Review - Liquor Control Reform Act 1998

Response by Yarra Ranges Council

Introduction

“The majority of Victorians drink responsibly, often while spending quality recreational time with friends and family. However, drinking has a collective cost borne by all of us. It links to injury, accidents, violence and over 200 physical and mental illnesses; alcohol is one of the top 10 avoidable causes of disease and death in Victoria. Alcohol related harm is estimated to cost $4.3 billion every year to the health and justice systems, workplaces, families and individual Victorians” (Vichealth).

“Local governments play a major role in supporting the objectives of the Public Health and Wellbeing Act 2008, by protecting, improving and promoting public health within their municipality. By integrating action across the social, cultural, built, economic and natural environments, council policies and practices can make major contributions to economic prosperity, community cohesion and population health outcomes”.(Vichealth best practice guide for local governments – Reducing the Harms from Alcohol).

This response to the consultation questions has been developed by officers at Yarra Ranges Council in line with available evidence and adopted Council strategies, taking the following strategic perspectives:

- Reducing alcohol related harms
- Facilitating active, vibrant, economically sustainable places.

Review of the Liquor Control Reform Act 1998

The consultation questions for the review of Liquor Control Reform Act are:

1. What opportunities are there for reducing regulatory burden?
2. Does the current licence type regime work? How could it be improved?
3. How could the liquor licence application and renewal process be improved?
4. Is there scope for streamlining the interaction between licensing and planning processes? What are the biggest opportunities?
5. Are there opportunities to improve the risk based fee structure?
6. How can the LCRA better foster diversity and support small business?
Yarra Ranges Council has a strategic health and wellbeing goal to ‘reduce harms from alcohol and other drugs’. An important and first principle question that is not asked in the consultation is:

**How can the Liquor Control Reform Act better reduce the harms from alcohol to improve the health and safety of Victorians?**

With this central health and wellbeing question in front of mind this submission seeks to inform decision making by the VCGLR and the Minister and proposes that deeper engagement with the sector in particular Planners, is warranted.

**Strategic Opportunity**

The review of the Liquor Control Reform Act (LCRA) offers a strategic opportunity to align and integrate the legislative (planning) and regulatory (LCRA) environments to better protect health and wellbeing, while also fostering vibrant local economies.

Improvements in the ability of local governments to advocate for and include local community impacts when assessing liquor licensing applications, is long overdue.

Advocacy in 2015 by the South East Metropolitan Councils’ ‘Alcohol Management Strategies for Outer South East Melbourne Councils’ seeks changes to state planning provisions to give better consideration of the health impacts of planning decisions on alcohol. (See Appendix 1 extract)

Achieving this change is also an action of the Yarra Ranges Health and Wellbeing Strategy which aims to:

“Seek greater local planning control over decisions affecting health through advocacy to the State Government”.

It is timely through this LCRA review, to advance the alignment of planning provisions and the regulatory framework to provide greater certainty and consistency for the alcohol industry, local governments and communities. Consideration of the local health impacts of licensed premises and packaged liquor outlets, at all stages of the process, including at VCAT, is an improvement advocated for by Councils and peak bodies.

The view expressed by the MAV in its submission is reflects the experience of Councils and describes the limitations of the current planning and regulatory processes. “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 objective of the Act of contributing to minimising harm arising from the misuse or abuse of alcohol” (MAV submission). This submission is also cognisant of the State government target to achieve a **“10 percent decrease in excess alcohol consumption by adolescents and adults by 2050”** (2016 Victorian public health and wellbeing outcomes framework).
Response to the Consultation Questions

Q1. What opportunities are there for reducing the regulatory burden?

Where duplication of process exists, this should be reduced or removed, however attention must be given to ensure this does not reduce consideration of the local impacts: health and social harms and local amenity. The ability for local Council’s to act to protect their communities while inadequate in the current process, should not be removed through the review or through seeking efficiencies. Deeper engagement with stakeholders is recommended to avoid unintended consequences of changes.

Overall the regulatory costs (burden) appears reasonable considering the potential social and health impacts to Victorians of the alcohol industry. While a detailed analysis has not been undertaken by Council, it is clear the above mentioned cost of $4.3 billion to the health and justice service systems far exceeds the regulatory fees charged.

Consideration of other mechanisms such as those used to limit harms from tobacco could offer alternatives and as a source of funds to conduct health promotion and responsible service of alcohol programs that deliver results.

The focus of the regulatory environment must be on reducing harms and maximising safe and responsible enjoyment of alcohol.

More detailed consultation with the sector including eminent research institutions, should inform the LRCA decisions. In addition alcohol and drug services can offer insights about the impacts of the current regulatory regime. This should include review of evidence of jurisdictions where regulation strikes a balance between a vibrant industry and businesses and limiting alcohol health impacts.

To reduce regulatory burden, consideration of planning applications only being referred to Councils once all information and supporting material have been received by the VCGLR is warranted. This could reduce the need for further information or extension of time requests by Councils which in turn delay the application process and place burden on applicants, who are often small businesses.

Absolute clarity is needed on the information and evidence required for a license to be granted, with appropriate practice notes and support provided for all parties. Clarity of process and expectations will certainly reduce regulatory burden.

Any such changes must be informed by further and timely engagement with local government, businesses, communities, academic institutions, other state government departments and services.
Q2. Does the current licence type regime work? How could it be improved?

The limited information required to support license applications and the lack of compulsion that applicants offer evidence related to potential impacts (or not) is a weakness in the current system*. Responsibility to furnish detailed evidence of potential harms, sits with objectors who need to demonstrate to the Victorian Commission for Gambling and Liquor Regulation that their grounds for objecting are legitimate. The bar is too high in the current grounds for objection. Community, local governments and licensing inspectors have a narrow platform from which to object. This leads to low confidence levels about the likelihood that reasonable objections related to potential harms and negative impacts on communities, will be successful.

*Grounds for refusal of a licence application - the granting ‘would detract from or be detrimental to the amenity of the area’ or ‘would be conducive to, or encourage the misuse or abuse of alcohol’.

Q3. How could the liquor licence application and renewal process be improved?

Application Processes

A significant opportunity for improvement through changes to the planning provisions so that health can be considered by local planning authorities has already been noted. The views of local communities as represented by local Councils are disproportionately under-valued in the present application process with advocating for the wellbeing of the community falling largely to local governments. All levels of government have a responsibility to work together to ensure fair process, which delivers on policy objectives enshrined in legislation and the outcomes targets for decreased alcohol harms, noted at page 2. Council notes the state target has been adopted by a number of government departments.

Consideration of improvements to the application process, for example more rigorous review of relevant alcohol related arrests and alcohol related VicPol callouts to venues within the application precinct would enhance a number of policy objectives of both state and local governments.

Renewal Processes

This question goes to the resources required to understand how well a licensee complies and whether the process of review associated with the renewals actually provides opportunities to require better practice, greater action to reduce harms etc. An unwieldly checking process is not recommended, however consideration of how compliance of the Responsible Service of Alcohol and other license requirements are monitored, is critical.
Particularly where complaints are received, specific input from police and additional rigour around renewal is warranted. Where a licensee has met all responsibilities, renewal should be efficient and reasonable.

**Q4. Is there scope for streamlining the interaction between licensing and planning processes? What are the biggest opportunities?**

The duplication of application processes that effectively serve two very different purposes is problematic and Council proposes that:

- Local oversight provided through the planning process is critical to protecting local wellbeing and amenity and should be retained
- Opportunities to streamline the 2 processes should be considered using a systems analysis approach and further engagement including on the scope of the Planning and Environment Act
- Engagement with local licensees could provide useful information about the impact of the current process and help with re-design
- Reform of planning controls to take into account health impacts, where currently the provisions are focused on amenity impacts (clause 52.27) is recommended.

We have reviewed the MAV submission and support the position expressed in relation to Q4. In particular the proposal that:

> “Planning and Liquor Licensing are separate processes each having their own merits in how they assess the suitability of a proposal. Councils have … a stronger awareness of likely issues and community views while having flexibility in a planning permit to employ conditions that can resolve potential site impacts. …

The VCGLR should give more regard to the planning permit and delegated Council report, which would assist them to better understand local circumstances. The VCGLR can draw on the benefits of considering planning application reports to aid in better understanding local and community sensitivities that may exist …

Both the Liquor Control Reform Act and the Planning and Environment Act could provide consistent definitions when asking officers to consider amenity impacts and harm minimisation during an application process." (MAV submission to LCRA)

**Q5. Are there opportunities to improve the risk based fee structure?**

The LCRA provides that fees can be based on the type of venue, patron capacity and the licensee’s previous compliance history. These factors are based on evidence that shows certain characteristics and practices are associated with a higher risk of alcohol-related harm. (LCRA Consultation Paper 2016)
Response

Relating alcohol harms through evidence as above is endorsed. The following points are made regarding fee structures:

- The impact of alcohol on health in Yarra Ranges is mirrored in the wider Victorian community. More than 60% of residents of Yarra Ranges have risky levels of alcohol consumption in terms of lifetime risk. Risky alcohol consumption is much higher amongst males, particularly 18-24 year olds and 45-54 year olds. 45% of our residents are at increased risk of alcohol-related harm on a single occasion compared to 42.5% across Victoria.

- As noted the current fees do not reflect the real cost to government and communities e.g. the costs of: clean up, damage to local infrastructure, policing, emergency departments and ambulance services. Other costs associated with alcohol include: days lost at work, violence related to alcohol consumption and the long and short term health impacts.

- The lower density of licensed premises in Yarra Ranges indicates there are significant risks related to packaged liquor outlets as they contribute to the high rates of lifetime harms from alcohol in the municipality. An enhanced application process that enables Councils to better protect health and wellbeing is proposed.

Therefore, a fee based structure that strikes a balance of providing incentives for a more diligent implementation of the Responsible Service of Alcohol, while supporting vibrant night time and tourism economies, is needed. Economic modelling to understand the appropriate quantum of such a fee structure is recommended.

Responsible service of alcohol (RSA) is often under-enforced. This claim is based on police and ambulance callout data and emergency department presentations that are related to alcohol (high levels of intoxication). Local community service forums that engage with traders, community groups and patrons, identify poor or patchy adherence to the RSA.

Consideration of how the fee regime can enable and require more effective implementation of RSA and respond to breaches is needed. Penalties for breaches may be a better way to increase compliance and needs to be considered.

Q6. How can the LCRA better foster diversity and support small business?

The LCRA can support diversity and small business through clear regulations, sector development and training that empowers owners, managers and staff to implement the responsible service of alcohol regulations effectively.
Further, action by the state government to shift the cultures around alcohol over time is essential to achieving change. This will support the positive social and economic benefits of the industry while protecting the whole Victorian community from the potential health harms.

Consideration of supporting small businesses to understand the full cost of these harms and stronger use of penalties for breaches, may assist in gaining compliance with the RSA. This may be through a public health and health promotion approach akin to those used to change smoking behaviours and funded through similar mechanism to those used to reduce smoking.
Appendix 1

SEM Councils Recommendations to the State Government of Victoria 2015

The outer metropolitan Councils of South East Melbourne requests the State Government of Victoria to assist the SEM to reduce alcohol-related harm in the community through adoption of the following recommendations.

RECOMMENDATION 1
That the Victorian Government supports the SEM’s efforts to research and develop strategies to reduce alcohol-related harm associated with liquor licensing, particularly packaged liquor licenses.

RECOMMENDATION 2
That the Victorian Government reviews and amends Practice Note 61 to incorporate a clearer definition of Cumulative Impact in relation to the assessment of packaged liquor licenses.

RECOMMENDATION 3
That the Victorian Government provides Local Government with access to ‘Point-of-Safe’ Alcohol Volumetric Sales Data, i.e. litres/units of alcohol sold per premises at geographical local levels, rather than wholesale data.

RECOMMENDATION 4
That the Victorian Government review and amend as appropriate the Victorian statutory planning provisions (Clause 52.27 VPP) to ensure that:

(a) Consideration is given to the impacts on the broader health, wellbeing, public safety and security of the community in regard to an application for a packaged liquor license

(b) Consideration is given to the needs of the community when assessing the Cumulative Impact of packaged liquor on health, wellbeing, public safety and security

(c) Applicants must prepare and provide a socio-economic impact assessment as a justification to Councils as part of their application for a liquor license planning permit, particularly for packaged liquor.

RECOMMENDATION 5
That the Victorian Government better define ‘amenity’ in relevant legislation to ensure it encompasses a broader community catchment, rather than only the surrounding area, that incorporates a range of social and health indicators that align themselves with the principles of the Public Health and Wellbeing Act 2008.

RECOMMENDATION 6
That the Victorian Government issues a specific Ministerial Direction to gazette a set of relevant decision-making guidelines under Section 5 of the Victorian Commission for Gaming and Liquor Regulation Act 2011 (the VCGLR Act) to inform the Commission as to how packaged liquor applications should be considered in areas of high alcohol-related crime, social and economic disadvantage.

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1 Liquor Control Reform Act 1998, sections 38(1), 40(1) and 41(1)(b)(i).
Liquor Control Reform Act 1998, sections 38(1A), 40(1A) and 41(1)(b)(ii).