

SUBMISSION TO THE DEPARTMENT OF TRANSPORT – PLACES OF PUBLIC ENTERTAINMENT REFORMS DISCUSSION PAPER

13 July 2025

Weir Legal & Consulting (**WLC**) has detailed knowledge of the operation of the current provisions of the *Building Act 1993 (Vic.)* relating to POPEs, having acted for and provided advice on POPE issues to many stakeholders, including state government, local government and peak bodies. In particular, it has acted for many Councils and Municipal Building Surveyors in relation to POPE issues and has seen how the provisions of the Act operate in practice. This has included assisting the Victorian Municipal Building Surveyors Group to prepare a detailed paper on various issues identified by that group which we understand has been provided to DTP by the VMBSG.

WLC has reviewed the DTP POPE Reform Workshop Outcomes Paper dated 30 April 2025 and the June 2025 Directions Paper, which sets out three options for reform of the Act to improve the operation of the POPE permit system.

Having observed the significant difficulties arising in the operation of this legislation in its current form and the risk, expense and frustration caused for all involved, we welcome the proposals for reform. Part 1 of this document responds to the three reform options. Part 2 are our suggestions for reform.

PART 1 – Comments in options in the discussion paper

INITIAL COMMENTS

The discussion paper refers to two types of OPs for events being Division 1 and Division 2 OPs. It is our view that a Division 1 OP may approve a venue for occupation as a class 9, however, unless there is a division 2 OP as well (which could be reflected in a single combined document), a division 2 POPE OP will be required each time an event that meets the definition of a POPE is held in a class 9 building. The relationship between Division 1 and Division 2 OPs is referenced in the discussion paper and we welcome a focus on better alignment between the 2 types of permits as part of the reforms. We make further comments about this issue in Part 2 of our submission.

We agree with the list of key challenges and frustrations listed on page 3 of the Discussion paper. These reflect issues raised with us when giving advice on the POPE regime.

COMMENTS REGARDING FOUNDATIONAL CHANGES APPLYING ACROSS ALL OPTIONS

WLC supports reform of the terminology used in the POPE provisions, including ‘Place of Public Entertainment’, ‘admission by payment or other consideration’ and ‘enclosed or substantially enclosed’. These terms are unnecessarily complicated and difficult to apply.

WLC also agrees that the requirement for a POPE permit and the approval process should reflect the level of risk posed by an event or structure and that the CBO exemption does not operate in practice to exempt low-risk events as may have been intended.

Amendments should include a requirement regarding the timing of lodgement of a POPE application and of any planning permit application the granting of which is a precondition of the grant of a POPE permit. At present, applications may be lodged very late, which puts undue pressure on Council staff and MBSs, particularly where further information is required and

which would need to be assessed. Councils and MBSs may feel compelled to grant the applications subject to the imposition of conditions that they comply with various matters which Council doesn't have all information required at the time the permit is issued. This leads to a further regulatory burden in ensuring compliance with the conditions imposed and may lead to risk for attendees if conditions are not complied with.

COMMENTS REGARDING OPTION 1

Approval of POPE permits (Div 2)

It isn't clear to us what delegation of a POPE approval by an MBS to a PBS would mean in practice. Is it intended that it would stand legally as a decision of the MBS but made under a delegation by a PBS? If so, that would leave any potential civil liability for errors sitting with Council/the MBSs insurer rather than with the PBS' insurer. It also isn't clear to us what the legal basis would be for an MBS delegating their powers to a PBS. Whilst appreciating that this is an option intended to require minimal change, we query whether Councils and their insurers would perceive this as increasing the risk to them of decision-making regarding POPEs and would choose not to delegate their power to a PBS.

Conditions and assessments

Whilst clarifying the power to impose conditions would be useful, the clarification should not be drafted in a way that prevents the permit issuer from being able to impose conditions that are appropriate taking into account the particular site and conditions applicable for that event. It is also essential for a suite of standards to be developed that articulate safety requirements and can be referenced in conditions. At present there is debate on what standards apply and a lack of clarity around training required for safety offices.

Class 9b building OPs

It isn't clear what is meant by 'retrospective permits' for Class 9b buildings. We assume that for class 9b buildings that were not issued with a Division 1 OP permitting the owners to use the building for the purpose of a particular type of public event, that an amended OP could be issued. That is, the permit is not 'retrospective' in the sense that it applies to permit events that have already occurred, but rather, after the original OP was issued, an amended OP is issued that permits the new or broader use in the future. However, this is already able to occur under the Building Act – an existing OP for a building can be amended to permit a changed use or a broader array of uses. If the intention of this change is to permit a broader use that would allow a specific type of public event, this should not occur without consideration of whether or not the building is suitable and safe for that use.

COMMENTS REGARDING OPTION 2

Approval of POPE Permits

WLC agrees that the requirements regarding POPE permits should incorporate an assessment of risk and that the existing provisions do not identify or distinguish between public events which involve significant risk and those which do not. Whilst we do not oppose granting a PBS the power to issue a POPE permit, we query how enforcement of the requirements of that permit will be achieved. The amending legislation would need to include requirements that the PBS attend site to inspect it to ensure that permit requirements are complied with. In the

absence of such a requirement, we regard it as very unlikely that a PBS will provide staff to be on site during an event to ensure that the permit requirements are met.

This will mean that either there will be no one on site who enforces compliance with the permit requirements or Council staff will need to attend site to inspect and enforce requirements that were imposed by the PBS. However, Council will have to incur the expense of its staff attending the site without having had the benefit of the payment of a POPE permit fee to Council – this would result in a PBS being able to charge a fee for the issuing of the permit and then Council bearing the expense of enforcement. Councils are already underfunded for Building Act enforcement and this would only exacerbate the problem.

There is also the inherent conflict of interest that will come with allowing an applicant to choose who to seek a permit from. As has happened with building permits, we are likely to see Councils quickly seek to opt out of providing this service at the same time as event organisers choosing to appoint a PBS who they can give repeat work to setting up the inherent conflict of interest. It is one thing to have to 'live with' the privatised system of building approvals given it has now become so entrenched, it's another to extend privatisation and all its pitfalls to the public events sector. If PBS are to be allowed to issue POPE permits, this should only be for low risk events. Allowing a PBS to assist applicant with initial review and certification could have some merit, but the decision to issue a POPE permit, especially for a higher risk event, should be retained by state or local government in collaboration with health and emergency services. Let's not repeat the mistakes of the 90s by throwing POPE approvals open to private certification.

Conditions and assessment

WLC is concerned about the proposal to remove of the discretion to require conditions. Unnecessarily long or duplicative POPE conditions are unhelpful, both for event organisers and also for regulators. However, the discretion to impose conditions is important because every event is different. Even if the event is the same and is merely moving from site to site, there needs to be an ability to impose conditions which reflect matters like:

1. site specific conditions which might relate to the geography of the land on which the event is to be sited;
2. the time of year and prevailing weather conditions;
3. the likely number of attendees, which might vary from site to site

Temporary structures

WLC agrees that streamlining the process of approval of temporary structures and to provide guidance as to the application of the NCC to different types of structures will improve the efficiency of this process. We also agree that different types of structures will have different categories of risk attached to them and that the regulatory process should reflect that not all structures are high-risk.

Certification by an appropriately qualified professional, such as an engineer could be a feasible step but we query whether self-certification would be appropriate other than for structures deemed to be very low risk. WLC's view is that the VBA should retain control of permit issuing for higher risk structures, albeit with guidance as to consistent application of NCC provisions.

Specific timing requirements should also be imposed to tie in with timing requirements for the issue of the POPE itself.

Class 9b buildings

We refer to our comments made on this topic in relation to Option 1

COMMENTS REGARDING OPTION 3

Removal of permit requirement

Option 3 would remove the POPE permit entirely, with all event-related matters to be managed through planning or events permits within Councils or other permits issued by other authorities. Temporary structures would still require approval, utilising a risk-based approach.

We submit that the proposal to have no POPE permit system at all and to have councils '*handle broader event approvals through planning or event permits*' would not achieve the aim of efficient and consistent decision-making processes for event organisers. Each Council is likely to impose different planning permit requirements.

We assume that the reference to other 'event permits' issued by Council is a reference to any requirement to obtain a permit under a Council's Local Laws. If that is so, we note that local laws vary widely between municipalities, as those laws are drafted to reflect that municipality's needs and priorities.

If the aim of POPE reform is to achieve consistent and efficient decision-making, this would not be achieved by eliminating POPE permits. Whilst it would avoid the need to obtain both a planning and a POPE permit, it would not mean that there is consistent decision-making, because there would be no legislative parameters for what measures are required for a safe event. Councils would be concerned about potential civil liability for mismanaged or dangerous events and may develop their own raft of standard requirements, which would likely not be consistent between different municipalities.

It is vital that the assessment of public events occurs in a way that consistently applies agreed standards and is free of the influence of lobbyists and those with a vested financial interest in the outcome of the decision-making. We have observed that decision-making in relation to POPEs can sometimes occur in a context of significant publicity, of overt pressure placed on both MBSs and councillors and where decision-makers are placed under great pressure to 'compromise' in order to achieve what is argued to be a financially positive outcome. Where safety must be prioritised, decision-making should not be left open to public debate.

Temporary Structures

WLC agrees with a risk-based approach to the regulations of temporary structures.

We reiterate our comments made previously about allowing PBSs to issue POPE permits.

Class 9b buildings

We refer to our comments made on this topic in relation to Option 1.

PART 2 - SUGGESTIONS FOR REFORM

WLC suggests consideration be given to reforms which are holistic include the following:

A risk based approach to the requirement for a POPE permit

- define 3 or 4 types of public entertainment events based on defined risk factors such as:

- size and complexity of proposed structures;
- number of patrons;
- duration of event, eg overnight events post greater risk;
- nature of entertainment/activities eg pyrotechnics or fast moving vehicles are higher risk
- require approval processes based on the risk level of the event such as:
 - highest risk events to be approved by the BPC/SBS – who would co-ordinate with the relevant local council and local health and emergency services, especially where the event is in regional or rural Victoria;
 - moderate risk to be approved by the relevant council or by a PBS engaged and overseen by council;
 - lower risk able to be approved by a PBS with clear processes for what the PBS must do to for on site inspections prior to and during event to ensure compliance;
 - lowest risk events exempt from needing a permit but possibly with a requirement to notify and self-certify to defined standards.
- Although reg 210 lists the types of conditions that can be imposed, there are no standards relating to these matters. It is essential to develop and prescribe clearly documented standards and requirements which can be referenced and used to draft conditions on permits covering matters such as:
 - Appropriate numbers and type of amenities/facilities;
 - Triggers for dedicated emergency services units to be on site eg ambulances, Vic Pol, Health or FRV officers dedicated to the event;
 - Availability of clean water and management of sanitary waste;
 - Provision for disabled access;
 - Standards for fire safety including access and egress, onsite water supply;
 - Numbers of safety officers required and training requirements, including currency of training and approved training bodies (currently referenced in reg 210 and 211)

The above suggestions are based on the following observations:

- Festivals run in remote areas over several days are extremely high risk, they tend to have several thousand attendees, involve high rates of illicit drug use and require high levels of support from health and emergency services. Local councils in these areas often lack the resources to approve and oversee these events. They are lucrative for event operators and whilst they may bring economic benefit to remote towns they also divert local health and safety resources from these communities during the event. Concerns about safety can often be overshadowed by political interests. These large events carry too much risk for small councils to manage.
- At present the MBS may list in conditions the qualifications to be held by safety officers (reg 210(b)). Reg 211 says the Authority or chief officer may publish a list of safety training qualifications. To our knowledge no such list has ever been published. We have observed qualifications being offered by safety officers which are more than 10 years old. Safety Officer training should be like first aid training and needs to be kept current. It is difficult for the MBS to impose appropriate conditions when there is no clear training and qualification system in place for fire safety officers. It is possible that OH&S legislation is relevant here and could be adopted but this is not clear.

- The current exemptions based on ‘community based organisations’ are interpreted differently across the state and if an event organiser rightly or wrongly deems themselves to be a CBO, Council may not be aware of the event. The term is often interpreted as meaning that a community based organisation will only be exempt if it does not engage a third party professional event organiser to assist with the event. Whilst the engagement of professional event organisers may indicate the event is more complex and higher risk, it is also possible that CBO’s that choose not to engage professional assistance are less likely to understand the risks and should be subject to oversight through the POPE permit process. The experience of the event organisers is a factor relevant to risk but the current exemption does not properly address that risk.
- For the highest risk events, more formal coordination with health and emergency services is required to ensure all safety risks are being well managed.
- With regards to newly constructed class 9 buildings or class 9 buildings which are regularly used as a POPE, we understand it is rare for an RBS or MBS to issue a Division 2 OP for a POPE for the venue to cover standard types of events that may occur in the future. Owners may not realise that their Division 1 OP does not cover them for POPE events. If a Division 2, POPE OP was issued more often for these types of buildings, it would not be necessary for the building owners to seek event specific POPEs. They would only be required to do so where it is proposed to hold an event which is outside the terms of their standard POPE conditions. This might alleviate the need for Councils to issue as many POPE permits. If this approach were to operate, the owner/event organisation could still register their event online (via the process suggested below) referring to their existing Division 2 POPE but would only need an event specific POPE if their proposed event is outside the conditions of the Division 2 POPE OP.

Central oversight of events

It would be great to require all events with over a certain number of attendees (say 500 or 1000) to be register online giving certain key information including contact details. This could then trigger a notification to the organiser where a POPE is required. If registration was done via a state government based portal, this would enable consistency and oversight of events across the state which could be referred to relevant councils where required. Not only would this allow data collection to inform future policy but also consistency is determining when a POPE is required and the ability to communicate with those involved in events including issuing education materials or informing stakeholders about high risk issues or changes to legislation. Modest registration fees based on the nature of the event could fund the operation of the portal and possible other regulatory practice activities such as education or auditing.

Making Victoria a preferred jurisdiction for events

If the Victorian government can facilitate an efficient, risk based process for POPEs through the use of technology and coordination between the state, local councils and health and emergency services, there is the potential for Victoria to be considered easier to deal with attracting higher numbers of events and bringing beneficial economic activity to the state. Clarity around standards and appropriate oversight through a risk based approvals process will also lead to events that are safe for the whole community.