23 December 2016

The Hon. Marlene Kairouz MP
Minister for Consumer Affairs, Gaming and Liquor Regulations
Level 26, 121 Exhibition Street
Melbourne VIC 3000

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

Dear Minister,

**Review of the Liquor Control Reform Act 1998 – LIV Submission**

The Law Institute of Victoria (LIV) welcomes the opportunity to make a submission in response to the Review of the Liquor Control Reform Act 1998 (the LCRA).

The LIV’s submission has been prepared in consultation with its Liquor, Gaming & Hospitality Committee (LGH Committee). The LGH Committee is the primary body through which the LIV engages with liquor, gaming and hospitality issues. It regularly liaises with liquor and gaming industry regulators in Victoria, including the Victorian Commission for Gambling and Liquor Regulation (VCGLR) and the Department of Justice and Regulation (the Department) on issues of law and policy.

**Past submissions**

Relevant past submissions prepared by the LIV, through its LGH Committee, include the following:

- submission on the Liquor Control Reform (Underage Drinking and Enhanced Enforcement) Bill 2004 (13 October 2004)
- submission on liquor licensing forums and accords (3 August 2006)
- submission on Responsible Service of Alcohol (RSA) courses (6 August 2006)
- submission on transfer of liquor licence processes (27 September 2006)
- submission on transfer of liquor licence processes (2 February 2011)
- submission on the creation of the VCGLR (11 August 2011)
- submission on the National Business Names Register causing delays for transfer of liquor licences (27 July 2012)
- submission on proposals to introduce new powers in relation to minors under the LCRA (3 August 2012)
- submission on transfer of liquor licence processes (5 May 2015)

Copies of these submissions are enclosed to provide further context for the LIV’s responses to the current Review.
Consultation questions

The LIV provides its responses to the questions set out in the Consultation Paper as follows:

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

   *Alternative dispute resolution*

   The LIV recommends that alternative dispute resolution (ADR) mechanisms, which are standard in all Court jurisdictions, be implemented and clarified in the legislation. Procedures such as mediation, compulsory conferences and directions hearings are beneficial to users as they can often narrow down relevant issues to reduce hearing times or avoid formal hearings altogether.

   *Deemed approvals of directors or nominees*

   The LIV supports the introduction of deemed approvals of directors or nominees. In particular, this would reduce the regulatory burden where individuals are already directors for other premises in Victoria, or have been directors with a proven track record within the last 2 years.

   *Advertisement of licence applications*

   It is the LIV’s view that advertising periods for liquor licence applications are currently too long.

   The LIV believes that extended advertising periods can encourage protracted, rather than more timely Police responses. LIV members have suggested that Police have, unfortunately, often take advantage of extended advertising periods to delay and obstruct applications, adding to the regulatory burden.

   To address this concern, the LIV suggests that a time limit of 14 or 30 days should be set for responses to advertisements.

   *Online forms*

   The LIV supports the introduction of online forms to streamline the liquor licence application process.

   It notes that the electronic application form for nominees has been implemented to great success on the VCGLR website. Electronic forms should be replicated across the board for all applications.

   *National Act*

   The LIV supports the recognition of RSA certificates across jurisdictions. The LIV understands that there are certain, subtle, differences in regulatory requirements for service of alcohol in different States, however this can be addressed by providing RSA holders with bridging forms or fact sheets.

   The LIV otherwise supports a national liquor control Act with jurisdiction-specific provisions or Schedules. It would welcome further consultation on such legislative reform should the opportunity arise.
2. **Does the current licence type regime work? How could it be improved?**

While the LIV considers that the current licence type regime is generally adequate, it makes the following comments in relation to specific licence categories that could be incorporated to prevent certain situations from “falling between the cracks”:

*Limited licences for regular events*

The LIV supports the introduction of limited licences for regular events. Such licences can be endorsed on permanent licences as limited licences.

*Caterers or servers licence*

The LIV supports the reintroduction of a specialised caterer’s or server’s licence.

*Wine and beer producer’s licence*

At present, distillers of spirit alcohol are not included under the wine and beer producer’s licence. The LIV submits that this licence category should be expanded to include distillers.

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

The LIV queries the necessity of renewing licences on an annual basis. It submits that an option for long-term licence renewals should be incorporated in the LCRA. The licence fee payable could be adjusted accordingly.

Existing licensees, who have consistently demonstrated clean records, should have the option to renew licences in 3-year terms at a minimum, with the requisite licence fees refundable where the relevant licence is cancelled or forfeited. As an alternative, licences could be renewed automatically upon payment of the requisite fee. The LIV submits that both options would reduce red tape and regulatory costs.

*Online processes*

The LIV supports the introduction of further online processes (including electronic forms) to address delays in the applications and renewals process.

To address delays in transfers of liquor licences (see above), the LIV also supports the use of emails to notify applicants on the progress of their applications. The practice of notifying applicants by mail rather than email of the grant of the transfer which creates a further delay unless the applicant or representative monitors the licences on line site to pick up the change of licensee as soon as it occurs.

*Transfers of liquor licences*

The LIV has consistently raised concerns regarding delays in processing transfers of liquor licences in past written submissions and in person consultations with the VCGLR and the Department.

In several instances, in meetings between representatives of the VCGLR and the LIV’s LGH Committee, it was indicated that determination times for licence applications have been protracted
by reason of training requirements which depleted resources necessary to provide the usual service. This has been apparent to applicants' legal representatives, and particularly so with respect to the determination of transfer of licences in respect of which the required confirmation of settlement had been given. In a transfer of licence, confirmation of settlement is only given immediately following the payment in full of the purchase price at which point possession of the business is handed to the licence transferee and that party assumes liability for rent, if a leasehold in addition to finance costs, payment of staff and the continuity of the business.

The LIV notes that the VCGLR makes a particular point of notifying applicants in correspondence that trading may not take place by the transferee until the transfer has been recorded and the name of the transferee appears on the licence.

Clearly, tension is created between a commercial imperative and a legal responsibility, and if there is a significant delay between the notification of settlement and the actual transfer of the licence, significant practical difficulties ensue for the incoming party.

While this may not be the intended or usual practice, the practical consequences of such delays represent a flaw in the system and exposes parties to potential legal difficulties which, we suggest, are avoidable. Our members note that there must be a need to balance legitimate regulatory concerns with the commercial realities faced by their clients.

Recent experiences have included a transferee being informed that the transfer may not be recorded for up to a week following the delivery of the letter confirming settlement, owing to lack of resources. Other enquires disclosed that the application in question had not been scrutinised by an experienced licensing officer prior to the delivery of settlement letter, raising the possibility that the application documentation may still be subject to question even after the settlement had occurred.

Previous liquor licensing administrations had adhered to a longstanding practice whereby an application for transfer would be assessed prior to settlement and a letter issued confirming that the transfer was approved and held over pending notification of settlement being received. Apart from ensuring that there were no last minute hiccups with the documentation, this procedure gave legal representatives confidence in organising settlement knowing that the transfer had been approved.

The LIV submits that it is reasonable for a purchaser or transferee to expect that they can commence trading immediately upon payment of the purchase money to the vendor or transferee. The current practice relies to a large extent on the experience and judgement of the applicant’s representative to assess that the matter is ready to proceed in order to initiate the arrangements for settlement. Apart from requiring additional contact with the VCGLR to check these matters, reliance that could be placed on information received is limited if the application has not been fully scrutinised.

The condition in most business contracts requiring the transfer of licences stipulates that settlement date is the date fixed in the contract or if the VCGLR has not approved of the transfer, the settlement is postponed until such approval has been given. This condition can only be honoured if notification of approval is given prior to the settlement taking place. If this is done, then the VCGLR has only to be satisfied with the confirmation of settlement in order to finalise the transfer rather than having to go through the entire application which appears to be what is occurring at present.
We suggest that the legal uncertainty could be alleviated if the VCGLR deems the transfer to have been granted immediately upon receipt of notification of settlement, notwithstanding that a period of time may elapse before the licence is actually changed over. This practice is adopted in other States and we are not aware of any adverse or unintended consequences.

**New Entrant Training**

Section 44 of the LCRA allows the VCGLR to refuse an application if the applicant or transferee does not have an adequate knowledge of the Act.

However, LIV members have reported cases where the requirement for new entrant training for applicants or transferees has been applied inconsistently. Certain applicants have been exempted from new entrant training based on prior experience in the industry, and therefore exposure to the Act, whilst others, who have substantially similar experience, have not.

Further, the LIV believes that new entrant training and RSA courses can be effectively delivered electronically online.

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

The LIV notes that there is currently significant overlap between liquor licensing and planning processes. Local council authority in liquor licence application processes should be limited to reduce overlaps, delays, costs and expenses.

The LIV submits that reducing circumstances where planning permits are required, for example in low-risk or existing-use situations, would mitigate the need to go through costly and time-consuming planning processes. It is not suggested that planning permits should be dispensed with entirely in liquor licensing situations.

A local council may object to a grant, variation or relocation of licence on the grounds that doing so would detract from, or be detrimental to, the amenity of the area in which the premises are situated (section 40(1) LCRA). The grant, variation or relocation of a licence is also contingent on planning approval being obtained, and section 16 of the LCRA imposes a condition on every licence (except pre-retail, limited or major event licences) that the use of the premises does not contravene the relevant planning scheme (which may be artificially engineered to take into account liquor licensing matters).

The LIV is concerned that current arrangements do not recognise delineation between the functions of the VCGLR and local councils. It submits that the ability for a local council to object to a grant, variation or relocation of licence, and to reject planning approval of its own accord, represents a duplication of processes.

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

The LIV submits that application fees for genuine not-for-profit, temporary and major event licenses should be waived.
6. How can the LCRA better foster diversity and support small business?

The LIV submits that the LCRA would better support small businesses by reducing red tape through the implementation of deemed approvals of transfers of licences, streamlined licence categories, and implementation of online facilities and databases (see general comments).

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

The LIV makes the following submissions in relation to harm minimisation measures in the LCRA:

- Measures should be undertaken to make codes of conduct for service or sale of packaged liquor more effective.
- Management plans, house rules and codes of conduct should be applicable for every licensee.
- RSA training and certification should be required of all applicable service staff. However, the LIV also submits that requirements for paper certificates and on-site registers are unnecessary. It is suggested that a more effective way for police to monitor and enforce RSAs and certificates would be through implementing an online database accessible in real-time and requirements for service staff to carry licences whilst on the job (similar in application to drivers’ licences).

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

See above question 7 for the LIV’s general comments on harm minimisation.

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

See above question 7 for the LIV’s general comments on harm minimisation.

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

The LIV considers that current controls on patron behaviour in the LCRA are generally adequate. It is noted that licensees can apply to ban specific patrons and that these bans are generally difficult to remove.

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

While the LIV considers that family violence is a significant issue and supports government initiatives to address it, it does not consider that the LCRA is an appropriate vehicle to deal with this issue.

The LIV submits that any form of violence, could, instead, be addressed through appropriate conditions placed on liquor licences.
12. Could the current compliance and enforcement provisions in the LCRA be improved? If so, how?

Supply to minors and allowing minors on premises

The LIV submits that it is not clear how licensees are expected to control supply or permit patrons to avoid contravening sections 119 and 120 of the LCRA in relation to supply of liquor to minors and allowing minors on licensed or authorised premises. This needs to be clarified through either legislative amendment or the provision of guidance materials.

“Intoxication” and “drunkenness”

Whilst the words “intoxicated” and “drunk” may be regarded as interchangeable to lay persons, intoxication and drunkenness are different concepts with separate offences and responsibilities for licensees under the LCRA. The Intoxication Guidelines published by the VCGLR list behavioural changes and physical signs which could equally apply to a drunken person. However, it is submitted that whilst both fall under the heading of “affected by alcohol” the behavioural consequences, are in fact, different and significant.

It is acknowledged that the LCRA does not define “drunkenness”. However, it is submitted that drunkenness is something more than intoxication and goes to the behaviour of the relevant patron. Further, the issue of safety of the patron and others becomes paramount in considering the position of a drunken person more so than a situation of intoxication.

The behaviour of the person is fundamental to any consideration of drunkenness. It is noted that under the Summary Offences Act 1966, there is the offence of being found “drunk and disorderly” (emphasis added) in a public place and the penalty is more severe than the offence of merely being found drunk.

In contrast, the LCRA refers to “drunken or disorderly” (emphasis added) persons which acknowledges that a person may be drunk without being disorderly, therefore exhibiting few signs of his or her actual state. This would appear to be the basis for the defences in section 108(5) of the LCRA.

Whilst the LIV does not believe there is any need to amend the LCRA in respect of intoxication and drunkenness offences and defences, consideration could be given to the offence under section 108(4)(b) being amended to “drunken and disorderly”, so that a licensee would not commit an offence if a passively drunk person remained on the premises for their own safety. This will also bring the LCRA in line with the Summary Offences Act. If amendment is to be contemplated, the defences in section 108(5) should still be fully available.

Alternative dispute resolution

As stated in Question 1 above, the LIV supports the introduction of alternative dispute resolution mechanisms (and associated costs provisions) in the LCRA.

The LIV further submits that section 29 of the LCRA should be amended so that the right to apply for review of decisions made under the section should be expanded to all affected parties, not just Police.
13. Are there other measures that could reduce harm? What would be the costs and benefits of including them?

The LIV submits that driver’s licence applicants should be required to undergo compulsory responsible consumption of alcohol courses as a precondition to obtaining their licence. It considers that individuals who are disqualified for committing drink-driving offences should be required to re-take the course.

Contact

The LIV would welcome providing additional information to the Review and engaging in further consultation with the Department or your office.

The LIV notes that the State Government has a stated commitment to the reduction of red tape and appreciates the Review’s focus on “facilitating a diverse industry and reducing red tape”. In light of this, a copy of this letter has also been sent to the Red Tape Commissioner, Dr Matthew Butlin, for his consideration.

For inquiries about this submission or to arrange a meeting with the LGH Committee, please do not hesitate to contact Karen Cheng of the Property & Environmental Law Section at the LIV, at kcheng@liv.asn.au or 9607 9522.

Yours faithfully,

Steven Sapountsis
President
Law Institute of Victoria

Cc: Dr Matthew Butlin
Red Tape Commissioner
By email: matthew.butlin@dtf.vic.gov.au

Encl.
12 October 2004

Dr David Cousins  
Director  
Consumer Affairs Victoria  
GPO Box 123A  
MELBOURNE, 3001

Dear Dr Cousins,

RE: Liquor Control Reform (Underage Drinking and Enhanced Enforcement) Bill 2004

The Law Institute of Victoria (LIV) through its Liquor Leisure & Hospitality Committee welcomes the opportunity to comment on the Liquor Control Reform (Underage Drinking and Enhanced Enforcement) Bill 2004.

Please find enclosed the LIV’s submission. If you would like to discuss any of the matters raised please contact me or Natalina Velardi on (03) 9670 9382

Yours sincerely,

CHRISTOPHER DALE  
PRESIDENT
To: Dr David Cousins, Director, Consumer Affairs Victoria

Submission on Liquor Control Reform (Under Age Drinking & Enhanced Enforcement) Bill

A submission from: the Property & Environmental Law Section
This submission is prepared by the Property and Environmental Law Section of the Law Institute of Victoria (LIV), through a sub-committee of its Liquor, Leisure & Hospitality Law Committee

Date: 13 October 2004

Queries regarding this submission should be directed to:

Natalina Velardi
(03)9607 9382
nvelardi@liv.asn.au
1. BACKGROUND

The Minister for Consumer Affairs proposes to introduce a Bill in the forthcoming Spring Session of Parliament to amend the Liquor Control Reform Act 1998 (‘the Act’). An Exposure Draft of the Liquor Control Reform (Underage Drinking and Enhanced Enforcement) Bill 2004 (‘the Bill’) together with an explanatory paper on the Bill were released for comment by stakeholders and the community. By letter dated 29 July 2004, Dr Cousins invited the Law Institute of Victoria (‘LIV’) to make submission on the Bill. The LIV welcomes the opportunity to provide comments on the Bill.

The LIV provides specific comments in relation to certain sections of the Bill.

2. SPECIFIC COMMENTS ON THE BILL

2.1 Section 3(1) of the Act (section 3 of the Bill): Definition of ‘responsible adult’

The definition of ‘responsible adult’ is extremely wide by including a person who has assumed the temporary responsibility for the wellbeing of a person under 18 years of age either expressly, or implied. The proposed definition should specifically exclude persons who do not have the attributes of a responsible person in the situation.

2.2 Section 3C of the Act (section 4 of the Bill)

The definition of a ‘person “in the company of” another person’ includes a reference to being ‘in close proximity to that other person’. The definition restricts the definition in the 1998 Act which is simply “in the company of another person”.

The phrase “close proximity” is not defined and is a vague concept that creates uncertainty. It is unclear for example if the term covers children using designated play areas on licensed premises when their parents or guardians were in other parts of the licensed premises.

The LIV suggests that a more appropriate test for Section 3C should be “line of sight” rather than “close proximity”. The example included in the draft Bill seems to rely on the “line of sight” test, and a person may be in “close proximity” to another person, but if they are not in that person’s “line of sight” we do not believe the appropriate degree of control is in place.

2.3 Section 3 of the Act (section 9 of the Bill): Definition of ‘Food Court’

“Food Court” is defined as ‘an area set aside by the lessor of retail premises for the consumption of food or drink by the customers of lessees of premises used for the sale of food or drink that are next to, or near, the area’. This definition assumes that:

- A Landlord has set aside an area in a Food Court for the consumption of liquor. This may cause problems, as it may not be the landlord that has set aside the areas in the food court. The Bill should specify that alcohol consumed in the
“Food Court” needs to be supplied by the Licensee of premises used for the sale of food and drink.

The proposed definition of “food court” relies on that area being set aside by the “Lessor of retail premises”. We note that it is not always the case that the “food court” is owned by “the Lessor of retail premises”. Apart from the uncertainty of introducing the definition of “retail premises” into the Section rather than referring to the “licensed premises” it is often the case that there are several different owners that may have rights to use a “food court” and that food court may in fact be on common area.

The “Food Court” must be in a Shopping Centre. A ‘Food Court’ could be situated in an area that is not in a traditional shopping centre food court such as a strip shopping centre.

2.4 Section 3B of the Act (section 10 of the Bill)
Section 3B refers to a situation where supply occurs if off-premises requests are made. In this case ‘the supply of liquor to the person occurs at the place where the liquor provided was first identified (emphasis added) as being for that person’. The LIV considers that the reference should be to the supply occurring when the liquor is appropriated to the person. Even from the example in the Bill, it may not be clear who is identified at table 12.

We suggest that the proposed Section 3B be amended to clarify that this only relates to General Licensed premises. We note that the Section could not apply to On-Premises Licences because such Licences have the ability to apply for authorised premises.

2.5 Section 30(c) (section 14 of the Bill)
We note the draft Bill proposes a minor amendment to Section 30C that requires the Director to give a copy of any objection to the Chief Commissioner within seven days after he receives that objection.

We believe this procedure should be adopted for all Applications, that is, that the Director provides to the Applicants copies of any objections lodged by any party to their Application.

2.6 Section 34(8) (section 15 of the Bill): Licence variations applications by police need not be displayed
We note that if such an Application is not displayed then (apart from the Licensee or Permittee) a “person” would not become aware that the Police were seeking to vary licence or permit conditions. A “person”, in addition to a Licensee or Permittee, should be entitled to be made aware of a Licensing Inspectors Application for Variation.

We note the proposed amendment to Section 34. For consistency, Section 35 should be amended in the same way, that is, if an Application is made by the
Chief Commissioner to vary a Packaged Liquor Licence, that Application does not require advertising.

2.7 Section 54(10) (section 17 of the Bill): Nominees of licensee or permittee
The draft section 54(10) should specify that where a nominee ceases to manage or control licensed premises, the liability as a licensee or permittee is re-imposed on the directors or members of the committee of management, when they have direct knowledge of the cessation of the management or control.

2.8 Section 90(1A) (section 20(2) of the Bill): Grounds of application for enquiry
9(1A)(a) allows an inquiry if a club is not “conducted in good faith as a club.” The phrase could have significant implications for licensed clubs that are operated primarily as gaming venues.

Clubs that operate as gaming venues allow authorised gaming visitors (who are not members) and it is therefore unlikely to be operated solely for the benefit of its members, or therefore in good faith as a club.

9(1A)(c) repeats the criteria for refusing to grant a new licence to an existing club. The phrase “used mainly for the supply of liquor” could create difficulties for an already licensed club operating in accordance with s10 (2).

2.9 Sections 91(1), 105(1), 106(1), 108(1), 118(1), 119(1) and (2), 119(3), 120(1) and 121 (section 21 of the Bill): Increases to penalties
The LIV submits that the increases in fines are excessive in all circumstances particularly given the other penalties available to VCAT such as disqualification or cancellation. It considers that the imposition of a maximum penalty will have the effect of business closures.

2.10 Section 101A (section 23 of the Bill): Plan of premises
We note the insertion of Section 101A and believe that this clause will assist the police in enforcement of conditions on a Liquor Licence. Liquor Licensing Victoria approves plans from time to time and maintains a register of approved plans although plans or depictions approved at the time of the grant of the licence are only updated with variation applications where there are changes to the licensed premises.

We also suggest that there be some onus in the draft Bill on applicants for the transfer or variation of licences to provide a current plan as a condition of the grant of such application. In the alternative, the applicant may provide Liquor Licensing Victoria with a declaration that the approved plan is accurate.

2.11 Section 105 (section 24 of the Bill): Minor amendment
We note a minor amendment is proposed to Section 105(1) of the existing Act. We raise the issue that Sections 105 and 106 of the current Act seem to replicate each other. Both Sections 105 and 106 prohibit the “right to supply liquor”. We suggest
consideration be given as to whether Section 105 should only relate to letting and subletting, and Section 106 only relate to the right to supply liquor.

2.12 Section 109A (section 27 of the Bill): Sale of liquor through vending machines

We note proposed Section 109A in relation to vending machines. We understand that any Licensee may be able to seek an Endorsement on their Licence permitting the sale of liquor through vending machines.

We therefore believe it appropriate that this Section be treated in a similar way to an Application by a Licensee for an Endorsement to allow minors on the premises pursuant to Section 120(2) of the current Act, that is, that it is an offence to permit the sale of liquor through vending machines unless such an Endorsement has been applied for and obtained. On this basis we believe that any Application for such an Endorsement should also be entitled for a review at VCAT if the Director refuses the Endorsement Application or makes a Decision to impose Conditions on the Endorsement that the Applicant wishes to review. We therefore suggest that Section 88(3) of the current Act be amended to refer to a person who requests the Directors approval under 109A being permitted to apply to VCAT for a Review.

As Section 109A is to constitute a further offence under the Act consideration should be given to listing such an offence in Section 141(2). We note this Section is currently being amended by proposed Section 33 of the draft Bill.

2.13 Section 17(2) and (3) (section 27 of the Bill): Dry area polls

The LIV considers that the draft clause 17(4) is a barrier to entry of competition by requiring an applicant to fund a poll in the already uncompetitive environment of dry areas.
3 August, 2006

Director of Liquor Licensing
Ms Sue MacLellan
Consumer Affairs Victoria
Liquor Licensing
GPO Box 4304
MELBOURNE VIC 301

Dear Ms MacLellan,

LIQUOR LICENSING FORUMS AND ACCORDS

The Law Institute of Victoria (LIV) through its weekly radio segment on the ABC Statewide Drive Program recently became aware of an issue involving Liquor Licensing Forums and Accords.

A talkback caller to the program on the 19 July 2006 said he was barred by the Portland Community Licensing Forum (PCLF) from all licensed premises associated with the PCLF for a period of six months from 6 June to 5 December 2006.

The LIV strongly supports initiatives to ensure the responsible serving of alcohol and the need for licensees to ensure a safe environment for their patrons. The LIV recognises that the Licensing Forums & Accords enable regulatory agencies and licensees to proactively work together to address issues and to establish local solutions.

Furthermore, the LIV commends the joint initiative of Consumer Affairs Victoria through Liquor Licensing Victoria, Victoria Police and the Municipal Association of Victoria in producing the “Guidelines for the establishment of Liquor Licensing Forums and Accords” (Guidelines).

However the LIV is concerned with the arbitrary manner in which the process operates and whether in some communities, the Forums are acting without authority and appear to be attempting to usurp your authority.

We would be interested to know the legal basis for a Forum to ban a patron from licensed premises, and especially in cases where the ban applies to all licensed premises in a community. A licensee may ask a patron to leave the premises at any time but we cannot see how that power extends to a Forum and to a ban covering all licensed premises in a community.

In addition, the LIV believes the wording of the notification in Portland conveys an incorrect interpretation of the Liquor Control Reform Act 1998 (“the Act”). A copy of the notification from Portland is attached. You will see that it informs the patron that failure to leave licensed premises when asked to do so will result in a fine of two thousand dollars under section 114(d) of the Act.
That section only operates when a patron has committed an offence by being “drunk, violent or quarrelsome” and refusing to leave when requested. It applies when an individual is actually committing an offence. However, if on another occasion, a banned patron appears at one of the licensed premises from which he/she is barred and conducts him/herself in an orderly and responsible manner, section 114(d) will not apply. The licensee has a right to refuse to do business with the patron and may ask the patron to leave but unless the requirements of s.114 (d) are met, that offence and the penalties do not apply. The LIV suggests it is misleading to suggest otherwise.

The LIV submits that:

- those responsible for overseeing the Forums consider whether the Forums’ members may lawfully ban patrons from licensed premises and whether that ban can be applied to all premises which constitute membership of the Forum; and

- (if such power is lawful) the Guidelines be amended to include a template for such notifications which omit misleading references to the Act or to fines which may be imposed;

Furthermore, the LIV submits that the Guidelines for the Forums should establish procedures which observe the principles of natural justice by:

- adopting a warning process so that imposing a ban on a patron cannot be based on one incident;

- including a specific section on the criteria applied by the Forums when deciding to ban a patron;

- requiring information to be provided to a patron on the grounds being relied on to ban the patron;

- providing an opportunity for patrons threatened with banning to appear before an independent and authorised body, such as a representative from Liquor Licensing Victoria to hear and respond to the accusations against them; and

- stipulating an appeal process which would be made known to the barred patron, via the amended notification.

The LIV’s Liquor Licensing and Hospitality Committee is available to assist with providing input for this process.

If you have any queries about any of the above, please contact me on (03) 9607-9369 or by email at president@liv.asn.au.

Yours sincerely,

Catherine Gale
President
Law Institute of Victoria

cc Chief Commissioner of Police
cc The Australian Hotels Association
9 August 2006

The Honourable Marsha Thomson MP
Minister for Consumer Affairs
Level 23, Nauru House
80 Collins Street
MELBOURNE VIC 3001

Dear Minister,

**RE: RESPONSIBLE SERVICE OF ALCOHOL COURSES**

The Law Institute of Victoria (LIV) wishes to raise a matter which resides under your portfolio as the Minister for Consumer Affairs.

The LIV notes that in recent years two of the expressed aims of government, both State and Federal, have been the

1. reduction of red tape faced by business; and

2. elimination of anti-competitive restraints on businesses, including those doing business across State-borders.

Consumer Affairs Victoria, through the Director of Liquor Licensing (Director), is responsible for administering the *Liquor Control Reform Act 1998* (Act). Adequate knowledge of a licensee’s obligations under that Act is a prerequisite of the Director granting a liquor license. The Director has therefore approved a one day training course that covers understanding liquor law and Responsible Service of Alcohol (RSA). There is also a refresher course available. The William Angliss Institute of TAFE is one of the institutions that is an approved provider of this training course.

There are similar prerequisites for the service of alcohol in New South Wales and other States of Australia. At present, the relevant authority in each State does not recognise the equivalent RSA courses completed by interstate personnel.

Therefore, when for example, a major wine exhibition, such as Wine Australia, is conducted in New South Wales, the New South Wales authority requires that exhibitors either hire a local, New South Wales-qualified person to supervise their exhibition stand, or company personnel have to be sent to New South Wales some time prior to the exhibition (whenever a suitable course is being held) to undertake the relevant training in New South Wales.
This applies even if the relevant personnel have already completed identical training in their home State. The result is duplication of course studies which is an additional and unnecessary expenditure in time and cost for the organisation involved.

The LIV therefore requests that an effort be made to implement uniform RSA course requirements between the States, or at least implement guidelines so that the Director recognises the completion of an RSA course in another State and other States recognise completion of the Victorian RSA course.

Should you require any further information please contact me or Nadia Venier of the Property and Environmental Law Section.

Yours sincerely,

[Signature]

Goeffrey Provis  
Vice President  
Law Institute of Victoria

cc:  Director of Liquor Licensing Victoria, Ms Sue Maclellan  
CEO William Angliss Institute of TAFE, Mr David Riley
27 September 2006

The Honourable Marsha Thompson MP
Minister for Consumer Affairs
Level 23, Nauru House
80 Collins Street
MELBOURNE VIC 3000

Dear Minister,

RE: APPLICATIONS FOR TRANSFER OF LIQUOR LICENCES – LIQUOR CONTROL REFORM ACT

We refer to your letter dated 1 June 2006 in which you responded to our initial submission dated 22 March 2006 (copies attached) in relation to the finalisation of transfer applications under the Liquor Control Reform Act 1998 (Act).

In your letter you indicated that you were advised that transfer applications were being finalised on the same day or within 48 hours of advice of confirmation of settlement being received. Our members indicate that this does not always occur. The consequence of the delays leads to significant difficulties in conducting business. Suppliers will not supply the purchaser of the business until the purchaser holds a liquor licence.

The realities of the sale and purchase of a business with a liquor licence are that there are commercial imperatives that the liquor licence transfer be undertaken on the same day as settlement. One example is in the case of a lease being transferred with a sale of business. The usual lease of a licensed premises requires the purchaser, as the new tenant, to be in possession of the premises on and from the settlement date (not the vendor), as the vendor has no entitlement to be in possession after that date.

The usual contract of sale of a business requires the vendor to move out and the purchaser to take possession on the day of settlement.

The Act, however, makes it illegal for the purchaser to sell liquor between the date of settlement and the date the transfer is registered. However, the vendor, being the current licensee until the transfer is registered, is not on the premises to conduct the business.

In our view, the appropriate solution is to make sure that all events happen contemporaneously, i.e. the transfer of the lease, the settlement of the contract and the transfer of the liquor licence. Perhaps so long as settlement occurs prior to 12 noon, and the necessary notification is given to Liquor Licensing Victoria by that time, the transfer registration should be processed on that day, or at least confirmation of approval be given.
Should you have any queries do not hesitate to contact myself or Nadia Venier on 9607 9522 or nvenier@liv.asn.au.

Yours sincerely,

[Signature]

Catherine Gale  
President  
Law Institute of Victoria

cc: Minister for Small Business Andre Haermeyer
2 February 2011

Mr Mark Brennan
Director of Liquor Licensing
Department of Justice
GPO Box 4304
Melbourne VIC 3001

Dear Mr Brennan

Issues regarding transfer of liquor licences

The Law Institute of Victoria (LIV) is the peak body for Victorian lawyers, and advocates for change in respect of issues which adversely affect lawyers and their clients. LIV members have expressed concern regarding recent changes in processes for the transfer of liquor licences, as set out below.

**A letter confirming that settlement has occurred**
The ‘liquor licence application kit to transfer an existing licence or permit’ available on the Department of Justice website states that it ‘contains all the forms and related materials required to transfer an existing licence or permit in Victoria’. The document checklist within the kit requires that a letter (‘settlement letter’) confirming that settlement of the sale and purchase transaction has occurred before the licence is issued.

It appears that recently Liquor Licensing has changed its policy so that settlement letters in support of a transfer of liquor licence are required to be signed by the transferor and the transferee personally before the transfer can processed. LIV members have noted that previously, lawyers were able to prepare and sign settlement letters and confirm on behalf of their clients that settlement had occurred. The LIV submits that this policy position should be re-introduced so that lawyers, as agents for their clients, are able to prepare and sign settlement letters on behalf of their clients. This will avoid the costs and delays associated with the current policy position which requires lawyers to write to their clients seeking their signature on settlement letters.

**Provision of settlement letters to Liquor Licensing**
LIV members have also reported that Liquor Licensing has amended its policy to require the original settlement letters to be provided to Liquor Licensing before a transfer of liquor licence is processed. The LIV submits that there should be scope to provide settlement letters to Liquor Licensing by facsimile transmission or electronic mail (email) transmission so that Liquor Licensing can process the transfer of liquor licence. The original settlement letters can then be sent by regular post for Liquor Licensing’s records, but provision of the original settlement letters should not affect the processing of the transfer of liquor licence. This approach will prevent liquor licensees, particularly those in rural areas, from incurring costs (usually in courier fees to expeditiously deliver the original settlement letter to Liquor Licensing) and suffering delays in the transfer of liquor licences.
Patron number calculation
Further, LIV members have raised concerns regarding the Liquor Licensing policy which requires transfers of on-premises and general liquor licences to be accompanied by an assessment by a registered building surveyor detailing the patron capacity of the licensed premises even where there has been no variation to the licensed premises since the licence was granted. The LIV is concerned that this requirement is causing additional expense and delay to liquor licensees, and considers that it should cease to be requirement.

The LIV would be grateful if the above issues could be addressed in a practice note.

Issues regarding determination of applications
The LIV is also concerned about the delays in having applications granted after lodgement of final documentation. Delays of several weeks are regularly being experienced with financial consequences to applicants, their employees and other parties and frustration for all involved.

If you would like to discuss any of the matters raised in this letter, please do not hesitate to contact me or Karen Cheng, LIV Property and Environmental Law Section Lawyer, on ph 9607 9522.

Yours sincerely

Caroline Counsel
President
Law Institute of Victoria
Dear Mr Brennan

VICTORIAN COMMISSION FOR GAMBLING AND LIQUOR REGULATION (VCGLR)

As President of the Law Institute of Victoria (LIV), I thank you for meeting with Mr Paul Ryan, Chair of the LIV’s Liquor, Gaming and Hospitality Law Committee (Committee), on 3 August 2011 to brief Mr Ryan on the creation of the VCGLR and associated changes to the administration of liquor and gambling regulation. The LIV, in particular, the Committee, appreciates the opportunity to be involved in changes which impact on the liquor and gaming industry.

You have sought the LIV’s feedback on the proposed changes. Given the timeframes available the LIV is not in a position to provide a detailed response. However, in relation to the briefing on the VCGLR and the summary of proposed changes, the LIV comments as follows:

1. The LIV recommends that the Chairman of the VCGLR be an individual with a legal background.
2. The LIV recommends that the members of the Full Commission remain separate from and do not act as single Commissioners in respect of VCGLR hearings.
   This would significantly contribute to the independence, or at least the perceived independence, of the Full Commission.
3. The LIV recommends that cross-examination of witnesses be available to parties in VCGLR hearings. You will no doubt be aware that cross-examination of witnesses is current procedure at hearings before the Victorian Commission for Gambling Regulation. The LIV submits that such cross-examination is appropriate and ensures the VCGLR is given the best opportunity to have all relevant evidence before it.
4. The LIV recommends that the VCGLR have the ability to deal with gaming and liquor applications and conduct hearings in respect of such applications in the absence of a planning approval.
5. The LIV’s strong view is that appeals to the Victorian Civil and Administrative Tribunal is the preferred course.
6. The LIV queries how the separate timeframes in respect of gaming applications and liquor applications work so as to avoid the potential for separate gaming and liquor hearings.

Further it is the LIV’s strong preference that there be one appeal process dealing with all of the gaming, liquor and planning aspects of an application.

The LIV is particularly concerned as to the likely cost, effort and delay in the possible multiple hearings of the liquor, gaming and planning aspects of an application.
7. The LIV would appreciate the opportunity to review and comment on the proposed Bill prior to the Bill proceeding to Parliament.

The LIV, through the Committee, has many years’ experience in the liquor and gaming industry and has day to day involvement in liquor and gaming applications and all matters connected to those applications. The LIV is confident that it can make a positive contribution to ensuring that the best possible legislation is introduced.

Further, the LIV requests and recommends that Government consult with the LIV and its Committee on the procedures and practices to be introduced as part of the creation of the VCGLR.

Should you have any queries in relation to the above please do not hesitate to contact Committee Chair, Mr Paul Ryan, on 9628 9600 or 0418 393 535. Mr Ryan will make himself available to meet with you if this would be of assistance.

Yours sincerely

Caroline Counsel
President
Law Institute of Victoria
27 July 2012

Mr Mark Brennan  
Chairperson  
Victorian Commission for Gaming and Liquor Regulation  
49 Elizabeth Street  
North Richmond 3121

Dear Mr Brennan,

**National Business Names Register causing Delays for Transfer of Liquor Licences**

The Law Institute of Victoria (LIV) wishes to raise issues in relation to the operation of the new Australian Securities and Investments Commission (ASIC) National Business Names Register (Register), and the consequential impact upon the transfer of liquor licences.

The Victorian Commission for Gaming and Liquor Regulation (VCGLR) requires evidence of registration of business name prior to approving a transfer of liquor licence. The experience of LIV members is that it is taking weeks to process applications to transfer business names through ASIC which in turn is significantly delaying the transfer of liquor licences.

LIV members have advised that ASIC has informed them if they write to the ASIC asking for an application to transfer of business name to be processed urgently because of an impending settlement, then ASIC will give priority to that application. However ASIC has also advised that, due to overwhelming demand, even urgent applications may take weeks to process. This is having a significant impact on the businesses that our members represent.

To address this serious issue pending ASIC’s resolution of delays in its processes, the LIV requests that the VCGLR waive the requirement for evidence of registration of business name and allow the transfer of liquor licences without such evidence. Details of registration of the business name could be supplied to the VCGLR as soon as they are available from ASIC.

This proposal is not dissimilar to what the Committee has previously proposed in regards to planning permits and lodging a variation of liquor licence. The LIV has previously advised that there are significant delays in getting planning permits approved which has commercial ramifications, therefore allowing a variation of liquor licence to be approved subject to a planning permit being evidence later would avoid further delays.

If you would like to discuss the matters raised in this letter please do not hesitate to contact me, Karen Cheng, LIV Property and Environmental Law Section Lawyer on 03 9607 9522 or LIV Liquor, Gaming and Hospitality Law Committee Chair, Paul Ryan, on 03 9628 9600 or 0418 393 535.

Yours sincerely,

Michael Holcroft  
President  
Law Institute of Victoria
3 August 2012

Ms Lissa Zass
Manager
Office of Liquor, Gaming and Racing
Department of Justice
Level 29
121 Exhibition Street
Melbourne 3000

Dear Ms Zass

Consultation on proposed amendment to the Liquor Control Reform Act 1998 (Vic)

The Law Institute of Victoria (LIV) welcomes the opportunity to participate in the Department of Justice consultation regarding the proposal to introduce a new power in relation to minors in the possession of alcohol under the Liquor Control Reform Act 1988.

The LIV notes that it is contemplated that police members, Protective Services Officers and gambling and liquor inspectors will be provided with authority to immediately dispose of (“tip-out”) alcohol, whether in an opened or unopened container, as soon as it has been seized from a minor. The LIV supports the proposed amendment as a means preventing the consumption of alcohol amongst minors, and considers that a minor having to watch their drink being “tipped out” will have a greater effect than merely taking the drink away, as the behaviour is condemned.

The LIV commends the Department of Justice in acting to reduce alcohol –related harm amongst young people and would welcome any further opportunities for consultation on this issue.

If you would like to discuss the matters raised in this letter please do not hesitate to contact me, Karen Cheng, LIV Property and Environmental Law Section Lawyer on 03 9607 9522 or LIV Liquor, Gaming and Hospitality Law Committee Chair, Paul Ryan, on 03 9628 9600 or 0418 393 535.

Yours sincerely

Geoff Bowyer
Acting President
Law Institute of Victoria
5 May 2015

Alex Fitzpatrick
Director
Licensing
Victorian Commission for Gambling and Liquor Regulation
DX 210976
MELBOURNE

By email: Alex.fitzpatrick@vcglr.vic.gov.au
Cc: Martin.andrews@vcglr.vic.gov.au

Dear Alex,

LIQUOR LICENCE TRANSFERS – DETERMINATION PROCESS AND TIMING

I write to you in my capacity as Chair of the Liquor, Gaming & Hospitality Committee of the Law Institute of Victoria.

You made mention at the November 2015 VCGLR (the Commission) Industry Forum that it was recognised by the Commission that determination times for licence applications had, in recent times, been protracted by reason of training requirements which had depleted resources necessary to provide the usual service. This has been noticeable to applicants’ legal representatives but particularly so with respect to the determination of transfer of licences in respect of which the required confirmation of settlement had been given. As you would be aware, confirmation of settlement is only given immediately following the payment in full of the purchase price at which point possession of the business is handed to the licence transferee and that party assumes liability for rent, if a leasehold in addition to finance costs, payment of staff and the continuity of the business.

The Commission makes a particular point of notifying applicants in correspondence that trading may not take place by the transferee until the transfer has been recorded and the name of the transferee appears on the licence.

Clearly, tension is created between the commercial and legal responsibility and if there is a significant delay between the notification of settlement and the actual transfer of the licence, significant practical difficulties ensue for the incoming party.

Recent experiences have included a transferee being informed that the transfer may not be recorded for up to a week following the delivery of the letter confirming settlement owing to lack of resources. Other enquiries disclosed that the application in question had not been scrutinised by an experienced licensing officer prior to the delivery of settlement letter, raising the possibility that the application documentation may still be subject to question even after the settlement had occurred.

While this may not be the intended practice, the practical consequence is arguably a flaw in the system and exposes parties to potential legal difficulties which, we suggest, are avoidable.
Previous liquor licensing administrations had adhered to a longstanding practice whereby an application for transfer would be assessed prior to settlement and a letter issued confirming that the transfer was approved and held over pending notification of settlement being received. Apart from ensuring that there were no last minute hiccups with the documentation, this procedure gave legal representatives confidence in organising settlement knowing that the transfer had been approved.

The current practice relies to a large extent on the experience and judgement of the applicant’s representative to assess that the matter is ready to proceed in order to initiate the arrangements for settlement. Apart from requiring additional contact with the Commission to check these matters, reliance that could be placed on information received is limited if the application has not been fully scrutinised.

The condition in most business contracts requiring the transfer of licences stipulates that settlement date is the date fixed in the contract or if the Commission has not approved of the transfer, the settlement is postponed until such approval has been given. This condition can only be honoured if notification of approval is given prior to the settlement taking place. If this is done, then the Commission’s delegate has only to be satisfied with the confirmation of settlement in order to finalise the transfer rather than having to go through the entire application which appears to be what is occurring at present.

The legal uncertainty we believe would be alleviated if the Commission would deem the transfer to have been granted immediately upon receipt of notification of settlement notwithstanding that a period of time may elapse before the licence is actually changed over. This practice is adopted in other States and we are not aware of any unintended consequences.

The practice of notifying applicants by mail rather than email of the grant of the transfer which creates a further delay unless the applicant or representative monitors the licences on line site to pick up the change of licensee as soon as it occurs.

We would be grateful if consideration can be given to these views. We enclose for your reference, a copy of the licensing conditions typically included in licensed business transactions.

If you would like to discuss the matters raised in this letter, please do not hesitate to contact Barton Wu of the Property & Environmental Law Section at the LIV, at bwu@liv.asn.au or 9607 9357.

Yours faithfully,

Paul Ryan
Chair
Liquor, Gaming & Hospitality Committee

Encl.