or from a bridge over an arterial road, non-arterial State roads (for which VicRoads is the road authority) or freeway. VicRoads must consult with any other road authority that may be affected by the granting of such a permit. A penalty, including a road management infringement penalty (see Schedule 1 in the proposed regulations) applies to climbing, jumping or rappelling without VicRoads consent.

**Regulation 21 - Camping**

Section 132 (2)(g) of the Act states that regulations may be made in respect to regulating the conduct of anyone in or on any land or premises, or vehicle, owned or under the control of a road authority, or on a public road or in a construction zone.

Regulation 21 states that a person other than a person authorised in writing by VicRoads or in accordance with a sign erected by VicRoads, ‘camp’ (a defined term) on a road reserve or ancillary area of a freeway, arterial road or non-arterial State road for which VicRoads is the coordinating road authority. A penalty, including a road management infringement penalty (see Schedule 1 in the proposed regulations) applies to camping without written consent or in contravention of a no-camping sign.

The regulation does not apply to a person carrying out works or a person resting or sleeping to manage or avoid driver fatigue.

**Regulation 22 - Removal of vehicles**

Regulation 22 prescribes a requirement that road authorities that have the powers under clause 4 and 5 of Schedule 4 to the Act (i.e. State road authorities, such as VicRoads and the Secretary to the Department of Environment, Land, Water and Planning (DELWP) and also the road authorities EastLink Corporation and Peninsula Link Freeway Corporation) must serve a notice by post on the registered operator or owner of the vehicle in accordance with clause 4(2) and 5(5) of Schedule 4 to the Act notifying the owner that the vehicle has been moved, kept or impounded and may be sold, destroyed or given away unless the specified fee is paid within the prescribed time. The notification requirement does not apply if the vehicle does not display a number plate or other identification, Clause 4 provides the road authorities referred to above with the power to remove unregistered or abandoned vehicles and clause 5 also provides the road authorities referred to above with the power to remove vehicles causing obstruction or danger.

**Regulation 23 - Hoardings and advertisements**

Section 66 of the Act states that written consent from a relevant coordinating road authority is required for placing of specified things on a road or road infrastructure (i.e. any structure, device or hoarding for the exhibition of an advertisement or place any advertisement for exhibition on or over a road or place any sign or bill on or over a road or on a pole, bus shelter, traffic sign, tree or other object or infrastructure on a road reserve).

Regulation 23 gives effect to section 66 of the Act by stating the requirements a road authority must consider as to whether hoardings and advertisements would, or would be likely to:

* Obscure the field of view of a user of the road; or
* Cause a hazard by distracting the attention of a user of the road; or
* Distract attention of a user of the road from a traffic control device; or
* Wholly or partly obscure a road user’s view of a traffic control device; or
* In any other way be detrimental to the safe or efficient use of the road.

Regulation 23 also states that the coordinating road authority may charge a person a fee for an application for consent under section 66 of the Act, prescribes the contents of a consent application and a written consent, the right of the applicant to appeal the decision of a coordinating road authority that has refused consent and specifies who the Tribunal may take submissions from in reviewing a decision.

**Regulation 24 - Direction to remove objects, substances and materials from road**

The general powers of authorised officers are set out in section 74 of the Act. Regulation 24 states that an authorised officer of a road authority may give a direction in writing to a ‘responsible person’ (a defined term in regulation 25) to remove any object, refuse, rubbish, substance or other materials deposited or left on a road within a reasonable time and subject to any conditions. A penalty applies if a person does not comply with the direction; however it is a defense to have a reasonable excuse for not complying with the direction.

**Regulation 25 - Removal of objects, substances and materials from road**

Section 132 (2)(i) of the Act states that regulations may be made in respect to the removal of dead animals or of vehicles abandoned or left standing on a road and the recovery of the cost of removal and regulating the storage and disposal of vehicles abandoned or left standing and the passing of title therein. Section 132 (2)(i) of the Act states that regulations may be made in respect to the placing by persons of refuse, rubbish or other materials on a road, road reserve or ancillary area or other property owned or occupied by a road authority and the recovery from those persons of the cost of removal of the refuse, rubbish or other materials.

Regulation 25 states that a responsible road authority may remove any object, refuse, rubbish substance or other materials deposited of left on a road . The road authority may sell or dispose of any such objects etc removed from the road, subject to certain conditions. Refuse and rubbished and things of ‘low value’ (a defined term in the proposed regulations) may be disposed immediately (“low value means of less than $500 in value or where the costs of the road authority to remove and store the object etc are greater than $500). For other things the road authority must notify the owner (if known) that the object etc will be disposed of or sold if not collected within 14 days having paid a fee covering the road authority’s reasonable costs. The road authority may also recover its costs, through the Magistrate’s court, of removing objects, materials etc off a road from the ‘responsible person’ (a defined term in the proposed regulations), such as the person who deposited material on the road.

**Part 6 – Road Management Infringement Notices**

**Regulation 26 - Offences under the regulations for which a road management infringement notice may be issued**

Section 90 (1) of the Act provides a power to enable an authorised officer or member of the police to serve a road management infringement notice on a person that has committed an infringement specified in Schedule 8 to the Act or in the regulations.

For the purposes of section 90(1) of the Act, regulation 26 refers to the offences and penalties prescribed in Schedule 1 to the proposed regulations.

**Part 7 – Fees and Charges**

**Regulation 27 - Fee for property enquiries**

Regulation 27 prescribes a fee to be charged by VicRoads for the supply of:

1. information as to whether VicRoads has any proposals of works requiring the purchase or compulsory acquisition of land; or
2. information as to whether VicRoads has declared any road or part of a road as a controlled access road under section 42 of the Act; or
3. the details of any policy made under clause 3 of Schedule 2 to the Act; or
4. information for the purposes of complying with section 32 of the Sale of Land Act 1962—

As VicRoads has not declared any roads to be a controlled access road under section 42 of the Act or established a policy in relation to controlled access roads under clause 3 of Schedule 2 to the Act, the fee for property enquiries presently only relates to the aforementioned matters in (a) and (d).

Regulation 27 prescribes a fee for property enquiries in terms of fee units under the **Monetary Units Act 2004**. A fee unit is set at $13.60 from 1 July 2015 to 30 June 2016. The fee is exempt from GST. The proposed property enquiry fee remains unchanged at 1.27 fee units.

**Regulation 28 - No charges for certain use of road reserves**

Section 132 (2)(t) of the Act states that regulations may be made in respect to regulating the use of road reserves and requiring the payment of charges approved by the Minister to be paid by persons using road reserves or facilities provided on road reserves.

**Schedule 1 - Road management infringements**

# The Table in Schedule 1 itemises the offences, regulation references, specified penalty units and penalty infringement codes for offences for which an authorised officer can serve a road management infringement. 5. Assessment of the Options

## 5.1 Overview

This chapter is divided into undertaking a cost benefit analysis of the proposed regulations that impose a material burden and providing a brief explanation for the proposed regulations that are deemed to not impose a material burden.

The following components of the proposed regulations impose a material burden and are subject to a cost benefit analysis in this chapter:

* Discontinuance of a road
* Review and amendment of road management plans
* Notices of incident and condition reports
* Protection of roads, property and public safety
* Property enquiry fee
* Hoardings and advertisements signage consent application fees

The cost benefit assessment of these proposed regulations is undertaken in sections 5.2 to 5.7. For each of the aforementioned regulations, the base case and feasible alternatives are analysed followed by an assessment of the net cost and benefits. The base case for sunsetting regulations is the principal legislation i.e. the Act in the absence of the remaking of the proposed regulations. The feasible alternatives include the proposed regulations, and in many cases, less prescribed information given that most of the proposed regulations prescribe the content of forms.

An explanation is provided below of the following regulations that do not impose a material burden and are not subject to a cost benefit analysis in this chapter.

Regulations 1 to 5 set out the objectives, authorising provision, commencement revocation and definitions, and are administrative in nature.

Regulation 7 makes reference to the inclusion of details about controlled access roads in a register of public roads. Controlled access roads have not been declared under section 42 of the Act, and as a result, this regulation remains dormant in effect until a road is declared a controlled access road. VicRoads considers this is unlikely in the foreseeable future.

Regulation 11 exempts a road authority from giving a notice for amendments to road management plans where the proposed amended standard is higher than the existing standard and/or the amendments are administrative and/or the changes are machinery or declaratory in nature etc. Accordingly, this regulation does not impose a material burden.

Regulation 12 relates to when a road management plan becomes effective and Regulation 13 requires disclosure in a notice of where a road management plan can be inspected or obtained. Both of these regulations do not impose a material burden on road authorities.

The key parts of the proposed regulations that are material in terms of their impact on the community that need to be assessed are:

* exemptions from consultation requirements for certain road discontinuances -see Note below (Regulation 6);
* procedures for reviewing and amending road management plans (Regulations 8, 9 & 10);
* notices of incident and condition reports (Regulations 14 & 15);
* provisions to protect roads, property and public safety (Regulations 16 to 25);
* property enquiry fee (Regulation 27); and
* hoarding and advertisement signage consent application fees (typically tourism attraction/service/ community facility signs) (Regulation 23).

Note:

While regulation 6 provides an exemption for coordinating road authorities and does not require to be assessed, it is useful to evaluate whether the exemption has been appropriate, and whether the scope of the exemption needs to be reduced or further expanded following the evaluation. This is discussed in the next section.

Multi-criteria analysis (MCA) was undertaken as the costs and benefits of every option could not be fully quantified.

The MCA involves:

* Specifying assessment criteria;
* Assigning a ‘weighting’ to each criterion;
* Assigning scores for each option in relation to each criterion; and
* Calculating a weighted score for each option.

MCA allows a decision to be made based on the weighted scores. The option assigned the highest weighted score is the ‘preferred option’.

In the MCA, each option is given a score from – 10 to + 10 against each criterion. For each option, scores are assigned relative to the base case (which has a score of zero); either -10 if the impact is negative and +10 if the impact is positive. Each score is converted to a weighted score with an assessment for the basis of the score.

## 5.2 Discontinuance of a Road (regulation 6)

(Assessment of the Options)

Regulation 6 provides exemption from the full consultation requirement for discontinuance of certain roads or parts of roads. The exemption does not technically impose a significant economic or social burden on a sector of the public. The purpose is to remove an economic burden for coordinating road authorities.

As stated in the nature and extent of the problem section, it would appear that coordinating road authorities, other than VicRoads, do not use the road discontinuance powers in section 12 of the **Road Management Act 2004** and therefore have not exercised the exemption available in regulation 6. Instead, those coordinating road authorities choose to use the road discontinuance provisions within their own enabling legislation, which do not have such exemptions but do have slightly different consultation and procedural requirements. VicRoads only has access to the provisions of section 12 of the Act when it needs to discontinue a road or part of a road and the exemption provisions/requirements in proposed regulation 6 (existing regulation 201) often fit with the circumstances in which VicRoads finds the need to discontinue roads or parts of roads (e.g. when rationalising redundant portions of road with other surplus land at the conclusion of a road improvement project).

Furthermore, municipal council coordinating road authorities are able to make a notice to discontinue a public road under Clause 3, Schedule 10 of the **Local Government Act 1989**. Accordingly, VicRoads is in effect, the only coordinating road authority that would utilise this exemption.

The criteria for an exemption would appear to be appropriate given that in most discontinuance cases, adjoining landholders, utilities and other users have an interest in the status of a public road that is being considered for discontinuance.

## 5.3 Review and Amendment of Road Management Plans

## (regulations 8, 9 & 10)

(Assessment of the Options)

**Base case**

The Base Case is the Act in the absence of the regulations – that is, no periodic reviews prescribed in regulation beyond what is specified in the Act.

The Act does not mandate that road authorities prepare road management plans, but once they have exercised the option to prepare a road management plan, they must review that plan.

Road authorities are required under section 54 of the Act to comply with the procedure for making or amending a road management plan,

*(1) Before a road authority makes or amends a road management plan, it must*

*comply with the following procedure.*

*(2) If a road authority proposes to make a road management plan, the road authority*

*must give a notice stating—*

*(a) the purpose and general purport of the proposed road management plan;*

*(b) where a copy of the proposed road management plan can be obtained or*

*inspected;*

*(c) that any person who is aggrieved by the proposed road management plan may*

*make a submission on the proposed road management plan to the road authority within the period specified in the notice.*

*(3) The road authority must allow at least 28 days after the day on which a notice is*

*given under subsection (2) for the making of submissions.*

*(4) A notice under this section must be—*

*(a) published in the Government Gazette;*

*(b) published in a daily newspaper generally circulating in the area in which the*

*roads to which the road management plan applies are situated;*

*(c) given in any other manner prescribed for the purposes of this section.*

*(5) A road authority must in accordance with the regulations conduct a review of its*

*road management plan at prescribed intervals.*

*(6) A road authority may amend its road management plan in accordance with the*

*regulations.*

*(7) If a road management plan is amended in accordance with subsection (6), the*

*road authority must incorporate the amendments into the road management plan.*

Section 54(5) of the Act states that a road authority must conduct a review of its road management plan at prescribed intervals. Accordingly, under the base case, a road authority would determine the timing of a review of its road management plan but still would be required under the other provisions in section 54 of the Act to provide a public notice of the review and allow at least 28 days for public consultation.

Given that a road authority’s compliance with its road management plan provides a defense against compensation claims for property damage, personal injury and other damages arising from an incident related to the condition of the road, most road authorities would likely undertake a review of exposures they have identified or at the behest of their insurers to ensure that their road management plans were up-to-date and did not provide unnecessary exposures to them or their insurers.

However, it is likely that some road authorities would conduct their reviews less frequently given that about 20 percent of road authorities had not previously conducted periodic reviews of their road management plan in a timely fashion in accordance with the current prescribed intervals.

Municipal council road authorities are required to comply with a range of governance matters under the **Local Government Act 1989** such as Best Value Principles that would lead to, at a minimum, service level reviews (including funding for road inspection and maintenance). This would not necessarily lead to a review of the inspection and maintenance regime in the road management plan other than in cases, where the outcome of the service level review for road funding had recommended a reduction in funding and/or resources.

Some municipal councils have decided to adjust funding for road inspection and maintenance as a result of their service level review. This has triggered a review of their road management plan to ensure the inspection and maintenance regime is consistent with the available funding and/or resources, having regard to the need to maintain good asset management practices, which is consistent with the considerations that a road authority must have regard to under section 38 of the Act etc. However, it should be noted that the **Local Government Act 1989** does not override the requirements of the **Road Management Act 2004** in respect to road management plans. There are no requirements to prepare or review a road management plan in the **Local Government Act 1989** and there are also no requirements to align the review of a road management plan with the review of a Council Plan (inclusive of a Strategic Resources Plan - sections 125 and 126 **Local Government Act 1989**). Even so, VicRoads considers that there are logical reasons to consider aligning the review of road management plans with the review of Council Plans/Strategic Resources Plans in consideration that changes to the latter may have indirect implications for a road management plan. there would also be efficiencies from reviewing all such plans within an aligned timeframe.

VicRoads, DELWP (Department of Environment, Land, Water and Planning) and all municipal councils have adopted road management plans in accordance with section 54 of the Act and the Code. This has provided a defense against claims arising from an incident where the road authority can demonstrate that it has complied with its road management hazard inspection and response performance indicators in respect to the road and/or infrastructure as to where the alleged incident took place.

The coverage of the inspection and maintenance regime outlined in the initial road management plan adopted by road authorities in 2004/05 would deal with, where relevant, most of the claims arising from an incident. This is due to the fact that most aspects of the inspection and maintenance regime in the initial road management plans have remained substantially unchanged or have undergone only relatively minor adjustments.

Using VicRoads as an example, given that recent periodic reviews have overall resulted in relatively minor changes to the inspection and maintenance regime (the core part of the road management plan that road authorities draw upon to provide a defense against claims) it is reasonable to consider that most of the $1.6 million of claims (other than the $27,000 in claim payments) lodged against VicRoads in 2012/13 that were not paid out (also discussed in section 2.1.2) is attributable to the initial road management plan prepared in 2004/05.

Similar to VicRoads, it is likely that the initial road management plans prepared by the 79 municipal council road authorities have been effective in preventing the payment of most of their compensation claims (as contemplated by the Act, which provides protection for road authorities against unlimited liability).

**Alternatives**

There are several alternatives to the base case:

Option 1: Periodic reviews undertaken every five years

Option 2: Periodic reviews undertaken every ten years

Option 3: Self-regulation

Note:

The assessment of each option assumes that, once a plan is in place, road authorities act in accordance with that plan (this is important because the plan only has an effect in practice, and can only be used as a defence, if the road authority has acted in accordance with it).

### Option 1: Periodic review every five years

This option would require a periodic review of a road management plan every five years.

**Costs**

The key costs to a road authority in conducting a review of its road management plan are:

* the use of internal personnel and/or consultants to review, develop, consult, analyse and settle changes to the road management plan; and
* advertising associated with providing a notice of the proposed amendment of its road management plan to consult with the public and later a notice of its decision to adopt changes to its road management plan, both published in the Government Gazette and a daily newspaper.

VicRoads spent about $45,000 comprising $15,000 for advertising and $30,000 for labour costs on its recent review of its road management plan. Appendix 1 provides a breakdown of the costs associated with the review. This equates to a cost of $10,000 on an annualised basis. A sample of municipal council road authorities estimated an average of about $20,000 comprising $5,000 for advertising and an estimated $15,000 for labour costs per periodic review. This equates to a cost of $4,000 on an annualised basis.

As can be seen from Table 3 below, the aggregate cost of the periodic review of road management plans by VicRoads and 79 municipal council road authorities is $1,630,000 and $326,000 on an annualised basis.

**Table 3: Option 1 Costs**

|  |  |  |
| --- | --- | --- |
|  | Cost per review every five years | Cost on an Annualised Basis |
| VicRoads | $ 50,000 | $ 10,000 |
| Municipal Councils | $1,580,000 | $316,000  (equivalent to $4,000 for  each of the 79 councils) |
|  | $1,630,000 | $326,000 |

**Benefits**

The five year review period provides the community and key stakeholders with the opportunity to contribute to the design and content of the road management plan. However, as shown in the Section 2 if the document (i.e. Nature and Extent of the Problem, Evaluation of periodic reviews) an evaluation of a sample of road management plans and consultation with municipal council road authorities, revealed that the community and stakeholders generally tend to provide no submissions to any of the reviews. VicRoads recent review received only 3 submissions in the first round or consultation and 13 submissions in the second round being mostly from municipal councils.

The five year review period ensures that road management plans remain up-to-date and reduce a road authority’s exposure to claims and potentially higher insurance premiums.

The five year review period also enables the reviews of road management plans to be considered in the context of and within the same period of the review of Council Plans (inclusive of the Council Strategic Resources Plan) and vice versa. The review of a Council Plan (if aligned with the review of the road management plan) would for example, such as in relation to resource allocation, enable any necessary consequential adjustments to the council’s road management plan (the review of Council Plans is detailed in section 125(1) of the **Local Government Act 1989**).

However, the evaluation of a sample of road management plans and consultation with municipal council road authorities revealed in the number of reviews undertaken since the inception of the Act in 2004, that most reviews resulted in formatting changes to the plan and occasionally an amendment to inspection and response times for various hazards. In those cases, where the standards have increased in respect to the inspection and response times for various hazards, it is assumed that these increased standards would lead to improved road safety outcomes for road users (although there is no data on the road safety benefits arising from changes to specific standards in road management plans).

An amendment to hazard inspection and response times arising from a periodic review and the consequent savings in claims could easily offset the minimal costs (on an annualised basis) associated with undertaking periodic reviews. It is not clear whether but is likely that the amendments to inspection and maintenance regimes made by road authorities to date are in part in response to recent claims or are due to a risk management approach developed by the road authorities in consultation with their insurers, having regard to the available funding and resources and the need to maintain good asset management practices, which are consistent with the considerations that a road authority must have regard to under section 38 of the Act etc.

### Option 2: Periodic reviews every ten years

This option would prescribe a longer interval for a periodic review of a road management plan. Ten years has been selected on the basis that some road authorities have affectively conducted a review ten years after the adoption of the initial road management plan due in part to the time consuming process of conducting two stages of consultation.

**Costs**

Several road authorities had not previously complied with the current prescribed interval for periodic review of a road management plan. When those road authorities have reviewed and amended their road management plans, they have tended to re-write the plans and any delayed changes to their inspection and maintenance regimes may have resulted in forgone potential savings from reduced claims.

This option could lead to higher insurance premiums and/or insurers requesting or demanding reviews and amendment to road management plans at more frequent intervals in response to claims trends. Reviews at more frequent intervals could result in lower insurance premiums than if reviews were conducted once every ten years.

Road management plans must be reasonable and achievable to ensure that road authorities have a defense. A road authority is required to have appropriate resources to deliver against the intervention levels and inspection frequency prescribed in their road management plan. Municipal councils have elections every four years and a newly elected council is required to establish strategies for budget priorities over the life of the council. In this regard, periodic reviews of road management plans every ten years would potentially conflict with a newly elected municipal council’s budget priorities. In these cases, a newly elected council could amend its road management plan under section 54 of the Act but would still incur the same costs associated with a periodic review.

**Benefits**

Over the ten year life of the regulations, this option would require only one rather than two periodic reviews of the road management plan. This would provide $50,000 savings to VicRoads and an average of $20,000 savings to each municipal council road authority or $1,630,000 across all road authorities compared to Option 1.

### Option 3: Self-regulation

This option would enable a responsible road authority to determine the timing of a periodic review of its road management plan. In effect, self-regulation has the same outcome as the base case. However, self-regulation would be accompanied with a set of guiding principles to help road authorities to take into account a range of factors to determine the most appropriate time to conduct a review. VicRoads legal advice is of the view that there is no legal head of power in the Act to enable road authorities to self-regulate the timing of their reviews on the basis that section 54(5) of the Act states that a road authority must conduct a review of its road management plan at prescribed intervals.

Notwithstanding this, self-regulation would still appear to be a feasible option (although not in the short-term as it would again require legislation change) for the following reasons. Given that compliance with the inspection frequency and response time to repair road hazards in a road management plan provides a defense to responsible road authorities to not admit liability to a claim from a person that has had an incident on a road, it would appear that responsible road authorities have a self-interest in ensuring that their road management plans remain up-to-date.

**Costs**

There is a risk under the self-regulation model that some responsible road authorities may be required to focus on higher priorities and may thereby defer reviewing their road management plans from time to time. This is a reasonable assumption given that some road authorities had not initially complied with the current prescribed periodic review. However, effectively all of these road authorities have since conducted a review by their own initiative or after consulting their insurers on the basis of either addressing claims payment trends that could have been avoided or as a risk management strategy or to manage possible premium increases (noting that road authorities must manage their road networks in consideration of many factors including available funding and/or resources and the need to maintain good asset management practices: consistent with the considerations that a road authority must have regard to under section 38 of the Act).

The level of some possible re-focus of priorities resulting deferred reviews/non-compliance may be explained by the different claims profiles in the case of municipal council road authorities. The Municipal Association of Victoria provides broad form public liability and professional indemnity insurance cover to municipal councils and this covers not only road-related claims but also other potential non-road related claims arising from other municipal council responsibilities e.g. claims related to planning and building. In some instances, a municipal council may have greater claims for those ‘non-road related claims. Accordingly, those other claims are more likely to affect their insurance premium and a municipal council (while still maintaining sound asset management funding, resources and practices as discussed above) may need to increase its focus on some of its efforts on reducing its exposure to those non-road related claims while still appropriately managing a possibly smaller exposure, such as under its road management plan (i.e. road-related claims).

VicRoads considers that this is generally an appropriate risk management strategy from a broader council perspective but it may also mean that the review of the council’s road management plan could be deferred for longer than may appropriate. That any road authority may have left the self-regulated timing of its road management plan (if self-regulation was adopted) for a longer period due to other deemed higher priorities, could in itself in certain circumstances represent a potentially significant risk for road authorities.

Another factor that needs to be considered for the self-regulation option is that insurance standard excesses appear to be around $20,000.[[10]](#footnote-10) Given that most property damage claims are less than this amount and are dealt with by the municipal council road authority rather than the insurer, most property damage claims, regardless of the number, are unlikely to affect a municipal council’s insurance premium.

As for Option 2, this option could also lead to higher insurance premiums and/or insurers requesting or demanding reviews and amendment to road management plans at more frequent intervals in response to claims trends. Reviews at more frequent intervals could result in lower insurance premiums than if reviews were conducted at longer self-regulated periods.

**Benefits**

Each responsible road authority would determine the timing of a review based on the likely need to make substantive changes to the inspection and maintenance regime (the corresponding risk is that some road authorities may not judge that timing correctly and be exposed to higher risks associated with claims). In most cases, road authorities are best placed to determine the timing of a review and would more than likely to be encouraged by their insurers.

In some cases, municipal council road authorities would likely still conduct reviews linked to the municipal council election cycle. In other cases, where a municipal council road authority expects to make no material changes following the election of a new municipal council, it would avoid (by effectively deferring the review of its road management plan to a later time of its choosing) the costs associated with a formal review that may otherwise be tied to the council election cycle. For these road authorities, the savings would be about $4,000 per annum for every year the review was deferred. These savings are not considered significant and may not provide much of a financial incentive to change the current regulated approach.

### Comparative assessment of the options

Not all of the costs and benefits can be quantified. Accordingly, the multi-criteria analysis approach has been adopted to compare the net impacts of the options. In this analysis, the objective of the periodic review of road management plans is to improve road safety outcomes and to reduce claim payments by road authorities. Given these objectives, four assessment criteria have been identified:

* Road safety (25 percent weighting)
* Claim payments by road authorities (25 percent weighting)
* Compliance cost to road authorities (25 percent weighting)
* Insurance costs to road authorities (25 percent weighting)

The weightings have been equalised across the benefit and cost criteria. In respect to the benefit criteria, any substantive change to intervention levels to hazard and inspection levels is likely to improve road safety outcomes. In respect to the cost criteria, the indirect impact of increased insurance premiums may be of a similar magnitude to the cost of undertaking a review, however  there is no quantifiable measure of this or correlation between 'costs to road authorities' and 'insurance costs'. On that basis the weights have been equalised for the costs in the absence of a basis for assigning different weights, consistent with the Victorian Guide to Regulation.

**Table 4: Comparative assessment of options**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Criteria | | **Base Case** | | **Option 1:**  Periodic review every five years | | **Option 2:**  Periodic review  every ten years | | **Option 3:**  Self  Regulation | |
| Criteria | Weight | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score |
| **Road safety** | 0.25 | 0 | 0 | +6 | 1.50 | +4 | 1.00 | +5 | 1.25 |
| **Claim payments by road authorities** | 0.25 | 0 | 0 | +6 | 1.50 | +4 | 1.00 | +5 | 1.25 |
| **Cost to road authorities** | 0.25 | 0 | 0 | -6 | -1.50 | -3 | -0.75 | -4 | -1.00 |
| **Insurance Costs** | 0.25 | 0 | 0 | -4 | -1.00 | -6 | -1.50 | -5 | -1.25 |
| **Total Score** |  | **0** | **0** |  | **0.50** |  | **-0.25** |  | **0.25** |

In terms of the road safety criterion, changes to an inspection and maintenance regime is likely to improve road safety, particularly in response to changing traffic use e.g. increase in bicycle lanes and usage. None of the options receive a score of +10 given that most periodic reviews have not resulted in substantive change to road management plans. However, the road safety benefits are likely to be achieved earlier when a review of the road management plan is undertaken on a more frequent basis. Accordingly Option 1 receives a score of +6 whereas Option 2 receives a score of +4. Given that not all road authorities have not previously complied with the current periodic review requirements, it cannot be assumed that self-regulation will, in all cases, deliver road safety benefits earlier than Option 1. Hence, Option 3 receives a score of +5.

In terms of reduced claim payments by road authorities’ criterion, in most cases there have been minimal changes to inspection and maintenance regimes across a sample of road authorities. Road authorities that have reviewed their road management plans nearing ten years after the preparation of the initial plan have tended to rewrite substantial parts of their plans with the insertion of various legal defenses such as force majeure provisions that ultimately would save the road authority from being liable for a claim in these circumstances. Given this, there is a potential cost to the road authority in not introducing these changes earlier under Option 1. On this basis, Option 1 receives a higher score of +6 and Option 2 receives a score of +4. Option 3 receives a score of +5 for the same reasons as stated in the road safety criteria.

In respect to the cost to road authorities’ criterion, a review is still required under the base case and it is likely that most municipal council road authorities would generally align a periodic review with the municipal council election cycle (also refer to the further discussion, under Base Case in section 5.3, on the advantages of generally aligning the review of council plans with the review of road management plans). Accordingly, none of the options receives a score of -10. Option 1 would require twice as many reviews as Option 2 within a ten year period and Option 1 receives a score of -6 and Option 2 receives a score of -3. Under Option 3, each road authority determines the timing of the review. Given that many road authorities are likely to still link the periodic review with the election of a municipal council, Option 3 receives score of -4 in recognition that some road authorities are likely to establish longer review periods.

In terms of the insurance cost criterion, Option 1 receives a score of -4. Option 2 receives a lower score of -6 on the basis that road authorities that have undertaken reviews after ten years have generally made substantial changes to their road management plans and sometimes at the request of their insurers or of their own initiative. Option 3 receives a score of -5 given that not all road authorities have demonstrated compliance with the current five year period and some are likely to not undertake reviews within an optimal timeframe.

Option 1 is the most attractive option with a score of 0.50. While Option 3 has a score of 0.25 the Act requires that a period of review should be prescribed. For this option to be feasible, the Act would need to be amended to enable road authorities to determine for themselves how often they would review their road management plans. Given the absence of data across municipal council road authorities in respect to the level of claim payments that are avoided as a direct result of specific changes to their inspection and maintenance regimes, VicRoads considers that Option 1 should be retained unless a compelling case with supporting evidence can be made to adopt Option 3.

**Stakeholder Questions**

**Review and Amendment of Road Management Plans**

**Question A** -

Should the current review periods (i.e. five years or four years and six months for municipal councils) for road management plans be retained in the regulations or be extended for a longer period?

**Question B** -

Should the review period, in the case of municipal council road authorities, continue to be aligned with the periodic review of Council Plans in accordance with section 125(1) of the **Local Government Act 1989** (i.e. within 6 months after council general elections, which are held every 4 years)?

If yes, what are the key reasons and benefits for retaining that current alignment?

**Question C** -

Are affected stakeholders including responsible road authorities supportive, subject to possible future legislation changes, of self-regulation (i.e. no prescribed review periods) and if not, specify the type of harms that would arise from self-regulation?

\*Note: There is no current proposal to amend the **Road Management Act 2004**.

## 5.4 Notice of Incident (regulation 12)

(Assessment of the Options)

A person who has suffered personal injury or property damage due to the condition of a road may be entitled to compensation from the responsible road authority.

**Base Case**

The Base Case is the Act in the absence of the regulations – that is, no information prescribed in regulation beyond what is specified in the Act.

Any person proposing to commence a proceeding in a court based on a claim in relation to an incident arising out of the condition of a public road or infrastructure must comply with section 115 of the Act,

*(1) If a person proposes to commence a proceeding in a court based on a claim in*

*relation to an incident arising out of the condition of a public road or*

*infrastructure, the person must give written notice of the incident to the*

*responsible road authority within the prescribed period of the incident occurring.*

*(2) In subsection (1), prescribed period means—*

*(a) the period of 30 days; or*

*(b) a longer period as may be prescribed either in respect of all cases or a*

*specified case or class of cases.*

*(3) A notice under subsection (1) must include the prescribed particulars so as to*

*enable the responsible road authority to prepare a condition report under section 116.*

*(4) If a person fails to give notice under this section and a report is not prepared*

*under section 116, a court may in any proceeding based on a claim in relation to*

*an incident arising out of the condition of a public road or infrastructure take the*

*failure into account in deciding the weight to be given to evidence about that*

*condition at the time of the incident having regard to—*

*(a) the reason why notice was not given;*

*(b) the length of the delay;*

*(c) the extent of any prejudice caused to the road authority in the proceeding;*

*(d) any other matter relevant in the interests of justice in the proceeding.*

Under the base case, any person would be still required to submit a written notice of the incident to the responsible road authority. However, a person would have the discretion to include any type of information in the written notice.

Note in particular that:

* the main purpose of a notice of incident as detailed in the Act (section 115(3)) is to provide sufficient information to the relevant responsible road authority to enable it to prepare a condition report; and
* the Act requires that the regulations prescribe the particulars that must be included in the notice of incident.

### Option 1: Minimal Information

The proposed regulation prescribes the following particulars to be included in a notice of incident:

* the name and address of the person proposing to commence a proceeding in a court;
* the signature of that person or the name and address of another person giving notice on that person’s behalf;
* the date of the notice;
* a description of the incident;
* the date and time of the incident; and
* a description of the site of the incident and any relevant infrastructure to enable the responsible road authority to identify and inspect the site.

**Costs**

Most of the particulars such as the name and address of the person, signature of the person, date of the notice and the date and time of the incident are relatively incidental matters for most people to record in a notice of incident. A description of the incident and the site of the incident are the two prescribed particulars that would involve the most time for most persons to write in a notice of incident.

It is assumed that the average person would take about one hour to prepare and write a notice of incident. Based on average weekly earnings,[[11]](#footnote-11) this equates to about $42.57 to prepare the prescribed particulars in a notice of incident. $1,477 per week = $76,804 p.a. divided by 1804 hours (44 weeks\*41 hours per week) =$42.57 per hour.

These costs would more than likely be incurred under the base case.

**Benefits**

This option provides certainty in ensuring that relevant matters are adhered to enabling the efficient operation of the Act. For example, the requirement for a person to include the date of the notice is a minor particular but is critical to the operation of sections 115 and 116 of the Act. Specifically, section 115 prescribes a period of 30 days in which a notice of incident must be submitted to the relevant road authority. This is to enable the relevant road authority to inspect the site of the incident, to check its records of periodic inspections of the road and other information relative to that date and to prepare a condition report within a timely manner following the incident.

While a court can still hear a proceeding in relation to a claim without a notice of incident or a condition report, section 115(4) permits a court to take into account the failure by a person to give a notice of the incident to the responsible road authority.

Accordingly, the requirement to include the date of the notice of the incident and also the date of the incident removes any uncertainty for persons proposing a court proceeding and also enables the responsible road authority to respond to the notice of incident in a timely manner.

A key benefit of prescribing the required particulars in a notice of incident is that it enables claimants to provide the necessary information and evidence to enable a responsible road authority to investigate and respond to the notice with a condition report. A secondary consequential benefit is to initiate and facilitate efficient court proceedings in the determination of a claim, if the claim was to proceed to court (being only a very small percentage) or if the claim was to proceed under a non-court-based claims management process (refer to section 2.1.3 for further explanations of how claims are separately processed after notices of incidents are received and condition reports are prepared by the road authority).

### Option 2: More Information

The notice of incident could be required to include further information to enable a responsible road authority, in addition to the requirement of the Act to prepare a condition report, to also investigate/assess and process an incident and claim. Additional information could include:

* the road conditions\*;
* the weather conditions at the time of the incident\*;
* the type of any road infrastructure or other infrastructure involved in the incident (traffic lights, signs, fences, poles, pit lids etc)\*;
* whether the road infrastructure or other road infrastructure was damaged as a result of the incident\*;
* the name of the organisation responsible for the infrastructure (if known) (e.g. gas company, water company, electricity company)\*;
* a sketch of the incident scene\*;
* whether anyone was injured by the incident and their contact details;
* whether there were any witnesses to the incident and their contact details\*;
* type of damage or loss and the reasons why the responsible road authority is responsible;
* property damage and the amount of the claim;
* detail how the amount of the claim for property, personal injury or other damage is calculated;
* whether an insurance claim has been made; and
* a statutory declaration that the information in the notice of incident is true and correct.

Note:

\* denotes information that a person could also choose or be requested to include in the

“*description of the site of the incident and any relevant infrastructure*” under Option 1.

**Costs**

Most of the additional information provides greater guidance to the claimant about providing a description of the site of the incident and any relevant infrastructure to enable the responsible road authority to identify and inspect the site. Some of the information regarding property, personal injury and other damages would require the claimant to have already obtained this information e.g. a quotation from a body repairer to repair damage to a motor vehicle. In addition, claimants would need to have their statutory declaration witnessed by a person prescribed under section 109 of the **Evidence Act 1958**. It is reasonable to expect this additional information and the requirement for the statutory declaration would add on average at least two hours to complete the notice of incident with an incremental cost of $85.14 compared with the proposed regulations; resulting in a total cost of $127.71.

**Benefits**

The additional information would better equip a responsible road authority to identify and inspect the site, and to consider a property damage claim. Similarly, the additional information would facilitate the efficient processing of a claim to the benefit of the claimant where the responsible road authority has admitted responsibility and agreed to the requested compensation.

The inclusion of the statutory declaration would deter frivolous claims arising from persons that have incurred property damage to their motor vehicle where the road infrastructure or any other infrastructure was in poor condition, but was not the cause of the property damage.

As the Act is currently written, regulations can only prescribe the information required to ‘prepare’ a condition report but cannot prescribe further information to facilitate the ‘investigation/assessment and processing’ of a claim.

The Act would need to be amended to enable the regulations to require that additional information to be provided by a claimant. There is no current proposal to amend the Act in that regard. VicRoads considers that there are no deficiencies that need to be addressed in relation to the current practices for assessing and processing claims that warrant changing the Act (either to prescribe a ‘additional information’ requirements or a non-court-based claims management process - see further explanations in section 2.1.3).

Some road authorities (including VicRoads) in effect request ‘additional information’ such as that referred to in the dot points above together with the ‘prescribed information’ when claimants complete a combined ‘notice of incident and claim’ form, which in effect achieves the same benefits as referred to above. VicRoads has identified an action to review its notice of incident and claim form to more clearly distinguish between the prescribed notice of incident information and the additional information required to separately assess the claim. That further action for VicRoads includes discussions with the Municipal Association of Victoria to recommend that any municipal council road authorities having similarly structured forms, should likewise review and modify their documents (see further explanations in section 2.1.3).

Option 2 is therefore not viable without legislation change but has been assessed for future consideration.

### Comparative assessment of the options

Not all of the costs and benefits can be quantified. Accordingly, the multi-criteria analysis approach has been adopted to compare the net impacts of the options. In this analysis, the objective of the notice of incident is to provide consumer protection by ensuring claimants provide relevant information to enable their claims to be fully considered and to ensure effective investigation of claims by road authorities. Given these objectives, three assessment criteria have been identified:

* Consumer protection (25 percent weighting)
* Effective investigation of claims (25 percent weighting)
* Cost to claimants (50 percent weighting)

These criteria have been selected on the basis that they reflect the key costs and benefits.

The options are assessed in Table 5 below.

**Table 5: Comparative assessment of options**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Criteria | | **Base Case** | | **Option 1:**  Minimal Information | | **Option2:**  More Information | |
| Criteria | Weighting | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score |
| **Consumer protection** | 0.25 | 0 | 0 | +5 | 1.25 | +10 | 2.50 |
| **Effective investigation of claims** | 0.25 | 0 | 0 | +5 | 1.25 | +10 | 2.50 |
| **Cost to claimants** | 0.50 | 0 | 0 | 0 | 0 | -3 | -1.50 |
| **Total Score** |  |  | **0.0** |  | **2.50** |  | **3.50** |

In respect to consumer protection, the evidentiary information required in Option 1 provides greater certainty for the claimant’s notice of incident to be considered in a court proceeding and is superior to the base case and receives a score of +5. Option 2 provides greater guidance to the claimant in terms of providing a description of the incident site, the road infrastructure and other infrastructure involved in the incident and the amount of property damages sought that would assist the responsible road authority to determine a claim, and for a court to determine the claim where a court proceeding is undertaken. Accordingly, Option 2 is superior to Option 1 and a score of +10 is received.

In respect to the effective investigation of claims, Option 1 provides minimal information to assist road authorities but is still superior to the base case and receives a score of +5. Option 2 provides greater information relating to the incident site and the amount of property damages to enable a responsible road authority to investigate a claim more cost effectively than Option 1 and receives a score of +10 accordingly.

In respect to the cost to claimants, Option 1 imposes an estimated cost of one hour to prepare the notice of incident but this cost would more than likely be incurred under the base case. This is because the notice would still have to be prepared, and VicRoads considers that little additional time would be taken to include the specific information the Regulations require. It, therefore, receives a score of 0. Option 2 imposes an estimated cost of three hours to prepare the notice of incident and receives a score of -3.

Option 2 would be the preferred option with a total score of +3.50 compared with Option 1 with a total score of 2.50; however Option 2 would first require amendment to the Act.

There are no current proposals to amend the Act; therefore Option 1 is adopted in proposed regulation 14.

## 5.5 Condition Reports (regulation 13)

(Assessment of the Options)

**Base case**

The Base Case is the Act in the absence of the regulations – that is, no information prescribed in regulation beyond what is specified in the Act.

The responsible road authority is required under section 116 (3) of the Act to include in the condition report the following matters:

* a statement of the condition of the relevant part of the road or infrastructure and where appropriate photographs showing the condition of the site of the incident;
* a reference to any relevant road management plan, policy or policy decision relating to the construction, maintenance or repair of the road or infrastructure;
* a summary of, or reference to, any records relating to the condition of the road or infrastructure from inspections and reports;
* a summary of inspections, maintenance and repairs of that part of the road or infrastructure conducted in the period of 12 months before the incident.

Under the base case, a responsible road authority is required to prepare a condition report with the aforementioned particulars.

### Option 1: Minimal Information

In addition to above requirements, regulation 15 prescribes the following matters to be contained in the condition report:

* the name of the road authority that has prepared the report;
* a statement or description of the site, road or infrastructure to which the report relates;
* date and time or approximate time on which any inspection on which the report is based was conducted; and
* a statement, signed by a person authorised by the road authority, certifying that the report is a condition report for the purposes of section 116 of the Act.

These prescribed matters have been included to ensure a condition report can be presented as admissible evidence to a court.

Note:

That certain information is prescribed in the regulations does not restrict a road authority from providing additional levels of detail in any condition reports it prepares.

**Costs**

Nearly all of the costs associated with the preparation of a condition report are primarily incurred under the base case. The additional prescribed particulars are minor matters of an incidental nature and would more than likely be undertaken under the base case. For the road authority, having first inspected the site and taken such actions as are necessary to address road conditions that trigger intervention, to then provide these incidental matters in a condition report would take a responsible road authority an estimated 5 minutes and cost VicRoads about $6.60 (VRO 3 to 4) or municipal council road authorities about $5.91 (Band 5B) per condition report. (Refer to section 5.7 for the calculation of VicRoads and municipal council road authority hourly rates).

**Benefits**

Evidentiary certainty for the responsible road authority in ensuring that a court considers a condition report provides an accurate assessment of the site of the incident during any proceeding. However, given that the costs would more than likely be incurred under the base case, it is reasonable to expect the benefits would be attributed to the provision in the Act rather than the regulations.

**Alternatives**

Given that the Act specifies the key requirements that need to be covered in a condition report other than the minor incidental matters that are pertinent evidentiary matters to enable a condition report to be presented as admissible evidence to a court proceeding, there are no other feasible alternatives to Option 1.

## 5.6 Protection of Roads and Property

(Assessment of the Options)

### 5.6.1 Regulations 16 to 21

**Base case**

The Base Case is the Act in the absence of the regulations – that is, no conduct restrictions prescribed in regulation beyond what is specified in the Act.

As shown in section 4 (i.e. Nature and Effect of the Proposed Regulations), VicRoads and municipal council road authorities and other road authorities, where applicable, have powers under the Act to deal with the protection of roads and property. However, the Act does not provide any enforcement for these powers in the form of financial penalties for the interference with and damage to roads and the property of VicRoads construction zones and property.

**Options**

There are no feasible options other than the proposed regulations that provide enforcement to the powers under the Act by way of penalties and infringement notices. Public education strategies are normally an option to improve compliance but need to be targeted at a particular sector of the community to be cost effective. In respect to the potential damage to roads and property, it is difficult to identify a particular group within the community. The cost of such an education program, including the need for ongoing reinforcement for such a wide spectrum of the community would be significant and very unlikely to be effective in communicating to those persons that may carry out inappropriate activities on roads or disregard a sign prohibiting an activity or persons that have acted maliciously.

### 5.6.2 Removal of Vehicles

(Assessment of the Options)

The Base Case is the Act in the absence of the regulations – that is no specific means of notification prescribed in regulation beyond what is specified in the Act.

The responsible road authority is required under clauses 4 (2) and 5 (5) of Schedule 4 to the Act, to take reasonable steps to notify the owner of the vehicle, noting that the owner of a vehicle may be different to the registered operator of the vehicle. In the absence of the regulation, it is likely that VicRoads would notify the owner of the vehicle by sending a notice by post to the last known address, if the address is known or can otherwise be obtained.

There are a number of ways in which such notice could be served — by post, by phone or email/SMS text message. These are the options examined below.

### Option 1: Notification by post

Regulation 22 requires a road authority that has the power to remove a vehicle (unregistered, abandoned or causing obstruction) under clauses 4 and 5 of Schedule 4 to the Act (see Note below), to serve a notice by post on the registered operator (or owner) of the vehicle informing that person that the road authority has removed the vehicle from the road. The serving of the notice is subject to the road authority being able to identify the registered operator (or owner) such as from the vehicle number plates. The notice may also include a requirement that the registered operator take reasonable steps to notify the vehicle owner (if a different person).

Note:

The Act provides State road authorities (e.g. VicRoads, the Secretary to the Department of Environment, Land, Water and Planning (DELWP)) and EastLink Corporation and Peninsula Link Freeway Corporation with the power to remove unregistered or abandoned vehicles, and vehicles causing an obstruction or danger (clauses 4 & 5 of Schedule 4 to the Act).

**Costs**

The contact details (e.g. name and postal address) of the registered operator of a vehicle from VicRoads registration and licensing systems can only be provided by a relevant person for the purposes of Part 7B of the **Road Safety Act 1986**. A road authority (e.g. VicRoads or a toll road operator) that is required to notify the registered operator of a vehicle that his or her vehicle has been removed from a road must make a request to VicRoads for the provision of contact details for the registered operator of the vehicle.

The times involved would typically involve 10 minutes for the road authority to make the request to VicRoads, 30 minutes for VicRoads to undertake the necessary checks, such as to comply with privacy requirements and to provide the requested information and a further 10 minutes for the road authority to prepare and post the letter to the registered owner. For the total of 50 minutes VicRoads would incur a cost of about $68 (VRO 3 to 4) or municipal council road authorities about $60 (Band 5B) per vehicle.

By way of example and in addition to the above costs VicRoads would incur a maximum cost of about $300 p.a. in postage based on the estimated annual removal of 150 vehicles. That would be a maximum cost given that the owners of abandoned, and in some cases, unregistered vehicles may not be easily identified and/or their address located as opposed to registered vehicles that are moved because they are in a location that is causing an obstruction or danger to other road users.

**Benefits**

A written hard copy notice with relevant details of the vehicle and the date of the notification enables the road authority to demonstrate that it has complied with the requirements of the Act prior to selling or disposing of a vehicle. The Act states that VicRoads must notify the registered operator (or owner) of the removed vehicle that is an unregistered or abandoned vehicle, that it will be sold or destroyed after 14 days upon receiving the notice, and in the case of a vehicle removed for causing an obstruction or danger, after 60 days upon receiving the notice. Sending a notice by post ensures that, in most cases and as far as is reasonably possible the owner of the vehicle is given the opportunity to reclaim the vehicle.

### Option 2: Notification by phone

VicRoads could notify registered operators or owners by alternative means such as by phone. The application for the transfer of registration is the most common form that persons use when buying, selling or transferring a motor vehicle. This application form is where VicRoads derives its contact information for notifying registered operators, noting that VicRoads does not maintain a register of vehicle owners, only registered operators.

The application form requests a home or company address and a preference for a mobile phone number. VicRoads registration and licensing systems do not currently record the landline phone number or mobile phone number provided in the application form by the transferor.

**Costs**

As VicRoads does not have immediate access to complete and up to date landline/mobile phone numbers via its registration and licensing system databases, it has no ability to notify most registered operators of vehicles by landline/mobile. Searching through archived paper records of application forms would also not provide reliable or complete phone contact details and the transaction costs involved in this type of search process would cost more than Option 1.

In this case, it would not be feasible to make registration system changes and initiate a program to collect and record phone contact details (and keep them up to date) solely for the purposes of alerting registered operators or owners of a vehicle that their vehicle had been removed (given that only about an estimated 150 vehicles are removed annually).

If VicRoads decided to notify the registered operator of the vehicle by phone, it would incur additional costs in repeating the information contained in the notice over the phone. There would also likely be delays in notifying the registered operator of the vehicle for those persons who only have a landline and were not at home when VicRoads made the call.

Other road authorities having power to remove vehicles would incur the same costs and have the same difficulties under this option as they would need to request VicRoads to provide the phone contact details from VicRoads registration and licensing systems.

Notification by phone would also prevent VicRoads from demonstrating that it had complied with the requirements of the Act unless it recorded its phone conversations with the registered operator (or owner if known) of the vehicle. As part of this process, VicRoads would need to verify the identity of the registered operator (or owner if known) and comply with all relevant privacy laws.

**Benefits**

Notification by phone is a fast means of informing the registered operator (or owner) of the vehicle but is problematic in its efficiency (particularly for registered operators and owners that have only a landline or cannot be contacted and because available phone contact details are less reliable and less available) and is likely to cost VicRoads more than Option 1 given the time that would be involved by VicRoads operators verifying the identity of the person and advising them about the removal of the vehicle.

Email offers the benefits of faster delivery than postage, presuming that the email address of the person is available to the road authority, noting that in many cases the registration and licensing systems will not record the email address or an active email address. While computers and mobile phones are widely used by the public, they are still not as common as a postal address and reliance on email would prevent VicRoads from locating and notifying some registered operators or owners.

### Option 3 Notification by email/SMS text message

Government agencies are increasingly using SMS as an alternative communication tool. For example, the Australian Taxation Office provides an SMS service to remind persons about deadlines for annual taxation returns.

VicRoads could email or SMS a notice to the registered operator (or owner if known) of the vehicle if the person’s email address and mobile phone number is known and is up to date. The application for the transfer of registration discussed in Option 2 has provision for an email address but inclusion is optional by the applicant and consequently not many email addresses and mobile phone numbers are recorded in registration and licensing systems. If the mobile phone number or email address is recorded in those systems, VicRoads could inform registered operator of a vehicle by SMS text message or email.

Note:

VicRoads registration and licensing systems are only required to record the details of the register operator of a vehicle and do not have details of vehicle owners, although in many instances the operator and owner will be the same person.

**Costs**

The provision of an email address and mobile phone numbers is currently optional in the registration application process. Accordingly, VicRoads registration and licensing databases do not have complete or comprehensive email addresses or mobile phone numbers for most registered operators of a vehicle and would be unable to notify the registered operator in every instance.

Internet and mobile phones are widely used by the public with the number of mobile phones considered to have reached saturation. However, a consumer survey in 2008 revealed that retirees and the unemployed have lower mobile phone take-up rates, 79 and 63 percent respectively.[[12]](#footnote-12) A recent report suggests the mobile phone take up rate has only marginally improved in recent years with a quarter of older Australians over the age of 65 not having a mobile phone.[[13]](#footnote-13)

Clearly email and SMS are not as common as a postal address and reliance on email/SMS would prevent VicRoads from locating and notifying some registered operators.

**Benefits**

Email and SMS offers the benefits of faster delivery and at a lower unit cost than postage. However, VicRoads would need to assess the feasibility of collecting email addresses at the time of registration application or registration renewal for the purpose of improving the registration renewal service to all motorists. It would be impractical to make these changes solely for the small number of vehicles removed each year. If this was feasible, VicRoads could utilise the registration and licensing system to notify registered operators who provided an email or mobile phone number in regards to removed vehicles.

#### Comparative assessment of the options

Not all of the costs and benefits can be quantified. Accordingly, the multi-criteria analysis approach has been adopted to compare the net impacts of the options. In this analysis, the criteria are:

* Consumer protection (25 percent weighting)
* Efficient notification to owners of removed vehicles (25 percent weighting)
* Cost to road authorities (50 percent weighting)

These criteria have been selected on the basis that they reflect the key costs and benefits.

The options are assessed in Table 6 below.

**Table 6: Comparative assessment of options**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Criteria | | Base case | | Option 1: Notification by post | | Option 2: Notification by phone | | Option 3: Notification by email/SMS | |
| Criteria | Weighting | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score |
| **Consumer protection** | 0.25 | 0 | 0 | +10 | 2.50 | +5 | 1.25 | + 7 | 1.75 |
| **Efficient notification to owners** | 0.25 | 0 | 0 | +10 | 2.50 | +5 | 1.25 | +7 | 1.75 |
| **Cost to road authorities** | 0.50 | 0 | 0 | -2 | -1.00 | -5 | -2.50 | -5 | -2.50 |
| **Total Score** |  |  | **0.0** |  | **4.00** |  | **0.00** |  | **1.00** |

In terms of the consumer protection criteria, Option 1 provides a notification channel (post) that is universally used by most persons in the community and hence ensures that registered operators of removed vehicles are notified and given the opportunity to reclaim their vehicle. Option 1 receives a score of +10. Notification by telephone to the home address of the registered operator during business hours is not a reliable method where the registered operator is at work. For these reasons, some registered operators of removed vehicles would not be contactable and would be denied the opportunity to reclaim their vehicle. As a result, Option 2 receives a lower score of +5. Older Australians and the unemployed have the lowest take-up rates for the internet and mobile phones. About 25 percent of the elderly do not have a mobile phone. Accordingly, Option 3 receives a score of +7.

For the aforementioned reasons, VicRoads considers that post offers an efficient notification process to owners and Option 1 receives a score of +10 whereas Options 2 and 3 provide limited efficiencies to road authorities and registered operators of vehicles. As a result, Option 2 receives a score of +5 due to the probability that many registered operators would not be home to receive a landline call and Option 3 receives a higher score of +7 to reflect the higher take-up rate of the internet and mobile phones.

In terms of the cost to road authorities a nominal cost is incurred with postage and handling to road authorities relative to the base case and Option 1 receives a score of -2. Due to the unreliability of contacting registered operators by phone and limited use of email/SMS by persons in the community, notification would likely lead to greater costs in searching and contacting registered operators of vehicles relative to Option 1. Accordingly, Options 2 and 3 receive a score of -5.

The multi-criteria analysis suggests that Option 1 is the most attractive option with a score of 4.00.

Notes:

VicRoads acknowledges that an alternative option is for the proposed regulation to provide discretion as to how notice can be served, such as by specifying that notification be ‘in writing’, as is done in regulations 6 and 24 (also see the Further Notes below), or that ‘effective notification’ be provided.

This more flexible approach would allow road authorities to use post if this continues to be the most efficient or effective way to achieve the outcome (given their legacy systems/processes, data gaps and other constraints). However, it would also allow them to adapt to the changing communications landscape without requiring further legislative amendment. This may be particularly important given the term of the remade regulations (10 years), rapid technological change and shifting demographics.

Nonetheless, for the following reasons, VicRoads considers there are also disadvantages of such an approach that outweigh its potential benefits.

* It is important that notice be given in a way that ensures that the registered operator/owner in fact receives the notice, and that the message it conveys is clear and complete and can be evidenced through official records where necessary.
* It is important, from a legal perspective, that there is certainty as to when notice can be deemed to have been served and when, after the expiration of the relevant statutory period, further action may be taken.
* The general standard approach in legislation for situations such as this, which effectively involves removal of ownership rights, is to require notice by post (although there are exceptions).
* Complying with privacy requirements in giving notice by phone (e.g. confirming the identity of the person) would add to road authority’s costs (e.g. establishing and maintaining identity information and maintaining accurate records of phone contact/s).
* Undelivered mail will also be returned to the road authority, whereas it may not be possible to close out un-returned phone calls for example.
* Registered owners of vehicles have a duty to notify changes of address but there are no such requirements for other contact details (such as email).
* Although technologies will rapidly change in the coming 10 years, the penetration of technology for certain groups (such as the unemployed and the elderly) may continue to be relatively low.

Thus, as noted in the multi-criteria analysis above, on balance, it is considered that proposed Regulation 22 should continue to require the service of a notice by post.

Further Notes:

In comparison with proposed regulation 22, proposed regulation 6 (Exemptions from consultation requirement for discontinuance of certain roads) and regulation 24 (Direction to remove objects, substances and materials from road) operate differently and only specify that notices and directions, respectively, must be given "in writing" and do not further require those notices or directions to be served by post.

In relation to regulation 6, road authorities require flexibility as to the method of giving notice because individual circumstances will vary. For example:

* The identity and contact details of an abutting property owner may be known because the road authority is already dealing with the person (e.g. acquiring part of their land for a road improvement project (which includes a road discontinuance action) or where the property owner has approached the road authority and has requested purchase of a redundant area of road reserve). If the road authority is already dealing with that person it may choose to serve a notice of proposed discontinuance, by regular or registered mail, in person or via the person's legal representative if that is the requested/agreed method of communications.
* If the contact details of the abutting property owner are not known, those details may need to be determined from a land title search, council rates records or approaching the owner at their residence. The method of giving written notice could consequently be by various methods depending on the circumstances.
* If the details are not already known to the road authority, where it proposes to discontinue a road it will normally make a 'Dial Before You Dig' enquiry to determine what utility services, if any, are located in the relevant part of the road reserve. The road authority will normally then give notice in writing to the utility using the regular postal service. However, depending on the circumstances the road authority may also choose to serve that notice by any other method (e.g. if there is an agreement between the road authority and the utility in accordance with clause 18 of Schedule 7 to the Act, notice would be served by the method required in accordance with that agreement).

In relation to proposed regulation 24, an authorised officer must comply with section 88 of the Act (Service of documents) in exercising his or her duties. The direction of that officer must be in writing and may be either given in person or by registered post. The authorised officer may also be assisted by a member of the police force (section 78 of the Act). Whether the written direction is served in person or by registered mail will depend on the specific circumstances but beyond that the authorised officer does not have further discretion as to the method employed in giving the direction.

**Stakeholder Question**

**Removal of Vehicles — notification**

**Question D -**

Should Regulation 22 allow notification by methods other than post?

Please provide reasons for your response.

### 5.6.3 Hoardings and Advertisements

(Assessment of the Options)

The Base Case is the Act in the absence of the regulations – that is, there are no prescribed matters that need to be considered by a road authority to determine a consent application or prescribed particulars that need to be included in a consent application.

Section 66 of the Act states that written consent from a relevant coordinating road authority is required for placing of specified things on a road or road infrastructure (any structure, device or hoarding for the exhibition of an advertisement or place any advertisement for exhibition on or over a road or place any sign or bill on or over a road or on a pole, bus shelter, traffic sign, tree or other object or infrastructure on a road reserve). However, those specified things do not require such consent if they are authorised or permitted by or under the **Road Management Act 2004** (the Act) or another Act, which accounts for the vast majority advertising signs within road reserves.

In practice, the majority of signs requiring consent under section 66 of the Act and to which the proposed regulation would apply, are signs for tourist attraction, service or facility of interest to road users (see section 2.1.4 for more details). For that reason the options are mainly assessed in relation to tourism related signs only.

VicRoads (with the endorsement of Tourism Victoria) has produced the Tourist Signing Guidelines (and the associated Wine Tourism Signing Guidelines and Information for Tourism Businesses supplement), which are all currently being substantially ‘reviewed and restructured’ (also see Notes at the end of this section). Those guidelines, which are not made under or incorporated by any legislation are stand-alone and outline in general, amongst other things, the process, eligibility criteria and the application requirements for tourism, service and facility signs. The guidelines also contain information related to the design standards, construction and installation of signs and ongoing responsibilities for signs. The guidelines also explain the role of road authorities under section 66 of the Act and the extent to which any sign permit also gives consent under section 63 of the Act (in relation to the works to install the sign).

VicRoads and most municipal council road authorities use the tourist signing guidelines together with the current regulations (the latter provide the specific road safety and operational road efficiency considerations), to provide tourism businesses with clear guidance as to the criteria, process and broader application requirements for tourism related signage within road reserves.

Tourism businesses use the tourist signing guidelines to determine and understand the overall framework governing tourism, services and facility signs located in roads reserves and the process for applying for a sign. From the guidelines a tourism business should be able to determine whether there is a reasonable likelihood that the relevant road authority may give permission for a sign.

The current (and proposed revised) tourist signing guidelines do not include application forms for consent for a sign. Application forms for different types of signage proposals (e.g. tourist attraction, tourist accommodation and services signs) are generally available on the relevant road authority’s website or from the road authority’s office. The forms used for making application to VicRoads (which are also used by some municipal council road authorities) specify additional details, depending on the type of tourism signage proposal, that are requested to be included in the application for section 66 consent. The specification of those details appropriately resides in the forms and is not intended to be specified in the proposed regulations (discussed in further detail below).

Notes:

The current application forms for consent for a sign under section 66 will be reviewed in consultation with the MAV and modified as part of the review of the VicRoads Tourist Signing Guidelines.

A number of different options have been considered for the proposed regulation dealing with consent for advertising and hoardings.

Given the fundamental importance of road safety, the inclusion of road safety and operational efficiency criterion for assessing whether or not a road authority will give consent (per the current regulation 508) is considered by VicRoads to be an essential component of any proposed regulation. That criterion would be the key basis for any defense of a decision on an application for consent under section 66 of the Act, should such a decision be appealed to VCAT (Victorian Civil and Administrative Tribunal). It is noted that VicRoads understanding, is that disputes in relation to tourism, service and facility signs within road reserves are rare and having disputes referred to VCAT is even rarer.

The following alternative options/variations of options were also considered but VicRoads determined that more detailed investigation of these options was not warranted for the reasons outlined below.

1. Including a ‘prescribed form’ under the proposed regulation for an application for consent under section 66 of the Act -

VicRoads considers that such as form is unnecessary and would be inflexible having regard to the broad types and variations of signing proposals that may require consent under section 66 of the Act. Also, that whether or not there is a prescribed form or prescribed details in any application for consent, a coordinating road authority may still request additional information that is reasonably required to enable it to assess and make a decision on an application. Enabling the coordinating road authority to detail the application requirements on its web site (inclusive of the basic application details prescribed in the proposed regulations) explains the consent application requirements in the most transparent way for an applicant and facilitates efficient processing of applications.

1. Requiring ‘additional information’ (more extensive details about the proposed sign) in the application for consent under section 66 of the Act -

For similar reasons as for the option above, VicRoads is advised that whether or not there are prescribed details in an application for consent, a road authority may still request additional information that is reasonably required to enable it to assess and make a decision on an application. Having regard to the broad types and variations of signing proposals that may require consent under section 66 of the Act, VicRoads considers that the prescription of such additional application information in the regulations would be unnecessary and would unnecessarily complicate the proposed regulation.

1. Making the, to be revised, Tourist Signing Guidelines (and supplementary guidelines) an incorporated document in the regulation -

The proposed review and restructuring of the guidelines referred to above will be significant and will likely result in:

* + new ‘VicRoads Tourist and Services Signing Guidelines – Information for Practitioners’ (referencing Australian Standard AS 1742.6 and other relevant standards and guidelines including the National Tourist Signing Eligibility Guidelines);
  + new Tourism Signing Guidelines – Information for Tourism Businesses;
  + new VicRoads Supplement to AS1742.6 (Tourist and Services Signs) including referencing national guidelines for road signage for accredited visitor information centre ; and
  + other changes as yet undetermined.

The above suite of guidelines covers much broader subject matter than just consents for signs under section 66 of the Act. Having regard to Victorian Guide to Regulation (Rules for instruments which refer to other documents) consideration was given by VicRoads to ‘incorporating by reference’ in the proposed regulation for hoardings and advertisements, the existing or new tourist signing guidelines. The decision was to not incorporate the guidelines because (aside from them being currently reviewed and restructured), they don’t cover all relevant signs to which the regulation applies and on balance the burdens of maintaining the incorporated status (also noting that the guidelines reference other standards that VicRoads does not control) would be unduly burdensome relative to the drafting convenience of incorporation by reference. Even with the release of the new guidelines, it is anticipated that they will undergo further minor changes and improvements as they are bedded down over time (the current guidelines having a number of deficiencies).

Consideration was also given to the benefits from the suite of guidelines being incorporated, including the improved standing they would have in VCAT, however as noted above disputes in relation to tourism, service and facility signs within road reserves are rare and having disputes referred to VCAT is even rarer.

Whether or not the suite of guidelines are referenced in the proposed regulations will not affect the availability of and access to those documents by persons and businesses wishing to apply for consent for a sign in a road reserve, such as from road authority website.

VicRoads determined that just two options warranted further investigation in this Regulatory Impact Statement, which are assessed below.

The prescribed consent assessment criteria in Options 1 and 2 below are identical (other than slight wording differences in Option 2, which provides improved readability by separating the two elements in current criteria (c)) and are intended to prevent the inappropriate location of a sign on a roadside that would adversely impact road safety or operational efficiency, such as to obscure the view of a user of the road or be designed in such a way that would cause a distraction. The guidelines provide road authorities with guidance on this matter and discourage the proliferation of separate tourist signs at the one location (which would cause a distraction) and the consolidation of separate tourist signs into a single tourist sign (to reduce distraction).

#### Option 1: Prescribe the consent assessment criteria (current regulation)

This option would only prescribe the consent application assessment criteria for a coordinating road authority. This is the approach taken with the current regulations that state as follows -

The coordinating road authority must consider whether the structure, device or hoarding or advertisement would, or would be likely to—

(a) obscure the field of view of a user of the road; or

(b) cause a hazard by distracting the attention of a user of the road; or

(c) obscure or distract attention of a user of the road from a traffic control device; or

(d) in any other way be detrimental to the safe or efficient use of the road.

**Costs**

This option provides no guidance to potential applicants of the type of information required in a consent application or the type of information that would be provided in consent issued by the road authority (in particular the date of expiry of a consent and any conditions of consent). This lack of guidance in the regulation may cause uncertainty for applicants and some applicants may make false assumptions (e.g. that no specific information is required by the road authority and that an issued consent has no time limit) resulting in rework, delays and additional costs for applicants and road authorities.

The cost of preparing a consent application would vary according to the requirements of each coordinating road authority, the type of signing proposal and its location. In some cases, coordinating road authorities that have administrative discretion to request information, may in some cases, request information that is unrelated to the road safety and operational efficiency aspects of the consent, and in doing so, impose an additional burden, although VicRoads considers that information would in the majority of cases still be relevant to the overall tourism signing proposal and its assessment (e.g. for a new tourism business being established it would not be unreasonable for VicRoads to additionally require information about car parking facilities, which could have road impacts if inadequate or anticipated visitor numbers etc.). This is the case for both options 1 and 2; however it is noted again that further to any prescribed application requirements in the regulations road authorities may request additional information that is reasonably required to enable it to assess and make a decision on an application.

**Benefits**

This option provides flexibility for coordinating road authorities and applicants in having a free format application process but may cause delays and rework if insufficient information is provided in the initial application.

#### Option 2: Prescribe the consent assessment criteria and particulars in the consent application

This option prescribes a broad outline of basic particulars to be included in the consent application:

* the name and address and contact details of the applicant;
* the name and address and contact details of the person or body that will have ongoing responsibility for the structure, device, hoarding advertisement, sign, or bill;
* the date of the application;
* the description of the proposed structure, device, hoarding advertisement, sign or bill; and
* the road name and location at which the structure, device, hoarding advertisement, sign or bill would be displayed.

As noted in the preamble to this section 5.6.3, even though the proposed regulation under this option would only prescribe basic details and not a highly detailed application form, a road authority still has the ability to and may request additional information (if required) that is reasonably required to enable it to assess and make a decision on an application (having regard to the particular type of sign and its location and its potential impacts on road safety and operational efficiency). The prescription of detailed application requirements in the regulations is impractical given the very broad scope of signage proposals that require an application for consent under section 66 of the Act

The consent application is assessed as to whether the sign would, or would likely to

(a) obscure the field of view of a user of the road, or

(b) cause a hazard by distracting the attention of a user of the road, or

(c) distract attention of a user of the road from a traffic control device, or

(d) wholly or partly obscure a road user’s view of a traffic control device, or

(e) in any other way be detrimental to the safe and efficient use of the road.

This option also prescribes the information that a road authority must include in any issued consent for a sign etc under section 66 of the Act, including the date of expiry of the consent and any conditions of the consent.

**Costs**

The proposed particulars are relatively straightforward and involve applicants providing basic information that does not require search costs other than the time to complete the consent application. It is estimated that the average time taken to include this information in an application would be about 5 minutes and about 30 minutes reading the relevant section in the VicRoads Tourist Signing Guidelines (and relevant supplementary guideline if applicable) at a total cost of $24.85 [[14]](#footnote-14).

Also refer to the second paragraph under Costs for Option 1, which also apples to this option.

**Benefits**

VicRoads considers that the particulars proposed in this option do not impose any barriers to any business (see note below) that is a genuine tourism attraction. Further that this option promotes a consistent approach across coordinating road authorities to request identical basic information in a consent application form and to assess the consent application based on key road safety and operational efficiency considerations, noting however in the proposed regulation under this option a road authority is not limited to only those two key considerations.

Unlike option 1, under this option applicants will be aware upfront from reading the regulations that any consent for a sign etc. may have an expiry date and that the consent will be subject to conditions. The applicant has the opportunity to engage in pre-application discussions with the road authority should they wish to know more about the likely requirements of the road authority in relation to the signing proposal.

Note:

In general disputes in relation to tourism, service and facility signs within road reserves are rare and having disputes referred to VCAT is even rarer, which supports the view that the requirements do not impose a barrier to any business that is a genuine tourism attraction. VicRoads considers that the proposed regulation will not change that situation as this option in effect formalises the current general practice.

#### Comparative assessment of the options

Not all of the costs and benefits can be quantified. Accordingly, the multi-criteria analysis approach has been adopted to compare the net impacts of the options. In this analysis, the criteria are:

* Road safety (40 percent weighting)
* Efficient application process (10 percent weighting)
* Cost to applicants (50 percent weighting)

These criteria have been selected on the basis that they reflect the key costs and benefits. Road safety is the primary objective and receives a 40 percent weighting. Efficient application process for road authorities receives a 10 percent weighting as it is an important, but secondary, objective. The costs to applicants criterion involves the time spent by applicants preparing a consent application.

The options are assessed in Table 7 below.

**Table 7: Comparative assessment of options**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Criteria | | **Base Case** | | **Option 1:**  Prescribe the consent assessment criteria (current regulation) | | **Option 2:**  Prescribe the consent assessment criteria, particulars in the consent application and particulars in issued consent | |
| Criteria | Weighting | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score |
| **Road safety** | 0.40 | 0 | 0 | +10 | 4.00 | +10 | 4.00 |
| **Efficient application process** | 0.10 | 0 | 0 | 0 | 0.00 | +2 | 0.20 |
| **Cost to applicants** | 0.50 | 0 | 0 | 0 | 0.00 | 0 | 0.00 |
| **Total Score** |  |  | **0.0** |  | **4.00** |  | **4.20** |

In terms of the road safety criterion, Options 1 and 2 have the same consent assessment criteria based on road safety considerations (other than slight differences in the wording of the criteria) and both Options receive a score of +10 relative to the base case which has no prescribed road safety criteria. The purpose of the road safety criteria is to ensure a tourist sign does not create a hazard or interrupt the flow of traffic by being positioned on the road such that obscures the vision of road user, is designed in such a way that is likely to distract a road user or does not provide clear directions to drivers resulting in unpredictable driving behavior.

In terms of the efficient application process criterion, Option 1 provides no guidance to applicants on the type of information required in a consent application or information about what a consent issued by the road authority will contain. This is likely to cause uncertainty to some applicants and create unnecessary work for road authorities in requesting further information. Option 1 is similar to the base case and receives a score of zero. Option 2 does provide guidance (although limited) by prescribing particulars in the consent application and information about what a consent issued by the road authority will contain. Option 2 only receives a score of +2 as applicants still need to refer to VicRoads Tourist Signing Guidelines and associated application forms (but the score is boosted somewhat because of the benefits to the applicant and road authority by detailing the information contained in a consent).

In terms of the cost to applicants, Option 1 does not prescribe any consent application particulars or particulars that a road authority must include in any issued consent (only assessment criteria are prescribed) and is identical to the situation in the base case and receives a score of zero accordingly. Option 2 does prescribe consent application particulars and the particulars that a road authority must include in a consent and also receives a score zero on the grounds that the additional particulars that may be sought from applicants are already provided under the base case (via the Tourist Signing Guidelines and associated application forms). The zero scores may appear unusual for not only the base case but for each option. However, the consent application process is essentially the same under the base case and each option. The only difference with Option 2 is that some of the existing consent application requirements are being transferred from the Guidelines into the regulations.

The VicRoads Tourist Signing Guidelines (2009) and the two associated supplementary guidelines inform the application and assessment process but adherence is not mandatory as road authorities are able to exercise some discretion in making their decisions (see Notes below).

Notes:

* The current VicRoads Tourist Signing Guidelines (2009) and the two associated supplementary guidelines (and also those guidelines once their review is completed) are not part of the regulatory framework. The guidelines are not incorporated documents in the regulations and are not proposed to be incorporated (also see previous discussion at item c. in section 5.6.3).
* The role of the Tourist Signing Guidelines and the associated supplementary guidelines is to provide general information for road authorities, municipal councils, tourism organisations, businesses and persons alike about the eligibility, number, extent and location of signs, sign content, signage rationalisation, making application and ongoing responsibilities for various types of signs.
* The guidelines do not include application forms, which are generally available on the relevant road authority’s website or from the road authority’s office.

The guidelines inform the applicant and inform the decision making process of the road authority, however the guidelines are not binding and a road authority will always have some degree of discretion in making its decision having regard to all the relevant factors.

The multi-criteria analysis suggests that Option 2 is the most attractive option with a score of 4.20.

## 5.6.4 Removal of objects, substances & materials from roads

(Assessment of the Options)

The Base Case is the Act in the absence of the regulations – that is, no specific means of providing the owner of objects, substances or materials that have been deposited or left on the road with the opportunity to collect those objects, substances or materials before those things are sold or disposed.

Noting the other confined powers of road authorities referred to in the Notes a. and b. below, other than on roadways and pathways, there would be no broader ability for the road authority to recover its costs from the responsible person through the Magistrate’s court, if the road authority needed to remove any object, refuse, rubbish, substance or other materials left on a road by that person.

The base case would not permit coordinating road authorities to sell or dispose of such objects, substances or materials where feasible, to offset the costs associated with the removal of those things from the road. Similarly, there would be no obligation on responsible road authorities to notify the owner that such things have been removed from the road, where the owner’s identity is known, to enable the owner to collect the object, substance or materials within a specified time period before it was disposed of or sold.

Notes for clarification:

1. Clause 6 of Schedule 4 to the Act (Power to move other obstructions) provides VicRoads and other State road authorities (but not municipal council road authorities) with the power to remove anything that obstructs or encroaches on or reduces the breadth or confines the limits of a roadway or pathway thereby affecting the free use of roadways and pathways. The State road authority may also require the person responsible for or in control of the obstruction to move it and may recover its reasonable costs. Roadway and pathway are defined terms in the Act but do not include the ‘shoulder’ of the road or ‘roadside’ of a road (also defined terms in the Act). Clause 6 does not deal with the disposal of things removed from the roadway or pathway and only deals with things that obstruct or confine free passage along the road. The proposed regulation enables any road authority to deal with any object, substance or material anywhere on a road, including the shoulder and roadside of a road, whether or not free passage along the road is obstructed or confined (e.g. the regulation enables a road authority to deal with objects, substances and materials that may reduce the safety of a road, such as excessive mud dragged onto a roadway from an adjoining property).

Accordingly, the powers of clause 6 of Schedule 4 to the Act only apply in respect to the removal of objects, substances and materials from roadways and pathways and only if those things obstruct or confine the free use of the roadway or pathway.

1. While clause 6 of Schedule 4 to the Act only applies to State road authorities, clause 5 of Schedule 11 to the Local Government Act 1989 provides equivalent powers to municipal council road authorities and the same comments made above in relation to clause 6 would apply to the clause 5 powers.
2. Clause 4 of Schedule 3 to the Act provides VicRoads and other coordinating State road authorities with the power to remove, alter or obliterate unlawful objects located on the road reserve, however, those objects are different to the “objects, substances and materials” to which proposed regulation 25 would apply. The placement of an object on a road would be unlawful if for example that action required consent or permission that was not sought, such as ‘consent for works’ under section 63(1) of the Act. An object that is unintentionally left on a road or has accidentally fallen from a vehicle onto the road would not be unlawful and would be dealt with under the proposed regulation 25. Accordingly, the powers of clause 4 of Schedule 3 to the Act do not apply in respect to the removal of objects, substances and materials from roads, where those things cannot be characterised as being ‘unlawful’.
3. A motor vehicle, whether unregistered or abandoned, including whether or not it is wrecked (e.g. from a road crash or having been burned out), legally continues to be a vehicle and cannot be dealt with as an object, refuse or the like under this proposed regulation.

#### Option 1: Notify owners of removed objects of any value (other than refuse or rubbish)

This option is very similar to the current regulation that requires a road authority to send to the last known address of the owner (if the owner is known) of the object, substance or material a notice stating that the object, substance or material will be disposed or sold if not collected within a period, not being less than 14 days.

If the owner of the object, substance or material is not known, the road authority must wait 14 days from the date the object, substance or material was removed from the road before selling or disposing if it.

**Costs**

This option requires a road authority to store any object, substance or material (other than refuse and rubbish) that has been removed from the road for at least 14 days before selling or disposing of it. The storage requirement applies to all objects, substances and materials (other than refuse and rubbish) regardless of whether the owner is known or not known to the road authority.

In the small percentage of cases where the road authority is able to identify the owner of the object, substance or material, the road authority incurs costs in searching for the owner’s last known address, and in preparing and sending a notice to the owner. VicRoads has estimated that this would take on average at least 30 minutes to conduct these tasks.

**Benefits**

This option would ensure that every person that has deposited or left an object, substance or material (particularly personal belongings) on the road is given the opportunity to collect the object, substance or material. The minimum 14 day storage requirement would still provide those persons who are not known to the road authority as the owner to make inquiries and contact with the road authority as to whether they have removed an object, substance or material from the road to enable its collection by the owner. However, consultation with road authorities suggests that most objects, substances and materials removed from the road tend to be building materials (bricks, plaster, timber etc) that do not have the owner’s identity located on the materials and would in the majority of cases be of little actual value.

This option would enable road authorities to reduce storage costs for objects, substances and materials that are considered refuse or rubbish.

#### Option 2: Notify owners of removed objects valued at $500 or more (other than refuse or rubbish

This option is the same as Option 1 but would only require the road authority to notify the owner (if known) of the object or material in cases where the value of the object, substance or material is more than $500.

A concept of low, medium and high value uncollected goods (and vehicles) is used in the **Australian Consumer Law and Fair Trading Act 2012**. In that Act, low and medium value goods (excluding vehicles) have thresholds set at $200 and $5,000 respectfully. While the concepts of uncollected goods and removed objects are different there are nevertheless similarities.

The value of $500 was selected having regard to the thresholds in that Act and the aforementioned differences. Also by having regard to the types of objects, substances and materials typically removed from roads, the majority of which are damaged and are not sought or collected by the owners. It is considered by VicRoads that a person is unlikely to pursue recovery of an object of a value less than $500 and that $200 would be too low and would impose unnecessary burdens on road authorities.

Comparisons with other schemes:

* The Uncollected Goods Act 1996 (Australian Capital Territory), which provides for the disposal of uncollected, lost or abandoned goods, includes the concept of ‘goods of low value’ and includes goods left on a road (public street). The threshold range for goods of low value is from $20-$500.
* By comparison it is noted that under the Transport (Compliance and Miscellaneous) Act 1983, lost property or goods left on trains, trams and buses may be sold or disposed of by the passenger transport company if unclaimed by the owners after 60 days. There is no requirement to identify or notify the owner of the property or goods and there is no threshold on the value of those things.

**Costs**

Road authorities would still incur the same costs as in Option 1 for searching the owner’s last known address, preparing and sending a notice but these costs would be limited to objects, substances and material greater than $500 (unless the cost of removal and storage exceeds the value of the thing). It is difficult to determine the proportion of objects, substances and materials (other than refuse and rubbish) that would have a value of greater than $500 due to inadequate recording of data by road authorities but it is considered by VicRoads to be minimal.

This option could potentially disadvantage the owner of an object, substance or material that has sentimental value but is considered to be of a low value in the opinion of the road authority. However, it is likely that the owner of a sentimental object or material is likely to hunt ‘high and low’ to recover the item and is more than likely to make inquiries with a road authority as to whether they have removed the item from the road to enable the person to collect the item before being disposed.

In terms of implementation, VicRoads proposes to prepare a brief guideline for its operational staff about how to how to estimate whether the value of an item (i.e. object, substance or material) is more or less than $500 or that the cost of removing and storing the item(s) is greater than that value.  Further, VicRoads proposes to consult the Municipal Association of Victoria (representing the majority of municipal council road authorities) on the development of the guideline with a view to making it available for use by any municipal council road authority.

The scope of the guideline would include clarifying (having regard to the age and condition of the item) how to estimate the value of:

* individual (single) items,
* groups of like items,
* groups of mixed items, and
* the cost of removal and storage.

Individual and groups of like items would be valued in a similar way.  In the majority of cases where there is some uncertainty about the value of an item(s), that would involve searching an indicative unit value on the internet and then reducing that value according to the age and condition of the item (e.g. assisted by a simple depreciation/devaluation matrix).  Indicative pricing details for most items, whether new or second hand are readily searchable on the internet.  Guidance would also be provided on estimating the cost to road authorities to remove and store items.  Those costs would be readily identifiable where it is necessary to engage a contractor or where the work is carried out under the provisional rates of a road maintenance contract.  Where the work is carried out by the road authority's employees, the guidelines would stipulate that only the relevant proportion of the costs are to be factored into the estimate (e.g. the cost of a special call out to remove an item(s) would be far greater than the costs of removal as part of other unrelated work).

In most cases the value of items will be well below the $500 threshold, which will simplify the estimating process.  Where an estimate is borderline / uncertain the guideline would recommend that the item(s) be dealt with as though the value exceeds the $500.  Practical examples could be provided in the guideline to illustrate the principles.

It is considered that the cost to road authorities of estimating the value of items will be incidental/marginal and have no significant impact on road authorities.  It is estimated that to search the unit price of an item on the internet would at most take only 2 or 3 minutes ($2.50-$3.75).

**Benefits**

This would reduce the storage costs for most objects, substances and materials (other than valuable objects, substances and material) and the notification requirement costs compared with Option 1. It is difficult to quantify the cost savings. However, this option is likely to result in a simpler process for road authorities whereby they keep only valuable items greater than $500 rather than keeping all objects and materials for at least 14 days.

#### Comparative assessment of the options

Not all of the costs and benefits can be quantified. Accordingly, the multi-criteria analysis approach has been adopted to compare the net impacts of the options. In this analysis, the criteria are:

* Consumer protection (50 percent weighting)
* Cost to road authorities (50 percent weighting)

These criteria have been selected on the basis that they reflect the key costs and benefits.

The options are assessed in Table 8 below.

**Table 8: Comparative assessment of options**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Criteria | | **Base Case** | | **Option 1:**  Notify Owners of all objects | | **Option 2:**  Notify Owners of Objects valued at more than $500 | |
| Criteria | Weighting | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score |
| **Consumer protection** | 0.50 | 0 | 0 | +10 | 5.00 | +7 | 3.50 |
| **Cost to road authorities** | 0.50 | 0 | 0 | -10 | -5.00 | -5 | -2.50 |
| **Total Score** |  |  | **0.0** |  | **0.00** |  | **1.00** |

In respect to consumer protection, Option 1 receives a score of +10 relative to the base case as a road authority is required to provide notice to owners, where known, for all objects, substances and materials. Option 2 receives a lower score of +7 due to the proposed exclusion of low value items (less than $500).

In relation to the cost to road authorities, Option 1 receives a score of -10 as road authorities need to notify owners of all objects (other than refuse and rubbish) where possible. Option 2 receives a lower score of -5 as it is expected that most building materials that are likely to fall within the low value category, are unlikely to have any identity of the owner.

The multi-criteria analysis suggests that Option 2 is the most attractive option with a score of 1.00 compared with Option 1 with a score of 0.00. However, given the lack of robust data about the type and value of objects, substances and materials (other than refuse and rubbish) removed by road authorities that has been deposited or left on the road, several stakeholder questions are asked below.

**Stakeholder Question**

**Removal of objects, substances and materials from roads**

**Question E -**

Should road authorities be allowed to not notify owners, where known, of low value objects, substances and materials?

If yes, is the proposed definition of ‘low value’ appropriate?

Should the monetary value be higher or lower than the proposed $500?

Is there the potential for unintended consequences that might result from the proposed approach to the removal of objects, substances and materials from roads?

For example, do road authorities anticipate that some owners of low value objects (that have been sold or disposed of in accordance with the regulation) may tend to challenge road authorities over how they have formed the opinion that an object is of low value or that the cost of removal?

## 5.7 Analysis of Fees

This section analyses the costs to:

* undertake property enquiries (section 5.7.1); and
* process consent applications for tourism attraction, service and facility signs. (section 5.7.2)

### Cost methodology

The Department of Treasury and Finance’s Cost Recovery Guidelines outline two methodologies for determining the appropriate cost base: the ‘fully distributed cost’ and ‘incremental cost’ method.

The fully distributed cost method is described as “*the most comprehensive costing approach, and allocates all costs (including direct, indirect and capital cost components) to the output, and is typically used where cost-recovered activities account for a large proportion of an agency’s activities*”. The incremental cost method recognises that it may be inappropriate to attempt to recover overhead and capital costs if these would be incurred anyway, even if a particular activity were not undertaken. The fully distributed cost method is used to calculate the costs per transaction.

### Determining the base case

The base case is the Act in the absence of the proposed regulations. In this case, no fees would be charged and none of the costs associated with administering the property enquiry function would be recovered. Based on the costs estimated in Table 1, this would leave an annual shortfall of $488,465 and would need to be funded by VicRoads out of general taxpayers’ revenue. VicRoads has processed an average of 28,284 property enquiry applications per annum over the past several years.

Similarly, no fees would be charged and none of the costs associated with considering and granting consent applications for tourism attraction, service and facility signage. Based on the costs estimated in Table 2, this would leave an annual shortfall ranging from $15,368 to $46,104 and would need to be funded by VicRoads and municipal council road authorities from general taxpayers revenue and local ratepayers revenue respectively.

The combined annual shortfall from not charging fees for property enquiries and consent applications ranges from $503,833 to $534,569.

### Estimating the efficient cost base

A property enquiry is a simple administrative task similar to searches conducted by other government agencies. All of the costs can be attributed to the amount of labour expended in processing a property enquiry. Accordingly, the efficient cost base has been calculated based on the reasonable time and associated costs required to process a property enquiry.

In respect to consent applications for hoardings and advertisements, consultation with VicRoads regional offices and several municipal road authorities was undertaken to ascertain the time taken and the associated costs to assess an application. The consultation revealed differences in approach in regard to the site visit of the proposed location of a sign. Some road authorities combine the site visit with other road traffic management inspections, particularly where the proposed location of the sign is far away from their office. This is an efficient approach and reduces the travel cost for assessing the road safety aspects of the proposed location. However, road authorities were not able to provide definitive advice on the proportion of consent applications that would fall into this category. Accordingly, the efficient cost base has been estimated based on the advice from road authorities in respect to the range of hours involved in assessing consent applications.

### Salary and oncost calculations

Salaries have been based on the midpoint of VRO2 and VRO 3 salaries for officers at VicRoads. The salary on-costs and indirect costs per employee are provided below.

Salary on-costs

Holiday Pay Loading 8.8 %

Long Service Leave 3.9 %

Payroll Tax 4.85%

WorkCover Premiums 3.9 %

Superannuation 9.5 %

Total salary on-costs: 30.95%

Indirect costs - Corporate overheads per person

IT & licenses $7,214

Accommodation rent $6,643

Stationary, printing, other office expenses etc $13,214

Training $1,460

Human Resources & Payroll $6,249

Total: $34,780

Indirect costs per hour per employee = $20.80 ($34,780 divided by 1672 hours).

Total annual hours used to calculate hourly rates

Number of weeks worked per annum

= 52 - 4 (annual leave) - 2 (sick leave) - 2 (public holidays)

= 44 weeks

Average weekly hours = 38

Total annual hours = 1,672

### 5.7.1 Property Enquiry Fee

The property enquiry application form requests the following information:

* Applicant’s name and address;
* Vendor’s name and address
* Purchaser’s name and address
* Description of the land

#### Cost components for the Property Enquiry fee

The property enquiry process involves the following tasks:

* Receipt property enquiry application.
* Process payment to Accounts Receivable
* Using VicRoads database, check whether the requested property enquiry is within a band of interest (land that has been approved for future works)
* Prepare a letter of response to the applicant.
* File application and letter of response.

This process takes an average of 15 minutes per application and is undertaken by officers (VRO2 to VRO3).

The salary is based on the midpoint of the combined VRO2 and VRO3 salaries = $61,007 divided by 1672 hours = $36.49 per hour.

The hourly rate of $36.49 is multiplied by 1.3095 (30.95 percent) to include salary on-costs (total = $47.78). Adding to this the indirect costs of $20.80 per hour brings the total estimated cost to $68.58 per hour.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| VRO 2 to 3  hourly rate | Salary on-costs hourly rate | Indirect Costs hourly rate | Total hourly rate | Administrative processing time (hours) | Cost |
| $36.49 | $11.29 | $20.80 | $68.58 | 0.25 | $17.15 |

**Options**

Given that the level of cost over-recovery is $3,394 or 0.7 percent of the $485,071 cost to VicRoads to administer the property enquiries service, or 12 cents per property enquiry application, it is considered that for all intents and purposes, VicRoads is achieving full cost recovery and there are no other feasible options other than Option 1 below given that the prescribed fee of $17.27 (1.27 fee units) per application is relatively low compared to the other costs associated with preparing a Section 32 vendors statement.

#### Option 1: Current fee levels

Under this option, the current prescribed fee of $17.27 (1.27 fee units) in the regulations would be maintained.

**Costs**

As shown in Table 9 below, this option generates revenue of $488,465 compared with the costs of $485,071; leaving a minor surplus of $3,394. Applicants would pay a slightly higher property enquiry application fee than would otherwise be the case under a full cost recovery scenario. However, the cost of 12 cents per application is negligible even for solicitors and conveyancers that submit multiple applications.

**Table 9: Property Enquiry Fee Revenue and Costs**

|  |  |
| --- | --- |
| Revenue | $488,465 |
| Costs | $485,071 |
| Surplus/Deficit | $ 3,394 |

**Benefits**

This option would provide full cost recovery with a slight over-recovery (i.e. $3,394 or 12 cents per enquiry or 0.7 percent per enquiry). Changing the fee to 1.26 fee units ($17.14) would allow the estimated costs and revenue to be equal but VicRoads has decided not to change the fee units specified in the regulations because it would incur costs associated with changing its website, forms, document templates and systems and in advising solicitors/conveyancers of the minor fee change for the remainder of the 2015-16 financial year (for them to consider any implications) that are not justified given the small effect on the fee paid by solicitors/conveyancers and other persons making a property enquiry.

Moreover, the calculation of the fee units for property enquiries is sensitive to minor changes in the estimated average time taken to process each property enquiry and the hourly salary of the officers carrying out that work. For example, calculating the fee units based on the salary rates for 2014/2015 (i.e. the year in which the current regulations were due to sunset, had they not been extended) would have produced a $1,697 deficit rather than a $3,394 surplus.

### 5.7.2 Consent application fee for hoardings and advertisements requiring consent

The consent application requires the following information:

* Applicant’s name and address;
* Name, address and contact details of the person or body to have ongoing responsibility of the sign;
* Description of the proposed sign; and
* The road name and location the sign will be displayed

#### Cost components for the consent application fee

The consent application process involves the following tasks:

* receipt of application;
* assessment of application in accordance with (existing) Regulation 23 of the Road Management (General) Regulations 2005 and with reference to the VicRoads Tourist Signing Guidelines and associated supplementary guidelines (where applicable) and relevant standards (where applicable);
* consult Council (e.g. where additional signs are required on municipal roads)
* site selection;
* site inspection where required;
* assessment report (with recommendations);
* prepare installation maps (sign general layout plan); and
* issue consent (permit) subject to specified conditions

Upon consent being granted, the cost of the detailed design, manufacture and installation of the sign is paid by the applicant but is separate non-regulated process, a separate cost from the consent application and is not included in the consent application fee accordingly.

Invariably, a site visit is conducted by the coordinating road authority of the proposed location to ensure the sign will not have adverse impacts such as to obscure the field of view of a user of the road or wholly or partly obscure a road user’s view of a traffic control device and would give clear directions to road users. In addition, the coordinating road authority will assess the existence of tourism attraction and other tourist services signs in the proposed locality to assess whether these signs provide sufficient directional guidance to the applicant.

Road authorities will combine where possible a site inspection with other non-related traffic operation inspections. However, in some cases, a road authority will need to travel to the proposed site to solely conduct a site inspection. The approach of each road authority to conducting site inspections and also the size of their jurisdiction will have a significant impact on their travel costs.

The coordinating road authority will consider whether the length of the name on the sign can be read at the prevailing speeds and whether it would cause a distraction or distract attention of the user of the road from a traffic control device. The coordinating road authority refers to the technical requirements for tourism attraction and tourist services as provided in the VicRoads Tourist Signing Guidelines and relevant supplementary guidelines, which reference Australian Standard AS 1742.6.

The time taken to consider a consent application may also vary with each consent application where the applicant is seeking signs on an arterial and municipal road. In this situation, a municipal council coordinating road authority would refer the consent application in respect to the proposed sign on the arterial road to VicRoads for consideration and approval and vice versa.

Consultation with several municipal councils and VicRoads regional offices confirmed the average time taken to consider a consent application ranges from one to three hours due to the aforementioned circumstances.

Several municipal councils listed below currently charge a consent application fee but advised that these fees do not fully recover the costs for considering and granting consent.

* Macedon Ranges Shire - $50
* Mornington Peninsula Shire - $125
* Yarra Ranges Shire - $95

Note:

Up until around 2008 VicRoads charged nominal $60 per sign and $110 for two or more signs although it was recognised that was well below cost recovery. VicRoads ceased charging fees on advice that it did not have the necessary power under the relevant regulations.

The estimated cost to consider a consent application is provided below for VicRoads and municipal councils.

VicRoads

The salary is based on the midpoint of the combined VRO3 and VRO4 salaries

= $77,194 divided by 1672 hours = $46.17 per hour.

The hourly rate of $44.17 is multiplied by 1.3095 (30.95 percent) to include salary on-costs (total = $60.46). Adding to this the indirect costs of $20.80 per hour brings the total estimated cost to $81.26 per hour.

|  |  |  |  |
| --- | --- | --- | --- |
| VRO 3 to 4  hourly rate | Salary on-costs hourly rate | Indirect Costs hourly rate | Total hourly rate |
| $46.17 | $14.29 | $20.80 | $81.26 |

Given the variation in the time taken to process a consent application, the cost to VicRoads would range from $81.26 (one hour) to $243.78 (three hours)

Municipal councils

The hourly rate of $39.43 is multiplied by 1.3095 (30.95 percent) to include salary on-costs (= $51.63). Adding to this the indirect costs of $20.80 per hour brings the total estimated cost to $72.43 per hour. Given the variation in the time taken to process a consent application, the cost to councils would range from $72.43 (one hour) to $217.29 (three hours)

|  |  |  |  |
| --- | --- | --- | --- |
| Band 5B hourly rate | Salary on-costs | Corporate overheads | Total hourly rate |
| $39.43 | $12.20 | $20.80 | $72.43 |

Several fee options such as charging a different fee depending on whether or not a site inspection is required or a maximum fee based on an hourly rate were considered. In respect to the first option, inspections are normally undertaken as part of the consent application process, and the fee must be paid with the application. Because it is not possible for a person filling in and submitting an application together with the application fee to determine whether or not an inspection is required, this option has not been considered further.

In respect to the second option, the costs to coordinating road authorities in administering a maximum fee based on an hourly rate would be offset by the low volume of consent applications. Consent applications invariably involve a number of iterations (mostly by phone) between the applicant and the coordinating road authority to clarify matters. Time administration under these circumstances is likely to be onerous for the small number of consent applications involved. As a result, VicRoads considers this option does not warrant further investigation.

For both options (i.e. determining a fee depending on whether or not a site inspection is required or a maximum fee based on an hourly rate) accepting an application without upfront payment of a fee and having to advise or invoice the applicant separately later, and where necessary following up non-payment of fees, would also be costly and time consuming for road authorities. For these reasons, VicRoads has determined has determined that further investigation of these options is not warranted.

Accordingly, the following three options have been assessed in detail:

* Standard flat fee
* Maximum fee
* Fee based on advertising fees under the Planning & Environment (Fees) Interim Regulations 2014

#### Option 1: Standard flat fee

Given that VicRoads advised that most consent applications would take on average two hours assessment by a road authority, a standard flat fee of $153.68 is proposed for this option (also see Table 2).

**Costs**

As shown in Table 10 below, the cost of this option generates estimated total revenue of $30,736 (i.e. based on the assumed average 2 hours of work by the road authority to process the application) compared with the estimated maximum possible total costs of $46,104 (i.e. the costs if in fact all applications took 3 hours to process); leaving a maximum possible shortfall of $15,368. This option would at worst recover only about 66 percent of the costs or at best break even if on average no application takes a road authority more than 2 hours to process, or over-recover if most applications took less than two hours to process.

**Table 10: Standard Flat Fee Revenue and Costs** [[15]](#footnote-15)

|  |  |
| --- | --- |
| Revenue (based on an assumed 2 hours work) | $30,736 |
| Costs  (if all applications in fact took 3 hours to process) | $46,104 |
| Surplus/Deficit | ($15,368)  Note: At best, if all applications took 2 hours to process the revenue and costs would be equal (i.e. $0.00). |

Due to the wide time variation involved between consent applications, a standard flat fee would result in some applicants being over-charged (where their applications are processed in less than two hours) and some applicants under-charged (where their applications are processed in more than two hours). Depending on the mix of consent applications, which may vary over time and geographical location and the approach taken to site inspections (the ability of a road authority to combine the site inspection with other traffic operation inspections), road authorities are likely to also incur a degree of cost under-recovery and VicRoads considers that is likely to occur in practice.

**Benefits**

Some applicants would receive a ‘benefit’ in the form of a lower fee because they would be under-charged (where their applications are processed in more than two hours) and these applicants would save about $76.84 if for example an application took 3 hours to process. It is difficult due to the lack of data to quantify the aggregate amount of savings to these people i.e. the exact number of consent applications that would take more than two hours to assess.

#### Option 2: Maximum fee

This option would set the fee at a level that reflects the maximum time involved in considering consent applications. This would enable road authorities to have the flexibility to charge according to the time involved in conducting site inspections and taking into account the size of their jurisdiction. The maximum fee would cap the fee on a per application basis and the prescribed fee would be high enough to enable road authorities to set their own fees according to their own cost structures. The proposed maximum fee is set at $243.78 for a three hour assessment to cover the higher costs associated with VicRoads ($81.26x3=$243.78).

However, to enable comparison with the other options (i.e. to compare the figures in Tables 10, 11 & 12), the average cost of $230.52 for road authorities to conduct a three hour assessment will be used to calculate the revenue and costs below (refer Table 11).

**Costs**

As shown in Table 11 below, the cost of this option generates estimated total revenue of $46,104 compared with the estimated total costs of $46,104; achieving full cost recovery. This estimate is based on the assumption that all applications take three hours to process and that road authorities would charge the maximum fee, and is provided for illustrative purposes. In practice, it is likely that road authorities would charge different fees depending on the signage requirements and particular circumstances, which makes it difficult to estimate the costs and revenue.

**Table 11: Maximum Fee Revenue and Costs** [[16]](#footnote-16)

|  |  |
| --- | --- |
| Revenue | $46,104 |
| Costs | $46,104 |
| Surplus/Deficit | $ 0.00 |

This option would enable road authorities to fully recover costs for signs located on roads for which they are responsible. A maximum fee may generate revenue-seeking behaviour where the maximum fee is adopted rather than a lower fee where a road authority has lower costs than the maximum fee. The probability and incentive for this behaviour would be greater where the road authority stands to receive significant revenue gains. However, in this case, most road authorities would only achieve minor revenue gains from a handful of consent applications each year.

Notwithstanding this, some road authorities may prefer to adopt the maximum fee rather than incur the time and effort to calculate the actual costs. This behaviour is more likely given most municipal road authorities have significant budget constraints. However, most municipalities are actively involved in supporting tourism and would not support adoption of the maximum fee without due consideration.

As is proposed to be done by VicRoads and also consulted with the Municipal Association of Victoria, it is expected that municipal council road authorities will likewise develop a fee structure for the broad categories of signs that normally require section 66 consent under the Act. In doing so fees would be set by each road authority that are commensurate with the time required to consider and the costs involved in considering and responding to applications for consent for signs.

**Benefits**

This option would enable road authorities to achieve full cost recovery. For those municipal council road authorities that currently charge a consent application fee (ranging from $50 to $125), a maximum fee structure would likely improve their cost recovery as each municipal council road authority could establish the level of the consent application fee to reflect their costs for any particular category of sign. In particular, the way in which they undertake site visits of the proposed location for a sign. Depending on the size of the municipality, it is likely that site visits would be undertaken in conjunction with other road authority functions for larger municipalities.

#### Option 3: Fee based on advertising fees under the Planning & Environment (Fees) Interim Regulations 2014

This option would prescribe a consent application fee identical to the application fee for a commercial advertising sign under the Planning and Environment (Fee) Regulations 2014 (see Note). The current fee for developing land where the value is $10,000 or less is $102. Most commercial advertising signs would fall within this planning permit fee category; however these types of signs and the fees that apply are not directly comparable with tourism attraction and community facility, which may require more detailed assessment and therefore a higher fee.

Note:

The mostly ‘commercial advertising signs’ to which the **Planning and Environment Act** regulations apply have some fundamental differences in comparison to the tourism signs and tourist services to which the proposed regulations would apply. The ‘commercial advertising signs’ are usually on land adjoining the road and are individual signs advertising a product or business. Importantly, they do not give direction to drivers and while it is necessary for the road authority, for both types of signs, to assess the sign proposal against the safety assessment criteria in the regulations, the importance of such and the locations of the signs generally requires more detailed assessment in the case of tourism related signs.

**Costs**

As shown in Table 12 below, the cost of this option generates estimated total revenue of $20,400 compared with the estimated total costs of $46,104; leaving a shortfall of $25,704.

**Table 12: Planning & Environment Fee Revenue and Costs**[[17]](#footnote-17)

|  |  |
| --- | --- |
| Revenue | $20,400 |
| Costs | $46,104 |
| Surplus/Deficit | ($25,704) |

This option would recover about 44 percent of the costs associated with considering a consent application for tourism and tourist services signage (refer to the Note above). It should be noted that the Planning and Environment (Fees) Interim Regulations 2014 have not been subject to a regulatory impact statement and it is not clear whether the current fee of $102 is based on full cost recovery.

**Benefits**

There would consistency in the level of fees for all signs installed on private land and the road reserve. However, the assessment criteria for signs on private land are different (including amenity considerations) than signs on a road reserve (refer to the Note above). Signs on private land and those within road reserves also have different primary purposes (commercial advertising/business identification as opposed to giving direction to road users; again refer to the Note above). Hence, it would seem appropriate that the consent application fee for a tourism and tourist services sign on a road reserve should be different to signs located on private land.

#### Comparative assessment of the options

Not all of the costs and benefits can be quantified. Accordingly, the multi-criteria analysis approach has been adopted to compare the net impacts of the options. The weightings and the assessment for each of the criterion are provided below.

**Multi-Criteria Analysis Criteria Weightings**

|  |  |  |
| --- | --- | --- |
| Criteria | Assessment | Weighting |
| Efficiency | Full cost recovery ensures that all the relevant costs of bringing the good/service to market are incorporated in the relevant price signals. Allocative efficiency is achieved when the value consumers place on a good or service equals the cost of resources used in production. | 50% |
| Equity | The fees should be based on a ‘users pay’ principle, where the user who benefits from government regulation pays for the service. | 25% |
| Simplicity | The fee structure should be simple for business to understand and for the road authority to administer. | 25% |

These criteria have been selected on the basis that they reflect the key costs and benefits.

**Table 13: Option 1 Standard Flat Fee**

|  |  |  |  |
| --- | --- | --- | --- |
| Criteria | Weighting | Score | Weighted Score |
| Efficiency | 50% | +7 | 3.50 |
| Equity | 25% | +6 | 1.50 |
| Simplicity | 25% | -5 | -1.25 |
| Total |  |  | 3.75 |

In terms of efficiency, full cost recovery is not achieved, but is still more significant than in the base case where no costs would be recovered. Option 1 is likely to achieve 66% cost recovery and would receive a score of + 7. In terms of equity, some applicants would be under-charged and others overcharged; but because at least some users are paying for the costs associated with their application, this is more equitable than the no-fee situation, resulting in a score of +6. In respect to simplicity, Option 1 receives a score of -5 as a standard flat fee is simple for road authorities to administer and for business to understand, but is less simple than the ‘base case’ where no fee would be charged.

**Table 14: Option 2 Maximum Fee**

|  |  |  |  |
| --- | --- | --- | --- |
| Criteria | Weighting | Score | Weighted Score |
| Efficiency | 50% | +10 | 5.0 |
| Equity | 25% | +8 | 2.0 |
| Simplicity | 25% | -7 | -1.75 |
| Total |  |  | 5.25 |

In terms of efficiency, full cost recovery is achieved as it allows each road authority to set its fees according to its cost structures and receives a score of +10. In terms of equity, cross-subsidy is broadly eliminated relative to Option 1. However, a fee based on average time taken to process will always have a degree of cross-subsidy for some applicants whose applications are slightly below or above the average. Accordingly, Option 2 receives a score of +8. In terms of simplicity, each road authority would likely need to either assess the average time taken for considering consent applications to derive an appropriate fee or develop (as a one-off exercise) a schedule of charges for particular categories of signing proposals, subject to the ability to apply discretion where appropriate.. Assessing applications on a case-by-case basis or based on the category or type of sign involves more complexity relative to the prescribed standard flat fee in Option 1 but developing a schedule of fees would generally reduce that complexity. Accordingly, Option 2 receives a score of -7, which reflects the complexity of those assessments.

Note:

The three paragraphs following Table 11 discuss the possibility of revenue-generating behavior by some road authorities (i.e. charging the maximum fee for all applications). For the reasons explained in those paragraphs (i.e. the resultant minor revenue gains, municipal councils’ active support for tourism and the strong likelihood of road authorities developing a schedule of charges for signing proposals) it is considered by VicRoads that although it is possible, it is unlikely that road authorities will exhibit that behaviour. Further, if that was to occur it would be limited to a very small number of road authorities. Even in that event, it is considered that the total weighted score for this Option 2 would not be significantly changed relative to the other options.

In the case of municipal councils, such behaviors would contravene the Local Government Charter (refer Part 1A of the **Local Government Act 1989**), which provides that in seeking to achieve its primary objective, a Council must have regard to the facilitating objectives, including to:

* promote appropriate business and employment opportunities;
* ensure that services and facilities provided by the Council are accessible and equitable;
* ensure the equitable imposition of rates and charges; and
* ensure transparency and accountability in Council decision making.

**Table 15: Option 3 Fee based on Advertising Fees under Planning & Environment (Fees) Interim Regulations**

|  |  |  |  |
| --- | --- | --- | --- |
| Criteria | Weighting | Score | Weighted Score |
| Efficiency | 50% | +5 | 2.50 |
| Equity | 25% | +4 | 1.00 |
| Simplicity | 25% | -5 | -1.25 |
| Total |  |  | 2.25 |

In terms of efficiency, full cost recovery is not achieved. Option 3 is likely to achieve about 44% cost recovery due to the lower fees involved. As a result, Option 3 receives a score of +5. In terms of equity, most applicants would be under-charged due to the low level of fee and would require greater taxpayer and ratepayer subsidy for consent applications that took more than one hour to assess. This is likely to represent most of the consent applications given that most consent applications take at least two hours to assess. As a result, Option 3 receives a score of +4. In respect to simplicity, Option 3 is identical to Option 1 and receives a score of -5.

A comparison of the scores for each option is provided in Table 16 below.

**Table 16: Comparative assessment of consent application fee options**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Criteria | | **Base Case** | | **Option 1:**  Standard Flat Fee | | **Option 2:**  Maximum Fee | | **Option 3:**  Fee based on  Advertising Fees under Planning &  Environment  (Fees) Interim  Regulations 2014 | |
| Criteria | Weight | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score |
| **Efficiency** | 0.50 | 0 | 0 | +7 | 3.50 | +10 | 5.00 | +5 | 2.50 |
| **Equity** | 0.25 | 0 | 0 | +6 | 1.50 | +8 | 2.00 | +4 | +1.00 |
| **Simplicity** | 0.25 | 0 | 0 | - 5 | -1.25 | -7 | -1.75 | - 5 | - 1.25 |
| **Total Score** |  |  | **0** |  | **3.75** |  | **5.25** |  | **2.25** |

The multi-criteria analysis suggests that Option 2 is the most attractive Option with a score of 5.25.

The recommended fee for Option 2 would be a maximum fee of $243.85 (i.e. a fee not exceeding $243.85 or 17.93 fee units).

A fee unit for 2015/16 is $13.60.

# 6. Impact on Small Business

The proposed regulations primarily impact on road authorities and the broad community.

Regulation 23 Hoardings and Advertisements is the only regulation that directly impacts on small business. The consent application process for tourism and tourist services signage impacts on the tourism industry; specifically bed and breakfast, farm stay accommodation, wineries, art and craft galleries and so forth. These tourism attractions are predominately small businesses.

The general eligibility criteria (application details) in current application forms for tourist signing, consistent with the VicRoads Tourist Signing Guidelines, could potentially impact on a tourist attraction business obtaining consent; in particular, the requirement to provide evidence of appropriate planning and license approvals. However, those application forms and the guidelines are not part of the regulatory framework and planning and licensing approvals are separately required under other regulatory frameworks for tourism attraction businesses (e.g. the Victorian Planning Provisions require a planning permit, which may be subject to conditions, such as in relation to car parking etc and a liquor license would be required for a restaurant). The type of businesses (wineries, bed and breakfast etc) that apply for a tourist sign are separately required to have appropriate planning and license approvals for the business to operate, whether or not they have a tourist sign, and would have already incurred these costs prior to the sign consent application process. The current application forms prompt for the provision of information about planning approvals and licenses, which is to provide assurances that the business requesting the sign is legitimate and to ensure that the request for signage is consistent with any relevant permits or license conditions. As part of the review of the VicRoads Tourist Signing Guidelines referred to in section 5.6.3, there will also be a review of application forms to ensure they contain only relevant information.

There are no reliable estimates of the number of tourism related signs located on road reserves statewide; however the figure is likely to be in the tens of thousands. Given the number of tourist signs that have been approved, it would seem that the general eligibility criteria associated with VicRoads Tourist Signing Guidelines and the road safety and operational efficiency assessment criteria in the existing and proposed regulations has not imposed a barrier to legitimate tourism attraction businesses. The proposed regulations do not change that situation. VicRoads has received minimal if any complaints about the eligibility criteria associated with the VicRoads Tourist Signing Guidelines and does not consider the guidelines impose a barrier to legitimate tourist operators.

The estimated cost to prepare a consent application ($3.55) and the proposed introduction of a consent application fee to not exceed $243.85, results in a total maximum cost of $247.40. This cost is separate to the cost for the design, manufacture and installation of a tourism or tourist services sign (estimated by VicRoads to be up to $2,000 depending on the site specific circumstances, road classification, etc).

The proposed introduction of a consent application fee is considered by VicRoads to impose a small impact relative to the total cost incurred by tourism attraction businesses for the manufacture and installation of tourism or tourist services sign.

# 7. Competition Assessment

### Overview

The National Competition Policy Agreement set out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5 (1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation.

The guiding principle is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

1. The benefits of the restriction to the community as a whole outweigh the costs; and
2. The objectives of the regulation can only be achieved by restricting competition.

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation.

Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).

Therefore, all regulatory impact statements must provide evidence that the proposed regulations are consistent with the National Competition Policy obligations.

### Definition of Market

The primary markets affected by the proposed regulations are:

* road management (road authorities, including State road authorities and municipal councils)
* road construction (protection of roads and property)
* land sales/purchases (persons, solicitors and conveyancers making a property enquiry)
* tourism (tourism, services and facility signs for businesses)

### Test for Restriction on Competition

Under the Guidelines for the application of the Competition Test to New Legislative Proposals, legislative schemes are deemed to contain restrictions on competition if they:

* Allow only one company or person to supply a good or service;
* Require producers to sell to a single company or person;
* Limit the number of industry or individual producers; and
* Limit the number of persons engaged in an occupation.

### Assessment

The proposed regulations do not contain any of the above restrictions. The various exemptions in respect to the discontinuance of a road and road management plans apply to all road authorities. The consent application process for tourism and tourist services signage applies to all tourist attraction businesses.

In view of the above, this assessment concludes that the proposed regulations do not act to restrict competition.

# 8. Implementation and Enforcement

Prior to commencement of the new Road Management (General) Regulations 2016, VicRoads will as a matter of course write to all road authorities advising them of the making of the regulations and providing an outline of the changes and new provisions, such as the introduction of a consent application fee for signs requiring consent under section 66 of the Act and the simplified process for reviewing road management plans.

Further to that written notification, within 1 month of the making of the new regulations VicRoads will prepare a communiqué in consultation with the MAV for circulation to road authorities, including municipal council road authorities, encouraging road authorities to plan the next review of their road management plans to ensure compliance with the prescribed review periods. The communiqué will outline the reasons why it is important for road authorities to review their plans in accordance with the Act and the regulations and will also note the evaluation planned to commence in September 2017 and be completed by 30 June 2018 (refer to section 10. Conclusions and Evaluation Strategy).

### Enforcement

There are no penalties in the Act in respect to the regulations that directly impact on road authorities. Even so, road authorities are expected / required to comply with the requirements of legislation, including timely periodic reviews of road management plans. As noted earlier in this Regulatory Impact Statement, however, compliance of road authorities with the requirement to periodically review road management plans has been mixed in the past. Nonetheless, for the following reasons, VicRoads does not consider it would be appropriate to address this issue by introducing sanctions for non-compliance.

* Adverse consequences flowing from a road authority’s non-compliance directly affect the authority only, so it is in its interest to address the underlying issues.
* Any possible remaining non-compliance would be relatively minor, and can be addressed in other ways, as highlighted in the evaluation strategy in this Regulatory Impact Statement, for example.

VicRoads expects that compliance will improve going forward, given that the proposed regulations provide for a simpler process for reviewing and amending road management plans (requiring one less consultation step) and that all road authorities have now completed at least one review of their plans. The evaluation strategy will test that expectation and provide a basis for considering further improvement opportunities if necessary.

There are several offences with associated penalties (including penalties for some road management infringements) in the proposed regulations. Those penalties enable VicRoads and other road authorities to pursue and enforce the protection of their roads and assets and (in the case of VicRoads) VicRoads property.

The enforcement of penalties prescribed in the regulations is achieved through the court system (e.g. Magistrate’s court). Those penalties (excluding penalties for road management infringements) are the maximum penalty that the court may choose to impose, however the court may also choose to impose a lesser penalty depending on the particulars of the case.

Some of the main offences set out in the relevant regulations are also included in the current and proposed regulations as road management infringements and are detailed in Schedule 1 to those regulations. Consistent with requirements for making legislation, the penalties associated with infringements are generally around 20% of the value of a penalty under the relevant regulation. The penalties for road management infringements are given by an authorised officer under the Act who has the power to serve an infringement notice on a person who has committed an offence. Road management infringements cannot be created where there may be extenuating circumstances that need to be considered by a court and it may be held that an offence has not been committed (e.g. interference with roads). Conversely a road management infringement may be served for damaging a road where it is certain whether or not an offence has been committed.

The table below compares the current and proposed penalties and where relevant, explains the differences. The offences for which road management infringement notices may be served by an authorised officer are detailed in Schedule 1 to the proposed regulations.

**Table 17**

|  |  |  |  |
| --- | --- | --- | --- |
| Proposed regulation and description of the offence | Current regulation and the associated penalty units  ($ value 2015/16)  *[Infringement penalty and $ value 2015/16]* | Proposed penalty units  ($ value 2015/16)  *[Infringement penalty and $ value 2015/16]* | Comments on differences |
| Reg 16 – Interference with roads | Reg 501 – Interference with roads  10 penalty units  ($1,516.70)  *[none]* | 10 penalty units  ($1,516.70)  *[none]* | There is no change in penalty units |
| Reg 17 - Interference with Construction Zones | Reg 502 – Interference with construction zones  10 penalty units  ($1,516.70)  *[none]* | 10 penalty units  ($1,516.70)  *[none]* | There is no change in penalty units |
| Reg 18 – Damage to roads | Reg 503 – Damage to roads  10 penalty units  ($1,516.70)  *[none]* | 10 penalty units  ($1,516.70)  *[none]* | There is no change in penalty units |
| Reg 19 – Entry to and conduct on VicRoads’ property | Reg 504 - Entry to and conduct on VicRoads’ property  10 penalty units \*\*  ($1,516.70)  *[3 p.u. / $455.01]* ***^^*** | 10 penalty units \*\*  ($1,516.70)  *[2.5 p.u. / $379.18]* ***^^*** | There is no change in penalty units |
| Reg 20 – Prohibited uses of bridges | Reg 505 – Interference with bridges  8 penalty units  ($1,213.36)  *[2 p.u. / $303.34]* | 10 penalty units  ($1,213.36)  *[2 p.u. / $303.34]* | Increased from 8 to 10 penalty units per Dept of Justice & Regulation requirements. |
| Reg 21 - Camping | Reg 507 – No camping on freeways or arterial roads  1 penalty unit  ($151.67)  *[1 p.u. / $151.67]* | 5 penalty units  ($858.35)  *[1 p.u. / $151.67]* | See Note a. below |
| Reg 24 – Direction to remove objects, substances and materials from road | There is no equivalent current regulation  *[none]* | 20 penalty units  ($3,033.40)  *[none]* | See Note b. below |

\*\* Denotes that this regulation has 4 separate offences of 10 penalty units each

**^^** Denotes that not all penalties are road management infringements

(refer Schedule 1 in the current and proposed regulations for details)

Notes:

1. VicRoads considers that the current penalty does not provide sufficient disincentive against unauthorised camping on freeway or arterial road reserve. The current offence and penalty (1 penalty unit) is also out of step with penalties under other jurisdictions. A search of 9 municipal council local law provisions that apply to camping on roads (and other public places) identified penalties for camping on roads ranging from 5 to 20 penalty units (average 14 penalty units). One further council has a penalty of 2 penalty units for the first offence and 4 penalty units for subsequent offences. A penalty of 10 penalty units applies to camping in unauthorised areas under the National Parks Regulations 2013.

VicRoads considers that 5 penalty units as proposed is an appropriate deterrent and is justified in comparison with other jurisdictions.

Unauthorised camping within the road reserves of freeways and arterial roads (including in roadside rest areas) is not a major or extensive issue statewide but is an increasing problem at a number of particular locations, such as in relation to depositing and disposal of rubbish and waste water and camp fires (e.g. in fire danger periods). Extended camping compared to overnight stays also generally causes increased adverse impacts. Dealing with unauthorised camping under the current regulations has been problematic due to the narrower definition of camping and the relatively low penalty compared to aggregate camping fees for caravan parks over multiple days or longer periods. This has caused difficulties for VicRoads in being able to effectively deal with particularly problematic unauthorised camping in certain circumstances.

The proposed regulation not only increases the penalty but also broadens the definition of camping (consistent with the definitions of camping in many council local laws) and also provides for signing related to the control of camping activity, which will be able to be enforced. An authorised officer of VicRoads can enforce the regulations on camping, however VicRoads would normally first approach those persons and request that they move on having explained why unauthorised roadside camping is not allowed. Overall the proposed regulation, including the increased penalty, is expected to progressively facilitate behavioural changes for persons approached in regard to their unauthorised camping.

1. While the offence of not complying with the direction of an authorised officer under the Act carries a penalty of 60 penalty units, a lesser penalty of 20 penalty units is proposed for offences under regulation 24. The lower penalty in the regulation is in recognition that under the Act, an authorised office will at times be required to deal with matters warranting the application of higher penalty responses by a court.

Even though the proposed penalty under regulation 24 would be lower than under the Act, the penalty would still be higher than the penalties adopted for other regulations such as interference with roads, regulation 16 and damage to roads, regulation 18 (both being 10 penalty units). The reason for that difference is that in VicRoads experience situations involving objects, materials and substances being deposited or left on a road can from time to time be of a magnitude that warrants a higher penalty response reflecting the severity of some impacts such as in relation to road user safety and to provide greater incentive for a person to respond to the directions of an authorities officer.

As noted in the introductory paragraphs of this Enforcement section above, the level of any penalty under proposed regulation 24 will ultimately be determined by a court on a case by case basis to a maximum of 20 penalty units.

# 9. Consultation

Road authorities and MAV were consulted in respect to the estimated costs associated with the periodic review of road management plans and the use of the exemptions provisions for the discontinuance of roads:

* Boroondara City
* Central Goldfields Shire
* Corangamite Shire
* DELWP (Department of Environment, Land, Water and Planning)
* Greater Geelong City
* Glen Eira City
* Greater Bendigo City
* Loddon Shire
* Municipal Association of Victoria (MAV)
* Towong Shire
* West Wimmera Shire
* Wodonga Rural City
* VicRoads

The following road authorities were specifically consulted in respect to the estimated cost of considering consent applications for tourism and tourist services signage:

* Ballarat City
* Macedon Ranges Shire
* Mornington Peninsula Shire
* VicRoads

Further road authorities consulted in respect to the costs associated with the removal of vehicles and the removal of objects, substances and materials from roads:

* DELWP (Department of Environment, Land, Water and Planning)
* Transurban in relation to CityLink
* EastLink in relation to EastLink Freeway
* Southern Way in relation to the Mornington Peninsula Freeway (Peninsula Link)
* VicRoads

In June 2015 VicRoads also consulted the following key stakeholders (being mainly road authorities) in relation to policy-related and any other aspects of the proposed regulations. Those stakeholders were provided with a draft of the proposed regulations and an overview of the key differences between the current and proposed regulations. Feedback was requested to assist VicRoads in finalising the policy and drafting of the regulatory impact statement and the proposed regulations.

* Boroondara Shire
* Central Goldfields Shire
* Corangamite Shire
* DELWP (Department of Environment, Land, Water and Planning)
* Greater Geelong City
* Glen Eira City
* Greater Bendigo City
* Loddon Shire
* Municipal Association of Victoria (MAV)
* Towong Shire
* West Wimmera Shire
* Wodonga Rural City
* VicRoads

Also in June 2015 VicRoads consulted the following toll road operator stakeholders in relation to policy-related and any other aspects of the proposed regulations. Those stakeholders were provided with a draft of the proposed regulations and their feedback was requested to assist VicRoads in finalising the policy and drafting of the regulatory impact statement and the proposed regulations.

* EastLink
* Transurban (CityLink)
* Southern Way (Peninsula Link Freeway)

VicRoads has also consulted:

* Local Government Victoria
* Department of Justice and Regulation
* Alpine Resort Management Boards

A concise overview of relevant feedback from the above stakeholders (*and VicRoads responses*) follows:

**DELWP** (Department of Environment, Land, Water and Planning)

* Regulation 6 (Road discontinuance consultation exemptions) - request that DELWP be consulted in relation to an exemption where a proposed road discontinuance could impact access to Crown land – *DELWP request is addressed in the proposed regulations.*
* Regulation 16 (Interference with roads) – request for exemptions from interference during emergency operations (e.g. fire or flood) - *DELWP request is addressed in the proposed regulations.*
* Regulation 18 (Damage to roads) – request for exemptions from damage during emergency operations (e.g. fire or flood) - *DELWP request is addressed in the proposed regulations.*
* Schedule 1 (Road management infringements) – request to broaden infringements – *DELWP request not possible within the scope of the regulations.*

**Alpine Resort Management Boards (ARMB)**

Mt Buller and Mt Stirling ARMB

* advised that it had no comments of suggestions.

Mt Hotham ARMB –

* advised that it considered the proposed regulations would not have a significant impact on the alpine resort, except in the area of snow clearing on the Great Alpine Road and other roads and areas in the resort, noting that snow clearing by its very nature can be damaging to roads and road infrastructure – *That concern has been addressed by including an additional exemption in proposed regulation 18 (Damage to roads), which provides that the regulation does not apply to a person engaged by a road authority or ARMB to perform snow clearing using a vehicle or machinery.*

**Boroondara City**

* Overall - the proposed changes were viewed as acceptable (OK)
* Regulation 10 (Procedure for certain amendments to road management plans) – Queried the need to advertise in a daily paper (declining circulation, expense, effectiveness of communication) and suggested publishing on council website and local newspaper (cheaper and circulation to local area) - *As the Act requires notification of the making of a road management plan in a daily newspaper, the regulations must do likewise for consistency and to meet public expectation. The proposed regulations reduce the number of consultations (public notices) from 2 to 1, which will achieved cost savings.*

**EastLink**

* Regulation 5 (Definitions) – Query whether definition of commercial road should include the Link Road and Extension Road (i.e. CityLink) – *This has been addressed in response to Transurban’s comments (see below).*
* Regulation 22 – Suggested drafting improvements to include references clause 5 of Schedule 4 to the Act – *The proposed regulations have been modified accordingly.*
* Regulation 25 – Suggested drafting improvements in relation to reimbursed costs and collection of vehicle– *The proposed regulations have been modified accordingly.*
* Sale of vehicles and any other objects – Query if the Act or regulations is required to account for proceeds of sale – *No proposal to deal with this in the regulations as that would require a change to the Act.*

**Transurban (CityLink)**

* Regulation 5 (Definitions) – Noted that the new term commercial road could extend the scope of the regulations to CityLink toll road and the need to clarify that nothing in the proposed regulations should not impact the rights, responsibilities etc under the Melbourne City Link Act 1995 – *that clarification has been included in the proposed Regulations at sub-regulation 5(3) and also in relation to EastLink and Peninsula Link freeway.*
* Regulation 16 (Interference with roads) – Queried whether there would be any impacts on the rights, responsibilities etc under the Melbourne City Link Act 1995 – *sub-regulation 5(3) now addresses that query and also in relation to EastLink and Peninsula Link freeway.*
* Regulation 17 (Interference with construction zones) – *same as for Regulation 16.*
* Regulation 18 (Damage to roads) – *same as for Regulation 16.*
* Regulation 20 (Prohibited use of bridges) – *same as for Regulation 16.* *Sub-regulation 20(2) additionally provides for consultation with CityLink (and any other road authority) where relevant to the granting of any authorisation.*
* Regulation 21 (Camping) – Sought clarification that shelters, structures etc erected for works would not be camping – *Sub-regulation 21(4) now provides that clarification.*
* Regulation 24 (Direction to remove objects etc from road) – Sought confirmation that the intention is not for VicRoads to give directions to Transurban to remove objects etc and clarification that nothing in the proposed regulations would impact the rights, responsibilities etc under the **Melbourne City Link Act 1995** – *that confirmation was provided by VicRoads and the clarification has been included in the proposed Regulations at sub-regulation 5(3) and also in relation to EastLink and Peninsula Link freeway.*
* Regulation 25 (Removal of object etc from road) – *same as for Regulation 24.*

**Southern Way (Peninsula Link Freeway)**

* Regulation 22 (Removal of vehicles) – ability of road operator to obtain details of registered owners – *This issue can/needs to be addressed using the Road Safety Act 1986 and is not a matter for the proposed regulations.*
* Regulation 18 (Damage to roads) – there is no further guidance on implementation of Section 112 of the Act with regard to the right to recover for damage to road – *This would need to be dealt with in the Act and cannot be dealt with in the proposed regulations.*

# 10. Conclusions and Evaluation Strategy

The following evaluation strategy has been developed to ensure continuous improvement and accountability.

### Objectives of the regulatory proposal

The primary objective of the proposed regulations is to provide a safe and efficient road network.

The secondary objective is to fund the efficient and equitable regulation of property enquiries and signs requiring consent under section 66 of the Act by prescribing fees that fully recover the costs of administration.

### Regulatory elements to be evaluated

The Victorian Guide to Regulation states that all Regulatory Impact Statements must include an evaluation strategy, however ‘*the evaluation strategy should be proportional to the reform proposal*’ and ‘*the extent of the data to be collected and the level of sophistication of the methods used will vary based on the significance of the reform proposal*”.

While the proposed regulations do not impose significant burdens on any part of the community the key regulatory burden that could nevertheless be evaluated is compliance and effectiveness of periodic reviews and amendments of road management plans (regulations 8 to 13).

Ideally the evaluation strategy would include the analysis of the different types/categories of claims for loss or damage arising from the condition of a road, both before and after making substantive changes to specific standards in a road management plan. Baseline claims data for a number of years before making substantive changes to road maintenance standards would be compared to claims data for the same number of years after implementing the substantive changes to the road management plan standard. That analysis would in theory show any trends in the numbers of claims paid by road authorities and show whether the substantive amendments to road management plans have delivered tangible benefits in reducing claims that would otherwise have been paid by road authorities.

In practice a statistical analysis approach such as that has inherent problems and is not considered feasible. Those problems include:

* while road authorities maintain records on the number and value of claims they generally do not categorise each claim by the type of specific road hazard at a sufficiently detailed level to facilitate the refined statistical analysis that would be required to reveal trends as to any benefits attributable to changes to road management standards;
* claims may result from multiple contributory factors, which cannot be readily differentiated and so, the statistical confidence levels for any results from analysis would be low and it may also not be possible to attribute trends to any particular factor;
* road authorities would need to make changes to their systems and practices for recording claims data to support the fine level of analysis required. Those costs would outweigh the benefits and could not be justified, including having regard to relatively low annualised cost of reviewing road management plans ($4,000 p.a. for municipal council road authorities – see Table 3 Option 1 Costs); and
* there are also data confidentiality considerations for road authorities and their insurers.

Given the above problems associated with an evaluation process based on statistical analysis, an alternative qualitative evaluation is proposed, which would involve requesting road authorities to complete a questionnaire to assess compliance and effectiveness of the regulations for road management plans (further details follow).

### Baseline data

The baseline for measuring compliance with the statutory requirements to review road management plans after the new regulations are made would be 100% compliance, noting that the current data indicates that around 20% of road authorities had not previously completed a review of their plan within the current statutory time frame.

### Key Performance Indicators

Compliance would be measured by whether or not road authorities have met the statutory time frames and requirements to review road management plans and where amendments are proposed, compliance with the process for amending road management plans.

Measuring the effectiveness of road management plans would be based on an analysis of responses to questionnaires to road authorities (municipal council road authorities, DELWP and VicRoads).

### Plan

VicRoads will request each municipal council, DELWP and itself to complete a questionnaire, which will be developed in consultation with the MAV. The questionnaire would be confidential and the aggregate results would be anonymous.

The questionnaire would cover questions including:

1. When was the last road management plan review commenced and completed?
2. Was the statutory time frame sufficient to complete the review and amendment of the road management plan (regulations 9 to 13)?
3. Is the period for review of road management plans appropriate (regulation 8)?
4. What level of public and stakeholder (by type) feedback was received for the notification of proposed amendment to the plan?
5. Did that feedback give rise to any changes to the road management plan?
6. What substantive changes were made to the road management plan?
7. What were the key triggers prompting those substantive changes (e.g. continuous improvement initiatives, increased claims, requested by insurers, need to align with like road authority standards, legal precedent, align with Australian standard etc)?

VicRoads would also undertake a desktop audit of road authority road management plans that are accessible on-line to determine compliance with the record keep requirements set out in the regulations (e.g. plans are to contain details of the amendments to the plans and when they took effect - see regulation 13).

### Consultation Plan

Key stakeholders will be consulted (road authorities, including municipal council road authorities and DELWP, Alpine Resort Management Boards, MAV and MAV insurance).

The aggregate results would be shared with the MAV, municipal council road authorities and DELWP and used to facilitate any necessary improvements in statutory compliance and would also be available to inform the next regulatory review process or further changes to the regulations.

### Timing

Following changes made to the **Local Government Act** in 2003, all council elections have been aligned to a common date and cycle. Since November 2008, elections are conducted for every Victorian council every four years. The next round of general council, elections is scheduled for November 2016.

A municipal council road authority must complete its review of its road management plan within 6 months or by the next 30 June whichever is the greater, unless that period is formally extended. Municipal councils should therefore have completed the review of their next review by 30 June 2017.

The evaluation would be planned to commence in September 2017 and be completed by 30 June 2018.

### Responsible Agency

VicRoads

# APPENDIX 1: VicRoads Road Management Plan review process

|  |  |  |  |
| --- | --- | --- | --- |
| **Step** | **Staff Class** | **Person Days** | **Estimated Cost** |
| Business decision / approval to commence review | VRO6  EO | 0.5  0.5 | $512.77 |
| Review RMP standards and priorities for inspection, maintenance and repair | VRO5 / VRO6 | 15.0 | $14,138.28 |
| Review classes of roads to which RMP applies | VRO5 / VRO6 | 1.0 | $942.55 |
| Prepare draft of proposed amendment to RMP | VRO5 | 2.0 | $1,701.34 |
| Prepare written report summarising findings and conclusions of review **3.** | VRO5 | 3.0 | $2,552.00 |
| Business decision / approval to advertise proposal to amend RMP | VRO6  EO | 0.5  0.5 | $517.22 |
| Prepare and arrange notices of proposed amendment to RMP | VRO3 | 1.0 | $590 .60 |
| Publish notice in Government Gazette **1.** | n/a | n/a | $114 |
| Publish notice in daily newspaper **2.** | n/a | n/a | $7,600 |
| Receive and record submissions on proposed amendment to RMP (28 day submission period) | VRO4 | 0.5 | $352.72 |
| Hear any submissions on proposed amendment to RMP (28 day submission period) **1., 2.** | EO  VRO6 | 1.0  1.0 | $1,034.44 |
| Prepare and submit a briefing report to CEO / Management on submissions received, and recommendations | VRO5 | 1.0 | $850.67 |
| CEO / Management review / approval of recommendations | EO | 0.25 | - |
| Respond to persons making submissions | VRO4 | 1.0 | $705.43 |
| Finalise review of RMP | VRO5 | 1.0 | $850.67 |
| Prepare report to seek CEO / Management approval of revised RMP | VRO5 | 1.0 | $850.67 |
| Update RMP, including any appendices and incorporated documents | VRO5 | 2.0 | $1,701.34 |
| Prepare written report summarising findings and conclusions of review **3.** | VRO5 | 2.0 | $1,701.34 |
| Prepare and arrange notices making RMP publicly available **1.** | VRO3 | 1.0 | $590 .60 |
| Publish notice in Government Gazette **1.** | n/a | n/a | $114 |
| Publish notice in daily newspaper **2.** | n/a | n/a | $7,600 |
| Make RMP publicly available **1.** | VRO4 | 0.5 | $352.72 |
| TOTALS | n/a | **36.25** | $45,377.81 |

Notes:

1. Current cost of one page notice in Special Government Gazette is $113.54.

2. These were the costs for VicRoads when it recently amended its RMP.

Notices published in The AGE and the Herald/Sun.

3. This in effect results in 2 such reports being prepared – the 1st report with initial notice

seeking submissions and the 2nd report with notice of made RMP.

# APPENDIX 2: Proposed Regulations

**Road Management (General) Regulations 2016**

**S.R. No. /2016**

**table of provisions**

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S.R. No.  /2016

***Road Management Act 2004***

**Road Management (General) Regulations 2016**

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

LUKE DONNELLAN

Minister for Roads and Road Safety

Clerk of the Executive Council

Part 1—Preliminary

1 Objectives

The objectives of these Regulations are—

(a) to exempt certain road discontinuances from certain requirements of section 12 of the Act; and

(b) to prescribe certain matters that must be recorded in a register of public roads; and

(c) to prescribe the interval at which a road authority must review its road management plan; and

(d) to prescribe the manner in which a road authority must review its road management plan; and

(e) to prescribe the manner in which a road authority may make certain amendments to its road management plan; and

(f) to prescribe the particulars to be contained in a notice of incident; and

(g) to prescribe particulars to be contained in a condition report; and

(h) to provide for the protection of roads and property; and

(i) to authorise the removal of vehicles, objects, substances and materials from roads; and

(j) to make provision with respect to the matters that a road authority must consider in exercising its powers in relation to hoardings and advertisements on roads, and to confer certain appeal rights; and

(k) to specify certain offences under the regulations to be road management infringements and to specify the penalty for those road management infringements; and

(l) to fix certain fees and charges.

2 Authorising provision

These Regulations are made under section 132 of the **Road Management Act 2004**.

3 Commencement

These Regulations come into operation on 14 March 2016.

4 Revocation

The following Regulations are **revoked**—

(a) Road Management (General) Regulations 2005;

(b) Road Management (General) and Road Management (Works and Infrastructure) Amendment Regulations 2009.

5 Definitions

(1) In these Regulations—

***Alpine Resort Management Board*** has the same meaning as ***Board*** has in section 3 of the **Alpine Resorts** (**Management) Act 1997**;

***commercial road*** means the Link road, Extension road, EastLink and Peninsula Link Freeway;

***construction zone*** means any place or area in which VicRoads or a VicRoads contractor is conducting road construction or maintenance works, whether or not that place or area is a road;

**Note**

***Road*** is defined in section 3(1) of the Act.

***emergency*** has the same meaning as in section 3 of the **Emergency Management Act 2013**;

***municipal council*** has the same meaning as ***council*** has in section 3(1) of the **Local Government Act 1989**;

***registered operator*** has the same meaning as in section 3(1) of the **Road Safety Act 1986**;

***relevant corporation*** means—

(a) in relation to the Link road, means VicRoads; and

(b) in relation to the Extension road, means VicRoads; and

(c) in relation to EastLink, means the EastLink Corporation; and

(d) in relation to the Peninsula Link Freeway, means the Peninsula Link Freeway Corporation;

**Note**

***Link road***, ***Extension road***, ***EastLink***, ***EastLink Corporation***, ***Peninsula Link Freeway*** and ***Peninsula Link Freeway Corporation*** are defined in section 3(1) of the Act.

***responder agency*** has the same meaning as in section 3 of the **Emergency Management Act 2013**;

***response*** has the same meaning as in section 3 of the **Emergency Management Act 2013**;

***the Act*** means the **Road Management Act 2004**;

***traffic control device*** has the same meaning as in the Dictionary to the Road Safety Road Rules 2009;

***vehicle*** has the same meaning as in section 3(1) of the **Road Safety Act 1986**;

***VicRoads contractor*** means a person engaged directly or indirectly by VicRoads to carry out work on behalf of VicRoads and includes a sub-contractor;

***VicRoads' property*** means any land or premises which is owned or occupied by VicRoads but does not include a road.

(2) For the purposes of these regulations, unless a contrary intention appears, a reference to a road, public road or freeway includes the Link road, Extension road, EastLink and Peninsula Link Freeway.

**Note**

See sections 133, 133A and 133B of the Act.

(3) These regulations do not alter or vary any right, privilege, obligation or liability of—

(a) the Link corporation or the Extension corporation under the **Melbourne City Link Act 1995**, the Agreement, the Extension Agreement or the Integration and Facilitation Agreement; or

(b) the EastLink Corporation under the **EastLink Project Act 2004** or the EastLink Agreement; or

(c) the Peninsula Link Freeway Corporation under the Peninsula Link Project Deed.

**Note**

***Link corporation***,***Extension corporation,*** ***the Agreement***,***the Extension Agreement***, ***the Integration and Facilitation Agreement***, ***EastLink Agreement***and ***Peninsula Link Project Deed*** are defined in section 3(1) of the Act.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Part 2—Management of roads

6 Exemption from consultation requirement for discontinuance of certain roads

(1) For the purpose of section 12(11)(a) of the Act, a proposed discontinuance of part of a road that does not incorporate the full width of the road is exempt from the requirements under section 12(4) to (10) of the Act if—

(a) the use of any existing means of access to any land will not be denied; and

(b) it will not prohibit or unreasonably restrict the passage along the road of persons, vehicles or other kinds of traffic; and

(c) notice of the proposed discontinuance has been given in accordance with subregulation (2) ; and

(d) any written submission received within the period specified in the notice from a recipient of that notice has been considered and dealt with in the same way that a written submission referred to in section 12(5) of the Act must be dealt with under section 12(6) to (10) of the Act.

**Notes**

1 Section 12(4) of the Act otherwise requires a discontinuing body to publish a public notice stating that submissions in respect of the proposed discontinuance of the road will be considered. Section 12(5) to (10) of the Act provide the process for dealing with those submissions.

2 ***Traffic*** is defined in section 3(1) of the Act.

(2) For the purposes of subregulation (1)(c), notice of the proposed discontinuance must—

(a) be given in writing to—

(i) the relevant municipal council; and

(ii) each utility, provider of public transport, infrastructure manager and road authority who is responsible for infrastructure installed on, under or over the relevant part of a road (of whom the discontinuing body is aware); and

(b) state that the recipient may make a written submission to the road authority in respect of the proposed discontinuance within the specified period, being a period of not less than 28 days after the notice has been served.

(3) For the purpose of subregulation (1), the use of an existing means of access to land will not be denied if—

(a) the land that is subject to the proposed discontinuance is proposed to be—

(i) sold, transferred or otherwise disposed of to the owner of the land that directly abuts the subject land where the abutting land is owned by a single land owner or one group of joint land owners (whether that be as a joint tenants, tenants in common or another form of joint ownership); or

(ii) consolidated or subdivided with the land that directly abuts the subject land where the abutting land is owned by a single land owner or one group of joint land owners (whether that be as a joint tenants, tenants in common or another form of joint ownership); or

(b) an alternative means of access is proposed to be provided in respect of any land where an existing means of access to that land would otherwise be denied.

**Example**

A narrow strip of land along the edge of a road reserve is no longer required because of the realignment of a roadway. The road authority proposes to discontinue that part of the road reserve and sell it to the sole abutting land owner. The existing means of access to the abutting land will not be denied and the discontinuance will not impact on the public’s use of the road since the discontinuance will only have the effect of slightly narrowing the road reserve and footpaths and the roadway will be unaffected. In such circumstances, regulation 6 provides, for the purposes of section 12(11)(a) of the Act, that the requirements under section 12(4) to (10) of the Act do not apply provided that the requirements specified in regulation 6 are complied with.

(4) For the purpose of section 12(11)(a) of the Act, a proposed discontinuance of a road or part of a road that incorporates the full width of the road is exempt from the requirements under section 12(4) to (10) of the Act if—

(a) the road or part of a road is not in use for road-related purposes by any person; and

(b) there are existing alternative means of access to all land abutting the road or part of a road; and

(c) notice of the proposed discontinuance has been given in accordance with subregulations (5) and (6); and

(d) any submission received within the period specified in the notice from a recipient of that notice has been considered and dealt with in the same way that a written submission referred to in section 12(5) of the Act must be dealt with under section 12(6) to (10) of the Act.

**Note**

Section 12(4) of the Act otherwise requires a discontinuing body to publish a public notice stating that submissions in respect of the proposed discontinuance of the road will be considered. Section 12(5) to (10) of the Act provide the process for dealing with those submissions.

(5) For the purposes of subregulation (4)(c), notice of the proposed discontinuance must—

(a) be given in writing to—

(i) the relevant municipal council; and

(ii) each utility, provider of public transport, infrastructure manager and road authority who is responsible for infrastructure installed on, under or over the relevant part of a road (of whom the discontinuing body is aware); and

(iii) where the road or part of a road provides access (whether or not that access is used) to the land administered under the **Crown Land (Reserves) Act 1978**, the **Forests Act 1958**, the **Land Act 1958**, the **National Parks Act 1975** or the **Alpine Resorts (Management) Act 1997**—the Secretary to the Department of Environment, Land, Water and Planning; and

(b) state that the recipient may make a written submission to the road authority in respect of the proposed discontinuance within the specified period, being a period of not less than 28 days after the notice has been served.

(6) For the purposes of subregulation (4)(c), reasonable steps must be taken to give to the owner of each property that abuts the road or part of a road notice in writing of the proposed discontinuance stating that the recipient may make a submission to the road authority in respect of the proposed discontinuance within the specified period, being a period of not less than 28 days after the notice has been served.

7 Matters that must be included in a register of public roads

The following matters are prescribed for the purposes of clause 1(k) of Schedule 1 to the Act as matters which must be included in a register of public roads—

(a) a reference to any declaration under section 42 of the Act of a controlled access road for which the road authority is the coordinating road authority, and a reference to any amendment or revocation of such a declaration; and

(b) a reference to any notice referred to in clause 5(1) of Schedule 2 to the Act in relation to a controlled access road for which the authority is the coordinating road authority.

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Part 3—Road management plans

Division 1—Review of road management plans

8 Road authority must conduct review of road management plan

(1) For the purposes of section 54(5) of the Act, a road authority that has a road management plan must conduct a review of that plan at the intervals prescribed by this regulation.

**Note**

The making of a road management plan is voluntary and a road authority may therefore decide not to have a road management plan—see section 49 of the Act. However, a road authority that has made a road management plan must conduct a review of that plan in accordance with the regulations at the intervals prescribed by the regulations—see section 54(5) of the Act.

(2) A road authority other than a municipal council must—

(a) commence a review of its road management plan—

(i) where the plan has not previously been reviewed, not more than 4 years after the making of the plan; or

(ii) where the plan has previously been reviewed, not more than 4 years after the completion of the last review; or

(iii) where the relevant Minister has fixed a later date, on or before that date; and

(b) complete that review—

(i) where the plan has not previously been reviewed, not more than 5 years after the making of the plan; or

(ii) where the plan has previously been reviewed, not more than 5 years after the completion of the last review; or

(iii) where the relevant Minister has fixed a later date, on or before that date.

**Note**

***Relevant Minister*** is defined in section 3(1) of the Act.

(3) A municipal council must conduct and complete a review of its road management plan within the period referred to in section 125(1) of the **Local Government Act 1989** or, if that period is extended in accordance with section 125(4) of that Act, within that extended period.

**Note**

Each incoming municipal council must review its road management plan during the same period as it is preparing its Council Plan under the **Local Government Act 1989**. Section 125(1) of that Act requires each municipal council to prepare a Council Plan within the period of 6 months after each general election or by the next 30 June, whichever is later, unless the Minister administering that Act extends the period under section 125(4) of that Act.

9 Conduct of reviews of road management plans

(1) In conducting a review of its road management plan, a road authority must ensure that the standards in relation to, and the priorities to be given to, the inspection, maintenance and repair of the roads and classes of road to which the plan applies are appropriate.

(2) After a road authority has completed a review of its road management plan, it must—

(a) produce a written report summarising the findings and conclusions of the review; and

(b) make the report available for copying or inspection—

(i) at the place where the road management plan may be inspected or obtained in accordance with section 55(1)(b) of the Act; or

(ii) on an Internet site maintained by the road authority.

Division 2—Amendment of road management plans

10 Procedure for certain amendments to road management plans

(1) Subject to regulation 11, if a road authority proposes to amend a road management plan and the amendment relates to the determination of a standard of construction, inspection, maintenance or repair under section 41 of the Act, the road authority must give a notice—

(a) stating or describing the purpose and general purport of the proposed amendment; and

(b) stating or describing the roads, roadways, pathways, road infrastructure or road-related infrastructure or classes of roads, roadways, pathways, road infrastructure or road-related infrastructure affected by the proposed amendment; and

(c) stating where a copy of the proposed amendment may be obtained or inspected; and

(d) stating where any relevant written report produced in accordance with regulation 9(2) may be inspected or obtained; and

(e) stating that any person who is aggrieved by the proposed amendment may make a submission on the proposed amendment to the road authority within the period specified in the notice, being not less than 28 days after the date on which the notice is published in the Government Gazette.

(2) A notice under this regulation—

(a) must be published in the Government Gazette and in a daily newspaper generally circulating in the area in which the roads, roadways, pathways, road infrastructure or road-related infrastructure or classes of road, roadway, pathway, road infrastructure or road-related infrastructure to which the road management plan applies are situated; and

(b) may be given by the road authority to any person who the road authority believes may be affected by the proposed amendment.

11 When notice of proposed amendment is not required

(1) A road authority is not required to give notice under regulation 10 if the Chief Executive Officer (however described) of the road authority certifies in writing that the proposed amendment to the road management plan results in the determination under section 41 of the Act of a standard that is higher than a relevant standard previously determined under section 41 of that Act.

**Example**

The Chief Executive Officer may give a certification if the proposed amendment to the road management plan results in the determination of a standard that—

• would provide for more frequent inspection or maintenance of a road; or

• would decrease the period of time within which defects are to be repaired.

(2) A road authority is not required to give notice under regulation 10 if the Chief Executive Officer (however described) of the road authority certifies in writing that the proposed amendment to the road management plan results in the determination under section 41 of the Act of a standard and the determination of the standard only deals with changes that relate to—

(i) a road or part of a road for which the road authority has become the coordinating road authority; or

(ii) a road or part of a road for which the road authority is the coordinating road authority that has become a public road—

since the relevant road management plan was made or since that plan was last reviewed in accordance with section 54(5) of the Act and these Regulations; or

**Example**

The Chief Executive Officer of a coordinating road authority may give a certification if the proposed amendment to the road management plan results in a determination of a standard for—

• a road in a new subdivision that has been constructed since the authority's road management plan was made or last reviewed; or

• a road for which the road authority has become the coordinating road authority because of a reclassification of that road under section 14 of the Act that occurred since the authority's road management plan was made or last reviewed; or

• an existing road that has become a public road by registration under section 17(3) of the Act since the authority's road management plan was made or last reviewed.

(3) A road authority is not required to give notice under regulation 10 if the Chief Executive Officer (however described) of the road authority certifies in writing that the proposed amendment to the road management plan results in the determination under section 41 of the Act of a standard and the determination of that standard only deals with changes to administrative procedures or responsibilities of a road authority or is of a fundamentally declaratory or machinery nature.

**Example**

The Chief Executive Officer may give a certification if the proposed amendment to the road management plan is required because of—

• the name of a road changing; or

• the road authority ceasing to be the coordinating road authority in respect of a road; or

• a road being discontinued; or

• a road ceasing to be a public road.

12 Date of effect of plan or amendment

If a road management plan or an amendment to a road management plan does not specify the date on which it is to take effect, it takes effect on the day after it is made.

13 Availability of amendments to road management plans

(1) If a notice of proposed amendment has been given under regulation 10(1) and the road authority amends its road management plan, the road authority must cause notice of the making of the amendment to be published in the Government Gazette and in a newspaper generally circulating in the area in which the roads to which the amended road management plan is to apply are situated.

(2) There must be included in a notice under subregulation (1), a statement that the amended road management plan, any incorporated document or any amendment to an incorporated document, as the case may be, may be inspected—

(a) at the office of the road authority specified in the notice; or

(b) on an Internet site maintained by the road authority (which may include links to other separately maintained Internet sites in the case of any incorporated document or any amendment to an incorporated document provided that access to those documents is free of charge).

(3) If a road authority amends a road management plan, the road authority must record on that plan—

(a) the substance of the amendment; and

(b) the date of effect of the amendment.

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Part 4—Notices of incident and condition reports

14 Particulars of notice of an incident

For the purposes of section 115(3) of the Act, the prescribed particulars to be contained in a notice of incident are as follows—

(a) the name and address of the person who proposes to commence a proceeding in relation to an incident; and

(b) the signature of the person referred to in paragraph (a) or the name and address of another person giving notice on that person's behalf; and

(c) the date of the notice; and

(d) a description of the incident; and

(e) the date of the incident and the time or approximate time of the incident; and

(f) a description of the site of the incident and any relevant infrastructure that is sufficient to enable the responsible road authority to identify and inspect the site of the incident and any relevant infrastructure.

15 Contents of condition report

For the purposes of section 116(3)(e) of the Act, the prescribed matters to be contained in a condition report under section 116 are as follows—

(a) the name of the road authority that has prepared the report; and

(b) a statement or description of the site, road or infrastructure to which the report relates; and

(c) the date and time or approximate time on which any inspection on which the report is based was conducted; and

(d) a statement, signed by a person authorised by the road authority for the purpose, certifying that the report is a condition report for the purposes of section 116 of the Act.

**Note**

These matters are in addition to the matters required by section 116(3) of the Act.

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Part 5—Protection of roads and property

16 Interference with roads

(1) A person must not, without a written permit issued by the coordinating road authority or, if the relevant road is a commercial road, without a written permit issued by the relevant corporation—

(a) interfere with, damage or remove any road infrastructure in, on, under or over a road; or

**Examples**

Types of interference with or damage to road infrastructure that are prohibited include digging up, breaking, covering, obscuring, painting or otherwise defacing that infrastructure by any means.

(b) interfere with or damage any roadside or ancillary area; or

(c) conduct excavations on or under, or dig up, a road; or

(d) place or leave anything in, on, under or over a road—

(i) that poses or may pose a risk to the safety of road users or the community; or

(ii) that adversely affects or may adversely affect the operation of the road; or

(iii) that encroaches on or obstructs the free use of the road; or

(iv) that reduces the breadth, or confines the limits, of the road; or

(e) place or leave refuse, rubbish or other materials on the road; or

**Note**

These requirements are in addition to rule 293 of the Road Safety Road Rules 2009 which applies to a driver (within the meaning of those Rules) and requires certain things that are dropped or left on a road to be removed or action to be taken to effect removal.

(f) remove, destroy or damage a plant growing in a road reserve.

1. 10 penalty units.

(2) Subregulation (1) does not apply to—

(a) a person conducting works with the consent of the coordinating road authority or in the circumstances specified in section 63(2) of the Act; or

**Notes**

1 ***Works*** is defined in section 3(1) of the Act.

2 It is an offence under section 63 of the Act to conduct any works in, on, under or over a road without the written consent of the coordinating road authority to the conduct of the proposed works. Certain exemptions apply to that offence provision.

(b) a person engaged directly or indirectly by a responder agency to perform response activities with respect to an emergency who is acting in the course of that person's duties in circumstances where it is reasonable that this regulation should not apply; or

(c) a person undertaking an activity that is authorised or permitted by or under the Act or any other Act; or

(d) a person undertaking an activity that constitutes a lawful and reasonable use of a road.

(3) A coordinating road authority or relevant corporation may issue a permit for the purposes of subregulation (1).

17 Interference with construction zones

(1) A person must not, without a written permit issued by VicRoads—

(a) damage or interfere with a construction zone, any works or undertaking conducted on that land or with any machinery, equipment or material stored, placed or used on that land; or

(b) place or leave anything in, on, under or over a construction zone that poses or may pose a risk to the safety of any person.

1. 10 penalty units.

(2) Subregulation (1) does not apply to—

(a) a person conducting works with the consent of the coordinating road authority or in the circumstances specified in section 63(2) of the Act; or

**Note**

***Works*** is defined in section 3(1) of the Act.

(b) a person undertaking an activity that is authorised or permitted by or under the Act or any other Act; or

(c) a person undertaking an activity that constitutes a lawful and reasonable use of a road.

(3) VicRoads may issue a permit for the purposes of subregulation (1).

18 Damage to roads

(1) A person must not without the written consent of the coordinating road authority or, if the relevant road is a commercial road, without the written consent of the relevant corporation—

(a) drive on a road a vehicle which is likely to cause damage to the road; or

(b) drag or push over the surface of a road, any object or implement which is likely to cause damage to the road.

1. 10 penalty units.

**Examples**

Examples of vehicles that would be likely to cause damage to a road include heavy earth moving vehicles that move on caterpillar tracks.

Examples of damage include cracking constructed roadways and flattening landscaped roadside areas.

(2) Subregulation (1) does not apply to—

(a) a person using snow chains on the wheels of a vehicle where the chains are reasonably required because of snow or ice on the road surface; or

(b) a person who is engaged by a road authority or an alpine resort management board to perform snow clearing using a vehicle or machinery; or

(c) a person breaching a mass, dimension or load restraint limit or requirement within the meaning of the **Road Safety Act 1986**; or

(d) a person breaching a mass, dimension or loading requirement within the meaning of the Heavy Vehicle National Law (Victoria); or

(e) a person who is engaged directly or indirectly by a responder agency to perform response activities with respect to an emergency and who is acting in the course of that person's duties in circumstances where it is reasonable that subregulation (1) should not apply; or

(f) a person undertaking an activity that is authorised or permitted by or under the Act or any other Act.

**Note**

Section 112 of the Act empowers road authorities to recover extraordinary expenses in repairing a road that has been damaged as a result of the passage of extraordinary traffic or excessive mass along the road.

19 Entry to and conduct on VicRoads' property

(1) VicRoads may place at or near the boundary of a VicRoads' property a sign advising that entry to that property is prohibited without the written consent of VicRoads.

(2) If VicRoads has placed a sign under subregulation (1), a person must not enter or remain on VicRoads' property without the written consent of VicRoads.

1. 10 penalty units.

(3) Subregulation (2) does not apply to—

(a) a person authorised or permitted to enter or remain on VicRoads' property by or under the Act or any other Act; or

(b) a VicRoads' works manager or a person acting under the supervision of a VicRoads' works manager; or

**Note**

***Works manager*** is defined in section 3(1) of the Act.

(c) a VicRoads contractor; or

(d) an employee or agent of a public sector body within the meaning of the **Public Administration Act 2004** who is acting in the course of his or her employment or authority.

(4) If VicRoads has placed a sign under subregulation (1), a person who has consent for the purposes of this regulation must on demand, when entering or being on VicRoads' property—

(a) produce the consent to a police officer or an authorised officer of VicRoads; and

(b) produce evidence to verify that he or she is the person named in the consent.

1. 10 penalty units.

(5) A person who has been given consent for the purposes of this regulation must not give that written consent to another person knowing or believing that the other person is likely to exercise the privileges given by the consent.

1. 10 penalty units.

(6) A person who is on VicRoads' property must not, without the written consent of VicRoads—

(a) damage or interfere with that land, any works or undertaking conducted on that land or with any machinery, equipment or material stored, placed or used on that land; or

(b) remove, destroy or damage a plant growing on that land; or

(c) erect or remove any notice or sign or fix any notice, bill or sign to a plant growing on or a structure on that land; or

(d) place or leave refuse, rubbish or other materials on that land.

1. 10 penalty units.

20 Prohibited uses of bridges

(1) A person, other than a person authorised in writing by VicRoads, must not climb, jump or rappel on, from or onto a bridge on or over—

(a) a freeway; or

(b) an arterial road; or

(c) a non-arterial State road for which VicRoads is the coordinating road authority; or

1. 10 penalty units.

(2) Before VicRoads grants an authorisation under subregulation (1), it must consult with any other road authority or body exercising the functions and powers of a road authority that VicRoads considers may be affected by the granting of the authorisation.

21 Camping

(1) A person, other than a person authorised in writing by VicRoads, or in accordance with a sign erected by or on behalf of VicRoads, must not camp on the road reserve or an ancillary area of—

(a) a freeway; or

(b) an arterial road; or

(c) a non-arterial State road for which VicRoads is the coordinating road authority.

1. 5 penalty units.

(2) In this regulation—

***camp*** means—

(a) to erect, occupy or use, for accommodation, a tent, tarpaulin or any similar form of accommodation, shelter or temporary structure; or

(b) to occupy or use a swag or sleeping bag; or

(c) to erect, occupy or use, for accommodation, a movable dwelling within the meaning of the **Residential Tenancies Act 1997**.

**Example**

Examples of movable dwellings include caravans, camper trailers and mobile homes. An annexe attached to any of those dwellings is also a movable dwelling.

(3) This regulation does not prohibit a person from resting or sleeping in a parked vehicle or movable dwelling in order to manage or avoid driver fatigue.

(4) This regulation does not apply to persons conducting works with the consent of the coordinating road authority or in the circumstances specified in section 63(2) of the Act.

22 Removal of vehicles

(1) If a road authority removes a vehicle in accordance with clause 4 or 5 of Schedule 4 to the Act, the road authority must serve a notice by post on the registered operator (if any) or owner of the vehicle informing that person that the road authority has removed the vehicle.

(2) Subregulation (1) does not apply if the vehicle does not display a number plate or other identification that would enable the identification of the vehicle's registered operator or owner.

(3) A notice under subregulation (1) may include—

(a) a notice for the purposes of clause 4(2) or 5(5) of Schedule 4 to the Act; and

(b) where notice is given to the registered operator, an instruction requiring the registered operator, where the registered operator of the motor vehicle is not the owner or sole owner of the motor vehicle, to take reasonable steps to serve a copy of the notice on any owner of the motor vehicle and to do so as soon as is reasonably practicable; and

(c) any other information that the road authority considers appropriate.

**Note**

A fee may be charged for removing a vehicle in certain circumstances—see clauses 4 and 5 of Schedule 4 to the Act.

23 Hoardings and advertisements

(1) Without limiting the matters that may be considered, in deciding whether to give consent for the purposes of section 66(1) of the Act, the coordinating road authority must consider whether the structure, device, hoarding, advertisement, sign or bill would, or would be likely to—

(a) obscure the field of view of a user of the road; or

(b) cause a hazard by distracting the attention of a user of the road; or

(c) distract attention of a user of the road from a traffic control device; or

(d) wholly or partly obscure a road user's view of a traffic control device; or

(e) in any other way be detrimental to the safe or efficient use of the road.

(2) If the coordinating road authority refuses its consent under section 66(1) of the Act, the applicant may, within 28 days of being advised of the refusal, apply to the Tribunal for a review of the decision.

**Note**

***Tribunal*** means the Victorian Civil and Administrative Tribunal—see section 3(1) of the Act.

(3) In reviewing a decision, the Tribunal may take submissions from any of the following—

(a) the applicant;

(b) the coordinating road authority;

(c) VicRoads;

(d) any person that the Tribunal considers has a substantial interest in the application such that that person should make submissions to, the Tribunal.

(4) A coordinating road authority may charge a person a fee for an application for consent under section 66(1) of the Act, not exceeding 17.93 fee units.

(5) An application for consent under section 66(1) of the Act must contain—

(a) the name, address and contact details of the applicant; and

(b) the name, address and contact details of the person or body who will have ongoing responsibility for the structure, device, hoarding, advertisement, sign or bill; and

(c) the date of the application; and

(d) a description of the proposed structure, device, hoarding, advertisement, sign or bill; and

(e) the road name and location at which the structure, device, hoarding, advertisement, sign or bill would be displayed.

(6) If the coordinating road authority grants its written consent under section 66(1) of the Act, the consent must—

(a) state the name, address and contact details of the road authority; and

(b) state the date of issue of the consent; and

(c) state the name, address and contact details of the applicant; and

(d) state the name, address and contact details of the person or body who will have ongoing responsibility for the structure, device, hoarding, advertisement, sign or bill; and

(e) include a description of the structure, device, hoarding, advertisement, sign or bill; and

(f) state the road name and location at which the structure, device, hoarding, advertisement, sign or bill may be displayed; and

(g) state the date on which the consent expires (if any); and

(h) include any conditions that the consent is subject to.

24 Direction to remove objects, substances and materials from road

(1) An authorised officer of a road authority that is the appropriate road authority for the purposes of regulation 25 may give a direction in writing to a responsible person, within the meaning of regulation 25, to remove any object, refuse, rubbish, substance or other materials deposited or left on a road or part of a road within a reasonable time specified in the direction and in accordance with any conditions specified in the direction.

**Note**

If the removal of the object, refuse, rubbish, substance or other materials deposited or left on a road constitute “works” then the responsible person may be required to seek consent for those works under the Act prior to undertaking the necessary work.

(2) A person must comply with a direction issued under subregulation (1), including any conditions specified in the direction.

1. 20 penalty units.

(3) It is a defence to a prosecution for an offence under this regulation if the person had a reasonable excuse for the failure to comply.

25 Removal of objects, substances and materials from road

(1) A road authority may remove any object, refuse, rubbish, substance or other materials deposited or left on a road or part of a road for which it is the appropriate road authority.

**Example**

An appropriate road authority may remove from a road—

• litter; or

• mud or gravel tracked onto the road by vehicle tyres; or

• building materials such as bricks, plaster and timber; or

• debris, including debris from a motor vehicle collision; or

• a truck or trailer load spilled on a road; or

• lost or abandoned property.

(2) A road authority may sell or dispose of anything which the road authority has removed from a road under subregulation (1).

(3) Before exercising its powers under subregulation (2), except in relation to refuse or rubbish or other things that in the opinion of the road authority are of low value, the road authority must—

(a) if the owner of the object, substance or material is known to the road authority—send to the last known address of the owner, a notice stating that the object, substance or material will be disposed of or sold unless the owner pays the fee specified (if any) in the notice and then collects the object, substance or material within the period stated in the notice (being a period not less than 14 days); or

(b) if the owner of the object, substance or material is not known to the road authority—wait 14 days from the date that the object, substance or material was removed from the road.

(4) A fee specified in a notice under subregulation 3(a) must not exceed an amount that reasonably represents the costs to a road authority in removing, keeping and releasing the object, substance or material, including any relevant overhead and other indirect costs.

(5) A road authority may recover in the Magistrates' Court, from a responsible person, costs incurred in removing any object, refuse, rubbish, substance or other materials deposited or left on a road other than in a receptacle or area provided for that purpose by the road authority, including any relevant overhead and other indirect costs.

(6) For the purposes of this regulation—

***low value*** means a value—

(a) less than $500; or

(b) $500 or more where the relevant road authority forms the opinion that the cost of removing and storing the object, substance or material would exceed the value of the object, substance or material;

***appropriate road authority***, of a road, means—

(a) the responsible road authority for the road; and

(b) Vicroads, if VicRoads is the coordinating authority for the road;

**Note**

This means that VicRoads may remove objects, substances and materials from any part of a road of which it is the coordinating road authority even if VicRoads is not the responsible road authority in relation to that part of the road under section 37 of the Act. Therefore VicRoads is entitled to remove objects from the roadside of an arterial road in an urban area even though the relevant municipal council is the responsible road authority in relation to that roadside.

***responsible person*** means—

(a) the person who deposited or left, or caused to be deposited or left, the relevant objects, refuse, rubbish, substances or materials on a road; or

(b) an—

(i) owner or manager of a premises; or

(ii) a person supervising or managing work or other activities undertaken at a premises—

who was in a position to prevent the relevant objects, refuse, rubbish, substances or materials from being deposited or left on a road in the vicinity of the premises but who failed to take reasonable steps to prevent the relevant objects, refuse, rubbish, substances or materials from being deposited or left on a road.

**Example**

A road adjacent to a landscaping supplies business premises is covered with mud and gravel that has been tracked onto the road by the tyres of earth moving vehicles. This mud and gravel is posing a hazard to road users. The operator of the premises is in a position to take reasonable steps to prevent the depositing of the mud and gravel on the road by—

(a) managing the cleanliness of the earth moving vehicles entering and exiting the premises; and

(b) managing the state of driveways and other surfaces within the premises from which any mud or gravel may become affixed to the tyres of the earth moving vehicles.

Therefore, the operator of the landscaping supplies business premises is a responsible person for the purposes of this regulation.

**Note**

Also see regulation 35 of the Road Safety (Traffic Management) Regulations 2009 which provides that it is an offence to throw, drop, place, leave, or cause or permit to be thrown, dropped or placed on a road, any destructive or injurious material, or a substance or thing, that is likely to endanger a person, animal or vehicle.

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Part 6—Road management infringement notices

26 Offences under the regulations for which a road management infringement notice may be issued

(1) The offences listed in column 2 of Schedule 1 are specified as road management infringements for the purposes of section 90(1) of the Act.

**Notes**

1 In section 3(1) of the Act, the definition of ***road management infringement*** includes offences against the regulations that are specified in the regulations to be road management infringements.

2 Section 90(1) of the Act provides that a police officer or an authorised officer of a road authority may serve a road management infringement notice in respect of an offence specified in the regulations.

(2) For the purposes of a road management infringement listed in column 2 of Schedule 1, the specified penalty is the penalty set out in column 3 of Schedule 1.

(3) A summary of an offence in column 1 of Schedule 1 is not to be taken to affect the nature or elements of the offence to which the summary refers or the operation of these Regulations.

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Part 7—Fees and charges

27 Fee for property enquiries

The fee of 1.27 fee units is to be charged by VicRoads for the supply, on request, of—

(a) information as to whether VicRoads has any approved proposals for works requiring the purchase or compulsory acquisition of land; or

(b) information as to whether VicRoads has declared any road or part of a road as a controlled access road under section 42 of the Act; or

(c) the details of any policy made under clause 3 of Schedule 2 to the Act; or

(d) information for the purposes of the preparation of a section 32 statement within the meaning of section 30(1) of the **Sale of Land Act 1962**.

28 No charges for certain uses of road reserves

Unless operated in an ancillary area, a payment to VicRoads is not required for a lease or licence to operate a roadside restaurant or similar facility on—

(a) a pathway on an arterial road; or

(b) a pathway on a non-arterial State road for which VicRoads is the coordinating road authority.

**Example**

A fee may be payable to VicRoads for a licence issued under the Act to operate a take-away food van in a rest stop on a freeway but no fee is payable to VicRoads for a café placing tables on a footpath of an arterial road.

**Note**

A municipal council may charge fees for use of footpaths under the **Local Government Act 1989**.

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Schedule 1

Regulation 26

Road management infringements

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | *Column 1* | *Column 2* | *Column 3* | *Column 4* |
| *Item* | *Summary of Offence* | *Road Management Infringement* | *Specified Penalty* | *Code* |
| 1 | Enter or remain on VicRoads' property without consent | An offence under regulation 19(2) | 2.5 penalty units | 8389 |
| 2 | Fail to produce written consent when entering or being on VicRoads' property or fail to produce evidence of identity | An offence under regulation 19(4) | 2.5 penalty units | XXXX |
| 3 | Damage or interfere with VicRoads' property, including removing, destroying or damaging plants and erecting or removing signs or notices on that land | An offence under regulation 19(6) | 2.5 penalty units | 8390 |
| 4 | Climb, jump or rappel on, from or onto a bridge on or over a freeway, arterial road or certain non-arterial State roads | An offence under regulation 20(1) | 2 penalty units | 8391 |
| 5 | Unauthorised camping on a freeway, arterial road or certain non-arterial State roads | An offence under regulation 21(1) | 1 penalty unit | 8392 |

ENDNOTES

LAST PAGE

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1. Austroads, *“Managing Asset Management Related Civil Liability Risk”,* Research Report, AP-R412-12, 2012 p 9 [↑](#footnote-ref-1)
2. Victorian Auditor-General, “Maintaining the State’s Regional Arterial Road Network, June 2008, no 115, Chapter 3 [↑](#footnote-ref-2)
3. Austroads, *“Managing Asset Management Related Civil Liability Risk”,* Research Report, AP-R412-12, 2012, p 11 [↑](#footnote-ref-3)
4. Frankston City Council, “Road Management Plan Review” May 2013, p 4 & City of Melbourne, “Road Management Plan Report”, June 2013, p 2 [↑](#footnote-ref-4)
5. http://greatershepparton.com.au/road-management-plan [↑](#footnote-ref-5)
6. City of Melbourne, “Road Management Plan Report”, June 2013, p 8 [↑](#footnote-ref-6)
7. VicRoads, “Victorian Rest Area Strategy- A strategy for the provision of rest areas in rural Victoria”, August 2010 [↑](#footnote-ref-7)
8. Department of Treasury and Finance, “Cost Recovery Guidelines”, January 2013, Victorian Government [↑](#footnote-ref-8)
9. ibid, p 6 [↑](#footnote-ref-9)
10. From annual reports and financial statements/reports of municipal councils as are available on the internet. [↑](#footnote-ref-10)
11. Private Sector full-time adult ordinary time earnings (ABS, Average weekly Earnings, Australia, November 2014, Cat. 6302.0 [↑](#footnote-ref-11)
12. Australian Communication and Media Authority, “Convergence and Communication”, Report 1: Australian household consumers’ take-up rates and use of voice communication services. 2009 [↑](#footnote-ref-12)
13. Australian Communication and Media Authority, “Older Australians resist cutting the cord” 21 July 2014, acma.gov.au [↑](#footnote-ref-13)
14. Based on average weekly earnings - Private Sector full-time adult ordinary time earnings (ABS, Average weekly Earnings, Australia, November 2014, Cat. 6302.0 [↑](#footnote-ref-14)
15. Revenue is calculated based on 200 consent applications multiplied by the $153.68 standard flat fee (=$30,736) and cost is calculated on 200 consent applications multiplied by the average road authority cost of $230.52 for a 3 hour assessment (=$46,104).

    [↑](#footnote-ref-15)
16. Revenue is calculated based on 200 consent applications multiplied by the $230.52 fee (=$46,104 and cost is calculated on 200 consent applications multiplied by the average road authority cost of $230.52 for a 3 hour assessment (=$46,104). [↑](#footnote-ref-16)
17. Revenue is calculated based on 200 consent applications multiplied by the $102 fee (= $20,400) and cost is calculated on 200 consent applications multiplied by the average road authority cost of $230.52 (for a 3 hour assessment). [↑](#footnote-ref-17)