



Alcohol Policy Coalition

23 December 2016

By email: lcra.review@justice.vic.gov.au

Review of Liquor Control Reform Act 1998

Dear Sir/Madam

We attach the Alcohol Policy Coalition's submission to the review of the *Liquor Control Reform Act 1998* (Vic).

Please contact Sarah Jackson, Legal Policy Advisor, Cancer Council Victoria if you would like to discuss the submission or need further information (sarah.jackson@cancervic.org.au, (03) 9514 6463).

Sincerely

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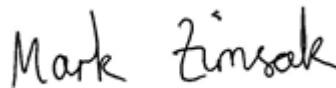
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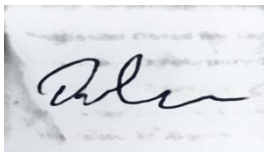
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Review of the Liquor Control Reform Act 1998



The Alcohol Policy Coalition is a collaboration of health and allied agencies who share a concern about the level of alcohol misuse and the associated health and social consequences for the community. The Alcohol Policy Coalition develops and promotes evidence-based policy responses that are known to be effective in preventing and reducing alcohol-related problems. The members of the Alcohol Policy Coalition are:

Australasian College of Emergency Medicine	Royal Australasian College of Surgeons
Alcohol and Drug Foundation	Salvation Army
Cancer Council Victoria	Turning Point
Centre for Alcohol Policy Research (CAPR), School of Psychology & Public Health, La Trobe University	Victorian Alcohol and Drug Association
Foundation for Alcohol Research and Education	Violence Prevention Group, School of Psychology, Deakin University
Jewish Community Council of Victoria	Uniting Church in Australia, Synod of Victoria and Tasmania
Public Health Association of Australia (Victoria)	

All the Alcohol Policy Coalition partners have a strong track record in tackling major health issues in the community.



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Executive summary

The priority of the Review of the *Liquor Control Reform Act 1998* (Vic) (LCRA) should be to reduce alcohol-related harm in Victoria. The review is an important opportunity to set a new direction for Victoria's liquor licensing regime that prioritises harm minimisation, by implementing evidence-based reforms that would have substantial impact in reducing alcohol-related family violence and other harms.

The indisputable link between alcohol and family violence resulted in the Royal Commission into Family Violence (RCFV) calling on the Review of the LRCA to consider family violence and alcohol-related harms. More specifically the RCFV called on the Review to "involve consultation with people who have expertise in the inter-relationship between family violence and alcohol use".¹ The important role that the regulation of alcohol can play in reducing the frequency and severity of family violence should be central to the decisions made relating to the Review of the LCRA.

Alcohol, harm and family violence in Victoria

Alcohol use in Victoria causes a range of devastating harms, including short-term and long-term harms to the drinker and others. Alcohol is a risk factor for long-term health problems, including cancer, and a major contributor to Australia's burden of disease.

Alcohol-related harms have risen dramatically in Victoria. This has included sharp increases in alcohol-related family violence, assaults, ambulance attendances and treatment episodes.

Alcohol is also a significant contributor to family violence in Victoria. Alcohol increases the frequency and severity of family violence, and is at least partially implicated in up to 53 per cent of family violence incidents in Victoria. The number of family violence incidents involving alcohol increased by 85 per cent between 2003-04 and 2012-13.

Proliferation of liquor licences in Victoria and link to harms

There is strong Australian and international evidence establishing that increases in the availability of alcohol, through increases in on-premises and packaged liquor outlet density and trading hours, contribute to increases in alcohol-related harms, including violence, family violence, child maltreatment and health problems.

Research shows that increases in liquor outlet density are associated with increases in violence, family violence, and alcohol-specific chronic disease.

Victorian research has found that the density of liquor licences, particularly packaged liquor licences, is associated with rates of police-reported domestic violence over time. Victorian research has also shown that packaged liquor licences are disproportionately located in areas of socio-economic disadvantage, with likely impacts on health inequalities.

In addition, there is a large body of Australian and international research clearly establishing the relationship between liquor outlet trading hours and levels of alcohol harm.

The number of liquor licences in Victoria has increased dramatically over the past three decades – from fewer than 4,000 in 1986 to more than 21,000 in 2016. The number of packaged liquor licences has increased by 49.4 per cent over the past 15 years, and the number of 'big box' chain packaged liquor stores has increased from 3 to 68.

Failure of the Liquor Control Reform Act to minimise harm

The proliferation of liquor licences and resulting increase in alcohol harms in Victoria demonstrate that the LCRA is failing to give effect to its primary object of contributing to harm minimisation, and is weighted towards its secondary objects relating to alcohol industry development.

In 2012 the Victorian Auditor-General reported that the liquor licensing regime is not effectively minimising alcohol-related harm, and that the licensing process is complex, inconsistent, lacking in transparency, and weighted in favour of industry. The sections below provide a summary of the APC's position on the questions outlined in the LCRA Review Consultation Paper.²

To address the significant and increasing harms from alcohol in Victoria, the APC has provided recommendations for reforming the LCRA. A summary of these policy proposals is provided below responding to each of the questions outlined in the Consultation Paper.

Question 1: Reducing regulatory burden

It is appropriate and necessary for liquor licences to be subject to the level of regulation required to reduce and prevent alcohol harms. The priority of the Review should be reducing alcohol harms, particularly family violence, and the burden of alcohol on communities, local councils and relevant services, as well as the social and economic costs of alcohol in Victoria.

Question 2: Current licence type regime

Licence categories should be revised to appropriately distinguish between different premises types, to ensure effective regulation and transparency for research. In addition, information on the maximum patron capacity permissible for each liquor licence should be made available.

A specific licence for online alcohol supply and home delivery should be created, under which delivery of alcohol should cease at 10pm, and persons delivering orders should be subject to Responsible Service of Alcohol (RSA) requirements.

Question 4: Interaction between licensing and planning processes

The Review should consider how licensing and planning processes should be effectively delineated in a manner that ensures harm, health, amenity and social impacts of liquor licences are fully considered in the decision-making process, and there is opportunity for effective community and local government engagement.

Question 5: Risk-based fee structure

A multiplier for calculation of licence renewal fees should be introduced for off-premises licence types based on volume of sales or retail floor space. This would appropriately reflect the contribution of packaged liquor outlets to alcohol harms and impacts. The funds raised from the licence renewal fees should be applied to administering the liquor licensing regulatory scheme.

Question 6: Diversity and small business

The proliferation of liquor licences indicates that the LCRA is unduly prioritising business interests over harm minimisation, and is detracting from overall business diversity by allowing a disproportionate number of alcohol outlets.

Question 7: Harm minimisation measures in the LCRA

Current LCRA regulatory measures and licensing decisions do not give primacy to harm minimisation. For example, the provisions of the LCRA:

- do not define harm or set out factors relating to harm to be taken into account in licensing decisions,
- impose high evidentiary requirements in relation to harm minimisation, and give precedence to competing secondary objects,
- do not adequately control the supply and consumption of liquor as required under the harm minimisation object of the LCRA,
- focus on amenity rather than harm impacts of licences, and
- do not apply equivalently to on-premises and off-premises licence types.

Objects and definitions

The objects and definitions section of the LCRA should set out a broad and non-exhaustive list of types of harm associated with alcohol. This should include family violence and adverse health effects.

Trading hours

The LCRA should reduce trading hours for the sale of alcohol for off-premises consumption and for on-premises consumption, based on evidence that reductions in trading hours are highly effective in reducing harm.

Promotions and discounting

Evidence supports the need for effective regulation of the advertising, promotion and discounting of alcohol, to reduce the impact of advertising on the age and frequency at which young people drink, and of licensee promotions and discounting practices on levels of consumption and harms.

The LCRA should impose a direct obligation on on-premises and off-premises licensees to refrain from irresponsible advertising and promotion of liquor, and should set out types of irresponsible promotions, including bulk purchase discounts, competitions, gifts with purchase, and shopper docket promotions.

Supply of alcohol to minors

The current exception in the LCRA allowing the supply of liquor to minors in licensed premises as part of a meal in the company of an adult spouse, parent or guardian is inconsistent with evidence of the effects of alcohol use at a young age and parental supply of alcohol to minors. There is clear evidence to demonstrate that the younger that people start to consume alcohol, the more likely they are to have alcohol problems later in life. This exception should be removed.

The LCRA should also introduce a requirement that the supply of alcohol to minors on private premises should be supervised, following the approach in most other Australian jurisdictions.

Question 8: Licence application process

Victoria's licence application system is heavily weighted towards granting licence applications, with only one per cent of applications refused.

The problems with the licence application system include the following:

- It places the evidentiary burden on objectors to satisfy objection and refusal grounds relevant to harm, and imposes no evidentiary requirements on licence applicants.
- These grounds establish an unrealistically high evidentiary threshold, and do not allow sufficient consideration or weighting of harm in licensing decisions.
- The difficulty, time, resources and cost involved in objecting to licence applications places an unreasonable burden on local council and community objectors, and creates a barrier to engagement in the licensing process.
- The overwhelming majority of applications are uncontested, and the Commission is unlikely to consider evidence of harm in these decisions.
- The focus of the licensing scheme on individual licence applications does not allow effective consideration of cumulative impact and harm levels across local areas.
- The system is inconsistent with the primacy of the harm minimisation object of the LCRA, and is resulting in the proliferation of liquor licences in Victoria.

There is a need for reform of the liquor application process to:

- reverse the onus of proof in licence applications and require the Commission to be satisfied of harm and public interest tests,
- require the Commission to consider the cumulative impact of existing licences in the area,
- include clear and comprehensive definitions of harm, public interest and cumulative impact, and
- introduce broader, consistent grounds for objecting to licence applications.

Question 9: Best practice harm minimisation behaviour by licensees

Research findings of a high proportion of intoxicated patrons in licensed venues in Victorian cities can be contrasted with Victorian data showing detection of only a small number of licensee offences relating to irresponsible supply of alcohol.

There is a clear need for improved enforcement strategies to ensure offences under the LCRA are detected and enforced, and act as effective deterrents to irresponsible supply of alcohol.

There is also a need to change the framing of offences and definitions, in order to remove uncertainty and inconsistency, and simplify enforcement.

Offences of supplying alcohol to intoxicated person, and permitting drunken persons on licensed premises, should be based on a single definition of intoxication.

The definition of intoxication should extend to intoxication by substances other than alcohol, to prohibit licensees from supplying alcohol to people who are intoxicated by drugs.

The onus of proving intoxication should be reversed, so that licensees would be required to establish that a person was not intoxicated in order to defend prosecution.

Question 11: Addressing family violence within the LCRA

There are clear opportunities to address family violence within the LCRA by regulating packaged liquor availability, and alcohol promotion and discounting practices that lead to increased alcohol consumption.

Reforms to regulate alcohol availability, and address alcohol involvement in family violence, should include changes to the licence application process and trading hours reductions.

There is also a need for an ‘alcohol harm zone’ mechanism to enable control of liquor outlet density and harm levels in local areas, in order to reduce alcohol-related family violence and other harms. Designation by the Minister of an alcohol harm zone would create a presumption against the grant of further licences in the area.

Question 12: Compliance and enforcement

There is a strong need to improve compliance with and enforcement of the LCRA. The Review should make recommendations on strengthening the compliance and enforcement provisions of the LCRA, and improving enforcement strategies and approaches.

The Review should take into account the Victorian Auditor-General’s 2012 recommendations on improving enforcement of the LCRA, as well as findings of its current investigation into the effectiveness of the Commission in regulating liquor licensing.

The Commission and Victoria Police should develop a collaborative enforcement strategy. To allow targeted and effective enforcement, data sharing between stakeholders should be implemented, and ‘last drinks’ data should be collected by police and emergency departments.

The current demerit points system is an ineffective compliance and enforcement tool. This is demonstrated by the small proportion of licensees who incur demerit points and the low number of points that are incurred, due to the low number of offences detected. The demerit points system should be reformed to lower the threshold number of points required to incur suspensions, and broaden the range of licensee offences that incur demerit points.

The star rating system is also a weak compliance tool, largely as a result of the low number of offences enforced and demerit points incurred, and should be abolished.

A scheme based on the New South Wales ‘violent venues’ scheme should be introduced in Victoria to allow identification of venues associated with significant numbers of violent incidents each year, and the imposition of serving and management conditions on these venues to improve safety.

Question 13: other harm minimisation measures

Static alcohol advertising

Children and young people are exposed to a large amount of static alcohol advertising (advertising on public transport and in public spaces) in Victoria in their everyday activities. This cannot be avoided or regulated by parents.

Evidence shows that exposure to alcohol advertising influences young people to start consuming alcohol, or to drink more frequently and heavily, and there is evidence that static alcohol advertising near schools increases children’s intention to drink.

Static alcohol advertising should be restricted on public transport infrastructure and in proximity to schools, in order to reduce young people’s exposure.

Conclusion and structure of this submission

The Review of the LCRA presents a clear opportunity to introduce evidence-based regulatory measures to reduce alcohol-related harm in Victoria. In particular, evidence supports the need to restrict liquor outlet density and trading hours, and alcohol advertising, promotion and discounting.

This submission provides detailed responses to questions 1-9, and 11-13 of the Consultation Paper, including clear recommendations for changes to the LCRA that would prioritise harm minimisation.

Recommendations

Question 2: Current licence type regime

1. Licence categories should be revised to appropriately reflect and distinguish between the different operating conditions of different premises types.
2. Information on the maximum patron capacity permissible for each liquor licence should be made available.
3. A specific licence for online alcohol supply and home delivery should be created, under which home delivery of alcohol should cease at 10pm, and persons delivering online or telephone alcohol orders should be subject to RSA requirements.

Question 5: Risk-based fee structure

4. The *Liquor Control Reform Regulations 2009* should introduce a multiplier for calculation of renewal fees for licensed premises that supply liquor for off-premises consumption. Renewal fees for licensed premises that exceed a certain volume of sales or leasable floor space should be multiplied by a factor that increases incrementally based on sales or floor space ranges. The funds raised from the licence renewal fees should be applied to administering the liquor licensing regulatory scheme.

Question 7: Harm minimisation measures in the LCRA

5. The Objects of the LCRA should be amended, or a standalone provision should be inserted, to set out a non-exhaustive list of types of harm associated with alcohol. This should include:
 - Excessive or risky consumption of alcohol.
 - Violence, including family violence.
 - Adverse effects on children, young people, other vulnerable people or groups, or communities.
 - Adverse short-term and long-term effects on health.
 - Anti-social behaviour.
 - Property damage.
 - Personal injury or death.
 - Road accidents.
 - Drink driving.
6. The LCRA should be amended to prevent the supply of liquor for on-premises consumption under extended trading hours after 2am. Ordinary trading hours should remain restricted to 11pm for any premises that has not been licensed for extended trade.
7. The LCRA should be amended to prevent the sale of liquor for off-premises consumption (packaged liquor) after 10pm.

8. The LCRA should impose a direct obligation on on-premises and off-premises licensees to refrain from engaging in advertising or promotions that may encourage irresponsible consumption of alcohol or that are otherwise not in the public interest.
9. The LCRA should set out a non-exhaustive list of the type of advertisements and promotions that would be considered to promote irresponsible consumption of alcohol. The list should apply with equal weight to on-premises and off-premises licences, and should include:
 - price-based promotions, such as sale prices and bulk purchase discounts,
 - shopper docket promotions,
 - competition and game of chance promotions,
 - gifts with purchase,
 - incentives to consume alcohol rapidly or excessively, such as drinking games or competitions,
 - non-standard drink sizes, and
 - happy hours.
10. The exception in section 119(5) of the LCRA allowing supply of liquor to minors in licensed premises as part of a meal if the minor is accompanied by an adult spouse, parent or guardian should be removed.
11. The LCRA should require supply of liquor to a minor in a residence to be consistent with responsible supervision of the minor.
12. The LCRA should specify factors to be considered in determining whether supply of alcohol to a minor is consistent with responsible supervision, including:
 - the minor's age
 - whether the adult is intoxicated
 - whether the minor is intoxicated
 - whether the minor is consuming food with the alcohol
 - whether the adult is directly and responsibly supervising the minor's consumption of the alcohol
 - the quantity and type of alcohol, and the time period over which it is supplied.

The LCRA should also include a statement that the supply of liquor to a minor who is intoxicated is not consistent with responsible supervision of the minor

Question 8: Licence application process

13. Section 4(2) of the LCRA should include a statement that harm minimisation may require a precautionary approach, according to which any decision made pursuant to the LCRA should favour minimising harm where an appreciable risk of harm exists.
14. The LCRA should be amended to reverse the onus of proof in applications for the grant, variation or relocation of a licence (not including lower risk licences, such as restaurants and cafes).
15. The LCRA should provide that the Commission must not grant a licence application unless satisfied that the licence:
 - a) will not contribute to harm in the area (harm test);

- b) is in the public interest (public interest test); and
 - c) is consistent with the Objects of the Act.
16. The LCRA should set out non-exhaustive factors that the Commission must take into account in determining whether the harm test is satisfied, and evidence that will be relevant to determining whether a licence application will contribute to harm.
 17. The LCRA should include a clear definition of public interest, which should set out non-exhaustive factors that the Commission must take into account in determining whether the public interest test is satisfied, including the likely impact of the application on the amenity of the area.
 18. Ministerial guidelines should be issued to provide guidance on assessing whether a licence application satisfies the harm and public interest tests, and on evidence required to support licence applications
 19. The LCRA should require the Commission to have regard to the cumulative impact of existing licences in the area in assessing whether a licence application satisfies the harm and public interest tests, and is consistent with the objects of the Act.
 20. The LCRA should set out non-exhaustive factors that the Commission may consider in assessing cumulative impact.
 21. New Ministerial guidelines should be issued to provide guidance on assessing cumulative impact.
 22. The LCRA should be amended to introduce consistent, broader grounds for objections to licence applications. The grounds should be
 - a) that the application does not satisfy the harm test; or
 - b) that the application does not satisfy the public interest test.
 23. The right to object should be open to any person (including members of the public, local councils and licensing inspectors), and should apply in relation to all licence applications.
 24. The power of the Commission under section 42(a) to refuse to accept an objection if the person making the objection is not affected by the application should be removed.

Question 9: Best practice harm minimisation behaviour by licensees

25. The offences under section 108(4) of the LCRA should be based on a single definition of intoxication.
26. The definition of intoxication in section 3AB of the LCRA should be amended so that it extends to where there are reasonable grounds for believing that a person's intoxication is a result of the consumption of liquor *or other substances*.
27. The LCRA should be amended to provide that where a police officer or licensing inspector decides that a person is intoxicated at a particular time, in the absence of proof to the contrary, the person is taken to be intoxicated at that time.

Question 11: Addressing family violence within the LCRA

28. The LCRA should introduce a power for the Minister to designate an area as an alcohol harm zone. The LCRA should provide that the Minister may designate an alcohol harm zone if satisfied that there is a high risk of alcohol-related harm or negative impacts of licences on the amenity of an area.
29. Designation of an alcohol harm zone would create a presumption that applications for licences in the zone will be refused or subject to specified limitations or conditions (e.g. trading hours limitations), unless the applicant can demonstrate that the application will not increase the risk of alcohol-related harm or negative amenity impacts in the area
30. The LCRA should set out non-exhaustive factors to which the Minister may have regard in deciding whether to designate an alcohol harm zone.
31. The Minister should have discretion to make the designation in relation to particular licence types only (e.g. higher risk licence types).
32. The right to apply for designation of an alcohol harm zone should be open to any person (including members of the public, local councils and licensing inspectors).

Question 12: Compliance and enforcement

33. The Commission and Victoria Police should develop a comprehensive and collaborative enforcement strategy.
34. State-wide emergency department and police data sharing should be implemented.
35. 'Last drinks' data should be collected by police attending alcohol-related events, and from hospital Emergency Departments.
36. The demerit point system should be reformed to lower the threshold number of demerit points that incurs a suspension (e.g. to two or three points).
37. The range of licensee offences that are deemed non-compliance incidents and attract demerit points should also be broadened.
38. Consideration should be given to introducing other sanctions or licence conditions which could apply at lower demerit point thresholds, such as serving restrictions and management requirements.
39. The star rating scheme should be abolished.
40. The LCRA should introduce a 'violent venues' scheme, where licensed venues identified as being associated with a significant number of alcohol-related violent incidents in a year are subject to licence conditions designed to reduce the risk of violence.
41. A list of venues that have been subject to these licence conditions should be published regularly.

42. The effectiveness of the 'violent venues' scheme should be monitored and regularly reviewed.

Question 13: Other harm minimisation measures

43. The LCRA should prohibit static alcohol advertising on all public transport infrastructure and within a certain radius of schools (e.g. based on evidence as to the distance Victorian children typically walk to school).

Introduction

Alcohol is a toxic and hazardous substance, which causes widespread and devastating harms to Victorian children, families and communities, and kills around 1200 Victorians per year.³ The priority of the Government in undertaking the Review of the *Liquor Control Reform Act 1998* (LCRA) should be to prevent alcohol-related harm to Victorians.

This is the first substantial review of Victorian liquor control legislation since the review of the previous *Liquor Control Act 1987* in 1998. Since then, environmental and social conditions in relation to alcohol have changed significantly. Through increases in liquor outlets, particularly ‘big box’ packaged liquor outlets, and extensions in trading hours, alcohol has become more available and affordable than ever before; and alcohol-related harms have increased to unprecedented levels. This represents a clear failure of the LCRA to meet its primary object of contributing to minimising harm, and prioritisation of its secondary objects related to facilitating the development of the alcohol industry. In current conditions, the focus of any review of the LCRA should be harm minimisation.

The Review is an important opportunity to reconsider the operation of the LCRA and licensing regime in current conditions, and to set a new direction for licensing in Victoria that prioritises prevention of harm. The Review should consider a range of reforms that we know would be effective to substantially reduce alcohol-related harms in Victoria, including effective controls on alcohol availability, supply and promotion.

The Victorian Government’s commitment to act on all the recommendations of the Royal Commission into Family Violence (RCFV) must extend to addressing the significant and increasing contribution of alcohol to family violence. In announcing the RCFV, Premier Daniel Andrews declared that family violence is “the most urgent law and order emergency occurring in our state”, and that “more of the same policies will only mean more of the same tragedies.”⁴

On the basis of the evidence establishing that alcohol increases the severity and frequency of family violence, the RCFV recommended that the Review should investigate family violence measures as a priority, calling for greater attention “to the relationship between alcohol supply and family violence” and consideration of the “supply and regulation of alcohol at a statewide or community level”.⁵

If the Victorian Government is committed to preventing family violence, it must respond to the evidence base and address the role of alcohol. Victorian research establishes that increases in liquor licences, particularly packaged liquor licences, in an area are associated with increases in family violence over time.⁶ This suggests a need for licensing reforms that more effectively regulate the availability of alcohol in Victoria, with a focus on packaged liquor availability. Such reforms would have substantial impact in reducing the incidence and severity of family violence as part of a multi-strategy approach, and help to protect Victorian children and families from the serious impacts of alcohol and violence.

The Alcohol Policy Coalition (APC) welcomes the opportunity to provide a submission on the Review.

The APC’s submission sets out background information describing the harms caused by alcohol, the impact of alcohol on children and families, the proliferation of liquor licences and increasing alcohol harms in Victoria, and the failure of the LCRA to minimise these harms. It also sets out the evidence base for the relationship between alcohol availability and harm, and discusses the evidence for regulatory measures to address alcohol harms. The submission then answers questions 1-9, and 11-

13 of the Consultation Paper, and provides recommendations for reform of the LCRA and associated policies in relation to each question.

Alcohol and harm

Alcohol use in Victoria causes a range of devastating harms. Alcohol contributes to street violence, family violence, injuries, overdoses, deaths, car accidents, crime, and harm to developing fetuses and breastfed babies.

Alcohol places individual drinkers at risk of short-term harms, such as assault and injury. Excessive alcohol consumption is also a risk factor for serious long-term health problems, including liver cirrhosis, stroke, coronary heart disease and high blood pressure. Alcohol has been classified by the World Health Organization (WHO) International Agency for Research on Cancer as a Group 1 carcinogen, and is a proven risk factor for cancer of the mouth, pharynx, larynx, oesophagus, bowel, breast and liver.⁷ Long-term alcohol consumption is responsible for more than 3200 cancers (2.8 per cent) in Australia each year.⁸

Alcohol is a major contributor to Australia's burden of disease. Researchers have estimated that 5,610 deaths and 157,101 hospital admissions were attributable to alcohol in Australia in 2010, and that 1,214 of those deaths and 39,381 of the hospital admissions were in Victoria.⁹

Alcohol harms disproportionately affect Aboriginal and Torres Strait Islander peoples, contributing to health inequalities. Aboriginal and Torres Strait Islander peoples die from alcohol-related causes at a rate seven times greater than non-Indigenous Australians.¹⁰

In addition to harms to individual drinkers, alcohol causes a range of social and health harms to third parties. These include street violence, family violence, child maltreatment, crime and road traffic accidents.¹¹

The impacts of alcohol and anti-social behaviour place a significant burden on local councils. They are required to respond to a range of amenity and public nuisance impacts such as vandalism, litter, graffiti and noise complaints, as well as damage to public infrastructure and amenities, such as parks and reserves. Inner city councils must also deliver street cleaning services and footpath management controls in areas where alcohol is consumed.¹²

The harms caused by alcohol have a substantial economic impact on Victoria. The social cost of alcohol-related harm to Victoria in 2007-08 was estimated to be \$4.3 billion, approximately \$366 million of which was borne by government through policing and health services.¹³ This figure would significantly underestimate the full costs of alcohol today. The estimated economic cost of alcohol harms in Australia is estimated to be up to \$36 billion each year.¹⁴

Alcohol's impact on children and families

Alcohol has negative impacts on Victorian children and families, including modelling of poor drinking behaviours, family arguments, injury, neglect, abuse and violence.¹⁵

Alcohol is a major contributing factor to family violence in Victoria. It is widely recognised that alcohol increases both the likelihood of family violence occurring and the severity of the harms associated with violence. This association has been recognised by the WHO,¹⁶ the Council of Australian Governments¹⁷ and the RCFV.¹⁸

WHO examined the body of evidence on the relationship between alcohol use and intimate partner violence, and reached the following conclusions:

- Alcohol use contributes to the incidence and severity of intimate partner violence.
- Heavy alcohol use may cause or exacerbate relationship stress which increases the risk of conflict.
- Alcohol use affects cognitive and physical function, resulting in domestic violence perpetrators using a violent resolution to relationship conflicts.
- Excessive drinking by at least one partner can aggravate existing relationship stressors such as financial problems, thus increasing the probability of violence.
- Alcohol use is often used by perpetrators as an excuse for violence.
- Experiencing intimate partner violence can result in increased alcohol consumption by the victim as a coping mechanism.
- Intergenerational effects may occur, including children who are witnesses to their parents' violence being more likely to have problematic drinking later in life.¹⁹

WHO also examined the evidence on the association between alcohol and child maltreatment, and concluded that:

- Alcohol is a significant contributory factor to child maltreatment.
- Harmful alcohol use interferes with physical and cognitive function. This reduces self-control and increases the propensity to violence towards children.
- Harmful parental alcohol use can impair responsibility, reduce the time and money available to children, and lead to neglect of basic needs.
- Harmful parental alcohol use is associated with other problems that increase the risk of child maltreatment, such as poor mental health and anti-social personality characteristics.
- Being maltreated as a child increases the risk of harmful drinking later in life.²⁰

Police data demonstrates that alcohol is involved in a very high proportion of family violence incidents in Victoria. Recent Crimes Statistics Agency research found that of the 121,251 recorded family violence incidents in 2014-15, 25,736 incidents, representing 21 per cent, were recorded as having the 'definite' involvement of alcohol (by the perpetrator or victim, or both), and a further 39,012, representing 32 per cent, were recorded as having the 'possible' involvement of alcohol. Alcohol is, therefore, at least partially implicated in up to 53 per cent (64,748 incidents) of reported family violence incidents in Victoria. Alcohol use was also linked to incidents where the perpetrator's violence was more severe and where the victims were particularly vulnerable to the harms caused by family violence.²¹ These figures would underrepresent the contribution of alcohol to family violence in Victoria, as it is likely that many family violence incidents involving alcohol are unreported.

A recent study of police data on family violence involving alcohol and drugs across Australia found that alcohol was present in 44.2 per cent of all family and domestic violence incidents in Victoria from 2009 to 2013 (including intimate partner violence and violence between family members). The

study found that 22.6 per cent of all family and intimate partner violence offenders were assessed as having definitely used alcohol and 16.1 per cent as having possibly used alcohol.²²

Data also indicates that alcohol is involved in a large proportion of child protection cases in Victoria. Court data shows that alcohol was involved in 33 per cent of substantiated child abuse and neglect cases and 42 per cent of cases involving a court protective order in 2001-2005.²³

The APC queries the RCFV's description of the proportion of family violence incidents involving alcohol reported by police as "relatively small".²⁴ This does not seem a fitting description of just under one quarter of reported family violence incidents that definitely involved alcohol, and around a half of reported incidents that at least possibly involved alcohol. We note that less recent Crime Statistics Agency research commissioned by the RCFV also found alcohol involvement in a sizeable proportion of family violence incidents. The research found that in 2012-13 the offender had definitely consumed alcohol in 20 per cent of family violence incidents, and possibly used alcohol in 17 per cent of incidents. In 2013-14, the offender had definitely used alcohol in 19 per cent of incidents, and possibly in 16 per cent.²⁵ Irrespective of the data relied upon, it is clear that alcohol is involved in a significant proportion of family violence incidents in Victoria.

Increases in alcohol harms in Victoria

Alcohol-related harm has increased dramatically in Victoria. This has included sharp increases in alcohol involvement in family violence, alcohol-related assaults, alcohol-related ambulance attendances, and alcohol-related treatment episodes.²⁶

For example:

- The number of family incidents with definite alcohol involvement increased by **85 per cent overall** and by **59 per cent per population** between 2003-04 and 2012-13.²⁷
- The number of alcohol-related hospital admissions increased by **29 per cent** from 2003 to 2012.²⁸
- Alcohol treatment episodes across Victoria increased by **47 per cent** from 2004-05 to 2013-14.²⁹
- Alcohol-related ambulance attendances in metropolitan Melbourne increased by **221 per cent** between 2004-05 and 2013-14.³⁰

There has been a pronounced overall upwards trend in alcohol-related ambulance attendances over the past ten years (see figure 1 below).

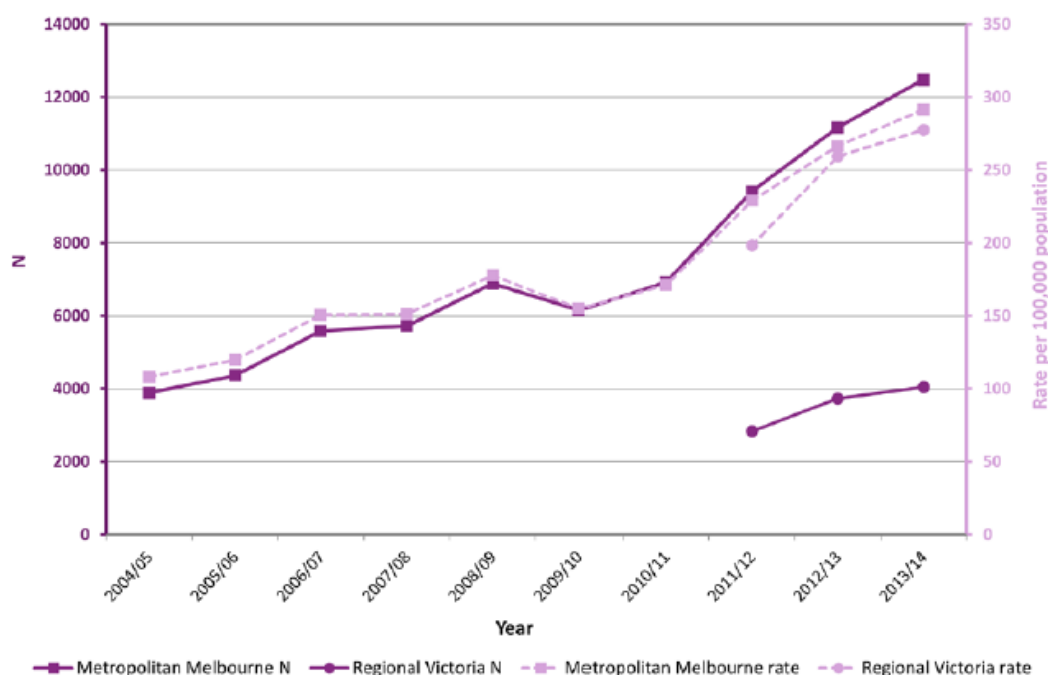


Figure 1: Increase in alcohol-related ambulance attendances in metropolitan Melbourne and regional Victoria from 2011-12 to 2012-13.³¹

The most recent available data indicates that alcohol harms in Victoria have reached critically high levels. Over a one year period there were, on average:

- 38 family violence incidents involving alcohol per day in 2012-13 (14,015 during the year),³²
- 81 alcohol-related hospital admissions per day in 2010-11 (29,694 during the year),³³
- 67 alcohol-related treatment episodes per day in 2014-15 (24,633 during the year),³⁴
- 23 alcohol-related ambulance attendances in metropolitan Melbourne per day in 2011 (8,349 during the year),³⁵
- 18 alcohol-related assaults per day in 2010-11 (6,768 for the year),³⁶
- 5 serious or fatal road injuries during high alcohol hours per day in 2010-11 (1,932 during the year),³⁷ and
- 3 alcohol-attributable deaths per day in 2010 (1,214 during the year).³⁸

This increase in harms is placing enormous pressure on systems and services that are required to respond, including emergency services, hospitals, alcohol and drug services, as well as systems and services responding to family violence, such as family violence specialist services, family services, crisis accommodation and housing services, and legal and health services.³⁹

Proliferation of liquor licences in Victoria

The increase in alcohol-related harms in Victoria can be linked with the explosion in liquor licences and significant extensions in late night trading hours over the past three decades. The number of liquor licenses in Victoria has increased more than five-fold from fewer than 4000 in 1986⁴⁰ to more than 21,000 in 2016.⁴¹ Victoria is now the liquor licence capital of Australia, with more liquor licences than any other state or territory overall, and behind only South Australia in licences per capita.

The increase in liquor licences has included a substantial increase in packaged liquor licences, and an explosion in large ‘big box’ stores offering cheap alcohol and bulk discounts. Over the past 15 years, the number of packaged liquor outlets in Victoria has increased by 49.4 per cent overall (from 1,354 in 2001 to 2,023 in 2016), and by 18.2 per cent relative to population (from 28.7 per 100,000 in 2001 to 33.9 in 2016). The number of big box stores has increased dramatically from 3 to 68 – an increase of 2,000 per cent per capita.⁴² Victoria, along with New South Wales, has the highest level of packaged liquor availability of all states.⁴³ Around 80 per cent of all alcohol consumed in Australia is sourced from packaged liquor outlets,⁴⁴ and evidence shows that outlets are clustered in disadvantaged areas.⁴⁵

Failure of the LCRA to minimise harm

The LCRA is the primary instrument regulating alcohol in Victoria. Liquor licensing determines the number, trading hours and operating conditions of licensed outlets in Victoria, and is the main vehicle for preventing alcohol-related harm.

However, the LCRA and its licensing regime are failing to give effect to the primary object of contributing to minimising harm arising from the misuse or abuse of alcohol. Instead, they are heavily weighted towards the competing secondary objects of facilitating the development of a diversity of licences, and contributing to the responsible development of the liquor, licensed hospitality and live music industries. This is evidenced by the almost unchecked proliferation of liquor licences in Victoria since the LCRA was introduced in 1998, with liquor licences more than doubling over that time, extensions in liquor trading hours, and dramatic increases in alcohol-related harms.

This current weighting of liquor licensing in favour of the alcohol industry is in conflict with the substantial health and social harms associated with alcohol, including harm to persons other than the drinker, and the status of a liquor licence as a privilege, conditional upon complying with legal requirements and obligations, rather than a property right.

This may also be partially driven by an exaggerated perception of the role of pubs, bars and bottle shops in the entertainment and cultural life of Victorians, and their contribution to the Victorian economy, which does not appear to be based on evidence. For example, the Australian Night Time Economy Report reported that in 2014 food outlets (restaurants, cafes and take away) contributed 62.2 per cent of Melbourne’s night-time economy,⁴⁶ and entertainment categories contributed 23.7 per cent.⁴⁷ In comparison, pubs, bars and bottle shops contributed only 13.3 per cent (3.3 per cent from liquor retailing, and 9.7 per cent from pubs, taverns and bars).⁴⁸ This indicates that these alcohol outlets make only a relatively small contribution to Melbourne’s economy at night, and that the large majority of night-time entertainment and cultural activities in Melbourne occur through sources other than pubs, bars and bottle shops.

In 2012, the Victorian Auditor-General’s *Effectiveness of Justice Strategies in Preventing and Reducing Alcohol-Related Harm* Report examined the effectiveness of the Department of Justice, Victoria Police and the Victorian Commission for Gambling and Liquor Regulation (Commission) in preventing and reducing the impact of alcohol related harm on the community.

The Auditor-General’s findings included the following:

- Alcohol-related harm has increased significantly across almost all indicators over the past 10 years. Alcohol harm is “widespread and increasing”.

- The liquor licensing regime is not effectively minimising alcohol-related harm due to a lack of transparency of decision-making, guidance on regulatory processes and engagement from councils.
- Liquor licensing processes and legislation are “inconsistent and cumbersome”.
- The licensing process is “complex, inconsistent and lacks transparency”, and is weighted in favour of the liquor and hospitality industry.
- “The number of objections to liquor licence applications by councils is exceptionally low.”
- “Councils’ ability to influence the liquor and hospitality industry on behalf of the communities they represent is restricted by shortcomings in the planning permit and liquor licence application processes. The grounds for objecting to a licence are narrow, and the evidentiary requirements and decision-making process for contested applications are unclear.”
- Liquor legislation hinders enforcement due to unclear and inconsistent definitions.
- There is no over-arching whole-of-government enforcement strategy to comprehensively address unlawful supply.⁴⁹

The Auditor-General’s Report noted the Department of Justice’s acceptance of evidence that strategies to increase the price and restrict the availability of alcohol are effective in reducing harm. The Report stated, “Since the law does not allow the state to use pricing as a harm minimisation strategy, it is reasonable to expect [the Department of Justice] to compensate for this by providing advice on ways to significantly enhance controls over supply instead. It has not done so.”

The Report concluded that the “level of reported alcohol-related harm has increased significantly over the past 10 years” and that “[a] fundamental change in approach to strategy development, licensing and enforcement is required before any noticeable impact on reducing harm is likely”. There is a clear need for fundamental reform of the LCRA to redress the current imbalance of the licensing objects, and to ensure the LCRA and liquor licensing regime is effective in preventing and reducing alcohol harms.

The Victorian Auditor-General is currently examining the effectiveness of the Commission in regulating gambling and liquor licensing, including the Commission’s regulatory practices in relation to licensed venues and packaged liquor, and will report on its findings next year. It will be important for the review to take into account these findings, as well as the findings of the Auditor General’s 2012 report.

Alcohol availability and harm — the evidence

There is a strong Australian and international evidence-base establishing that increases in the availability of alcohol, through increases in on-premises and packaged liquor outlet density and trading hours, contribute to increases in alcohol-related harms, including violence, family violence, child maltreatment and health problems.⁵⁰

Outlet density and harm

There is a large body of evidence establishing that the density of liquor outlets is significantly associated with rates of violence.⁵¹ Australian and international longitudinal studies have found that changes in liquor outlet density in neighbourhoods are associated with changes in violence rates.⁵² In particular, an Australian study found that the density of general licences (pubs), restaurants and packaged liquor outlets were significantly associated with police records of assault in Melbourne.

The study found that the density of on-premises outlets was associated with violence across neighbourhood types, but most strongly in entertainment precincts, whereas packaged liquor outlet density was related to violence only in suburban areas.⁵³

Evidence also establishes that changes in alcohol outlet density are associated with changes in the incidence of health problems. In a longitudinal study in Victoria, Livingston examined the impact of changes in outlet density on hospital admissions for alcohol-specific diseases (e.g. alcoholic liver cirrhosis).⁵⁴ The study found the density of packaged liquor outlets was the most influential predictor of alcohol-specific chronic disease (although it should be noted that this study only controlled for socio-economic disadvantage).⁵⁵ A West Australian longitudinal study examined impacts on acute harms, rather than chronic health harms, using a proxy measure for alcohol-related injuries.⁵⁶ This study combined data on outlet density with data on the hours in which the premises were trading and the amount of alcohol they sold. Using these data and sophisticated longitudinal models, they found that injury rates were significantly associated with the density of on-premises outlets (and particularly late-night trading outlets). In contrast, the density of off-premise outlets was not significantly associated with injury, but the amount of alcohol sold via off-premise outlets was. This study is an important improvement on much of the existing literature and demonstrates the need for detailed alcohol sales data to be collected and made accessible to researchers.

Packaged liquor outlet density and harm

There is growing evidence specifically linking the increase in packaged liquor outlets in Victoria with increases in alcohol-related harm.⁵⁷ Local level studies have shown that increases in outlet density are associated with increases in hospitalisations for assault, police records of family violence⁵⁸ and rates of alcohol-specific chronic disease.⁵⁹

In particular, Victorian longitudinal research examined the relationship between the density of alcohol outlets in a neighbourhood and the rates of family violence incidents reported to the police in Melbourne over a ten year period.⁶⁰ The research found that higher density of outlets, particularly of packaged liquor outlets, was associated with increased rates of family violence. A 10 per cent increase in the density of packaged liquor outlets was associated with an approximately 3.3 per cent increase in domestic assaults. Each additional new packaged liquor outlet per 1,000 residents in a postcode increased the family violence rate by an average of 29 per cent.

An important cross-sectional study from Western Australia incorporated measures of both alcohol outlet density and alcohol sales,⁶¹ finding that it was the amount of alcohol sold via packaged liquor outlets that predicted violence rates, rather than just the density of outlets. This finding has been replicated (for injury outcomes) in a recent high-quality longitudinal study⁶² and using a case-crossover approach,⁶³ suggesting that policy should not focus only on the density of packaged liquor outlets without considering how much alcohol they sell.

Longitudinal research from California has found that packaged liquor outlet density is associated with child maltreatment.⁶⁴ Examining changes in alcohol outlets and child maltreatment in 579 ZIP codes over six years, the study found that the density of off-premise outlets was significantly and consistently associated with rates of child maltreatment.

Research has shown that chain packaged liquor outlets have a stronger association with harm than independent outlets. This is likely because chain outlets are larger and offer cheaper alcohol.⁶⁵

Victorian research has found that packaged liquor licences are disproportionately located in areas of socio-economic disadvantage, with likely impacts on health inequalities.⁶⁶ Further research in

Victoria found that disadvantaged areas have twice as many packaged liquor outlets as the wealthiest areas, and in rural and regional areas there are six times as many packaged liquor outlets and four times as many pubs and clubs per person.⁶⁷ Research shows that the number of packaged liquor outlets in an area is associated with rates of alcohol-related harm,⁶⁸ and that rates of alcohol-related harm in Victoria are higher among people who are socio-economically disadvantaged.⁶⁹

Australian research indicates that packaged liquor contributes to harm in and around night-time entertainment areas via the practices of ‘pre-loading’ and ‘side-loading’ on packaged liquor. Studies estimate that more than 65 per cent of drinkers pre-load on packaged liquor before going out, leading to higher levels of intoxication and harm.⁷⁰ A recent study found that 60 per cent of people presenting with alcohol-related injuries in regional Victorian emergency departments had purchased their last drinks from packaged liquor outlets.⁷¹ Consumption of packaged liquor during a night out is also common⁷² and there are concerns about the contribution of late-night packaged liquor sales to alcohol-related disorder and violence.⁷³

Trading hours and harm

There is a large body of Australian and international research clearly establishing the relationship between trading hours of liquor outlets and levels of harm.⁷⁴ Australian and international research demonstrates that for every additional hour of trading, there is a 16-20 per cent increase in assaults, and for every hour of reduced trading there is a 20 per cent reduction in assaults.⁷⁵ The trading hours research includes a series of robust Australian studies demonstrating that reducing late night trading hours of on-premises liquor outlets leads to substantial reductions in rates of violence, whereas extending late night trading results in higher rates of harm.⁷⁶

A study on reduced trading hours in Newcastle, New South Wales provides particularly cogent evidence. The study examined whether a change in closing hours from 5am, initially to 3am and then to 3.30am, reduced the incidence of assault. The restriction in trading hours also involved provisions that no new patrons could be admitted to a venue after 1am and existing patrons could continue to drink until 30 minutes prior to closing time.⁷⁷ The results showed that the restriction in closing times produced a 37 per cent reduction in assaults between 10pm and 6am in comparison to a control locality, with approximately 33 assault incidents prevented per quarter. The restriction also led to a dramatic reduction in assaults after 3am (by two-thirds).⁷⁸ Follow up research at the five year mark found that the restriction in closing times was associated with a sustained lower assault rate in the Newcastle CBD⁷⁹ as well as a gradual reduction in injury-related hospital emergency department presentations.⁸⁰ The study found that the majority of the reduction in harm occurred after 3am, with little effect between 1am and 3am. This indicates that the reduction in trading hours, rather than the lock out, was effective in reducing harm.⁸¹

Similarly significant results were found in a study evaluating interventions in the Sydney CBD and Kings Cross, including 3am cessation of service. Following the reforms in those areas, statistically significant and substantial reductions in assault occurred in both the Kings Cross (down 32 per cent) and Sydney CBD Entertainment Precinct (down 26 per cent).⁸²

The Australian research is accompanied by comprehensive overseas studies examining impacts of changes to late-night on-premises trading hours.⁸³ This includes a comprehensive Norwegian study examining the effect of small changes in late night trading for bars in 18 Norwegian cities. The study found that each one hour change in trading hours was associated with a 16 per cent change in recorded assaults.⁸⁴

International studies have also found significant reductions in harm following reductions in packaged liquor trading hours. A Swiss study found significant decreases (between 25 per cent and 40 per cent) of hospital admission rates for adolescents and young adults following opening hours reductions for off-premise alcohol sales and bans on sales from video stores and gas stations.⁸⁵ A German-based study found that a policy change banning the sale of alcohol from off-premise outlets between 10pm and 5am reduced alcohol-related hospitalisations among adolescents and young adults by about 9 per cent.⁸⁶ An evaluation study of the effect of extending trading hours in two entertainment areas in Amsterdam, The Netherlands found the increased opening hours was associated with a 34 per cent increase in alcohol-related ambulance attendances late at night that was not matched in the control areas.⁸⁷

Evidence-based regulation to address alcohol-related harm

The Review of the LCRA presents a clear opportunity to introduce evidence-based regulatory measures that we know would be effective to reduce the high levels of alcohol-related harm in Victoria, including alcohol-related family violence. A comprehensive approach to reducing alcohol-related harm must address the availability, supply, price and promotion of alcohol.

Evidence supports the need for effective regulation of the advertising, promotion and discounting of alcohol, to reduce the impact of advertising on the age and frequency at which young people drink,⁸⁸ and the impact of licensee promotions and discounting practices on levels of consumption and harms.⁸⁹

There is also clear evidence that strategies to restrict the availability and increase the price of alcohol are highly effective in reducing alcohol harm.⁹⁰ In particular, restricting liquor outlet density and reducing trading hours are cost-effective and proven harm reduction measures.⁹¹ An Australian study found that restricting trading hours is supported by the strongest evidence of effectiveness in reducing alcohol harm of all interventions to control the supply of alcohol.⁹²

It is also clear that the effects of these measures can extend to reducing the incidence of family violence. As discussed above on page 19, Victorian research has found that the density of liquor licences, particularly packaged liquor licences, within an area is associated with rates of police-reported domestic violence over time, indicating the need for regulation that addresses alcohol availability, and packaged liquor availability in particular. A comprehensive, evidence-based approach to preventing family violence must include strategies to reduce the contribution of alcohol to family violence, with tighter regulatory controls on the availability of alcohol as the central component.

Consultation paper questions

1. What opportunities are there for reducing the regulatory burden?

Alcohol is a hazardous substance and not an ordinary commodity. For this reason, the supply of alcohol is regulated under a licensing scheme to ensure it is subject to a high degree of regulatory control.

For the same reason, licences to supply alcohol are a privilege granted by the state, not a right. In return for the privilege of a licence, and the profit it returns, licensees must accept appropriate regulatory responsibilities and requirements.

It is appropriate and necessary that licensees are subject to the level of regulation required to reduce and prevent alcohol-related harms. Regulation should not be reduced if this would increase the risk of harm and lead to further de-prioritisation of the harm minimisation object of the LCRA.

The APC believes that the priority for the Review should be to identify opportunities to reduce alcohol-related harms, particularly family violence. A focus of the Review should also be to reduce the considerable burdens of alcohol on communities, local councils, police, corrections, ambulances, emergency services, hospitals, relevant family violence services and others, and the enormous social and economic costs of alcohol in Victoria.

2. Does the current licence type regime work? How could it be improved?

The APC agrees with the Office of Liquor, Gaming and Racing's (OLGR) assessment that the current licence regime has resulted in inconsistent obligations and requirements.⁹³ Licence categories should be revised to appropriately reflect and distinguish between the different operating conditions of different premises types, and ensure they are subject to appropriate requirements. This is also important for research purposes to allow for transparency of data in relation to different licence types and characteristics.

There are a number of limitations with current licence categories. In particular, the General Licence category, of which there were 1543 in 2016, allows for the sale of alcohol for both on- and off-premise consumption. There is no information about what proportion of these licences are providing alcohol 1) for on-premises consumption only, 2) for off-premise consumption only, or 3) for both on- and off-premise sales. Such information would provide a more accurate picture of the availability of alcohol in Victoria.

Another limitation with the current licence type is basic information on licence conditions is not available. For example, the maximum patron capacity permissible for each liquor licence should be made readily available. Currently, this information is available for only about a third of all liquor licences in the state. Patron capacity is key characteristic of a licence and should be available.

A specific licence for online supply and home delivery should be created to ensure appropriate regulation and transparency of data in relation to this mode of supply. This licence should be subject to trading hour restrictions recommended by the APC for on-premises licences: online or telephone sales and delivery of alcohol should be prohibited past 10pm. Persons delivering online or telephone alcohol orders should be subject to RSA requirements.

The APC supports improved categorisation of licences currently operating under limited licences. However, the APC urges retention of the requirement for a limited licence to apply when a non-licensed entity such as a sporting club or a school sells alcohol on an irregular basis. Due to its toxic and harmful nature, the service of alcohol requires care; the requirement for such organisations to gain a limited licence underscores the need for care. It makes no sense for a business that sells alcohol on a professional basis to require licensing if "casual sales" are not subject to licensing. To exempt community organisations from acquiring a limited licence may engender complacency about alcohol and lead community organisations to be less stringent about adhering to the responsible serving of alcohol norms, and a higher risk of associated problems and harms. It could also be argued

that the settings in which alcohol is served, for example at schools, require even greater attention to care because of the likelihood of children and young people being present.

The APC also strongly urges retention of the current prohibition against the grant of licences for petrol stations, convenience stores and milk bars. There is no reason for these businesses to be licensed to sell alcohol as there are already more than sufficient numbers of packaged liquor outlets, often located within shopping strips and shopping centres, that provide Victorians with ready access to alcohol. As a principle, alcohol should not be available for sale in spaces that are visited by children and young people independently, without adult supervision. In addition, the sale of alcohol in petrol stations would inappropriately associate drinking with driving.

For the same reasons the APC also supports, at a minimum, retention of current requirements for the sale of liquor to occur in designated areas in supermarkets, and believes that supermarkets and liquor stores should not share floor space and checkouts.

The APC notes that the Victorian Parliament Drugs and Crime Prevention Committee which inquired into Strategies to Reduce Harmful Alcohol Consumption in 2005 recommended that alcohol should continue not to be sold in milk bars, convenience stores, and petrol stations, subject to exceptional circumstances.⁹⁴

RECOMMENDATIONS

1. Licence categories should be revised to appropriately reflect and distinguish between the different operating conditions of different premises types.
2. Information on the maximum patron capacity permissible for each liquor licence should be made available.
3. A specific licence for online alcohol supply should be created. Under this licence, online sales and delivery should be prohibited past 10pm and persons delivering online alcohol orders should be subject to Responsible Service of Alcohol requirements.

3. How could the liquor licence application and renewal process be improved?

The APC recommends a new model for liquor licence applications. This is discussed in the answer to question 8.

4. Is there scope for streamlining the interaction between licensing and planning processes? What are the biggest opportunities?

The APC agrees there is currently some overlap between licensing and planning processes. The Government should consider how the processes could be effectively delineated, while ensuring that harm minimisation is prioritised in licensing decisions, and that harm, health, amenity and social impacts of liquor planning permit and/or licence applications are given full consideration in the decision-making process. Any streamlining of the processes should also ensure there is proper opportunity for effective community and local government engagement in licensing decisions.

5. Are there opportunities to improve the risk-based fee structure?

Annual licence renewal fees in Victoria are calculated (under the *Liquor Control Reform Regulations 2009*) according to:

- a base fee (based on licence type)
- a risk fee (based on trading hours and compliance history), and
- a venue capacity multiplier, for most on-premises licence types where the venue capacity exceeds 200 persons and trading hours and/or compliance history risk criteria apply.

A venue capacity multiplier can apply to a licence that allows on-premises drinking (including restaurants and cafes), if the venue can accommodate more than 200 patrons.⁹⁵ The multiplier will apply to these licences if there have been any non-compliance incidents⁹⁶ in the past two years, or if the licence operates from 11pm through anytime past 1am the following day.⁹⁷

The multiplier applies to the base fee as well as to risk fees applicable to the licence.⁹⁸ The multiplier increases by 0.25 for every extra 100 patrons that the venue can accommodate, up to a cap of four times the original renewal fee for any venue with a capacity of over 1300 patrons.⁹⁹

There is no fee multiplier, however, applying to off-premises licences. As discussed above on page 18 and on page 20, packaged liquor accounts for around 80 per cent of all alcohol consumed in Australia, and packaged liquor outlets are associated with a range of harms, including violence, family violence and health impacts. Research shows that large 'big box' packaged liquor outlets are most strongly associated with harm.¹⁰⁰ Research also shows that the volume of packaged liquor sales predicts violence rates, rather than just the density of outlets.¹⁰¹

It is, therefore, clearly appropriate that licences that supply liquor for off-premises should also be subject to a fee multiplier under the risk-based fee structure, in order to allow some of the cost of the harms associated with these licences to be recouped. This should be based on volume of sales, as evidence shows that this is the key determinant of harm associated with packaged liquor. If it were not possible to use sales as the basis for a fee multiplier, retail floor space would be a suitable proxy determinant of risk.

The multiplier should operate in a similar way to the venue capacity multiplier applicable to on-premises licences. Renewal fees for premises that exceed a certain volume of sales or retail floor space should be multiplied by a factor that increases incrementally based on sales or floor space ranges. However, compliance history or late trading criteria should not be pre-conditions to the floor space multiplier applying (as they are with the venue capacity multiplier for on-premises licences), given the strong evidence indicating that the risk of harm increases with the volume of sales of packaged liquor outlets (even where outlets do not trade late and comply with obligations).

RECOMMENDATIONS

4. The *Liquor Control Reform Regulations 2009* should introduce a multiplier for calculation of renewal fees for licensed premises that supply liquor for off-premises consumption based on volume of sales or, if this data is not available, retail floor space. Renewal fees for licensed premises that exceed a certain volume of sales or retail floor space should be multiplied by a factor that increases incrementally based on sales or floor space ranges. The funds raised from the licence renewal fees should be applied to administering the liquor licensing regulatory scheme.

6. How can the LCRA better foster diversity and support small business?

Alcohol is a toxic and hazardous substance, and the primary aim of the LCRA should be to prevent the substantial harms and social impacts associated with alcohol. It is not appropriate for the licensing regime to be used as a tool to foster diversity of alcohol outlets or to support small licensed premises. Harm minimisation should be given precedence under the LCRA irrespective of the size of licensed premises.

In any case, there is no evidence to suggest that the LCRA is currently hindering diversity or small business. The proliferation of liquor licences and extremely low numbers of refusals of licence applications under the current scheme indicates that the LCRA is, in fact, unduly prioritising approval of all alcohol outlet types over its primary harm minimisation object.

In addition, diversity should not be considered only in terms of alcohol outlets, but in terms of the activity mix of all business types in an area. On this analysis, it is likely that the LCRA is detracting from business diversity by allowing disproportionate numbers of alcohol outlets in many areas.

7. Could the current harm minimisation measures in the LCRA be improved? If so, how?

Harm minimisation

The primary object of the LCRA, set out in section 4(1)(a), is to contribute to minimising harm arising from the misuse and abuse of alcohol, including by:

- (i) providing adequate controls over the supply and consumption of liquor;
- (ii) ensuring that liquor supply contributes to, and does not detract from community amenity;
- (iii) restricting the supply of certain alcoholic products; and
- (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking and its impact on the community.

The harm minimisation object of the LCRA competes with the secondary objects of the LCRA set out in sections 4(1)(b) and (c), that are directed to facilitating industry development:

- (b) to facilitate the development of a diversity of licensed facilities reflecting community expectations; and
- (c) to contribute to the responsible development of the liquor, licensed hospitality and live music industries.

Section 4(2) of the LCRA expresses the intention of Parliament that “every power, authority, discretion jurisdiction and duty conferred or imposed” by the Act “must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol”.

In *Kordister Pty Ltd v Director of Liquor Licensing*¹⁰² (*Kordister*) the Victorian Court of Appeal held that harm minimisation is a fundamental principle of the LCRA and can properly be regarded as the

primary regulatory object of the LCRA, and therefore the primary consideration in liquor licensing decisions.

Despite section 4(2) and the *Kordister* decision, however, it is clear that regulatory measures under the LCRA and licensing decisions do not give primacy to harm minimisation.

Examples of, or factors contributing to, the lack of priority given to harm minimisation under the LCRA include that the provisions of the LCRA and regulatory measures pursuant to the LCRA:

- do not define harm, or set out factors or evidence relating to harm to be taken into account in licensing decisions (objects and definitions),
- impose high evidentiary requirements in relation to harm minimisation, and give precedence to competing secondary objects (in sections 4(1)(b) and (c)) relating to diversity and industry development (e.g. Division 4 of the Act),
- do not adequately control the supply and consumption of liquor (as required under section 4(1)(a)(ii)) (e.g. Division 4 of the Act, trading hours, offences under section 108(4)),
- focus on amenity rather than harm impacts (e.g. definition of amenity under section 3A and evidence relating to amenity under section 3AA; amenity objection ground for all licence types under section 38(1); amenity inquiries under section 94), and
- do not apply equivalently to on-premises and off-premises licence types (e.g. objection ground under section 38(1A), evidence of amenity impacts under section 3AA, risk-based fee multiplier for venue capacity under the *Liquor Control Reform Regulations 2009*, the Commission's *Guidelines for responsible liquor advertising and promotions*).

For instance, Division 4 of the LCRA, relating to licence applications and determinations, places the evidentiary burden on objectors to satisfy the Commission of grounds relevant to harm minimisation, and imposes no evidentiary requirements on licence applicants. The grounds for the Commission to refuse a licence require objectors to satisfy an unrealistically high evidentiary threshold in relation to harm. They are effectively required to establish a clear causal relationship between a proposed new licence or variation and concrete harms.¹⁰³ This is an impossible task when dealing with the prospective risk of harm that may be caused by a proposed new licence.¹⁰⁴ As a result, the scheme does not allow sufficient consideration or weighting of evidence of harm or community impacts in licensing decisions. In addition, the overwhelming majority of applications are uncontested, and since licence applicants are not subject to any evidentiary onus, the Commission is highly unlikely to consider evidence of harm in these decisions. The effect of these problems is that the scheme is heavily weighted towards granting licence applications, and is not appropriately filtering or limiting new licences, with only about one per cent of applications refused.

In addition, the focus of the licensing scheme on individual licence applications does not allow effective consideration of the aggregate impacts of licences, and overall liquor supply, across geographic areas.

This is resulting in the proliferation of liquor licences in Victoria, in spite of the overwhelming evidence (described above) that increases in liquor outlet density lead to increases in alcohol harms, including street violence, family violence and health problems, and that levels of these harms in Victoria are extremely high and increasing.

The problems with Division 4 and licensing decisions, and the APC's recommendations for reform in this area, are discussed further in answer to question 8.

Other existing harm minimisation measures that are ineffective or do not give appropriate primacy to harm minimisation include:

- Objects and definitions (discussed below),
- Trading hours restrictions (discussed below),
- Prohibited advertising or promotion under section 115A (discussed below),
- Supply of liquor to minors under section 119(5)(e) (discussed below), and
- Licensee offences under section 108(4) (discussed in answer to question 9).

Objects and definitions

Despite the fact that harm minimisation is the primary Object of the LCRA and that every power under the LCRA must be exercised with regard to harm minimisation under section 4(2), the LCRA does not define harm, or set out factors or evidence relating to harm to be taken into account in licensing decisions. This is in contrast to amenity, which is defined in section 3A of the LCRA as “the quality that [an] area has of being pleasant and agreeable”. Section 3A(2) sets out factors that may be taken into account in determining whether a licence application would detract from amenity (in summary: parking facilities, traffic, noise, nuisance or vandalism, harmony and coherence of the environment), and section 3AA sets out evidence that will be taken to constitute detraction from amenity, which focuses on violent, offensive or nuisance behaviour in or around licensed premises.

In addition, section 4(1)(a) does not specify types of alcohol-related harm, whereas section 4(1)(b) specifies types of industries: “liquor, licensed hospitality and live music”.

This contributes to a lack of clarity as to the role of the liquor licensing regime in considering and addressing harm, with regulatory provisions and licensing decisions that purport to deal with harm minimisation focusing narrowly on amenity issues, and failing to address the range of alcohol-related harms. In particular, there is insufficient attention in provisions and decisions to broader and cumulative alcohol-related harms and impacts, such as harms to third parties, and harms associated with packaged liquor that occur over wider spatial areas than the vicinity of venues, such as family violence and health impacts. It also contributes to the prioritisation of industry development, which is inconsistent with harm minimisation as the primary aim of the licensing regime. There is a need for greater clarity as to the meaning of harm, the range of harms associated with alcohol, and factors and evidence that are relevant to assessing the risk of harm that a licence poses.

In order to clarify the role of the liquor licensing regime in considering and addressing harm, the objects of the LCRA should include a statement setting out types of harm associated with alcohol. Alternatively, harm should be defined in a stand-alone provision (in the same way that amenity is defined in section 3A).

The statement or definition should set out a non-exhaustive, broad range of types of harms that may be related to alcohol. This should include harms associated with on-premises and off-premises consumption of alcohol, harms that occur across a wider spatial area than the vicinity of premises, and harms that may occur in domestic settings, such as family violence and health problems.

This could be based on existing models in the South Australian draft Liquor Licensing (Liquor Review) Amendment Bill 2016 and in Australian Capital Territory (ACT) and Queensland liquor legislation (see descriptions of these models below).

The LCRA should also set out factors to which the Commission may have regard in assessing the likelihood that a licence application would contribute to harm, and evidence that will be taken to

constitute harm (in the same way that sections 3A(2) and 3AA set out factors and evidence relating to amenity). This is discussed further below in answer to question 8.

In addition, the Objects of the LCRA should include a statement acknowledging that alcohol is a toxic and harmful substance and expressing the intention that a liquor licence should be regarded as a privilege, and not a right. These should be guiding principles in regulatory provisions and licensing decisions under the LCRA. This would also help to clarify the role of the liquor licensing regime, increase licensees' awareness and understanding of their regulatory obligations, and ensure that harm minimisation is appropriately prioritised in liquor regulation and decision-making.

Model: South Australian draft Liquor Licensing (Liquor Review) Amendment Bill 2016

The South Australian draft Liquor Licensing (Liquor Review) Amendment Bill 2016 would amend the harm minimisation object of the *Liquor Licensing Act 1997* (SA) as follows:

"The primary object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor

(a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and

(b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor."

The draft Bill also sets out a non-exhaustive list of types of harm caused by the excessive or inappropriate consumption of liquor, as follows:

"For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes—

(a) the risk of harm to children, vulnerable people and communities; and

(b) the adverse effects on a person's health; and

(c) alcohol abuse or misuse; and

(d) domestic violence or anti-social behaviour, including causing personal injury and property damage."

The review of the South Australian Liquor Licensing Act recommended these amendments to the Objects of the Act to provide greater clarity in respect to harm, noting that the current version of the Object was introduced when "the topic of harm minimisation was in its infancy", where now harm minimisation has been embraced in South Australia and "has become the dominant, if not the primary theme in liquor legislation across Australia and New Zealand."¹⁰⁵

The South Australian draft Bill provides a useful model for amending the Objects of the LCRA to set out types of harm.

Model: ACT and Queensland's examples of harm

The respective liquor acts of Queensland (*Liquor Act 1992* (Qld)) and the ACT (*Liquor Act 2010* (ACT)) include non-exhaustive examples of the kinds of harm that ought to be minimised, in considering the object of harm minimisation.

The examples of harm given in the Queensland Act (s 3A) and the ACT Act (s 10) largely overlap. Both Queensland and the ACT include:

- adverse health effects,
- personal injury, and
- property damage,

The ACT adds an additional example of “violent or anti-social behaviour”.

RECOMMENDATION

5. Section 4 of the LCRA (Objects) should be amended to set out a non-exhaustive list of types of harm associated with alcohol. Alternatively the LCRA should include a separate definition of harm, setting out such a list. The types of harm should include the following:

- a) Excessive or risky consumption of alcohol.
- b) Violence, including family violence.
- c) Adverse effects on children, young people, other vulnerable people or groups, or communities.
- d) Adverse short-term and long-term effects on health.
- e) Anti-social behaviour.
- f) Property damage.
- g) Personal injury or death.
- h) Road accidents.
- i) Drink driving.
- j) Underage drinking.

Trading hours

In Victoria, 24-hour trading is permissible in many pubs, bars and clubs. Currently, 137 licences in Victoria allow 24-hour trading, and 980 licences allow trading past 1am.

Licence Trading Time	Total Number of Licences*
Trading up to 2am or 3am	583
Trading up to 4am or 5am	139
Trading up to 6am or 7am	121
Trading for 24 hours	137
All Late Trading	980

***These values include airport licences (13 airport licences in total).**

The APC notes that the LCRA Review Consultation Paper suggests that consideration of 'lock outs' will be excluded from the Review. We take this to mean that one-way door restrictions will not be considered. The APC acknowledges this, and strongly urges the Review to consider restricting the trading hours of liquor outlets, which is supported by a very strong evidence base as a highly effective harm minimisation measure.¹⁰⁶ As discussed above on page 21, strong Australian and international evidence clearly establishes the relationship between trading hours of liquor outlets and levels of harm, and trading hours reductions are supported by the strongest evidence base of all alcohol supply interventions to reduce harm.¹⁰⁷

If the Review is a genuine opportunity to consider evidence-based harm minimisation measures, it must give proper consideration to effectively restricting trading hours in the LCRA.

On-premises trading hours

Under the LCRA, the Commission can currently permit the sale of alcohol for on-premises consumption up to 24 hours a day through extensions of the late night (general) and late night (on-premises) licence.

Ministerial Decision-Making Guidelines impose a freeze on new liquor licence applications that would allow trading past 1am in four inner Melbourne municipalities. The freeze was extended this year until 2019, but significant exceptions were imposed, including that the Commission may allow trading past 1am in venues with less than 200 capacity that provide regular live music or that ensure that food will be available whenever liquor is being sold, if there are net economic and social benefits.¹⁰⁸ The Guidelines are further limited in scope, since they apply only to applications for new licences or variations in inner Melbourne and do not restrict the trading hours of licences granted prior to the first issue of the Guidelines in 2015.

As discussed above on page 21, there is unequivocal evidence that reductions in on-premises trading hours are highly effective in reducing harm, including violence and injuries, and that harms substantially decrease with each hour that trading is restricted. The Guidelines note that evidence available to the Victorian Government shows “a correlation between anti-social behaviour in the early hours of the morning and the operation of licensed premises that sell liquor after 1am.”

In 2016, liquor legislation in Queensland was amended to prohibit alcohol trading beyond 2am, or 3am if within a designated ‘safe night precinct’. This change was introduced to reduce harms associated with late trading based on the effectiveness of similar schemes applied in the Newcastle and Kings Cross areas of New South Wales (discussed above).¹⁰⁹

On the basis of the evidence, the Victorian Government must impose effective restrictions on on-premises trading hours across Victoria under the LCRA if it is committed to reducing alcohol harms. The current situation in which 24-hour trading is permitted is patently inconsistent with harm minimisation, and gives precedence to industry development objectives.

The APC recommends that 2am close of on-premises trading across Victoria would strike an appropriate balance between minimising the harms associated with late night trading and other objects of the LCRA.

RECOMMENDATIONS

6. The LCRA should be amended to prevent the supply of liquor for on-premises consumption under extended trading hours after 2am. Ordinary trading hours should remain restricted to 11pm for any premises that has not been licensed for extended trade.

This should apply to all licence categories that currently allow the supply of liquor for on-premises consumption after 1am if the Commission so determines: late night (general), late night (on-premises), restaurant and cafe, club, wine and beer producer’s, and major event licences, and BYO permits.

This would require the following changes to the LCRA:

- Amending sections 11A(2) and 11A(3) to limit the Commission’s discretion to allow the supply of liquor beyond ordinary trading hours under late night (general) or late night (on-premises) licences to between 11pm and 2am only.

- Amending sections 9A(1)(a)(ii) and (b) to limit the Commission's discretion to allow the supply of liquor for on-premises consumption beyond ordinary trading hours under a restaurant or café licence to between 11pm and 2am only.
- Amending sections 10(2)(b) and (3) to limit the Commission's discretion to allow the supply of liquor for on-premises consumption beyond ordinary trading hours under a club licence to between 11pm and 2am only.
- Amending section 13(1)(b) to limit the Commission's discretion to allow the supply of liquor for on-premises consumption beyond ordinary trading hours under a wine and beer producer's licence to between 11pm and 2am only.
- Amend section 14A(1) to remove the Commission's discretion to allow the supply of liquor for on-premises consumption under a major event licence after 2am.
- Remove the Commission's discretion under section 15(1) to allow the supply of liquor after 2am under a BYO permit.
- Repeal sections 8(1)(a)(iii) and 9(1)(a)(iii), which currently allow the Commission to authorise trading from 5am under a general or on-premises licence.

Packaged liquor trading hours restrictions

In Victoria under the LCRA, ordinary trading hours are 9am-11pm for bottle shops (under a packaged liquor licence)¹¹⁰ and 7am-11pm for take away from pubs and clubs (under a general liquor licence).¹¹¹ In both cases, the Commission has the discretion to extend trading hours up to 1am.¹¹² Late night general and late night packaged liquor licences permit the sale of packaged liquor at any time determined by the Commission.¹¹³ Therefore, 24-hour trading can be allowed under these licence types.

Ministerial Decision-Making Guidelines are in place which state that granting a licence that allows 24-hour sale of packaged liquor is contrary to harm minimisation and amenity aims. The Guidelines state that packaged liquor sales should not be allowed to extend past midnight, and that any other extensions of trading hours for trading in alcohol for off-premises consumption should only be allowed in 'exceptional circumstances'.¹¹⁴ The Guidelines only apply, however, to applications for new licences and do not restrict the trading of licences granted prior to the issue of the Guidelines in 2012.

Restrictions on packaged liquor trading hours should be legislated directly in the LCRA and apply to existing as well as new or varied licences. To best ensure minimisation of harms associated with night-time packaged liquor trading, the LCRA should prohibit the sale of liquor for off-premises consumption after 10pm. This would follow a recent amendment to liquor legislation in Queensland to prohibit packaged liquor sales from 10pm.¹¹⁵ This amendment was made to reduce alcohol-related harms through reduced night-time supply.¹¹⁶

RECOMMENDATIONS

7. The LCRA should be amended to prevent the sale of liquor for off-premises consumption (packaged liquor) after 10pm.

This should apply to all licence categories that currently allow the supply of liquor for off-premises consumption after 10pm, including packaged liquor, late night (packaged liquor), general, late night (general), club, wine and beer producer's, and limited licences. This should apply in relation to online sale of alcohol (orders and delivery).

This would require the following changes to the LCRA:

- Amend the definition of ordinary trading hours as it applies to packaged liquor licences by changing the end of ordinary trading hours from 11pm to 10pm.
- Repeal section 11A(4), which currently allows the Commission to authorise the supply of packaged liquor under a late night (packaged liquor) licence beyond ordinary trading hours at any times it determines.
- Repeal section 11(1)(b), which allows the Commission to authorise the supply of liquor for off-premises consumption under a packaged liquor licence between 11pm and 1am.
- Amend section 8(1)(a) to remove the Commission's discretion to allow the supply of liquor for off-premises consumption beyond ordinary trading hours under a general licence.
- Amend section 11A(2)(a) to remove the Commission's discretion to allow the supply of liquor for off-premises consumption beyond ordinary trading hours under a late night (general) licence.
- Remove the Commission's discretion under section 10(2)(b) to allow the supply of liquor for off-premises consumption beyond ordinary trading hours under a club licence.
- Remove the Commission's discretion under section 13(1)(b) to allow the supply of liquor for off-premises consumption beyond ordinary trading hours under a wine and beer producer's licence.
- Remove the Commission's discretion under sections 14(1A)(a) and (1B)(a) to allow the supply of liquor for off-premises consumption beyond ordinary trading hours under a limited licence.

Promotions and discounting

Under section 115A of the LRCA, the Commission has the power to ban irresponsible alcohol promotion or advertising by a licensee.¹¹⁷ However, this section does not impose a direct obligation on licensees to ensure that advertising and promotions are responsible. The Commission has published guidelines that set out 16 principles for the responsible advertising and promotion of alcohol.

Alcohol is heavily promoted in Victoria, including through static advertising (advertising in the public domain), television, print, online and point-of-sale advertising. Section 115A of the LCRA and the Commission's guidelines currently regulate promotional and serving practices by licensees, including point-of-sale promotions. Victoria also has a clear remit to regulate static alcohol advertising (this is discussed below).

There are many instances of advertising and promotions by licensees that encourage excessive consumption of alcohol. Point of Sale promotions (POS) are promotional materials found within or on the exterior of licensed premises (for instance, happy hours, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices). Australian research has found that POS promotions are ubiquitous, with one recent study finding there were an average of 17.3 promotions for each outlet.¹¹⁸ The study found that POS promotions (such as competitions and gift with purchase) in Sydney and Perth almost always required the purchase of a significant number of standard drinks to participate (just under 19 per promotion), providing incentives to increase the amount purchased or consumed on a single occasion.¹¹⁹

In addition, POS promotions centre heavily on price as an enticement to purchase the product. There is an inverse relationship between the price of alcoholic beverages and levels of consumption and harms.¹²⁰ POS promotions often feature price discounts for bulk purchases, which have been found to be highly effective in encouraging the purchase of increased volumes of alcohol.¹²¹ The

proliferation of POS promotions is likely to affect overall consumption of underage drinkers, as well as the consumption patterns of harmful drinkers and regular drinkers.¹²²

As POS marketing and price discounts are becoming more widespread, effective regulation is particularly important to protect young people, as exposure to alcohol advertising has been shown to increase the likelihood they will start drinking alcohol, and increase consumption among those already drinking.^{123, 124}

A further example of promotions that may encourage excessive alcohol consumption are liquor promotion vouchers on supermarket shopping receipts, known as “shopper docket” promotions, which commonly promote “buy some get some free” deals or discounted alcohol (see example attached to this submission). A 2013 report by Professor Sandra Jones for the NSW Office of Liquor, Gaming and Racing (NSW OLGR) warned that promotions which create incentives for people to buy more alcohol than intended are likely to increase consumption, particularly for young people.¹²⁵ Shopper docket promotions are also problematic because they target supermarket shoppers (including minors) who have not set out to buy alcohol, and direct them to discounted alcohol in packaged liquor outlets. The NSW OLGR conducted a six month investigation into shopper dockets, concluding that they were “likely to encourage the misuse and abuse of liquor”, and recommending to the Director General that they be banned.¹²⁶

The LCRA and the Commission’s guidelines do not effectively regulate alcohol discounting and promotions in Victoria. The Commission’s guidelines focus on promotional activities in on-premises outlets, and do not adequately address promotions by packaged liquor outlets and emerging methods of liquor promotion, particularly discount promotions and POS promotions.

In addition, the Commission appears to take a largely reactive approach to enforcement in relation to section 115A and the guidelines, acting in response to complaints from the public about inappropriate promotional conduct of licensed venues in Victoria. If the Commission does become aware of conduct that it assesses to breach the guidelines, its guidelines state that it will first request that the promotion be withdrawn before issuing a formal section 115A banning notice.¹²⁷ This means that licensees can engage in irresponsible promotional activity with little risk the Commission will become aware, and with little risk of sanction, unless the licensee ignores the Commission’s request to withdraw a promotion and refuses to comply with a banning notice issued by the Commission.

There are more than 21,000 licences operating in Victoria.¹²⁸ However, according to the Commission’s website, it has not yet taken action to ban any irresponsible promotions in 2016; and it banned only two irresponsible promotions in 2015, and three in 2014. The Commission has taken action to ban only 27 promotions since 2009, and all have been on-premises promotions, other than one packaged liquor promotion.¹²⁹ The failure of the Commission’s guidelines and enforcement activities to address packaged liquor promotions is concerning, given that around 80 per cent of alcohol consumed in Australia is packaged liquor.¹³⁰ Alcohol is involved in a significant proportion of family violence incidents, and the evidence of a particularly strong association between packaged liquor outlet density and family violence suggests consumption of packaged liquor in particular is a contributing factor to family violence. Promotions and discounting practices that lead to increased consumption may contribute to increasing the frequency and severity of family violence.

In addition children and young people are likely to be exposed to irresponsible alcohol promotions in packaged liquor outlets, for instance, when they accompany their parents who are buying alcohol.

RECOMMENDATIONS

8. The LCRA should impose a direct obligation on on-premises and off-premises licensees to not advertise or promote the supply of liquor, or the conduct of licensed premises, if it may encourage irresponsible consumption of alcohol or is otherwise not in the public interest.
9. The LCRA should set out a non-exhaustive list of the type of advertisements and promotions that would be considered to promote irresponsible consumption of alcohol. The list should apply with equal weight to promotions by on-premises and off-premises licensees, and should include:
 - price-based promotions, such as sale prices and bulk purchase discounts (e.g. which result in an alcohol product being sold for less than \$1 per standard drink)
 - shopper docket promotions
 - competition and game of chance promotions
 - gifts with purchase
 - incentives to consume alcohol rapidly or excessively, such as drinking games or competitions
 - non-standard drink sizes
 - happy hours.

Supply of alcohol to minors

1. Supply to minors in licensed premises

Section 119(5) of the LCRA allows the supply of liquor to minors in licensed premises for consumption as part of a meal if the minor is accompanied by an adult spouse, parent or guardian. This is a significant anomaly in the provisions of the LCRA dealing with supply of liquor to minors, and makes Victoria the only Australian jurisdiction to allow the supply of alcohol to minors on licensed premises in these circumstances. In New South Wales, for example, it is an offence for a parent or guardian to allow a minor to consume alcohol on licensed premises.¹³¹

Allowing the supply of liquor to minors on licensed premises is inconsistent with harm minimisation, based on the evidence of the risks of alcohol consumption by young people.

National Health and Medical Research Council (NHMRC) 2009 guidelines set out the following risks of alcohol to young people:

- Initiation of alcohol use at a young age may increase the likelihood of negative physical and mental health conditions, social problems and alcohol dependence.
- The brain is more sensitive to damage from alcohol in childhood and adolescence as it is still developing, leading to learning difficulties, memory problems and reduced performance on attention-based testing.
- Drinking contributes to the three leading causes of death among adolescents — unintentional injuries, homicide and suicide — along with risk taking behaviour, unsafe sex choices, non-consensual sexual behaviour, and alcoholic overdose.¹³²

The NHMRC recommends that for minors “not drinking alcohol is the safest option.” NHMRC guidelines advise that children under 15 years of age are at the greatest risk of harm from drinking

and for this age group not drinking alcohol is especially important. Older teenagers aged 15-17 should avoid alcohol, and delay drinking for as long as possible.¹³³

In addition, evidence indicates that parental supply of alcohol to minors is not linked with responsible drinking, but in fact has the opposite effect. For example, an Australian study of high school students in Australia found that parental supply of alcohol to minors was associated with an increased probability of risky drinking.¹³⁴

RECOMMENDATION

10. The exception in section 119(5) of the LCRA allowing supply of liquor to minors in licensed premises as part of a meal if the minor is accompanied by an adult spouse, parent or guardian should be removed.

2. Secondary supply to minors

In Victoria, it is an offence for a person to supply alcohol to a minor in a private home without consent of a parent or guardian.¹³⁵ This requirement was introduced in 2011 in recognition that parents should have the right to control their children's access to alcohol. However, currently, parental or guardian consent is the only requirement, with no requirement for the supply to be responsible or supervised. It should be equally important that if alcohol is supplied to a minor, they do not consume an excessive quantity, and that consumption does not occur in hazardous circumstances.

The Victorian law is out of step with secondary supply laws in Queensland,¹³⁶ NSW,¹³⁷ Tasmania,¹³⁸ WA¹³⁹, NT,¹⁴⁰ and ACT¹⁴¹ which all include some form of responsible supervision requirement.¹⁴²

For example, section 117 of NSW's Liquor Act 2007 sets out the requirement that supply of liquor to minors on private premises be consistent with responsible supervision of the minor, and states that relevant matters include:

- (a) the age of the minor,
- (b) whether the person supplying the liquor to the minor is intoxicated,
- (c) whether the minor is consuming the liquor with food,
- (d) whether the person supplying the liquor is responsibly supervising the minor's consumption of the liquor,
- (e) the quantity and type of liquor supplied and the period of time over which it is supplied,
- (f) such other matters as may be prescribed by the regulations.

Section 117(5A) of the NSW Act also states that "[t]he supply of liquor to a minor who is intoxicated is not, in any circumstances, consistent with the responsible supervision of the minor".

Research shows that parents and other adults often supply alcohol to minors, and this most often occurs at parties or private residences. The 2014 Australian Secondary Schools Alcohol and Drugs (ASSAD) Survey reported that 40 per cent of underage drinkers in Australia are supplied alcohol by a parent, and 45 per cent of underage drinkers are supplied alcohol by someone else.¹⁴³ If someone else bought alcohol for minors, it was most likely to be a friend aged 18 years or over (73 per cent). The ASSAD survey found that the majority of underage drinking occurred at three main locations: at

a party, the family home or a friend's home. Overall, most (64 per cent) current drinkers reported that they were supervised by an adult when having their last alcoholic drink. However, this leaves a substantial proportion of underage drinkers who consume alcohol without supervision.

Requiring supply of alcohol to a minor to be consistent with responsible supervision requirements would help to protect young people in Victoria from alcohol-related harm, including by:

- reducing underage drinking in risky and unsupervised settings,
- setting a community standard on the supply of alcohol to minors,
- influencing societal norms on underage drinking,
- educating the community that supplying alcohol to minors involves a duty of care, and requires a high degree of responsibility and supervision,
- discouraging supply of alcohol to minors at private parties due to the high level of supervision and responsibility required, and
- contributing to reducing the prevalence and incidence of underage drinking.¹⁴⁴

RECOMMENDATIONS

11. The LCRA should require the supply of liquor to a minor in a residence or private setting to be consistent with responsible supervision of the minor.
12. The LCRA should specify factors to be considered in determining whether supply of alcohol to a minor is consistent with responsible supervision, including
 - the minor's age
 - whether the adult is intoxicated
 - whether the minor is intoxicated
 - whether the minor is consuming food with the alcohol
 - whether the adult is directly and responsibly supervising the minor's consumption of the alcohol
 - the quantity and type of alcohol, and the time period over which it is supplied

The LCRA should also include a statement that the supply of liquor to a minor who is intoxicated is not consistent with responsible supervision of the minor, similar to the statement in section 117(5A) of the NSW *Liquor Act 2007*.

8. How should harm be considered in the licence application process?

Problems with the licence application scheme

Victoria's current system of licence applications and determinations is heavily weighted towards granting licence applications, and is failing to give effect to the primary object of the LCRA of contributing to minimising harm arising from the misuse or abuse of alcohol.

Objection and refusal grounds

Under the LCRA, any person or a local council may object to the grant, variation or relocation of any licence on the ground that it would detract from or be detrimental to the amenity of the local area ('amenity ground').¹⁴⁵ Further, any person or a local council can object to the grant, variation, or relocation of a packaged liquor or late night (packaged liquor) licence on the ground that it would be conducive to or encourage the misuse or abuse of alcohol ('misuse ground').¹⁴⁶ Unlike members of the public and local councils, licensing inspectors can object to the grant of any licence (and not just packaged liquor licences) on the misuse ground,¹⁴⁷ in addition to amenity and other grounds.¹⁴⁸ The Chief Commissioner of Police can object to the grant of any licence on any grounds he or she thinks fit.¹⁴⁹

There is inconsistency in the objection grounds open to members of the community and local councils in relation to packaged liquor and on-premises licence types. Community members and local councils may object to any licences on the amenity ground, but are only entitled to object to packaged liquor licences, and not on-premises licences, on the misuse ground. The rationale for this inconsistency is unclear, since community members and local councils are likely to experience or deal with, and be well placed to assess, the impacts of misuse or abuse of alcohol in and around on-premises venues.

Section 44(2) sets out the grounds on which the Commission may refuse to grant an uncontested application or a contested application (by virtue of section 47(2), including that granting the application would detract from or be detrimental to the amenity of the area ('amenity ground'), or would be conducive to or encourage the misuse or abuse of alcohol ('misuse ground') (section 44(2)(b)).

Onus and standard of evidence

Under section 44(2), the Commission is obliged to grant an application unless satisfied of a ground to refuse (though it is not required to refuse an application even if satisfied of a refusal ground).¹⁵⁰ This, combined with the requirement for objectors to make out objection grounds, places the onus of proof on objectors in contested applications.

In contrast, applicants for new licences, or variation or relocation of a licence, are required to provide only relatively basic information to support applications (e.g. personal contact information, the premises' address, licence/permit number and a brief description and visual plan of the licensed area), and are not subject to any evidentiary requirements in relation to the application.

To refuse a licence application on the amenity ground or misuse ground, the Commission must be satisfied that the granting of the application "*would* detract from or be detrimental to the amenity of the area" (emphasis added)¹⁵¹ or "*would* be conducive to or encourage the misuse or abuse of alcohol" (emphasis added).¹⁵² The word 'would' in these grounds has been interpreted by the Commission to require a high standard of evidence: essentially a clear causal relationship between the application and harm. (See the discussion of the Commission's 'Dan Murphy's Cranbourne East' internal review decision below.) This is unrealistic, particularly in the context of applications for new licences, which necessarily require a prospective assessment of the risk of harm. The onus of proof and unrealistically high evidentiary threshold applied to refusal grounds is likely to result in insufficient consideration and weighting of harm in licensing decisions.

If a ground for refusal is not made out, or there is no ground for refusal on the basis of the Objects of the LCRA, the Commission must grant the application (under section 44(2)). There is no requirement

for the applicant to provide evidence, or for the Commission to be satisfied, that the grant of the application will be consistent with or further the objects of the LCRA. This means that factors relevant to the harm minimisation object are subject to very high evidentiary requirements in licence determinations, whereas no evidentiary requirements at all apply in relation to considerations supporting licence applications, or competing secondary objects in section 4(1)(b) and (c), which support the interests of the alcohol industry.

The objection and refusal grounds in Division 4 are, therefore, in conflict with the primacy of the harm minimisation object. They also work against the approach laid down by the Supreme Court and Court of Appeal in *Kordister* that decision makers must primarily consider how to achieve the object of harm minimisation when exercising functions under the LCRA.¹⁵³ In addition, adherence to the grounds does not allow adoption of a conservative or precautionary approach. In *Kordister* the Court of Appeal held that the anticipatory (i.e. preventive) nature of harm minimisation may require the adoption of such an approach in certain cases.¹⁵⁴

Dan Murphy's Cranbourne East decision

Earlier this year, the Commission granted a packaged liquor licence for a big box Dan Murphy's outlet in Cranbourne East in the face of strong local council and police objections, and local evidence of increasing alcohol-related harm, and high incidence of family violence.¹⁵⁵

On internal review, the Commission upheld the initial decision to grant the licence following objections by the local council and Chief Commissioner of Police. In reaching this decision, the Commission considered general evidence about alcohol-related harms in the context of relevant 'locality' evidence (e.g. local demographics and crime statistics), following the approach in *Kordister*.¹⁵⁶ The Commission broadly accepted general evidence suggesting that alcohol availability leads to various harms, but was not persuaded by the locality evidence.

This was, in part, because the evidence suggested that levels of alcohol-related family violence and harm in the broad Casey area were high overall, but not in comparison to other Melbourne metropolitan areas when considered as a proportion of the Casey population.¹⁵⁷

However, this was despite extensive police evidence that the local Cranbourne area surrounding the proposed liquor outlet¹⁵⁸ was a 'hotspot for alcohol-related harm'¹⁵⁹ and was vulnerable to alcohol-related harms both in comparison to other areas in Casey and in comparison to Melbourne.¹⁶⁰ The public police evidence¹⁶¹ included that:

- The proposed outlet was in close proximity to Statistical Areas Level 1 (SA1s)¹⁶² with high numbers of alcohol-related offences.¹⁶³
- The 5km radius around the proposed outlet was the area of the highest intensity of alcohol-related offences in Casey.¹⁶⁴
- The SA1s around the proposed outlet had high incidences of family violence, and two SA1s, 800 m and 1.7km away from the proposed outlet, respectively, were ranked in the top one percent of areas for number of alcohol-related family violence offences in metropolitan Melbourne.¹⁶⁵
- The proposed outlet was in a Statistical Area Level 2 (SA2)¹⁶⁶ in the top 95 to 99 percent of reported family violence offences for metropolitan Melbourne.¹⁶⁷
- Casey had the highest levels of family violence in Victoria, and alcohol was a likely factor in one in four family violence reports in the police's Cranbourne Response Zone.¹⁶⁸
- One sergeant reported that there was a high level of family violence in the Cranbourne area, and often both the victim and the offender were alcohol-affected.¹⁶⁹

The Commission's decision was largely based on its interpretation of the ground for refusing an application under section 44(2)(b)(ii) — that the application would be conducive to or encourage the misuse or abuse of alcohol.

The Commission placed a heavy focus on the word 'would' in the refusal ground, appearing to decide that this, along with the natural meaning of the words 'conducive' and 'encourage', requires the Commission to be convinced that the premises would definitely cause the misuse or abuse of alcohol, based on the totality of the evidence (locality and general).

This suggests that the current drafting of the 'misuse' refusal ground means that an application could only be refused on this ground where there is clear evidence of a causal relationship between proposed premises and harm.

This establishes a very high bar for refusing applications based on harm and means that new licences, in particular, are unlikely to be refused for this reason. As demonstrated in this case, it will be extremely difficult to provide sufficient evidence showing that harm will definitely be caused by a proposed new licensed premises, as that will necessarily require assessment of the likelihood of future harm.

The case demonstrates the heavy onus placed on objectors to licence applications, the unrealistically high standard of evidence required to satisfy refusal grounds, the limited extent to which harm is taken into account in decisions, and the undue weighting of the system towards granting applications.

Burden on objectors

The decision in *Dan Murphy's Cranbourne East* also exemplifies the difficulties for local councils and police in objecting to liquor licence applications. Producing the requisite evidence to satisfy the amenity and misuse grounds, particularly in relation to proposed licensed premises that are not yet in existence, is extremely complex, costly and resource intensive, and places a large burden on objectors, who are likely to have limited resources.

For example, in the *Dan Murphy's Cranbourne East* application, the City of Casey found it necessary to engage a range of experts, including social and economic planners, solicitors and Senior Counsel, to support its objection. The hearing lasted for more than a week and involved significant cost and commitment of resources for the Council.¹⁷⁰

It is unreasonable for local councils and community members to bear the significant burden of objecting to licence applications, with no onus placed on licence applicants.

The time, resources and cost involved in objecting to licence applications, the difficulty in satisfying objection and refusal grounds, and the fact that objections so rarely succeed is highly likely to deter objections. This creates a significant barrier to community engagement in the licence application process.

Low proportion of contested applications

The proportion of contested licence applications is extremely low. In 2015-16, objections were received in relation to only 2.7 per cent of finalised applications.¹⁷¹

Decisions in relation to uncontested applications are not publicly available,¹⁷² and cannot be analysed. However, since there is no evidentiary onus on licence applicants, it is fair to assume that the Commission is highly unlikely to consider evidence relating to harm in the 97.3 per cent of

applications that are uncontested, and may not be in a position to ensure that licence grants are consistent with the primary object of the LCRA. This is indicated by the fact that in 2015-16 only around 0.8 per cent of finalised uncontested applications were refused.¹⁷³ This also means there is limited community engagement and consideration of community views and impacts in licensing decisions.

The effect of these problems with the licence application scheme is that the overwhelming majority of applications are granted, with limited scrutiny of potential impacts and harms.

For example, in 2015-16, of the 15,873 total licence applications finalised, 96.5 per cent were granted, 2.5 per cent were withdrawn and only one percent were refused.¹⁷⁴ Of the 2.7 per cent of finalised applications that were contested (approximately 119 applications), 33 per cent were refused (approximately 39 applications).¹⁷⁵

This results in continuing increases in new licences, including for new big box packaged liquor outlets, high outlet densities and excessive alcohol availability, and huge increases in alcohol harms.

Cumulative impact

In addition, the licence application scheme does not sufficiently enable consideration of licence applications in the context of the aggregate impacts of existing licences in the area.

Ministerial Decision-Making Guidelines for cumulative impact were issued in 2012 to provide guidance to the Commission in assessing the cumulative impact of licensed premises in licence applications.¹⁷⁶ The Guidelines were issued on the basis of the view of the Government (at that time) that, in meeting the harm minimisation objects of the LCRA, the Commission may 'deem it necessary to consider cumulative impact when determining liquor licence applications.'

The Guidelines state that "Cumulative Impact refers to the impacts arising from a concentration of licensed premises in a defined area."

However, the Guidelines do not sufficiently provide for consideration of individual licence applications in the context of the cumulative impact of existing licences in the area, for the following reasons.

First, the Guidelines are discretionary. Given the strong evidence base of harms associated with liquor outlet density, the cumulative impact of existing licences in an area should be a mandatory consideration under the LCRA in all licence applications to ensure that harm minimisation objects are met.

Second, the Guidelines focus on diversity of uses and amenity impacts, and give little attention to the broader cumulative harms associated with high outlet numbers or density. For example, the examples of negative cumulative impact set out in the Guidelines are "crime, a loss of amenity, and anti-social behaviour". There is no specific mention of harms associated with outlet density, such as violence, family violence and health impacts. In addition, the Guidelines set out 'existing levels of amenity' as a consideration relevant to the situational context but do not refer to existing levels of harm.

Third, the Guidelines are directed to on-premises licences and give inadequate attention to packaged liquor outlets. For example, the situational context considerations include matters relevant to on-premises licences, such as patron behaviour, patron numbers, increases in the number of people in the street and venue management plans, and do not include matters specifically relevant to packaged liquor, such as floor space.

Fourth, the guidelines require the Commission to assess the *contribution* of a new licence (or a licence variation or relocation) ‘to the cumulative impact of a concentration of licensed premises in an area’, but do not direct the Commission to consider the more general question of whether the grant of a new licence would support the object of harm minimisation in the context of the cumulative impact of existing licences. For example, if there is a very high existing number or concentration of licences, and/or a very high level of alcohol harm in an area, the contribution of one more licence to the level of harm or cumulative impact may be relatively small. However, it may nevertheless be contrary to the principle of harm minimisation to grant yet another licence, and contribute to further cumulative impact and harm, in the area.

There is a need for the cumulative impact of licences in local areas to be considered as a whole, rather than only in the context of individual licence applications, and for introduction of a mechanism to prevent or control any further increase in licences in areas that have a high risk or levels of harm, or high cumulative impacts from existing licences.

Need for reform of the licence application scheme

The heavy weighting of the current licence application process towards granting applications is demonstrated by the proliferation of liquor licences in Victoria, with only about one per cent of applications refused. This is in spite of the overwhelming evidence (described above) that increases in liquor outlet density lead to increases in alcohol harms, including street violence, family violence and health problems, and the extremely high and increasing levels of these harms in Victoria.

The weighting of the system is at odds with the fact that alcohol is an inherently risky and harmful product and not an ordinary commodity, and the enormous negative impact of alcohol on the community. It is also at odds with the status of a liquor licence as a privilege granted by the state rather than a right, and with harm minimisation as the primary object of the LCRA.

There is a need for reform of the liquor application process to:

- a) reverse the onus of proof in licence applications and require applicants to satisfy harm and public interest tests,
- b) require the Commission to consider the cumulative impact of existing licences in the area,
- c) include clear and comprehensive definitions of harm, public interest and cumulative impact,
- d) introduce broader, consistent grounds for objecting to licence applications, and
- e) limit the Commission’s discretion to grant licences unless satisfied that a licence will not contribute to harm, is in the public interest, and is consistent with the objects of the Act.

In addition, section 4(2) of the LCRA should include a statement that harm minimisation may require a precautionary approach, according to which any decision made pursuant to the LCRA should favour minimising harm where an appreciable risk of harm exists.

The reforms would ensure that harm is given appropriate weight and consideration in licensing decisions, consistent with the primary object and section 4(2) of the LCRA. This would ensure that fewer high risk licences are granted, and would have a large impact in reducing harms, such as family violence, street violence and health problems, that are associated with high outlet density and high availability of alcohol.

Model 1: *Liquor Control Act 1998* (WA), section 38

In Western Australia, the onus of proof in licence applications rests on the applicant to show that granting the application would be in the public interest. As a result, Western Australia is the only state where new applications for licensed premises have been refused with any frequency.¹⁷⁷ An analysis of reviews of liquor licence applications by the Liquor Commission of Western Australia in 2012 found that all reviews of decisions to refuse liquor licence applications confirmed the original decision. The analysis revealed that the most commonly advanced arguments in reviews referred to harm minimisation and amenity impacts, and that liquor licence applications failed in cases where applicants failed to provide substantive evidence to show that their applications were in the public interest.¹⁷⁸

Section 38 of the Western Australian *Liquor Control Act 1988* places the onus of proof on liquor licence applicants by requiring applicants to satisfy the Western Australian licensing authority that granting the application is in the public interest.

In determining whether granting the application is in the public interest, the licensing authority must have regard to the objects of the Act.¹⁷⁹

The licensing authority may also have regard to the factors set out in section 38(4). In summary, these are:

- the harm or ill-health that *might* be caused to people due to the use of liquor (emphasis added);
- the impact on amenity of the locality in which the licensed premises is situated; and
- whether offence, annoyance, disturbance or inconvenience *might* be caused to people who reside or work in the vicinity of the licensed premises (emphasis added).

In order to satisfy the test, the applicant must provide a public impact assessment (PIA). This is based on the view that the PIA should be part of applicants' business planning and is an important document for informing the community about the proposed manner of trade.¹⁸⁰ The level of detail required in the PIA will differ according to the complexity of the application and the impact the proposed premises will have on the surrounding community.¹⁸¹

The PIA must be supported by objective, accurate and relevant evidence.

Applicants are required to demonstrate that the licence will have positive (social, economic, health) impacts on the public interest. It is not sufficient for applicants to merely demonstrate that the grant of the application would not have any negative impact.¹⁸²

If an application is not granted because the licensing authority is not satisfied it is in the public interest, another application cannot be made in relation to the same premises within 3 years of the decision.¹⁸³

Model 2: South Australian draft *Liquor Licensing (Liquor Review) Amendment Bill 2016*

The recent Review of the South Australian *Liquor Licensing Act 1997* (conducted by former Supreme Court Justice, Timothy Anderson QC) recommended that the 'needs test' applying to bottle shop and hotel licence applications should be replaced by a 'Community Impact and Public Interest test', under which applicants would have to satisfy the South Australian Licensing Authority that the granting of the application will not detract from the safety and well-being of the community and is in the public interest. The Review recommended that the test should apply to higher risk licence

categories: general liquor (hotel) licence, packaged liquor sales licence, club licence, and on-premises licences trading after 2am, but the Licensing Authority should have discretion to consider any other application if there are community or public interest factors that need to be examined.

The South Australian Government substantially accepted the recommendation to introduce the new test, but noted that the test will need to be carefully framed to ensure it protects against a proliferation of liquor outlets and alcohol-related harm. The Government noted that the new test should apply to a sufficiently wide range of on-premises venue types to guard against a proliferation of bars in the community. It disagreed with the proposal that the test apply only to on-premises outlets authorised to trade after 2am, and recommended that it should apply to any on-premises general licence (with minor exceptions).¹⁸⁴

The South Australian Government has released draft amendments to the *Liquor Licensing Act 1997* and draft Community Impact Assessment Guidelines, reflecting the Government's response to the Review.¹⁸⁵

The draft Liquor Licensing (Liquor Review) Amendment Bill 2016 proposes to introduce a community interest test for certain high risk liquor licence applications. This would allow the Licensing Authority to grant an application only if satisfied that it would be in the community interest.¹⁸⁶ In making this assessment, the Licensing Authority would have to consider "the harm that might be caused" to the community due to excessive or inappropriate liquor consumption, as well as cultural, recreational, employment or tourism impacts, and social and amenity impacts.

The community impact test would apply to all applications for general licences, on premises licences (with some exceptions), club licences authorised to sell packaged liquor, and packaged liquor licences (other than direct sale only licences).¹⁸⁷

The draft Bill would also require the Liquor and Gambling Commissioner to publish community impact assessment guidelines.¹⁸⁸ The draft guidelines provide guidance on assessing community impact, and set out the community impact information that licence applicants must provide, such as information on vulnerable groups and facilities in the community, crime and social profile information, and information about existing premises in the area. Applicants for very high-risk licences (e.g. on-premises licences that operate after 2am), would have to give additional information, including evidence of community support, and provide notice of the application to residents in a 200 metre radius.¹⁸⁹

RECOMMENDATIONS

13. Reference to precautionary approach in objects

The APC recommends that section 4(2) of the LCRA should include a statement that harm minimisation may require a precautionary approach, according to which any decision made pursuant to the LCRA should favour minimising harm where an appreciable risk of harm exists.

14. Reverse onus of proof

The APC recommends that the LCRA should be amended to reverse the onus of proof in applications for the grant, variation or relocation of a licence (not including applications for lower risk licences, such as restaurant and café licences).

15. Grounds for granting a licence

The LCRA should provide that the Commission must not grant a licence application unless satisfied that the grant:

- a) will not contribute to harm in the area (harm test);
- b) is in the public interest (public interest test); and
- c) is consistent with the Objects of the Act.

The LCRA should include clear definitions of harm and public interest, and set out factors for assessing whether a licence application satisfies the two tests. The APC's recommended definitions of harm and public interest are discussed below

These requirements should not apply in relation to lower risk licences, such as restaurant and café licences. However, the Government should introduce regulation to ensure that restaurants and cafés are not able to change their operating conditions and effectively morph into other licence types.

Reversing the onus of proof in licence applications and requiring licence applicants to satisfy tests based on public interest would follow the Western Australian model (under the *Liquor Control Act 1988*), and amendments proposed in the South Australian draft Liquor Licensing (Liquor Review) Amendment Bill 2016.¹⁹⁰

Requiring the Commission to be satisfied that a licence will not contribute to harm would ensure that licence applicants provide evidence specifically relevant to harm, and would require VCGLR to give appropriate consideration and weight to harm minimisation in all determinations (including of uncontested applications), consistent with the primary object of the LCRA.

As discussed in answer to question 7 above, the LCRA should include a definition of harm. The definition should set out a non-exhaustive list of types of harm:

- a) Excessive or risky consumption of alcohol.
- b) Violence, including family violence.
- c) Adverse effects on children, young people, other vulnerable people or groups, or communities.
- d) Adverse short-term and long-term effects on health.
- e) Anti-social behaviour.
- f) Property damage.
- g) Personal injury or death.
- h) Road accidents.
- i) Drink driving.
- j) Underage drinking.

16. Factors and evidence for assessing harm

The LCRA should also set out a non-exhaustive list of factors to which the Commission may have regard in assessing the likelihood that a licence application would contribute to harm.

The factors should include features of the licence that are relevant to the likelihood of harm, such as:

- licence type;
- location;
- trading hours;

- venue capacity or retail floor space;
- patron or customer numbers;
- types of alcohol to be sold;
- past and/or projected alcohol sales; and
- in the case of applications for licence variation or relocation, compliance history of the licensee, management of the licensed premises, and any licence conditions.

The factors should also include characteristics of the area in which the premises would be situated that are relevant to the likelihood of harm, such as:

- rates or trends of alcohol-related harm in the area,
- 'at risk' groups or sub-communities in the area, such as children, young people and families, Aboriginal people and communities, and migrant groups from non-English speaking countries.
- sensitive uses in the area, such as schools, childcare centres and educational institutions, hospitals, drug and alcohol treatment centres, recreational areas, dry areas, areas frequented by young people, and
- socio-economic and social factors, such as rates of crime, violence and family violence, unemployment, homelessness, and the socio-economic profile of the area.

These factors are modelled on Western Australian Government guidance on assessing harm and health impacts of licence applications, as part of the public interest assessment required under section 38 of the Western Australian *Liquor Control Act 1988*.¹⁹¹

The LCRA should also set out a non-exhaustive list of evidence that will be relevant to determining whether a licence application is likely to contribute to harm. This should include research, statistics, reports or complaints in relation to alcohol-related crime, ambulance attendances, emergency presentations, hospital admissions and chronic health conditions.

17. Public interest

The LCRA should include a clear definition of public interest. The definition should set out non-exhaustive factors that the Commission must take into account in determining whether a licence application is in the public interest, including:

- a) the likely impact of the application on the amenity of the area; and
- b) the cumulative impact of existing licences in the area.

The LCRA should state that convenience for consumers should not be sufficient basis for establishing that a grant of an application is in the public interest. It would not be consistent with the primary object of harm minimisation if ease of buying alcohol were sufficient ground for determining that an application is in the public interest.

18. Ministerial guidelines on harm and public interest

Ministerial guidelines should also be issued to provide guidance on assessing whether a licence application satisfies the harm and public interest tests, and on the evidence required to support a licence application.

19. Cumulative impact

The LCRA should require the Commission to have regard to the cumulative impact of existing licences in the area in determining whether the public interest and harm tests are satisfied, and whether granting the application would be consistent with the objects of the Act.

This would ensure that the Commission considers whether the grant of an application would support the object of harm minimisation and be in the public interest in the context of the cumulative impact of existing licences in the area. This would better allow licensing decisions to respond to the strong evidence of the relationship between outlet density and harms, including family violence.

20. Factors for assessing cumulative impact

The LCRA should set out a non-exhaustive list of factors that the Commission may consider in assessing the cumulative impact of licences in an area, including the types, number, density, mix, locations, trading hours, capacity or retail floor space, patron or customer numbers, alcohol sales, compliance history and management of licensed premises in the area. These considerations are highly relevant in assessing whether the cumulative impact of existing licences is such that the grant of a licence application would be inconsistent with harm minimisation and the public interest. They would reflect the strong and consistent evidence base on how the number, distribution, type, sales and trading hours of liquor outlets at the local level drives alcohol-related harm.¹⁹² Inclusion of reference to retail floor space or alcohol sales would be important to ensure the definition is relevant to packaged liquor licences, as evidence demonstrates that it the amount of alcohol sold via packaged outlets predicts violence rates, rather than just the density of outlets.^{193, 194,195,196} Recent Victorian based research suggests that chain outlets contribute most substantially to injury risk. This is likely because they are larger and can sell alcohol at cheaper prices compared to independent retailers and thus reduce financial and convenience costs of purchasing alcohol.¹⁹⁷

This approach would be similar to the approach under Scotland's Licensing Act, which specifically requires licensing authorities to have regard to the number and capacity of existing licences premises in the locality when determining licence applications.¹⁹⁸

21. Ministerial guidelines on cumulative impact

Ministerial decision-making guidelines should provide clear guidance on how to assess and weigh the factors, and different impacts, in order to determine cumulative impact. The guidance should build on the cumulative impact guidance provided in the Department of Planning and Community Development's Practice Note 61 *Licensed Premises: Assessing Cumulative Impact* and the *Assessment of the Cumulative Impact of Licensed Premises* decision-making guidelines issued by the Minister, but should include clearer guidance on assessing a broader range of risk factors and impacts, including guidance relevant to packaged liquor licences and associated harms (such as family violence and health impacts).

The Ministerial guidelines should also provide guidance on determining the appropriate area for assessing cumulative impact. This should be based on the circumstances of each application, including:

- the type, size (retail floor space or venue capacity) and location of the proposed new, varied or relocated licence;
- the type and locations of existing licences (including the concentration or dispersal of licences, and the existence of any clusters of licences);
- the area in which the impacts of existing licences occur;
- the locations of any sensitive uses in the area; and

- physical, geographical, zoning or other relevant features of the area.

The Commission should have discretion to consider broad cumulative impacts occurring over a wide geographic area. For example, impacts such as family violence and adverse health impacts that may be associated with existing packaged liquor licences in an area, but may occur over a much wider area than the vicinity of licences.

22. Objection grounds

The LCRA should be amended to introduce consistent, broader grounds for objections to licence applications.

The grounds should be:

- a) that the application does not satisfy the harm test; or
- b) that the application does not satisfy the public interest test.

23. Objectors

The right to object should be open to any person (including members of the public, local councils and licensing inspectors), and should apply in relation to all licence applications.

These reforms to the objection grounds would broaden the range of evidence of harms and amenity impacts of licences that could be provided. This would help to promote local government and community engagement in licensing decisions, and greater consideration of community views and impacts.

The Chief Commissioner of Police should retain the right to object to any licence application on any grounds he or she thinks fit.

24. Remove Commission's power to refuse objection

The power of the Commission under section 42(a) to refuse to accept an objection if the person making the objection is not affected by the application should be removed. Objections should be considered on their merits, irrespective of the party making the objection. For example, public interest groups that may have greater capability and resources than community members to make objections should be entitled to do so, in order to ensure community interests are represented in the licence application process.

9. How should the LCRA encourage best practice harm minimisation behaviour by licensees?

Research indicates that a large number of licensees are not currently serving alcohol responsibly or engaging in best practice harm minimisation behaviour. A 2013 study investigated alcohol and drug use of night-time patrons in licensed venues in Australian cities.¹⁹⁹ At certain points throughout the night, the patrons in almost 40 per cent of venues in Melbourne, and 50 per cent of venues in Geelong, were assessed as exhibiting high visible intoxication levels.²⁰⁰ The study also found that in venues across Australia an alarmingly high proportion of patrons — 85 per cent — classified as intoxicated by the study's fieldworkers were continuing to be served alcohol.²⁰¹

A Victorian study found that more than 20 per cent of underage drinkers in inner-Melbourne in 2009 had drunk alcohol in a licensed venue in the past 12 months.²⁰²

Offences relating to the supply of liquor under the LCRA are essential to ensure harm minimisation behaviour by licensees. This includes the offences of supplying liquor to intoxicated persons (section 108(4)(a)), permitting drunken or disorderly persons on the premises (section 108(4)(b)) and supplying liquor to underage persons (section 119). However, these offences are not adequately enforced, and are not deterring licensees from supplying liquor irresponsibly.

RSA training requirements under the LCRA are also an important strategy to ensure best practice harm minimisation behaviour. However, the efficacy of these requirements is limited unless there are appropriate enforcement mechanisms to ensure that responsive service principles are being applied consistently and in full.²⁰³

The need for improved enforcement of alcohol supply offences to promote responsible supply by licensees is discussed below.

Enforcement of alcohol supply offences

Analysis by the Victorian Auditor-General shows that very few breaches of licensee supply offences are identified by Victoria Police or the Commission. Although the Commission's Compliance Unit inspects a high proportion of licensed premises, the most common breaches identified are administrative, such as not displaying correct signage or providing correct paperwork. For example, in 2009-10 and 2010-11 three quarters of all breaches detected by the Compliance Unit related to administrative breaches, while only 14 per cent related to the inappropriate supply of alcohol.²⁰⁴

The Auditor-General's analysis also shows that Victoria Police detects high numbers of offences related to the individual's consumption of alcohol, but minimal licensee offences related to the supply of alcohol. For example, in 2009-10, Victoria Police detected only 19 breaches of alcohol supply offences by licensees, compared to more than 14,000 breaches by individuals, with the vast majority for being drunk and/or disorderly/riotous. Across both Victoria Police and the Commission in 2009-10, there were only 31 offences of supplying liquor to an intoxicated person, and only 14 instances of serving alcohol to or allowing a minor on licensed premises.²⁰⁵

This is a clear gap that needs to be addressed. It is of critical importance to minimising alcohol harm in Victoria to ensure that the LCRA's restrictions on the supply of alcohol are strongly enforced. We acknowledge the Commission's graduated approach to enforcement according to the 'enforcement pyramid' and the value of using a combination of enforcement strategies.²⁰⁶ However, in the APC's view, the Commission's enforcement activities draw too heavily from the lower end of the enforcement pyramid (e.g. information, education, warnings, risk management), and there is insufficient attention to detection and prosecution of more severe breaches at the higher end of the pyramid. This renders enforcement schemes, such as the demerit point and star rating schemes, ineffective, since these schemes rely on detection of supply offences to have any impact.

The lack of enforcement of supply offences also occurs because of practical difficulties. For example, identifying a licensee who is supplying liquor to an intoxicated person or permitting an intoxicated person to remain on the premises requires an inspector or Police Officer to be present at the time this offence is happening. This means inspections need to take place during peak business periods, and over an extended time period to allow observation of patron and licensee behaviour. Detection of alcohol supply offences requires adequate staffing and resourcing, with adequate time for inspectors to conduct meaningful observations of licensee and patron behaviour.

The complexity and detail of the legislation itself also creates difficulties with enforcement. The offences in section 108(4) are difficult to enforce and prosecute due to the framing of the offences, evidentiary requirements, and inconsistency and lack of clarity in definitions.

The need for reform of the offences under section 108(4) of the LCRA to ensure they act as more effective deterrents to irresponsible supply of alcohol and harmful conduct by licensees is discussed below.

The need for improvement in enforcement strategies and provisions more generally in relation to the LCRA is discussed in the answer to question 12 below.

Intoxication and drunkenness under section 108(4)

Victoria is currently out of step with other Australian jurisdictions by basing licensee (or permittee) offences on dual concepts of intoxication and drunkenness.²⁰⁷

Currently section 108(4) of the LCRA makes it an offence for a licensee or permittee to:

- (a) supply alcohol to a person who is in a state of intoxication, or
- (b) permit drunken or disorderly persons to be on the licensed premises or on any authorised premises.

The LCRA defines intoxication directly in section 3AB:

[A] person is in a state of intoxication if his or her speech, balance, co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.

The Commission has published Intoxication Guidelines, which provide further guidance for licensees on determining whether a person is intoxicated based on visible signs such as affected speech, balance or behaviour.²⁰⁸

There is, however, no definition of 'drunk' in the LCRA. The Victorian Supreme Court has held that 'drunk' means what an ordinary person would consider drunk, and is a question of degree depending on the facts.²⁰⁹ Drunkenness has also been defined in Victorian Parliamentary Committee Reports with reference to case law as where a person's 'physical or mental faculties or his judgement are appreciably and materially impaired in the conduct of the ordinary affairs or acts of daily life'.²¹⁰

This suggests that the two terms largely overlap, since visible signs of intoxication would be understood by an ordinary person to also be signs of drunkenness. It is unclear what, if any, difference exists between the two terms.

The reference to intoxication and drunkenness within section 108(4) creates confusion and uncertainty for police, and makes enforcement of the offences extremely difficult in practice.²¹¹

It also suggests an interpretation where a licensee or permittee must not serve an intoxicated person, but is not obliged to eject the person from the premises until they progress to drunkenness — at which point they would be at greater risk of suffering or causing harm in the area around the premises. This is inconsistent with harm minimisation and the public interest.

The reference to drunkenness should be removed, so that section 108(4) refers only to intoxication. If a person is noticeably intoxicated to the extent that they should not be served alcohol, that person

should also not be permitted in licensed premises by a licensee. Further, a single concept of intoxication in section 108(4) would greatly simplify enforcement of the offences for police.

Intoxication by other substances

Currently, the definition of intoxication in section 3AB requires that there be reasonable grounds for believing that a person's intoxication was 'the result of the consumption of *liquor*' (emphasis added). The effect of this is that a licensee or permittee does not commit an offence by supplying alcohol to a person who is noticeably affected by drugs. Clearly it is contrary to harm minimisation and the public interest for a person to be served alcohol if they are noticeably intoxicated by any substance, whether it is alcohol or drugs.

This also creates practical enforcement difficulties in determining whether a patron is intoxicated by drugs or alcohol, and makes the offence difficult to prosecute.²¹² A licensee can avoid prosecution if it cannot be proven that there were reasonable grounds for believing that a person was intoxicated as a result of consuming alcohol, and not other substances.

Liquor legislation in other Australian jurisdictions addresses this issue by defining intoxication to include intoxication from the consumption 'of liquor or other substances'.²¹³

A licensee should not be allowed to supply alcohol to a person who is clearly affected by drugs, and removing this distinction would also simplify enforcement of section 108(4)(a).

Onus of proving intoxication

In order to prove that a licensee has supplied alcohol to an intoxicated person in breach of section 108(4), it is necessary to prove that the person did, in fact, appear intoxicated. Reports from police suggest that it is very difficult to obtain the level of evidence required to prove that a person was intoxicated, and licensees can avoid prosecution by claiming that a person was not noticeably affected by alcohol.²¹⁴

The Western Australian *Liquor Control Act 1998* addresses this issue by providing that, where an authorised officer has decided that a person is drunk at a particular time then, in absence of proof to the contrary, that person is taken to have been drunk at that time.²¹⁵ This places the onus on licensees, in defending prosecution for the relevant offence, to establish that the person was not drunk.

RECOMMENDATIONS

25. The offences under section 108(4) of the LCRA should be based on the single concept of intoxication. To achieve this, section 108(4)(b) should be amended to make it an offence for a licensee to permit a person in a state of intoxication on licensed premises.
26. The definition of intoxication in section 3AB of the LCRA should be amended so that it extends to where there are reasonable grounds for believing that a person's intoxication is a result of the consumption of liquor or other substances.
27. The LCRA should be amended to provide that where a police officer or licensing inspector decides that a person is intoxicated at a particular time, in the absence of proof to the contrary, the person is taken to be intoxicated at that time (following the approach under section 3A(2) of the *Liquor Control Act 1998* (WA)).

11. What opportunities are there to address family violence within the LCRA?

There is clear evidence that alcohol consumption increases the frequency and severity of family violence, and that increases in liquor outlet density, particularly packaged liquor outlet density, are associated with increases in family violence over time in Victoria (see discussion above on page 19 and 20).

Based on this evidence, there are a number of clear opportunities to reduce family violence within the LCRA by introducing reforms to more effectively regulate the availability of alcohol, particularly packaged liquor availability, and alcohol promotion and discounting practices that lead to increased alcohol consumption. These reforms would have significant impact in reducing the involvement of alcohol in family violence in Victoria.

Reforms to regulate alcohol availability should include the recommended changes to the licence application process (discussed above in answer to question 8) that would allow greater consideration of harm impacts and improved filtering of potential licences, as well as trading hours reductions (also discussed in answer to question 8), which would lead to reduced alcohol supply. Reforms to more effectively regulate alcohol promotions and discounting, and static alcohol advertising, are discussed in answer to question 8 and question 13 respectively.

In addition, there is a need for an 'alcohol harm zone' mechanism to introduce controls on the number or density of outlets in local areas, in order to reduce alcohol-related family violence and other alcohol harms.

Alcohol harm zones

There is strong and consistent evidence that changes in the number of alcohol outlets lead to changes in alcohol consumption and harm.²¹⁶ A number of studies have shown that restricting outlet density within a local area may be effective to reduce alcohol-related harm. This is because it increases the time and inconvenience in obtaining alcohol, limits competition between retailers and the likelihood of discounting and other promotions, and avoids crowd density that leads to higher incidences of violence.²¹⁷

Based on the evidence of the relationship between outlet density and family violence in Victoria, it is clear that reductions in outlet density would lead to reductions in alcohol-related family violence.

The LCRA could introduce a mechanism modelled on Cumulative Impact Policies in England and Wales (discussed below). Members of the public or local councils could apply for Ministerial designation of an area as an alcohol harm zone, creating a rebuttable presumption against the grant of further licences (in general, or of a particular type, e.g. packaged liquor).

This would enable the cumulative impact of licences to be considered as a whole across local areas, rather than only in the context of individual licence applications. The mechanism should prevent further licences in areas that are highly vulnerable to alcohol harm or amenity impacts, based on evidence of factors such as existing levels of harm and amenity impacts, vulnerability to harm in the area, and existing licences and cumulative impact in the area.

This would also have the advantage of better empowering local councils and communities to respond to the impact of alcohol in local areas, and would reduce the unrealistic burden on councils

of objecting to individual licence applications to attempt to control alcohol harm and amenity impacts in a local area. Local councils are at the forefront of responding to alcohol-related problems, deal with the sizable financial costs associated with alcohol-related harm, and are experts in the social, economic and health conditions of their municipalities. They should, therefore, be empowered to respond to alcohol impacts in local areas.

Model: England and Wales Cumulative Impact Policy

Cumulative Impact Policies were introduced in England and Wales as a tool for local licensing authorities to limit the growth of licensed premises in problem areas.²¹⁸

A licensing authority may adopt a special cumulative impact policy within its statement of licensing authority. This creates a rebuttable presumption that applications or variation applications will be refused or subject to certain limitations, unless the applicant can demonstrate there will be no negative cumulative impact on one or more of the licensing objectives.

The guidance defines cumulative impact as the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.

Evidence providing a basis for including a cumulative impact policy within a statement of licensing policy may include:

- Local crime and disorder statistics
- Statistics on local anti-social behaviour offences
- Health-related statistics, such as alcohol-related emergency attendances and hospital admissions
- Environmental health complaints, particularly in relation to litter and noise
- Resident complaints and surveys
- Evidence from local councillors
- Evidence obtained through local consultation

RECOMMENDATIONS

28. The LCRA should introduce a Ministerial discretion to designate an area as an alcohol harm zone. The LCRA should provide that the Minister may designate an alcohol harm zone if satisfied that there is a high risk of:
 - a) alcohol-related harm in the area; or
 - b) negative impacts of licences on the amenity of the area.
29. The LCRA should set out non-exhaustive factors to which the Minister may have regard in deciding whether to designate an alcohol harm zone, including:
 - a) evidence of a high level of alcohol-related harm in the area;
 - b) evidence of a high level of negative amenity impacts of existing licences in the area;
 - c) evidence of a high negative cumulative impact of existing licences in the area;
 - d) the types, number, density, mix, locations, trading hours, capacity or retail floor space, patron or customer numbers, alcohol sales, compliance history and management of licensed premises in the area; and

- e) characteristics of the area that indicate a high risk of or vulnerability to alcohol-related harm, such as:
- i. 'at risk' groups or sub-communities in the area, such as children and young people, Aboriginal people and communities, people from remote and regional communities, families, and migrant groups from non-English speaking countries;
 - ii. sensitive uses in the area, such as schools, childcare centres and educational institutions, hospitals, drug and alcohol treatment centres, recreational areas, dry areas, areas frequented by young people;
 - iii. socio-economic and social factors, such as rates of crime, violence and family violence, unemployment, homelessness, and the socio-economic profile of the area.
30. Designation of an alcohol harm zone would create a presumption that applications for licences in the alcohol harm zone will be refused or subject to specified limitations or conditions (e.g. trading hours limitations), unless the applicant can demonstrate that the application will not increase the risk of alcohol-related harm or negative amenity impacts in the area.
31. The Minister should have discretion to make the designation in relation to particular licence types only (e.g. higher risk licence types).
32. The right to apply for designation of an alcohol harm zone should be open to any person (including members of the public, local councils and licensing inspectors). The applicant could be required to define the area that should be designated as an alcohol harm zone in the application based on relevant evidence.
- The designation could be subject to review after a certain period, for example, two years.

12. Could the current compliance and enforcement provisions in the LCRA be improved? If so, how?

There is a strong need to improve compliance with and enforcement of the LCRA. This is of fundamental importance in ensuring that Victoria's liquor licensing scheme is effective in minimising the harm caused by alcohol.

Effective enforcement must necessarily go beyond the provisions of the legislation itself to consider its practical application and associated policies and procedures. To ensure the LCRA is effective in contributing to minimising harm, the Review should make recommendations as to enforcement approaches, in addition to considering compliance and enforcement provisions of the LCRA.

Enforcement approaches

Responsibility for ensuring compliance with and enforcing the LCRA's licensing scheme is held by the Commission and Victoria Police. Although these bodies make significant contributions to enforcing the law and reducing alcohol harms, we believe there is a need for improvement in enforcement approaches. This is demonstrated by the rising rates of alcohol-related harm in Victoria, and research (referred to in the answer to question 9 above) suggesting that many licensed venues in Victorian cities have patrons with high levels of intoxication on premises.²¹⁹

The APC believes that use of ‘swift and certain’ sanctions is an effective approach to deterring contravention of liquor licensing requirements. This approach is based on the argument that:

“...If punishment is swift and certain, it need not be severe to be efficacious. If punishment is uncertain and delayed, it will not be efficacious even if it is severe.”²²⁰

Such an approach creates tangible, predictable and effective deterrents and penalties. This is supported by criminological literature on what works to deter crime, which finds that there is substantial evidence that the increased visibility of law enforcement personnel and perceived certainty of punishment is associated with reduced intended offending.²²¹

A swift and certain approach would support more effective operation of provisions of the LCRA and liquor regulations, as well as the recommendations in this submission.

We also support the following five point plan to policing of licensed venues developed by Doherty and Roche (2003):²²²

- establish a clear strategic direction for policing licensed premises and alcohol-related harms;
- proactively police licensed venues, events and harms;
- establish intelligence gathering and analysis practices and systems that identify problematic licensed premises and assist with the evaluation of police responses;
- collaborate with key local stakeholders, including licensing authorities, local government, licensees and health agencies, to develop integrated responses to reduce alcohol-related incidents and harms; and
- enforce liquor laws and other legislation impacting on the management of licensed premises and behaviour of staff and patrons.

Currently, the LCRA contains a range of compliance and enforcement mechanisms, including the demerit points scheme and star rating scheme, none of which are effective. The sections below describe the weaknesses in these schemes, and make recommendations for strengthening the enforcement and compliance provisions of the LCRA.

We also provide recommendations below on improving enforcement strategies and approaches in relation to the LCRA and liquor regulations. These largely mirror analysis of recommendations of the Victorian Auditor-General’s 2012 report *Effectiveness of Justice Strategies in Preventing and Reducing Alcohol-Related Harm*. We strongly support these recommendations.

As noted above on page 19, the Victorian Auditor-General will also report in 2017 on the findings of its current investigation into the effectiveness of the Commission in regulating liquor licensing. The APC urges the Government to take into account the findings of this investigation, as well as the Auditor-General’s 2012 findings.

1. Development of an enforcement policy

A key recommendation of the Auditor-General’s report was that the Commission and Victoria Police develop a comprehensive and collaborative enforcement strategy to minimise harm more effectively and efficiently. We strongly support this recommendation.

The policy should enable better strategic planning and increased cooperation between the Commission and Victoria Police and should address how enforcement activities can best be planned and targeted to effectively reduce harm.

The policy should identify enforcement priorities, outline the roles and responsibilities of each body and establish mechanisms for ongoing collaboration and cooperation, and regular review and updating. The policy should be based on current and accurate data reporting (see further discussion below) and should address the issues set out below.

RECOMMENDATION

33. The Commission and Victoria Police should develop a comprehensive and collaborative enforcement strategy, which should be regularly reviewed and updated.

2. Data collection and reporting

Accurate and timely reporting of alcohol related offences is critical in providing targeted and effective enforcement in priority areas. Data can be used by both Victoria Police and the Commission to give greater enforcement priority to particular locations, times or licensed premises that are associated with high numbers of alcohol related offences.

The Auditor-General found a number of problems with data collection and recording of Victorian alcohol related offences, leading to under-reporting: it is not mandatory to record the presence of alcohol and inefficient, duplicative processes discourage recording of non-essential details.²²³

The introduction of a violent venues scheme, as discussed below on page 60, would contribute to improved data collection, provide a framework for the reporting of alcohol-related violent incidents associated with licensed premises, and facilitate targeted enforcement. For example, NSW 'violent venues' lists show that only a small proportion of NSW venues are responsible for a majority of the violent incidents (14 venues were responsible for 200 incidents in 2015),²²⁴ suggesting that law enforcement strategies should be targeted at such venues.

As well as the violent venues scheme, systematic collection and dissemination of harms data between relevant stakeholders should be mandatory, including collection and dissemination of hospital and police data.

The collection and use of this data has proven successful elsewhere. For example, in Cardiff, Wales, the Tackling Alcohol-Related Street Crime (TASC) strategy was implemented to combat violence in and around licensed premises. Among interventions such as improving RSA training and education programs for schoolchildren, a database was developed that recorded hospital and police data. This allowed the identification of problematic areas to which police resources would be directed. Furthermore, regular inspections of licensed premises were performed to identify high risk venues. An evaluation of the TASC one year later found that there was a four per cent reduction in alcohol-related assaults, equating to 100 assaults prevented. This was despite assault rates increasing for the rest of Wales.²²⁵

A similar concept was also explored in the Alcohol Linking Program in NSW. This involved improving police recording of alcohol intelligence information, using this information to assess the level of risk imposed by particular venues, and providing targeted police responses to licensees on this basis.

Evaluation of the program found significant declines in alcohol-related incidents and assaults in intervention compared to non-intervention areas.²²⁶

Currently underway, the NHMRC partnership five-year project led by Professor Peter Miller of Deakin University, *Driving change: Using emergency department data to reduce alcohol-related harm* is trialling and evaluating an intervention based upon the above models across eight emergency departments in NSW, Victoria and the ACT. A key element of this project is to require emergency departments to collect data on where patients purchased their last alcoholic drink, facilitating targeting of enforcement to high risk venues identified by the data. Such a scheme has been implemented in parts of the UK and was recently piloted by Australian researchers in rural Victoria, with evaluations concluding that last drinks data collection in emergency departments is low cost, easy to implement,²²⁷ and associated with reduced assaults and emergency department attendances post intervention.²²⁸

We also strongly support the collection of mandatory 'last drinks' data by police officers attending alcohol-related incidents, as occurs in NSW and other states. This data should be supplemented by the Commission and Court data and compiled by the Victorian Crime Statistics agency.

RECOMMENDATIONS

34. State-wide emergency department and police data sharing should be implemented.
35. Mandatory 'last drinks' data should be collected by police officers attending alcohol-related events, as occurs in NSW and other states. This data should be supplemented by the Commission and Court data and compiled by the Victorian Crime Statistics agency. Mandatory 'last drinks' data should also be collected in hospital Emergency Departments, as many alcohol-related harms are not reported to police.

Compliance and enforcement provisions of the LCRA

1. Demerit Point System

In our view the current demerit point system needs significant reform to be an effective tool for reducing alcohol related harm. Under the existing system licensees incur demerit points for non-compliance incidents — infringement notices or prosecutions for certain offences including offences of supply of liquor to intoxicated persons (section 108(4)(a)), permitting drunken or disorderly persons on the premises (section 108(4)(b)) and supplying liquor to underage persons (section 119).

Each incident incurs one demerit point, with points applying for a three year period.

Licences will be suspended at the following thresholds:

- 5 demerit points will lead to a 24 hour suspension;
- 10 demerit points will lead to a 7 day suspension; and
- 15 demerit points will lead to a 28 day suspension.²²⁹

There are currently more than 21,000 licences operating in Victoria.²³⁰ As of 15 November 2016 there were only 56 licences and permits that had incurred demerit points, with a total of 70 demerit points against them.²³¹ Two licences had four demerit points, one had three, six had two demerit points and the rest had(one demerit point each. To date, no venue has reached five demerit points. The Commission has stated that this is due to increased compliance activity being carried out on

venues that have gained a demerit point, causing the venue to modify its behaviour. However, there has been no independent assessment to verify this claim.

Without further evidence to support the Commission's claim, we argue that the rising rates of alcohol related harm, the low numbers of demerit points applied and the fact that no licensee has incurred sufficient points to receive a licence suspension, all combine to support a conclusion that the demerit point scheme is not effective. In our view the demerit point scheme is ineffective for three reasons: because it does not apply to a broad enough range of offences, because too many incidents are required to trigger a license suspension, and because not enough breaches of the supply offences are detected.

To improve the current demerit point system, we recommend the following changes be made:

1. The threshold number of demerit points required to incur a suspension be lowered at each stage. Two or three non-compliance incidents and corresponding demerit points should suffice to incur the first suspension, for example.
2. The list of offences that incur demerit points should be broadened by extending the definition of non-compliance incidents under the Act to include other deliberate licensee behaviour that conflicts with the aim of harm minimisation. A non-exhaustive list of current licensee-directed offences under the Act that should be categorised as non-compliance incidents includes the following:
 - Supplying or permitting the supply or consumption of liquor that is not in accordance with the licence, or permitting persons to carry on the business of supplying liquor on licensed premises without the consent of the Commission (sections 106(1), 108(1)(a), (b)),
 - Permitting an underage person to supply liquor on licensed premises other than as permitted (section 122(1)),
 - Failing to comply with licensee obligations to ensure that all employees have up-to-date RSA training where required (sections 108AA–AE).
 - Failing to comply with a banning notice for certain advertising or promotions (section 115A).
 - Knowingly permitting a person to enter licensed premises, where the person has a banning notice or exclusion order prohibiting them from entering the premises (sections 148Q),
 - Letting or sub-letting licensed premises or the right to supply liquor without the Commission's consent (section 105(1)).

Expanding the demerit point system would recognise the importance of harm minimisation, and provide more robust methods for discouraging non-compliant behaviour.

Consideration should be given to developing categories of offences, with breaches of more serious offences such as those that currently attract demerit points incurring more than one demerit point.

Consideration should also be given to introducing other sanctions or licence conditions which could apply at lower demerit point thresholds, such as serving restrictions and management requirements.

It is important to note that, irrespective of any changes to the demerit system, its success also relies on detecting breaches of relevant offences. It is critical that enforcement of the offences tied to demerit points is given priority, so that the demerit point system can act as an effective deterrent to poor licensee behaviour.

RECOMMENDATIONS

36. The demerit point system should be reformed to lower the threshold number of demerit points that incurs a suspension (e.g. to two or three points).
37. The range of licensee offences that are deemed non-compliance incidents and attract demerit points should also be broadened.
38. Consideration should also be given to introducing other sanctions or licence conditions which could apply at lower demerit point thresholds, such as serving restrictions and management requirements.

2. Star Rating System

The Star Rating System gives each licensee a star rating based on its history of non-compliance incidents. A licensee starts with three stars, and gains or loses stars depending on the number of non-compliance incidents. The ratings are assigned as follows:

- One star: Three or more non-compliance incidents in the previous 12 months
- Two stars: One to two non-compliance incidents in the previous 12 months
- Three stars: No non-compliance incidents in the previous 12 months
- Four stars: No non-compliance incidents in the previous 24 months
- Five stars: No non-compliance incidents in the previous 36 months

Licensees with four or five stars receive a discount on their licence fee (five and 10 per cent respectively). A compliance risk fee is payable on licence renewal for those with a reduced rating, depending on the number of non-compliance incidents in the relevant period.

In our view the star rating system is an ineffective compliance tool. Its purpose is to reward licensees who have not breached any of the relevant LCRA provisions on alcohol supply. We question whether it is appropriate to reward licensees for adhering to their legal obligations. In addition, as with the demerit point system, the star rating system is only effective to the extent that breaches of the relevant provisions are detected. Based on the low number of non-compliance incidents (i.e. supply offences) detected, as discussed above on page 50, we argue that the star rating system is highly unlikely to have any real effect on improving compliance. Its main effect is likely to be to reduce the revenue received from licence fees. We recommend that the star rating system should be abolished.

RECOMMENDATION

39. The star rating system should be abolished.

3. Violent Venues scheme

The star rating and demerit points systems discussed above focus on non-compliance with requirements of the LCRA — encouraging compliance by penalising non-compliant conduct and rewarding compliant conduct. Any improvement in licensee behaviour and resulting compliance with the LCRA's alcohol supply laws should then lead to a reduction in alcohol-related harms within the community.

Those schemes, however, are not designed to take into account any direct link between a particular licensed venue and incidents of alcohol related harm. It is well established that licensed venues vary in their level of risk for, and association with, alcohol related harms, in particular assault and other violent incidents, with some venues experiencing significantly more incidents than others.²³²

These links could be directly addressed by introducing a scheme that focuses on acts of alcohol-related violence attributable to particular licensed premises. We support the violent venues scheme in place in New South Wales, which has the following features:

- Licensed premises are graded according to the number of alcohol-related violent incidents (offences under the Crimes Act) they experience over a certain period.
- Data is based on incidents police record as having occurred on or in the immediate vicinity of licensed premises.
- Venues are assigned a level from one to three based on number of violent incidents (highest-lowest), and special licence conditions are imposed based on the classification.
- Conditions for Level 1 venues include a mandatory 1.30am lockout and no glass containers after midnight, Level 2 venues are subject to similar conditions but to a lesser degree, and Level 3 venues are encouraged to develop or review their safety practices.
- There is a process for reviewing the attribution of a particular incident to a licensed premises.

The following conditions apply to Level Two venues (12 to 18 violent incidents in a year):

- Cease alcohol service 30 minutes before closing;
- No glass or breakable containers after midnight;
- Alcohol time-outs or free water and food for 10 minutes every hour after midnight;
- Required to maintain a detailed incident register whenever trading; and
- Extra compliance monitoring.

The following conditions apply to Level One venues (19 or more violent incidents in a year):

- 1.30am lockout;
- Cease alcohol service 30 minutes prior to closing;
- Extra security measure such as additional guards, CCTV, digital video and audio; recording devices, or electronic ID scanning;
- Drinks must not be served in glass or breakable containers after midnight;
- No shots, no doubles, no RTDs (ready to drink) over 5% after midnight;
- A limit of four alcoholic drinks per customer per order after midnight;
- Alcohol time-outs or free water and food for 10 minutes every hour after midnight;
- Required to maintain a detailed incident register whenever trading; and
- Extra compliance monitoring.

A violent venue scheme in Victoria would increase licensee accountability and enable targeted interventions at high risk premises, placing strict conditions on the operations of these licences that would contribute to making the venue, and local community, safer. Public access to, and regular media attention on these violent venues lists would not only motivate positive changes for licensees who fear a loss of reputation, but also increase public transparency about the risks associated with certain venues. New South Wales maintains a violent venues list, with quarterly reports well-disseminated by the media.

Evaluations of the NSW scheme show that the naming and shaming of violent venues is associated with significant declines in violence in and around licensed venues across New South Wales, and improved licensee behaviour regarding safety.²³³ Violent incidents in listed venues have dropped by 84 per cent since the scheme began. There were 200 violent incidents across 14 venues in 2015 compared to 1,270 incidents across 48 venues on the first violent venues list in 2008.²³⁴ Introducing a similar scheme in Victoria would likely have similar positive results in reducing alcohol-related violent incidents, and improving community safety.

RECOMMENDATIONS

40. The LCRA should introduce a violent venues scheme based on the NSW scheme, where licensed venues identified as being associated with alcohol-related violence are subject to a strict set of licence conditions designed to reduce the risk of violence.
41. A list of violent venues should be published regularly.
42. The effectiveness of this scheme should be closely monitored and regularly evaluated to ensure there are real and sustained improvements in licensee behaviour and rates of violent incidents.

13. Are there other measures that could reduce harm? What would be the costs and benefits of including them?

Static alcohol advertising

A further harm reduction measure that should be included in the LCRA is effective restriction of static alcohol advertising to reduce young people's exposure.

In 2015, Australian alcohol advertisers spent \$26.9 million on outdoor advertising, which amounted to 36 per cent of the total spend on alcohol advertising. The alcohol industry is among the top ten spenders on outdoor advertising in Australia - well above the gambling industry, which ranked 19 in 2015.²³⁵

Children and young people cannot avoid exposure to static alcohol advertising in day-to-day activities, and parents cannot regulate their exposure. Young people are particularly likely to be exposed to static alcohol advertising because they are frequent public transport users.²³⁶ A 2011 House of Representatives Standing Committee inquiry into outdoor advertising noted that it "... is visible to all audiences and cannot be avoided."²³⁷

Effects of alcohol advertising on young people

Young people are particularly susceptible to alcohol advertising messages²³⁸ and to harm from drinking.²³⁹

Research has consistently found that young people's exposure to alcohol advertising increases the likelihood that they will start drinking, or drink more frequently and heavily if they already drink. The more advertising they are exposed to, the greater the effect.²⁴⁰

A US study found that exposure to outdoor alcohol advertising around schools increased the intention of children aged 10-12 years to drink alcohol.²⁴¹

Despite a recent decline in youth drinking, levels of consumption and risky drinking among young Australians are still unacceptably high. The 2014 ASSAD Survey reported that almost 15 per cent of 12-17 year olds were current drinkers (consumed alcohol in the past 7 days), 25 per cent had consumed alcohol in the past month, and 45 per cent had drunk in the past year. 17 per cent of 17 year olds had drunk at least 5 drinks on one day in the past week.²⁴² The 2013 National Drug Strategy Household Survey Alcohol reported that adolescent drinking was prevalent, with 15.4 per cent of males and 11.3 per cent of females aged 12-17 exceeding adult risky drinking guidelines.²⁴³

Support for restricting young people's exposure to alcohol advertising

There is a high level of community concern about young people's exposure to alcohol advertising and support for restrictions in Victoria. A VicHealth survey found that:

- 82 per cent of respondents agreed that alcohol advertisements should be restricted so that they are less likely to be seen by people under 18, and
- 77 per cent of respondents agreed that alcohol advertising on billboards should be banned within one kilometre of schools.²⁴⁴

Expert groups including the WHO, the National Preventative Health Taskforce and the Australian Medical Association have recommended restricting alcohol advertising in places where children and young people's exposure is high.²⁴⁵

The Victorian Government has proposed to prohibit static gambling advertising on public transport infrastructure and within a certain distance of schools.

Concerns about static betting advertising identified in the of OLGR Static Betting Advertising consultation paper²⁴⁶ apply equally to static alcohol advertising, particularly in relation to the impact of this advertising on young Victorians.

The SA Government recently announced that it will prohibit alcohol advertising on public transport. This was recommended by the SA *Review of the Liquor Licensing Act* on the basis that failure to curb alcohol advertising could hinder a continuing decline in underage drinking. The ACT Government has recently decided to no longer allow alcohol advertising by alcohol producers on public buses.

Current regulation

There are currently few restrictions on static alcohol advertising in places where children and young people are often present, such as on public transport, public transport hubs and near schools.

The Outdoor Media Association's self-regulatory guidelines state that its members should limit alcohol advertising on fixed signs within a 150 metre sight line of a school. However, this does not apply to alcohol outlets near schools, or advertising on buses, trams and taxis.²⁴⁷ There is no monitoring of outdoor alcohol advertising near schools, and no penalties for breaching the 150 metre rule. There have been many examples of outdoor alcohol advertising placed near schools in breach of the guidelines.²⁴⁸

The House of Representatives Standing Committee inquiry concluded that loopholes in the guidelines make them 'little more than a token gesture' and recommended limiting outdoor alcohol advertising given its exposure to children.²⁴⁹

RECOMMENDATION

44. The LCRA should prohibit static alcohol advertising on all public transport infrastructure and within a certain radius of schools, including advertising from alcohol retailers, producers and licensed venues (e.g. based on evidence as to the distance Victorian children typically walk to school).

Conclusion

As the first review of Victoria's liquor licensing regime in 18 years, the Review of the LCRA presents an important and significant opportunity to reassess the operation of Victoria's liquor licensing regime in the current context. Following the recommendations of the RCFV, the Review also presents a critical opportunity for the Victorian Government to take action to address the role of alcohol in the scourge of family violence in Victoria.

The current context in Victoria is excessive availability of alcohol, resulting from continuing increases in liquor licences, including big box packaged liquor licences, which are increasing at a rate far outpacing population growth, as well as extended alcohol outlet trading hours. These problems are compounded by irresponsible supply, discounting and promotion of alcohol, and relentless alcohol marketing with few restrictions to protect young people. The result is high and rapidly increasing alcohol-related harms in Victoria, including alcohol-related family violence.

There is a significant opportunity to reduce alcohol-related harms and family violence by introducing effective regulation to address these factors. Our submission presents clear, evidence-based reforms to the LCRA that we know would be effective to change current conditions, and bring about immediate and substantial reductions in these harms. We urge the Victorian Government to act on our recommendations.

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- ¹⁶² 'Statistical Areas Level 1 (SA1) have been designed by the ABS as the smallest unit for the release of Census data ... as to the typical number of persons within an SA1 ... SA1s [contain] between 200 and 800 people': *Liquor Decision - Internal Review - Dan Murphy's Cranbourne East* n 80. See also Australian Bureau of Statistics 2016, *Census Dictionary, 2016*, ABS doc. no. 2901.0, definition of 'Australian Statistical Geography Standard (ASGS)', <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2901.0Chapter23002016>>.
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