1 Endorsed Local Government Response

At the Council Meeting held 13 December 2016, the Port Phillip City Council endorsed the following submission to the Liquor Control Reform Act (LCRA) Review 2016.

The City of Port Phillip has consulted broadly in the preparation of this submission to the Liquor Control Reform Act (LCRA) Review 2016. Consultation includes Victoria Police, the Port Phillip Licensee Association, the Municipal Association of Victoria and local agencies.
1.1 What opportunities are there for reducing the regulatory burden?

1.1.1 Currently the LCRA does not clearly outline to an applicant whether a planning permit is required in the first instance (for all liquor licence types) or whether a licensed premises application can be considered concurrently with a planning application.

It would be misleading and unfair with regard to cost for business to obtain a liquor licence and then to later find out that the site from which they wish to trade is not suitable for the required planning permit. To mislead business in this way would create additional regulatory burden for local government, for the VCGLR and the Victorian Commission for Gambling and Liquor Regulation (the Commission) and for planning authorities and the Victorian Civil and Administrative Tribunal (VCAT) in the form of complex appeals processes.

The Act should clearly outline that is necessary to have a valid planning permit before making application for a liquor licence in all instances.

1.1.2 Liquor Licence applications should only be referred to Councils once all information and supporting material has been received by the VCGLR. This would reduce the need for further information or extension of times requests by Councils which in turn delay the application process for business and Councils.

This is of particular importance for Councils effected by the Freeze in which a letter of support is required from the municipality. Councils have experienced the regulatory burden of being referred incomplete applications.

The onus to communicate with applicants and request additional documents should remain with the VCGLR until such time that the application is complete and can then be referred to local government and Victoria Police.

1.1.3 A comprehensive practice note should be developed which clearly outlines the information that would be required by an applicant to support their liquor licence application.

There is often uncertainty as to what material should be provided, particularly acknowledging there are a range of reports that may be relied upon, such as, cumulative impact assessment, social and economic impact assessment, venue management plans etc.
1.2 Does the current licence type regime work? How could it be improved?

1.2.1 The current licence categories do not accurately reflect what may be taking place at the licensed premise or event. For example a limited licence can be used for multiple purposes such as, festivals, home delivery, sporting events, and internet sales.

The license types need to be better defined to ensure appropriate consideration of harm and so that Councils can give closer regard to any likely amenity impacts.

In addition there is the need for different assessment criteria for some categories, home delivery will need to consider impacts very differently to that of a sporting club.

1.2.2 The licence categories should be developed in a way that the name reflects the potential harm. A risk matrix could analysis the harm level dependant on a range of factors.

1.2.3 It is recommended that packaged liquor licence types should be broken down into three distinct groups being, packaged liquor, packaged liquor late night and packaged liquor big box.

It has been well researched that the floor areas and size of an outlet indicates its likely retail trade catchment. The trade catchment for packaged liquor will then provide a distance where harms can be considered. (Cite research of the South East Melbourne Councils Alcohol (SEMCA) Density Research Project 2014 – 2016).

1.2.4 The licence types create confusion where there is duplication in the name or meanings, such as a sporting club who could operate with a renewable limited licence, restricted club or full club licence.

1.2.5 The Act needs to give a clearer description to what a limited licence can be used for. There have been many instances where applicants have suggested that a limited licence could be a café/restaurant that only wishes to trade for lunches or for a number of days not totalling a full seven day week.

1.2.6 In addition, the delivery of alcohol needs to be considered given the potential harms that can occur with alcohol being taken to a place of residence. An application for this type of licence does not afford the Councils who may be within the delivery area the opportunity to object.

For all online and home delivery licence types, the area of delivery must be designated and all municipalities within that zone referred for comment/objection to the licence application. Without this assessment, cumulative harm is not possible to calculate sufficiently and is likely to be undercounted.
1.3 How could the liquor licence application and renewal process be improved?

1.3.1 Licence renewals should be considered against the venues compliance history.

Where a venue has breached or contributed to amenity impacts and the misuse and abuse of alcohol a new application should be made which is required to be re-referred to Councils for comment in order for the VCGLR to determine whether additional conditions should be placed on the licence.

1.3.2 Licence renewals must be subject to checking whether each site has a current and valid planning permit.

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

1.4.1 Planning and Liquor Licensing are separate processes which each have their own merits in how they assess the suitability of a proposal. Councils have the ability at the local level to 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.

1.4.2 The VCGLR should give more regard to the planning permit and delegated Council report assisting them in better understanding any local circumstances that are not required to be mentioned as part of the license application process.

1.4.3 The VCGLR would also benefit from its assessment officers having greater knowledge of the Council planning processes so they can understand the nature of the conditions being imposed on an applicant and perhaps reinforce these during the licensing process. Equally there is an opportunity for Council planning officers to better understand the VCGLR process so applicants can understand the stages that are required to go through in obtaining an approval.

1.4.4 The methodology in determining patron numbers should be standardised.

There are currently three opportunities for different patron ratios to be applied. Currently the VCGLR determine numbers from a floor space availability calculation while planning can often have an alternative restriction due to car parking requirements and under the Building Regulations restrictions can be imposed based on essential services, such as, fire exits, toilets and paths of travel.
1.4.5 Council considers that the elements of the planning scheme which deal with the consumption of alcohol should also be reviewed alongside the review of the LCRA. This includes Clause 52.27 and definitions in the planning scheme. For example, the definitions in the planning scheme are out-dated and should be revised to reflect modern land uses. The definitions should also identify the prime use of the land for example in the case of a bar, the primary use is for the consumption of alcohol. For a restaurant or café, consumption of alcohol may be secondary.

1.4.6 **There is a need to provide clarity around what should be considered in the planning permit process and what should be considered through a liquor licensing process.** As planning permits and liquor licences are considered under two different acts, different factors are considered. Council notes that it is unclear if social harm is an element which can be taken into account in planning permit decisions and notes contradictory VCAT decisions on this.

1.4.7 **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.**

   An opportunity exists to align harm minimisation within both Acts by applying the 'precautionary principle' which is an accepted public health term aiming to reduce the incidence of harm from occurring in the first place. A social and economic impact assessment informs the application of the precautionary principle.

1.4.8 Council considers that social harm should be part of its considerations at the planning permit stage along with amenity considerations. Given the planning permit is required prior to a liquor licence this would allow Council to make a more comprehensive review of the proposal. The VCGLR could also give a clearer indication to how it gives regards to decisions made under the Planning and Environment Act and VCAT. Often the Commissioners in a panel hearing will make mention of interpretations and decisions of VCAT but there are no clear rules as such.

1.4.9 The VCGLR could directly benefit from the views of Councils. It is often the case that the local Council has a greater knowledge of local issues occurring in and around the subject site. **VCGLR Officers could take opportunities to consult more comprehensively with Councils on applications that may be in sensitive community locations.**
1.5 **Are there opportunities to improve the risk based fee structure?**

1.5.1 Councils are unaware of how the risk based fee structure benefits local government when dealing with the after effects of alcohol consumption.

1.5.2 **Ever increasing is the amount of Council money being allocated towards addressing issues that arise as a result of alcohol fuelled violence and anti-social behaviour; such as graffiti, investigation of noise complaints, vandalism to public property and street cleaning.**

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

1.6.1 Council is unclear whether this question of fostering diversity relates to creating a diverse range of licenced premises or a range of businesses that do not all have liquor licenses.

Currently many Councils are seeing in imbalance occur in the number of on premises being established to those who provide take away alcohol. Many Councils are concerned about the imbalance at the local level between licenced premises and a lack of other service and retail offers.

1.6.2 **It is critical to note that a range of licence types within a local precinct is not always conducive to local amenity.**

For example, the location of packaged outlets close to on-premise venues can provide increased access for ‘side-loading’ whereby patrons leave a venue temporarily to access lower cost alcohol and engage in rapid consumption before re-entering a venue. The impact of alcohol related harm and amenity issues associated with this practice is considerable.

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

1.7.1 **The Act should clearly articulate the definition and criteria to measure and assess both existing harm and potential impact of increased harm (precautionary principle).**

*Broader public health impacts for local communities need to be included.*

There is considerable evidence that details the impact of alcohol consumption on local communities.
1.7.2 **Whilst amenity is important, it is necessary to increase the focus on social harms and public health impacts of alcohol through the Liquor Control Reform Act.**

The longer-term whole of population effects of alcohol must be considered by ensuring that there is some control of alcohol outlet density, particularly in areas that show high levels of socioeconomic harm.

1.7.3 **It is necessary to broaden the understanding of social harms beyond immediate vicinity.**

Whole of population alcohol consumption, and the health impacts of such, need to be considered. Responses include controls of alcohol advertising, reducing access to alcohol through control of trading hours and number of licensed outlets and promotion of lower alcohol content products and alternative social interactions.

1.7.4 **The assessment of packaged alcohol outlets must also include the assessment of locations and sensitive land uses in the immediate vicinity need to be included.** For example packaged alcohol outlets should not neighbour schools and crisis support services. (Cite evidence of the FARE Report.)

1.7.5 **Harms associated with 'big box' packaged liquor should be considered separately in the Act to reinforce that the retail catchment of such a premise will often extend to as far as 5km.**

A 2015 decision of the Commission acknowledged that there were current deficiencies in the Act to allow for the consideration of harms that occur beyond the specific site and into the home. It was acknowledged that packaged alcohol had a symbiotic role with alcohol fuelled violence occurring in the home. (Cite Hunt Club Casey CC Vs Woolworths Dan Murphy's Cranbourne East)

1.7.6 **The Act would benefit from the creation of a 'public interest test' similar to that which occurs in Western Australia under the Department of Racing, Gaming and Liquor.** It would be important that a relevant community notification process took place where meaningful discussions occurred with the community where the subject premise is proposed for. This would assist both the VCGLR and the licensee with a better understanding of issues so effective harm minimisation strategies and/or conditions can be developed.

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

1.8.1 **The assessment of layering health and crime data with packaged alcohol outlets to assess areas of saturation is required.** Data sources to include ambulance data, hospital admissions and crime data.
1.8.2 The interrelationship between alcohol and family violence has been clearly established. Academic experts to be engaged to develop clear criteria and standardised benchmarks.

1.8.3 The onus should be on the applicant to demonstrate, with the precautionary principle of harm minimisation, the social impact through license applications. This should also be applied to ensure appropriate planning through cumulative impact assessments.

1.8.4 Consideration could be given to treating liquor licensing applications similar to gaming with a cap per population model. This could be measured through floor space assessment.

1.8.5 Restriction should be established on the density of packaged liquor outlets in retail areas until such time there is an appropriate balance of licence types operating. The community interest should be protected to ensure diversity of retail offer in local precincts.

1.8.6 Review is required of the online supply of packaged alcohol and home delivery services. Current license types do not ensure appropriate consideration of the area for alcohol delivery. Current practices do not ensure appropriate control on the age and intoxication of those receiving delivered packaged alcohol. There is significant community concern regarding online purchase and home delivery of packaged alcohol.

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

1.9.1 Local Government supports the existing measures undertaken by licensees of Star Rating, Demerit System and Venue Management Plans. Further initiatives may be considered such as Security Conditions, ID Scan Systems and CCTV.

1.9.2 The sharing of compliance information by VCGLR to local government and Victoria Police would support assessment of license alterations and new applications.

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

1.10.1 The Act does not clearly define the areas that the duty of care extends to from a licensed premise. Patron behaviour creates an issue when it transitions to an area the licensee feels is no longer their responsibility.

1.10.2 The Act needs to provide more certainty around patron behaviour, particularly where clear distance is associated with the movement of patrons from one licensed premise to another.

1.10.3 A more enhanced level of training should also be provided to licensed premise reinforcing the importance and expectations of maintaining acceptable crowd behaviour.
1.11 What opportunities are there to address family violence within the LCRA?

1.11.1 The relationship between alcohol and violence is not a small proportion. (43% of family violence incidents recorded by Victoria Police alcohol is recorded as a factor).

1.11.2 Venue Management plans and staff training should include response to violence, particularly family violence.

1.11.3 The clear link between packaged alcohol and increased family violence needs to be acknowledged. (Cite Livingston research and SEMCA Alcohol Density Project)

1.11.4 The recording of the influence of alcohol in violence, particularly family violence, needs to be improved through Victoria Police. Violent behaviour may be recorded as ‘drunk and disorderly’.

1.11.5 There are currently limited mechanisms for venue operators to report through reports of family violence. In some cases customers/patrons report through discussion with their local hotelier or packaged liquor operator issues occurring in the home and there is no referral service, similar to that of Gambler Help which occurs in a gaming room.

1.12 Could the current compliance and enforcement provisions in the LCRA be improved?

1.12.1 The current compliance model is focused heavily on financial penalties. Often operators will factor fines into their operating costs when holding specific events. This attitude defeats the purpose of the penalty section in that income based enforcement is less likely to succeed.

1.12.2 The Act should give further regard to reinforcing the introduction of a layer of restrictions through imposing additional conditions on a liquor licence per offence and over time. This may start with additional security or a more frequent training to suspending the numbers of days or hours a venue is permitted to operate.

1.12.3 The Act should also allow for Councils to recommend specific conditions when a breach is recorded, given the local knowledge it is likely a locally developed condition between Council, Victoria Police and the VCGLR would have greater effect.

1.12.4 Additionally there would be benefit if licensed premises were required to keep self-auditing tools developed between the VCGLR and industry to be used as frequently as required and form part of the reporting procedures to be presented to a compliance officer if requested.
1.13 Are there other measures that could reduce harm? What would be the costs and benefits in including them?

1.13.1 The promotion of alcohol must be limited. Reasonable controls to liquor advertising need to be introduced which acknowledge public places and infrastructure where young person’s frequent, such as train stations, bus shelters and within proximity to schools and health service providers.

1.13.2 The reduction of trading hours would have a long term and whole of population effect on alcohol related harm. Ordinary trading hours of 9am (rather than 7am) need to be introduced. In addition trading hours should be considered based on the context of the existing premises operating in the area.

1.13.3 All licence types must prioritise the assessment of the misuse and abuse of alcohol and evidence of alcohol related harm in local communities.

1.13.4 It is often the case that the default in an application is approval, whereas the onus needs to be placed on the applicant to justify why the proposal would not add to or contribute to an increase in harm.

Similar to the Office of Liquor, Gaming and Racing in New South Wales it would be of benefit if an applicant supplied social and economic impacts assessment accompanied certain applications which could then be reviewed by the VCGLR and its referral authorities. This also increases the consistence with the role of the VCGLR as the gaming authority, where these approaches are already accepted.

1.14 Additional observations and comments from the meeting of 11 November 2016 – Local Government Alcohol and Other Drugs Working Group

1.14.1 The current default of the VCGLR is approval. This default position needs to be reversed to reduce alcohol harm in Victoria.

1.14.2 It is unclear how the VCGLR assesses harm minimisation. Council does not receive any supporting information or analysis undertaken by VCGLR officers.

1.14.3 On line - home delivery of alcohol needs its own definition. Home delivery issues over how product is delivered, underage and intoxicated purchase of packaged alcohol. Home delivery licenses are referred to their delivery zone, similar with party buses.
1.14.4 Limited licenses - what is limited? What is the definition?

1.14.5 Applicants should need to provide justification for a proposal outlining why their application will not contribute to harm minimisation.

1.14.6 There is a need to better outline risk catchments dependant on type of licensed premises application, (E.g. packaged liquor big box 5km).

1.14.7 License meanings need to better reflect what the event or use is being conducted under the liquor licence.

1.14.8 Hours of operation must be consistent with the planning permit/planning policy approved hours.

1.14.9 Harm minimisation should have a key principle of applying the precautionary approach.
2 Alcohol Related Harm in the City of Port Phillip

The data describing alcohol related harms accessed from www.aodstats.vic.gov.au. This is a public data site and can be accessed anytime for updated data.

2.1 Alcohol Hospitalisation Rate

Port Phillip has an extremely high rate of alcohol related hospitalisations. This shows that alcohol related harms are serious and many emergency department presentations are transferred to hospital admissions. The City of Port Phillip has the second highest rate of alcohol related hospitalisations in the Southern Region.
2.2 Alcohol Emergency Department Presentations

Port Phillip has a very high rate of alcohol related emergency department presentations. The City of Port Phillip has the third highest rate of emergency department presentations in the Southern Region.
2.3 Alcohol Ambulance Attendance Rate

There are many emergency instances for which alcohol is the primary cause of harm. Port Phillip has the highest rate of alcohol related ambulance attendances in the Southern Region. This is second only to the City of Melbourne across all Victorian municipalities.
2.4 Alcohol Assault Rate

Alcohol abuse and misuse results in violence. Port Phillip experiences an unacceptable rate of alcohol related assaults. Port Phillip has the highest rate of alcohol related assault in the Southern Region. The City of Melbourne (inclusive of the CBD) has a significantly higher rate of alcohol related violence that the City of Port Phillip.
2.5 Alcohol Family Violence Rate

Alcohol abuse and misuse increases the incidence and severity of family violence. Port Phillip experiences a high rate of alcohol related family violence incidents. Port Phillip has the fourth highest rate of alcohol related assault in the Southern Region.