To the Office of Liquor, Gaming and Racing
lcra.review@justice.vic.gov.au

Dear Sir/Madam

Review of the Liquor Control Reform Act 1998 – Consultation Paper

Frankston City Council welcomes the opportunity to respond to the Review of the Liquor Control Reform Act 1998 – Consultation Paper, recently released for comment by the Office of Liquor, Gaming and Racing.

This submission has been prepared with input from Council officers whose work involves statutory planning assessment, community safety, strategic planning and compliance issues.

Please find attached our detailed response to the Review of the Liquor Control Reform Act 1998 – Consultation Paper. Please note this is an officer submission and has not yet been approved by Council.

Yours faithfully

Michael Papageorgiou
MANAGER PLANNING & ENVIRONMENT
Review of the Liquor Control Reform Act 1998
Consultation Paper
Frankston City Council Submission

Introduction:

Frankston City Council welcomes the opportunity to provide a submission in response to the Review of the Liquor Control Reform Act 1998 (the LCRA) – Consultation Paper.

Council supports the objectives of the review to minimise the regulatory burden and encourage responsible new development activity and services, while also considering family violence and alcohol-related harms in accordance with the recommendations of the March 2016 Royal Commission into Family Violence.

This submission focuses on the interactions between planning and licensing requirements and harm minimisation objectives. Observations and suggestions are provided for improvements in these areas. It is noted the Municipal Association of Victoria will be submitting a more comprehensive submission, which will include additional matters of common interest to Frankston City Council.

Interactions between planning and licensing requirements

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

The regulatory burden and consistency with the Planning and Environment Act 1987 (the Planning Act) could be improved by a better alignment of definitions and assessment criteria in planning and liquor legislation. Consistency, transparency and timeframes for applicants and affected parties could also be improved by streamlined processes and greater interaction between Councils and the Victorian Commission for Gambling and Liquor Regulation (the VCGLR).

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

The LCRA could explain and define the activities that may obtain a limited liquor licence and provide different categories for these, with the objective of not requiring a planning permit for temporary or short term activities. Currently the Act does not outline this clearly or provide guidance whether a planning permit is required. The Act needs to make it clear that no planning permit is expected or required for a limited licence. This will provide greater clarity to applicants and for Council officers.

To enable this, a greater level of accuracy is needed so that the applicable licence clearly reflects what will be taking place on the premises. Limited licences currently encompass a broad range of purposes, including festivals, home deliveries, sporting events, internet sales and more.

As noted in the LCRA review discussion paper, an indicator of the problems with the licence types is the increase in the number of limited licences. New modes of liquor supply exist today that did not exist when the LCRA’s licensing regime commenced. For example, there is no specific licence for online supply.
T address this, the Act could further break the activities down into different limited licence categories. This will also assist assessment officers in giving closer regard to amenity issues.

Another suggestion is for a temporary limited licence class to be created for lower-risk use categories (e.g. café and restaurant), to allow for the sale and consumption of liquor in premises that have achieved a planning permit and although they have applied for a planning permit to serve liquor, this has not yet been issued. Such an interim arrangement would provide better opportunities for new businesses and start-ups, although a maximum timeframe should be applied (e.g. 3 months) that would cover the expected timeframe for achieving a liquor licence.

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

When considering Temporary Limited Licence Applications for events, the VCGLR should incorporate provisions to ensure that the applicant has the necessary Council event approvals in place before the liquor licence is granted. As with planning permits, the process undertaken by Councils to put the necessary event approvals in place often involves consultation with several stakeholders, including negotiation on the applicant’s red-line boundary, and can take longer than the 30 days provided by the VCGLR to Councils to make an amenity based objection. There have been instances where the VCGLR has deemed an application for a Temporary Limited Licence for an event to be ‘low risk’ and haven’t sought an amenity-based submission from the Council, which has resulted in liquor licences being approved for events on Council-owned land where community facilities are located, without any consultation with Council.

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

Currently there are significant discrepancies between planning and licensing legislation and processes. Definitions and terms used in both need to be better aligned to provide clarity for applicants and for decision makers. In particular, the definition of amenity impacts needs to be consistent between the LCRA and the Planning Act.

The assessment criteria used to determine patron numbers also requires greater consistency. Currently in most planning applications this is determined by available car parking, whereas under building regulations it is based on safety issues and coverage of fire services. VCGLR bases its decision on a floor space availability calculation. In most cases the town planning car parking availability assessment will result in a lower figure for maximum patron numbers. This is a source of confusion that needs to be standardised: while there is a need to respect these different types of assessment and their application in various contexts, ultimately the lowest number derived from the different methods will be the effective maximum, and this should be reflected in the liquor licence that is finally approved.

There are also opportunities for avoiding confusion for applicants and affected persons between the separate processes for town planning and liquor licence applications, including public notification. It is preferable that in this cases were a planning permit is mandatory for the premises, this should be issued before a licence application is submitted, or at least prior to the final assessment of the licence application. Applicants for a licence should be required under the LCRA to provide a planning permit as part of the information required for lodgement. VCGLR should also be required under the LCRA to ensure the licence conditions reflect those of (and do not conflict with) the planning permit conditions.

Currently liquor licence applications can be advertised during the planning application process. This can result in confusion for applicants and affected persons between the different types of applications.
The LCRA needs to either prevent licence applications from being advertised prior to a planning permit being issued, or provide for the advertising of both planning and licence applications at the same time. In the latter scenario, people should be afforded the opportunity to object to both applications at once, rather than sending two separate submissions. This would also reduce the burden on applicants to provide separate responses. The process for this to occur would need to be carefully designed and explained in the Act and its regulations.

To reduce licence application timeframes, VCGLR should be incorporated into Planning Schemes as a Recommending Referral Authority. This would enable relevant concerns to be identified earlier, as well as provide additional guidance to the Responsible Authority in decision making. It would also provide a better customer service outcome to applicants.

**Harm minimisation**

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

Of concern to Council are the resources required for addressing issues that arise as a result of alcohol fuelled violence and anti-social behaviour; such as graffiti, vandalism to public property and street cleaning.

The following suggestions are offered to address this issue:

- Consider implementing a provision requiring licensees to pay the costs of alcohol-related crime in designated areas with a concentration of premises that have led to higher rates of crime and harm to public property (the Violent Crime Reduction Act in the UK has implemented this through “Alcohol Disorder Zones”).

- Consider including “big box” packaged liquor as a ‘high risk premises’ as up to 80% of alcohol consumed in Australia is sold at packaged liquor outlets, and taking into account the harms that occur beyond the specific site and into the home (Euromonitor International. Alcoholic drinks in Australia. Euromonitor International Ltd. London. 2012).

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

The following suggested measures are proposed:

- All licence types to require Responsible Service of Alcohol training.
- The LCRA should take into account the broader social and economic impacts of alcohol to the community – there is a substantial body of evidence regarding the negative impacts on the health and wellbeing of the communities.
- The Act should adhere to the precautionary principle - with clear definitions and criteria to measure and assess the impact of both existing and potential harm.
- The Act should place the onus on the applicant to demonstrate the social and economic impacts through the licence application process for packaged liquor outlets. For example a similar process could be sued to the one for electronic gaming machine applications. This could include the use of a population based cap model that uses floor space as a measure.
- Packaged alcohol outlets assessment should include consideration of locations and sensitive land uses in the immediate vicinity, and should restrict outlets near local schools and crisis support services.
- The Act should consider preventing the advertisement of ‘happy hours’ and drinks specials outside the venue or outlet.
8. How should harm be considered in the licence application process?

Currently, there are very little grounds on which Councils are able to make an objection, particularly in relation to alcohol-related harms. This is disempowering for Councils and is leading to a lack of engagement with the liquor licence approval process. More opportunity is needed for evidence to be used, particularly in relation to crime statistics and data from Turning Point (Turning Point Alcohol & Drug Centre was established in 1994 to provide leadership to the alcohol and drug field in Victoria, Australia).

Health and crime data to be included to measure alcohol-related harm:

- Alcohol-related ambulance attendances
- Alcohol-related hospital admissions
- Alcohol-related assaults
- Alcohol involvement in family incidents
- Alcohol-related serious or fatal road injuries
- Alcohol-related deaths
- Alcohol-related one punch deaths

The number of packaged liquor outlets in Victoria now stands at 2039. The growth in the number, size and opening hours of packaged liquor outlets has seen the rates of alcohol-related harm amongst both adults and young people increase sharply. (Livingston M. A longitudinal analysis of alcohol outlet density and assault, Alcoholism: Clinical and Experimental Research, 32, 2008).

There is currently no limit on the total number, size, type, or density of licensed premises that can be issued across the State, municipality, or neighbourhood.

- Consideration to be given to treating liquor licensing applications similar to gaming with a cap per population model. This could be measured through floor space assessment.
- The Act should consider the density and type of outlets in the local area.
- Restriction on the density of packaged liquor outlets in retail precincts.
- Review of current licence types to ensure appropriate consideration of the area for alcohol delivery.
- Review of current licence types to ensure appropriate control on the age and intoxication of those receiving delivered packaged alcohol.
- “Big box” packaged liquor should be considered separately in the Act to reinforce that the retail catchment of such a premises will often extend to as far as 5km (Hunt Club Casey CC v Woolworths Dan Murphy’s Cranbourne East).

The interrelationship between alcohol and family violence has been established (see response to question 11).

- Academic experts should be engaged to develop clear criteria and standardised benchmarks for alcohol related family violence.

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

As stated in the consultation paper, the Royal Commission into Family Violence concluded “alcohol use is associated with a relatively small proportion of family incidents, it is widely regarded as increasing the severity and incidence of family violence” (Royal Commission March 2016 - final report p. 301).
However the AIC’s National Homicide Monitoring Program’s (NHMP) database determined that almost half (44%) of all intimate partner homicides are alcohol related and recent data from Victoria suggests that alcohol is involved in a significant percentage of family violence incidents reported to police – from 21.2 to 43% (Crime statistics agency December 2016 – In Brief No.7 - Family violence, alcohol consumption and the likelihood of criminal offences).

This percentage may be higher as violent behaviour may be recorded as ‘drunk and disorderly’. Local government has undertaken research analysing crime data which has indicated that family violence in public spaces is frequently not seen or understood to be family violence, and therefore is not reported as such (City of Port Phillip, unpublished).

Opportunities to address family violence within the LCRA include:

- Academic experts should be engaged to develop clear criteria and standardised benchmarks for alcohol related family violence.
- Requirement of venue management plans and staff training that includes appropriate response to violence, particularly family violence – notifying the police and referring to services. A possibility is including this training in the Responsible Service of Alcohol course.
- Although outside the scope of the Act improvement recording of family violence incidents involving alcohol would be greatly beneficial to understanding this issue, and improving harm minimisation.

**Summary Comments**

Overall there are significant opportunities to improve the interaction between licensing and planning processes. The purpose of each regulatory instrument needs to be clear to applicants and submitters. The processes for obtaining separate but related approvals for the same activity need to be as streamlined as possible. This does not mean that serious amenity issues should not be assessed. Indeed, a clearer assessment process should enable more targeted and effective assessments to be undertaken.

Council has strong views on the need to better address harm minimisation objectives. Greater opportunity is needed in the assessment process for relevant data and research findings to be used to properly assess the impacts of new licence approvals for local areas.

The observations and suggestions in this submission capture some examples of Council’s suggested improvements to the LCRA. It is anticipated the MAV submission made on behalf of member Councils will provide a more comprehensive coverage of the LCRA reform issues. That submission will include further matters of interest to Frankston City Council.