Dear Sir/Madam

Submission: Review of the Liquor Control Reform Act 1998

Thank you for the opportunity to make this submission. Council welcomes the review of the Liquor Control Reform Act 1998 (LCRA). Licensed premises are part of what makes Yarra a vibrant and desirable place to live. They provide employment opportunities and contribute enormously to the local economy, whilst supporting the social, artistic and cultural vibrancy of our city with live music, food and entertainment.

However, there is a need to ensure that the LCRA can respond to the diverse needs of the industry while also being able to adequately respond to and minimise the potential harms associated with the supply and consumption of alcohol in our community.

This submission considers the questions raised in the Consultation Paper under the headings of Facilitating a diverse industry and reducing red tape and Harm minimisation.

Due to the timing of this review and the substantial number of scheduled agenda items for the newly elected Council there has not been an opportunity for Council to consider this submission and put forward an adopted position paper. Instead, this submission raises a number of matters that should be considered by the Office of Liquor, Gaming and Racing when making their recommendations.

For further information about this submission please contact Erika Russell, Senior Planner (Community Health and Safety) on 9205 5534 or at erika.russell@yarracity.vic.gov.au.

Yours sincerely

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Yarra City Council
Facilitating a diverse industry and reducing red tape

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

- The LCRA provides ample opportunities for the supply of alcohol in a range of settings. The current prohibitions on granting a licence for certain types of premises including drive-in cinemas, petrol stations, milk bars and convenience stores should remain.

- There is significant overlap between liquor licensing and planning permit processes. While each has an important and distinct role, there are opportunities for improvement that would reduce the regulatory burden (discussed further under question 4).

- Regulatory burden can also be reduced by improving the liquor licence application process (discussed further under question 3).

- It takes a considerable amount of time for licensees to maintain Responsible Service of Alcohol (RSA) registers and these are difficult to check from a compliance perspective. Liquor and Gaming NSW recently introduced a digital licence for RSA holders and opportunities for this in Victoria should be explored.

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

- The current licence categories could be improved to provide greater clarity around what is appropriate within each licence type, to remove duplication and to ensure consistent conditions across different venues. For example, sporting clubs have the capacity to operate under multiple licence types and often do operate under multiple licence types. Similarly, the supply of packaged liquor for off-premises consumption can occur under a number of licence types.

- A Renewable Limited licence is considered the appropriate licence type for online alcohol sales and delivery and this does not accurately reflect the potential alcohol related harm that could occur. Additionally, the only Council notified of such applications (at the VCGLR’s discretion) is the Council where the company is registered. This does not reflect where alcohol is necessarily being delivered to and where the potential harm is located. This approach limits Council’s capacity to assess impacts associated with these licences and the use of this licence category does not allow Council to consider the misuse and abuse of alcohol as considered by Council for Packaged liquor licences. Further consideration needs to be given to the appropriate licence type for online alcohol sales and delivery as well as their assessments (including conditions) and referrals. Consideration should also be given to specifying delivery zone areas on any licence issued.

- A Renewable Limited licence is also considered the appropriate licence type for caterers. Under this category the licensee can supply liquor for consumption without Council being aware of the actual location where this will occur. This makes it impractical to assess potential amenity impacts. A recent referral example received by Council involved a caterer seeking to supply alcohol at functions with potentially up to 1,000 guests.
- Wine and Beer Producer's licences present challenges for Council that are similar to Renewable Limited licences. Under this category the licensee can supply liquor for consumption off the licensed premises without Council knowing the location. Accordingly, these licences do not allow Council to assess potential amenity related concerns. There is also potential to include security requirements for Wine and Beer Producer's licences. While this licence type was most likely originally aimed at allowing tastings at small events, it is now being used for larger events and the volume of alcohol consumed is not controlled. A recent event in the City of Yarra held under this licence type involved 250 patrons (inside a venue and externally on the footpath). The event organiser was not licenced and there was no security scheduled until Council specified a security condition for the event under an event permit. Council was only aware of the event because the organiser sought to close the footpath.

- The LCRA should provide a clearer description of what a Limited licence can be used for and at what frequency (including maximums for different time periods).

- The conditions relating to a Restaurant and Café licence (relating to the 75% seating requirement and predominant activity being the serving of meals for consumption on the premises at all times) are difficult to enforce and it appears that non-compliance is frequent. This causes great concern for and is deemed unfair by licensees with other licence types (such as General and On-premises) particularly given that they pay higher fees as their licence types are considered higher risk. Additionally, this licence type should not be permitted for venues operating past 1am (i.e. venues should be required to apply for a higher risk licence that reflects the higher risk of operating past 1am). RSA training and certificates should also be required for staff working in venues with a Restaurant and Café licence.

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

- Clear guidance needs to be provided to applicants regarding what is required to be supplied with liquor licence applications (including those that relate to post 1am). Referrals should only be sent to Councils and other parties once all required information is provided. There have been examples where Council was not able to assess amenity impacts in a meaningful way due to a lack of application information, leading Council to object on limited information in order to ensure that the timeframes for objection under the LCRA were met. Council may subsequently receive the remaining application information (such as a venue management plan, type of event and type of venue) and determine an objection was never necessary, which is costly in terms of administration and confusing for the applicant.

- For permanent licences, there is a need to ensure that a planning permit has been issued prior to a liquor licence request being made. This could be achieved through changes in processes and greater clarification under the LCRA. While the LCRA states that the use of the licensed premises does not contravene the planning scheme that applies to the licensed premises under the Planning and Environment Act 1987, applicants have previously applied for a planning permit and liquor licence at the same time. Consequently, Council has received liquor licence referrals before the planning permit process is finalised. Liquor licensing should have regard to
relevant planning permit conditions and these should be reflected on any liquor licence issued.

- For temporary liquor licences, the LCRA allows the VCGLR to have discretion over whether to refer copies of limited licence applications, either temporary limited or renewable limited, to local councils. While this approach is reasonable for lower risk proposals, there is an opportunity to establish appropriate triggers for when referrals will be made to Council and for these to be identified. Appropriate triggers may include any applications on public land (e.g. a park, footpath) or applications that exceed certain patron numbers or hours. Council is aware and supportive of the proposal to, upon granting a temporary limited licence, notify the relevant Council with an automated email notification of that grant. Also of note for temporary liquor licences, is the confusion they can create in the community when alcohol is being supplied outside of that approved on any planning permit and permanent liquor licence.

- For footpath trading areas, it is understood that applicants wanting to licence such areas require a letter from Council to be included with their application to indicate whether other appropriate approvals (such as footpath trading permits) have been sought. There may be an opportunity to further refine and include this requirement in the LCRA to ensure consistency across different Councils. Liquor licences should clearly define maximum patrons for footpath trading areas and should also explore potential ways to better correlate this number with the number of tables and chairs allowed in any footpath trading permits. Consistency with footpath trading permits need to be ensured (including hours and patrons), and the red line area should not automatically include the space between the building and outdoor furniture.

- For renewals, consideration should be given to compliance breaches. Compliance history is relevant to liquor licence fees and a similar model could be used to determine whether a renewal or new licence is required. This would allow Council to be part of the process if a new licence is required and this is reasonable given that Council cannot apply to vary an existing licence under the LCRA.

- The City of Yarra is one of four inner city Councils where a late night freeze on new post 1am liquor licences being issued applies. While there are guidelines (i.e. non-mandatory) with exemptions which allow the supply of liquor after 1am in a limited number of circumstances provided that certain criteria is met, there is potential for these to be mandated under the LCRA to ensure consistency in the granting of licences and to provide greater certainty to all parties. There are also opportunities to provide clarity around what constitutes a significant cultural festival or major tourist event. Additionally, the appropriateness of patron capacity not exceeding 200 people is questionable as this number is not necessarily associated with being low risk.

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

- While the liquor licensing and planning permit processes have distinct roles, there is uncertainty regarding the role planning has in considering alcohol related harm beyond amenity grounds. While the *Planning and Environment Act 1987* (P&E Act) states that the Responsible Authority must consider *any significant social effects and*
economic effects which the responsible authority considers the use or development may have, various planning decisions have challenged this notion, stating that these matters are instead more suitably addressed under liquor licensing. The most notable example is Hunt Club Commercial Pty Ltd v Casey CC (Red Dot) [2013] VCAT 725 where the Tribunal concluded that Whilst town planning seeks to secure a pleasant, efficient and safe working, living and recreational environment, it is not the role of town planning to address all issues of public health, nor to regulate the pricing or general availability of a product to manage the health and well being of society. Consequently, it is difficult for the planning permit process to adequately consider the full range of alcohol related harms that may result from a proposal. Therefore, it is important to ensure that Councils have an opportunity to consider the full realm of potential harms through the liquor licence process. This could be facilitated through making the misuse and abuse of alcohol a relevant consideration for Council for all licence types (i.e. not just packaged liquor). This is further discussed under question 8.

- The most significant similarities between the two processes is the consideration of amenity impacts. The LCRA provides a definition of amenity and a list of matters that are relevant for considering whether a proposal will detract from or be detrimental to the amenity of an area. While the P&E Act does not provide any such definition, the matters considered in planning assessments are similar. There is a substantial opportunity to streamline the consideration of amenity impacts into one process rather than two. Where a planning permit is required, the consideration of amenity impacts should be undertaken in the planning assessment. The planning permit process considers the local context and the assessment for the sale and consumption of alcohol is extremely thorough.

- Overall, liquor licensing decisions should have greater regard to the planning assessments to ensure a better understanding of the local circumstances that are not identified throughout the liquor licence process. As stated previously, liquor licensing should have regard to relevant planning permit conditions and these should be reflected on any liquor licence issued.

- There is an opportunity to specify that the Commissioners should give substantial regard to planning decisions (including evidence presented and assessments undertaken) in liquor licensing reviews.

- There is potential to provide consistent definitions under the LCRA and P&E Act including those that relate to amenity and harm minimisation (including the application and acknowledgement of the precautionary principle).

- Currently there are multiple ways to determine maximum patron numbers. While any liquor licence issued should not have a patron capacity exceeding that specified on any associated planning permit, there is an opportunity to standardise how maximum patron capacities are calculated. The rate should aim to enhance the safety of venues and positively influence patron behaviour, and not be below existing calculations.

- There may also be opportunities to improve processes relating to referrals especially where the same parties are notified in both the planning permit and liquor licensing processes. For example, notice is required to be given to Victoria Police for an
application in association with a hotel, tavern or nightclub that is to operate after 1am. Victoria Police may also be notified about other applications. The matters raised by Victoria Police at the planning stage commonly relate to what would normally be raised in a liquor licensing referral (e.g. security guards, ID scanning and CCTV). Additionally, in the planning permit process the VCGLR are a determining authority for an application in association with a hotel, tavern or nightclub that is to operate after 1am. This means they can effectively decide that a planning proposal is not appropriate, resulting in the refusal of a planning permit. There is potential for this decision to be disputed and overturned at VCAT and for the VCGLR to then again have to determine the appropriateness of the proposal but under a different set of considerations at the liquor licensing stage.

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

   - Higher fees for licences that are deemed higher risk are supported, as are the additional risk fees associated with past non-compliance. As stated previously, for renewals, consideration should be given to the number of breaches and whether a renewal is appropriate or whether a new licence is required. This could involve specifying a maximum number of breaches allowed per year, after which a new licence is required.

   - The lower fees associated with a Restaurant and Café licence are appropriate given that venues operating with this licence type are typically a lower risk compared to those attracting higher fees. However, as stated previously there are ongoing concerns relating to non-compliance in this licence category and those operating after 1am with a Restaurant and Café licence should not be considered low risk.

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

   - As stated previously, the LCRA provides ample opportunities for the supply of alcohol in a range of settings. The current prohibitions on granting a licence for certain types of premises including drive-in cinemas, petrol stations, milk bars and convenience stores should remain.

   - It is unclear as to whether ‘better foster diversity’ relates to creating a diverse range of licensed premises within a particular area or ensuring a diverse range of retail opportunities (including alcohol and non-alcohol based). Such consideration of diversity is currently not a relevant consideration under the LCRA but exploration of these opportunities are welcomed. This could involve examining saturation points which may be influenced by the number and density of premises as well as the types of premises in an area.

**Harm minimisation**

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

   - As mentioned earlier, the freeze guidelines and exemptions could be mandated under the LCRA to ensure consistency in the granting of licences and to provide greater certainty to all parties. There is also an opportunity to review whether 200
patrons are appropriate for reducing the potential harms associated with post 1am applications.

- Signage outlining counselling, information and referral contacts for people with alcohol and drug problems should be mandatory for all licence types, in addition to Packaged liquor.

- There are opportunities to improve standard conditions for late night licences to ensure that potential risks are mitigated. These would potentially relate to security guards, ID scanning and CCTV.

- Ordinary trading hours for a range of licence types should be reviewed, in particular a 7am commencement is not considered appropriate for any licence type as it has the potential to encourage the misuse and abuse of alcohol (including flow on drinking from venues that operate early in the morning). 9am is considered more appropriate.

- As mentioned previously, RSA training and certificates should be required for staff working in venues with a Restaurant and Café licence. This should also be extended to the holders of limited, Wine and Beer Producer’s, and major events licences.

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

- The onus should be on applicants to demonstrate that a proposal is appropriate, having due regard to harm minimisation and the precautionary principle. This is particularly true for appeal processes. The costs associated with appealing liquor licensing decisions are substantial and can add to previous costs associated with any planning appeal process. It is difficult if not impossible to establish a clear association between a venue and potential harm, however data relating to ambulance attendances, emergency department presentations and crime, as well as academic research and other knowledge need to be given adequate weight in decision making. There needs to be greater acknowledgement of the significant relationship between family violence and alcohol and an appreciation and understanding of potential social harms beyond the immediate vicinity of a venue (including packaged liquor outlets) that occur in both the public and private realm.

- As stated previously, it is important to ensure that Councils have an opportunity to consider the full realm of potential alcohol related harms through the liquor licence process. This could be facilitated through making the misuse and abuse of alcohol a relevant consideration for Council for all licence types (i.e. not just packaged liquor).

- As mentioned earlier, the planning permit process considers the local context and the assessment for the sale and consumption of alcohol is extremely thorough. Accordingly, liquor licensing decisions should have greater regard to the planning assessments to ensure a better understanding of the local circumstances that are not identified throughout the liquor licence process. Any liquor licence issued should reflect relevant conditions placed on any associated planning permit.

- A review of online alcohol sales and delivery is required. Under a Renewable Limited licence the area of delivery is not considered and it is unclear whether appropriate age checks are being undertaken once alcohol is delivered. Accordingly, current practices do not ensure appropriate control of the age and intoxication of those receiving the alcohol delivery.
• For Packaged liquor licences, evidence suggests that larger scale stores have the greatest potential for harm and there is potential to acknowledge this through new categories and a hierarchy of risk based fees for packaged liquor outlets (with ‘big box’ stores attracting the highest fee).

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

   • The existing star rating and demerit point systems are supported.
   
   • There are opportunities to explore incentives for licensees that regularly attend liquor forums or are part of liquor accords. There may be further opportunities to reward venues that participate in campaigns or initiatives that promote and enhance harm minimisation. There may also be opportunities to highlight good behaviour by venues to the broader industry.
   
   • As mentioned previously, there are opportunities to improve standard conditions for late night licences to ensure that potential risks are mitigated. These would potentially relate to security guards, ID scanning and CCTV. Standard conditions for larger higher risk venues operating prior to 1am should also reviewed.

10. **Could the current controls on patron behaviour in the LCRA be improved? If so, how?**

    • There are opportunities to explore where the duty of care of a venue should extend to. This is relevant to both amenity impacts (especially noise when patrons leave a venue) and also patron safety (for example ensuring patrons have a safe method of transport home and that they are not leaving the premises in a vulnerable state).

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

    • The significant relationship between family violence and alcohol should be outlined in the LCRA. As mentioned previously, there needs to be a greater appreciation and understanding of potential social harms beyond the immediate vicinity of a venue (including packaged liquor outlets) that occur in both the public and private realm. Such harms should form relevant considerations in determining whether the supply of alcohol is appropriate.
    
    • Opportunities to include the identification of and responding to family violence within RSA training should be explored. Evidence suggests that family violence is occurring within venues but that it is often not identified as such. Any such training should equip staff with the capacity to report family violence and to offer referral information to patrons where necessary. Any family violence incidents within venues should also be recorded by staff within an incident register.
    
    • Consideration should be given to the appropriateness of future late night (packaged liquor) licences. Not allowing future package liquor licences past existing ordinary trading hours (11pm) should be considered.
12. Could the current compliance and enforcement provisions in the LCRA be improved? If so, how?

- Additional risk fees associated with past non-compliance is supported.
- The existing compliance and enforcement provisions are heavily focused on financial penalties and there are opportunities to explore whether extra conditions can be placed on licences for non-compliance, such as additional security requirements. There may also be opportunities to require additional training for all staff that work at venues with compliance issues and to mandate attendance at liquor forums or membership of an accord.
- As mentioned previously, there are ongoing concerns relating to non-compliance for venues operating under a Restaurant and Café licence and conditions for this licence can be difficult to enforce. For this licence type it may be more appropriate to specify that alcohol can only be provided with meals and to require seating for all patrons at the venue rather than what is required under the existing conditions.

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

- The promotion of alcohol should be limited especially on public infrastructure (e.g. at train stations).