

Submission to the review of the Victorian Liquor Control Reform Act 1998



February 2017

fare



About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent, not-for-profit organisation working to reduce the harm caused by alcohol.

Alcohol harm in Australia is significant. More than 5,500 lives are lost every year and more than 157,000 people are hospitalised making alcohol one of our nation's greatest preventative health challenges.

For over a decade, FARE has been working with communities, governments, health professionals and police across the country to reduce alcohol harms by supporting world-leading research, raising public awareness and advocating for changes to alcohol policy.

In that time FARE has helped more than 750 communities and organisations, and backed over 1,400 projects around Australia.

FARE is guided by the World Health Organization's (2010) *Global strategy to reduce the harmful use of alcohol* for stopping alcohol harms through population-based strategies, problem directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email info@fare.org.au.

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Introduction

Family violence, including domestic or intimate partner violence and child maltreatment, is an abhorrent violation of human rights, to which alcohol is a significant contributor. Alcohol is associated with both the likelihood of family violence occurring and the severity of harms that result from this violence.

The link between alcohol and family violence is indisputable. Alcohol consumption of both the perpetrator and the victim is a factor that contributes to physical violence. This association has been recognised by the World Health Organization (WHO) and the Council of Australian Governments.

The latest research from Deakin University found that alcohol use is present in 44.2 per cent of all family violence incidents in Victoria, with intimate partner violence accounting for slightly higher proportions of alcohol involvement.¹

This contribution was formally recognised in the Victorian Royal Commission into Family Violence. Recommendation 93 specifically advised that the Liquor Act review should consider its role in family violence.

*The Victorian Government ensure that the terms of reference of the current review of the Liquor Control Reform Act 1998 (Vic) consider family violence and alcohol-related harms. The review should involve consultation with people who have expertise in the inter-relationship between family violence and alcohol use.*²

Up until now, the role of alcohol has not been adequately recognised in national or state and territory plans and strategies to address the issue. The involvement of alcohol in family violence is receiving growing attention, including proposed formal recognition in the definition of alcohol harm in South Australian legislation. This acknowledgement that the regulation of alcohol has a role to play in reducing the rate of family violence can no longer be ignored.

The Victorian Government is already leading the country in responding to the devastation of family violence with the commitment of more than \$600 million to programs and services and the implementation of the ten-year plan, *Ending family violence: Victoria's plan for change*.

The leadership shown in Victoria began with the establishment of the Royal Commission into Family Violence, which was an important first step in setting the agenda for action to reduce family violence incidents across the state. The review of the *Liquor Control Reform Act 1998* should represent a continuation of work commenced during the Royal Commission.

It has been 18 years since a review of the *Liquor Control Reform Act 1998* has occurred and this process now provides an opportunity to put measures in place to reduce the unacceptable levels of harm that currently permeate Victorian communities.

The government's commitment to act on all recommendations arising from the Royal Commission into Family Violence must extend to addressing the significant contribution of alcohol to family violence as part of this review of the *Liquor Control Reform Act 1998*. The evidence is clear, the more alcohol outlets and the greater their concentration, the higher the risk of alcohol-related family violence in the community. Priority must be given to addressing alcohol's availability, particularly to packaged liquor and facilitating better community engagement with the licensing system.

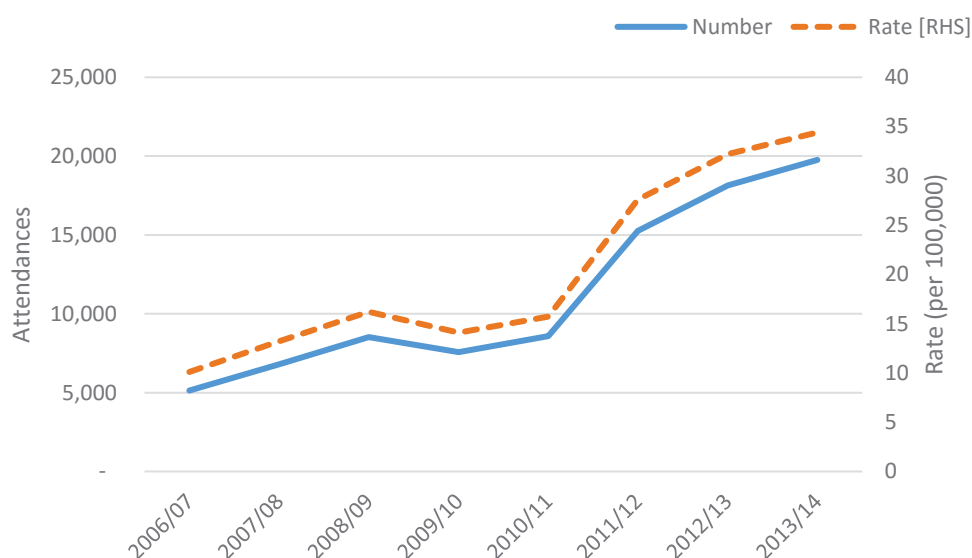
For the Victorian Government to maintain its leadership in reducing and preventing family violence, it cannot afford to ignore the contribution alcohol's increased availability makes to levels of family violence. It must accept this evidence and implement measures that have been shown to be effective in stopping violence and reducing harm to women and children.

Alcohol harm in Victoria

Current alcohol policy settings contribute to a high level of alcohol harm in communities across Victoria.* This harm places a significant burden on health services, including through emergency department presentations, hospital admissions, and ambulance attendances. Victorian police identify alcohol as contributing to a large proportion of family violence incidents, and doctors and other health professionals are witnesses to this harm on a daily basis.

While some indicators have reflected modest reductions in alcohol harm with reduced consumption in recent years, the long-term trend has generally been upward. In 2012-13, there were 7,744 emergency department presentations in Victoria where alcohol was identified as a contributing factor. The rate of such presentations increased by 58.6 per cent since 2003-04, from 8.7 per 100,000 people to 13.8 per 100,000 people.³ The rate of alcohol-related hospital admissions in Victoria was also observed to increase by 13.0 per cent over the period, from 41.6 per 100,000 to 47.0 per 100,000.⁴ Change in the rate of alcohol-related ambulance attendances has been particularly dramatic. Such attendances almost doubled in the seven years to 2013-14, from 10.1 per 100,000 to 34.4 per 100,000 (see Figure 1).⁵

Figure 1 – Alcohol-related ambulance attendances, Victoria, 2006/07 to 2013/14



In 2013, 25.9 per cent of Victorian females reported engaging in single occasion risky drinking (as defined by the National Health and Medical Research Council Guidelines).⁶ This was higher than the proportion reporting such behaviour in New South Wales (24.4 per cent).⁷ Similarly, 45.9 per cent of Victorian males reported single occasion risky drinking in 2013, compared with 44.7 per cent of males in New South Wales.⁸

* Statistics presented in this section reflect the most recently available data AODStats, hosted by TurningPoint.

The scale and variety of harm that alcohol causes to innocent third parties distinguishes it from other health and lifestyle risks, such as smoking and gambling. These harms include street and family violence,^{9,10,11} road traffic accidents,¹² and child maltreatment.¹³ Alcohol-related family violence is particularly widespread. In 2012-13, alcohol was identified as a factor in more than 12,000 family violence incidents in Victoria. The rate of such incidents has increased by 41.3 per cent since 2003-04, from 15.5 per 10,000 people to 21.9 per 10,000.¹⁴ Police data shows that the number of family violence incidents with definite alcohol involvement increased by 85 per cent over ten years, from 7,567 incidents in 2003-04 to 14,015 in 2012-13.¹⁵

More than one in five (22 per cent) Australian children are negatively affected by the drinking of others.¹⁶ Problematic drinking by their primary caregiver substantially affects 142,582 Australian children, with 10,166 already in the child protection system as a result.¹⁷ In addition to maltreatment and neglect, children can be affected by alcohol consumption prior to birth through Fetal Alcohol Spectrum Disorders (FASD).¹⁸ Data also indicates that alcohol is involved in a large proportion of child protection cases in Victoria. Court data shows that alcohol was involved in 33 per cent of substantiated child abuse and neglect cases and 42 per cent of cases involving a court protective order in 2001-2005.¹⁹

These statistics reflect an unacceptable level of alcohol harm in the Victorian community, impacting the lives of drinkers and third parties.

The cost of alcohol

The range and magnitude of costs associated with alcohol consumption are large. Alcohol costs Australians an estimated \$36 billion every year. This cost is borne by drinkers, their friends and family, government, and society more broadly. Some costs impact directly on business and government, including productivity and labour costs (\$4.0 billion), healthcare (\$2.2 billion), and crime (\$1.6 billion).^{20,†} Other costs are associated with the effect of drinking on households and family members (\$1.7 billion), counselling and treatment (\$110 million), child protection (\$671 million), and the loss of life (\$4.6 billion).²¹

In 2012, the Victorian Auditor-General conducted a performance audit on the effectiveness of the Department of Justice, Victoria Police, and the Victorian Commission for Gambling and Liquor Regulation in preventing and reducing the impact of alcohol harm on the community. The findings of the audit were released in the report titled *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*.²²

The audit found that alcohol harm has increased over a ten-year period and that the government's initiatives have not been effective in reversing this trend. The cost of alcohol is significant, with the social cost of short and long-term alcohol harm in Victoria estimated to be \$4.3 billion per year.²³ Approximately, \$366 million or nine per cent of the total cost is borne by the Victorian Government, mainly through the provision of health and policing services.²⁴

The role of licensing and regulation

The Victorian Auditor-General report found that despite the government having various strategies and initiatives in place aimed at reducing alcohol harm, the effectiveness of these have been diminished

[†] Figures indexed to CPI to reflect change in the cost of living between 2004/05 and 2008.

due to the lack of a whole-of-government policy position on the role of alcohol in society, poorly implemented initiatives, inconsistent and cumbersome liquor licensing processes, and a lack of coordinated, evidence-based and targeted enforcement.²⁵

Between 2007-08 and 2011-12, the Department of Justice spent approximately \$67 million on the development and implementation of alcohol policy, liquor licence regulation, and compliance inspections.²⁶ Despite this, the Auditor-General's report identified limited evaluation of what this investment had achieved.²⁷ The report found that weaknesses and inconsistencies in the liquor legislation and licensing processes has limited government agencies' ability to minimise harm from alcohol. An example of this is the poor administration of the legislation which has resulted in liquor licensing decision being made that are not in line with the harm minimisation object of the Liquor Act. It was also reported that the lack of transparency in decision-making, insufficient guidance on regulatory processes, administrative errors, poor quality data and a lack of engagement from councils contributed to the ineffectiveness of the liquor licensing system in not preventing alcohol harm.

Many of the issues identified in the 2012 Auditor-General report remain relevant today. Limited scope for community objections to new licences and issues with licensing procedures has fuelled unfettered growth in the number of liquor licences in Victoria. Currently, Victoria has the largest number of alcohol licence of any jurisdiction, with 21,000 liquor licences active in the state in October 2016. This is 37 per cent more than the number of active licences in New South Wales in 2016 (15,300).²⁸

This submission

FARE's submission to the review of the *Liquor Control Reform Act 1998* addresses the Terms of Reference provided. The submission places particular focus on strategies to reduce harm, one of the areas listed for comment within the *Review of the Liquor Control Reform Act 1998 consultation paper*.

While FARE acknowledges that there were a variety of questions posed within the consultation paper, it is imperative that harm minimisation is prioritised to ensure adequate protection of the community from alcohol harm. While several other priorities were listed, including "reducing regulatory burden" and to "foster diversity and support small business", these priorities are identified elsewhere in the remit of government and should be considered secondary priorities in the context of liquor legislation.

This submission aims to cover all areas of alcohol policy that may be activated through the *Liquor Control Reform Act 1998* and associated regulations. The current policy environments are identified, as well as future directions and specific recommendations for reform.

List of all recommendations

1. Amend the Liquor Control Reform Act 1998 to ensure extended trading hours are no later than 2am for the supply of alcohol for on-licence premises. Ordinary trading hours should remain restricted to 11pm for any business that has not sought and been approved for extended trade.
2. Amend section 11 of the Liquor Control Reform Act 1998 to make the ordinary hours of the supply of alcohol 9am to 10pm for all packaged (takeaway) liquor licences.
3. Remove section 111(b) from the Liquor Control Reform Act 1998 to ensure packaged liquor licences are not subject to late-night licences.
4. Amend the *Liquor Control Reform Act 1998* to empower the Commissioner declare 'alcohol harm zones' that stop future liquor licence applications, including packaged liquor for localities where alcohol harm is deemed to be significant.
5. Amend the *Liquor Control Reform Act 1998* to mandate the consideration of cumulative impact for every liquor licence application.
6. Update the Decision Making Guidelines on the Assessment of the Cumulative Impact of Licensed Premises under the *Liquor Control Reform Act 1998* to reflect the latest evidence.
7. Amend section 3B of the *Liquor Control Reform Act 1998* to ensure that supply of delivered alcohol is considered the point at which the product is physically transferred from the store (or a staff member representing the store) to the customer.
8. Amend the *Liquor Control Reform Act 1998* to restrict alcohol delivery services to businesses with packaged liquor licences.
9. Amend the *Liquor Control Reform Act 1998* to apply ordinary trading hours (9am to 10pm) for packaged liquor licences for online and delivery services.
10. Amend section 35 of the *Liquor Control Act 1998* to require all public notices to be advertised in local newspapers, both online and hardcopy.
11. Explore options for advertising new applications in digital media, including on social media platforms (such as Facebook and Twitter).
12. Amend section 36 of the *Liquor Control Reform Act 1998* to require the Commission to direct the applicant to notify nearby community buildings, facilities, and places that may be sensitive to a new licensed premises in writing for all licence applications.
13. Amend the *Liquor Control Reform Act 1998* to require the Commission to implement an online database for all liquor licence applications that are open for consultation.
14. Remove section 42(a) of the *Liquor Control Reform Act 1998* whereby the Commission may refuse to accept an objection if the person making such objections are deemed not to be personally affected.
15. Amend the *Liquor Control Reform Act 1998* to require licence applicants to prepare and submit Public Interest Assessments where the onus of proof sits with the applicant and where they must include compelling evidence that granting of the licence will be in the public interest.

16. Legislate to introduce a Community Defenders Office, based on the successful Alcohol Community Action Project (ACAP) pilot, to provide the Victorian community with greater access to resources that can assist them in participating in consultation around local liquor licensing.
17. Amend section 92A(3) of the *Liquor Control Reform Act 1998* to require that persons with interests of any variety are invited to make a submission to disciplinary inquiries.
18. Amend section 92 of the *Liquor Control Reform Act 1998* to require that local government is notified of inquiries into potential compliance breaches.
19. Remove section 1195(a) from the *Liquor Control Reform Act 1998* so minors cannot consume alcohol at an on-licence premises.
20. Amend the *Liquor Control Reform Act 1998* to incorporate irresponsible supply laws that prohibit the unsafe provision of alcohol to a minor (for instance, excessive amounts) or the inadequate supervision of the minor's alcohol consumption.
21. Amend section 1195(e) of the *Liquor Control Reform Act 1998* to require adults to obtain written permission from a minor's parent or guardian consenting to the supply of alcohol to their child by the adult in question.
22. Develop a comprehensive public education campaign that informs the general public of the laws surrounding the supply of alcohol to minors and the associated risks with underage alcohol consumption.
23. Amend section 4(2) of the *Liquor Control Reform Act 1998* to state that, "It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must prioritise harm minimisation above all other considerations".
24. Amend the *Liquor Control Reform Act 1998* to remove irrelevant objects, including those intending to "facilitate the development of a diversity of licensed facilities reflecting community expectations" and to "contribute to the responsible development of the liquor, licensed hospitality and live music industries".
25. Amend section 4 of the *Liquor Control Reform Act 1998* to specifically identify harms associated with alcohol consumption (including family violence) for consideration in liquor licensing decisions and to better achieve harm minimisation.
26. Strengthen the *Liquor Control Reform Act 1998* to prohibit the harmful discounting and promotion of alcohol products by including provisions relating to prohibited liquor promotions within the *Liquor Control Reform Regulations 2009*, and ensuring that these are adequately enforced. These provisions should address both on- and off-licence premises with equal weight.
27. Include a provision within the *Liquor Control Reform Regulations 2009* with a requirement that alcohol is sold for a basic advertised price, removing discounts and special offers.
28. Amend the *Liquor Control Reform Act 1998* to prohibit the production and redemption of shopper docket promotions of alcohol.
29. Introduce a policy to remove alcohol advertising on publicly owned assets, such as public transport infrastructure.

30. Amend section 115 of the *Liquor Control Reform Act 1998* to include ‘undesirable’ products under the *Liquor Control Regulations 2009* to restrict the sale of such products.
31. Amend section 115 of the *Liquor Control Reform Act 1998* to provide the Minister the power to declare a product undesirable if:
 - the name of the liquor product, or its design or packaging, is indecent or offensive, or
 - the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product
 - the name of the liquor product, or its design or packaging, is likely to be attractive to minors
 - the liquor product is likely, for any reason, to be confused with soft drinks or confectionery
 - the liquor product is, for any other reason, likely to have appeal to minors, or
 - it is otherwise in the public interest to declare the liquor product to be an undesirable liquor product.
32. Amend the *Liquor Control Reform Act 1998* to increase licence fees by at least ten per cent.
33. Amend Part 5 of the *Liquor Control Reform Regulations 2009* to include risk loading based on outlet density within Local Government Areas.
34. Amend Part 5 of the *Liquor Control Reform Regulations 2009* to include floor-space as a risk-loading factor for packaged liquor venues.
35. Amend Part 5 of the *Liquor Control Reform Regulations 2009* to include the number of licensed venues owned by an operator as a risk loading factor for packaged liquor venues.
36. Use the existing powers within the *Crimes (Controlled Operations) Act 2004* to conduct Controlled Purchase Operations, whereby supervised minors attempt to purchase alcohol from licensed venues to test compliance.
37. Amend section 96A of the *Liquor Control Reform Act 1998* to allow police officers to suspend licences for up to 72 hours to ensure sufficient time to investigate and act on breaches of compliance.
38. Amend Part 4A of the *Liquor Control Reform Act 1998* to reduce the threshold for suspension under the demerit points system, so that three points over three years results in a 24-hour suspension, six points in the same time results in a seven-day suspension, and a 28-day suspension is warranted by the accrual of ten points.
39. Amend section 106(J) of the *Liquor Control Reform Act 1998* to include penalties for businesses and licensees that sell alcohol to individuals who are currently subject to barring orders.
40. Amend the *Liquor Control Reform Act 1998* to establish and maintain a violent venues register that names venues with a disproportionate rate of violent incidents and applies strict conditions to reduce alcohol harm.
41. Amend the *Liquor Control Reform Act 1998* to introduce legislation to allow for the development of regulations that can enforce compliance with Responsible Service of Alcohol (RSA) guidelines. These regulations should include measures to:

- prevent the service of alcoholic drinks in glass containers after midnight in high-risk areas
 - restrict the sale of alcohol products that are designed to be consumed rapidly
 - prevent the supply of four or more alcoholic drinks to any single patron.
42. Amend section 108A of the *Liquor Control Reform Act 1998* to require completion of Responsible Service of Alcohol (RSA) accreditation for individuals involved in the supply of alcohol at restaurants.
43. Remove section 109A of the *Liquor Control Reform Act 1998* to ensure that alcohol may not be made available through vending machines.
44. Amend section 66AD of the *Liquor Control Reform Act 1998* to strengthen the collection of wholesale data to:
- permit the release of data (subject to appropriate confidentiality and de-identification requirements) to qualified researchers and local councils for the purpose of detailed analysis
 - require wholesale liquor supply information to include the date of delivery or dispatch of the liquor that is subject to the transaction
 - explicitly provide for the use and the information in liquor licensing and planning decisions
 - mandate the collection and reporting of point of sale data reflecting whether a transaction is conducted in-store or online, and whether or not it is delivered
 - provide Local Governments with access to point of sale alcohol volumetric sales data (such as litres/units of alcohol sold per premises by local geographic regions).
45. Work with all states and territories and the Commonwealth Government to develop nationally consistent and comprehensive data collection on liquor licences and associated alcohol harm.
46. Amend section 3AB of the *Liquor Control Reform Act 1998* to include “drugs or another intoxicating substance” in the definition of intoxication.
47. Amend the *Liquor Control Reform Act 1998* to replace the word “drunk”, where it appears, with the word “intoxication”.
48. Amend the *Liquor Control Reform Act 1998* where business types are exempt from requiring a licence to supply alcohol, restrict such businesses to supplying no more than two standard drinks to any one individual over a 24-hour period.
49. Amend section 7(2) of Part 3 the *Liquor Control Reform Regulations 2009* to require a minimum resolution of 720p on video surveillance to improve the identification of persons of interest.
50. Amend the *Liquor Control Reform Act 1998* to reverse the onus of proof of intoxication, so that an authorised officer’s testimony is taken as proof that a patron was intoxicated unless evidence is provided to the contrary.

Availability

The availability of alcohol through long trading hours and high density of licensed venues has likely contributed to the increased harm in Victoria. Increased availability of alcohol is associated with an increase in assault,^{29,30} domestic violence,³¹ road crashes,³² child maltreatment,³³ and harmful consumption.^{34,35}

Evidence suggests that appropriate regulation of availability is fundamental to reducing the harm associated with alcohol consumption. Key components of availability include spatial availability, such as outlet density, and temporal availability in the form of trading hours.

Trading hour restrictions

Research has shown that an increase in trading hours is associated with an increase in harms³⁶ and that alcohol-related assaults increase significantly after midnight.^{37,38} Australian and international research demonstrates that for every additional hour of trading, there is a 16-20 per cent increase in assaults and conversely, for every hour of reduced trading there is a 20 per cent reduction in assaults.^{39,40}

Modest trading hour restrictions for on-premises licensed venues have been included in policy measures to reduce alcohol harm in New South Wales and Queensland. Where they have been applied in New South Wales, dramatic reductions have been observed in rates of assault and injury associated with the late-night trade of alcohol. Research has identified a 45.1 per cent reduction in non-domestic assault in Kings Cross following the implementation of 3am last drinks (with a suite of other measures) in 2014.⁴¹ Similarly, non-domestic assaults reduced by 20.3 per cent in Sydney CBD (which was also covered by the restrictions) over the period. Reduced rates of violence are also reflected in hospital statistics. A 24.8 per cent reduction was observed in the number of alcohol-related serious injury presentations to St Vincent's Hospital Sydney (which services the Kings Cross and Sydney CBD Entertainment Precincts) in the 12 months following the introduction of the measures.⁴² These results extend earlier research, which demonstrated their strong positive effect in Newcastle. Following the introduction of a suite of measures in 2008, including 3am last drinks, assaults reduced by 29 per cent or 133 incidents per year in the region.⁴³

In addition to trading hour restrictions at on-premises licensed venues, evidence supports reduced trading hours of packaged liquor as an effective measure in reducing alcohol harm. Research conducted in Switzerland has shown that a reduction in off-licence trading hours in Geneva, combined with a ban on the sale of alcohol from petrol stations and video stores, decreased hospital admissions among adolescents and young adults by up to 40 per cent.⁴⁴ Research from New Zealand found that drinkers purchasing takeaway alcohol after 10pm are twice as likely to drink heavily compared to those buying alcohol before 10pm.⁴⁵ New Zealand police noted that off-licence venues are more likely than on-licences to be an issue for offences involving minors.⁴⁶

The effectiveness of such restrictions has also been observed across New South Wales, where packaged liquor trading hours were restricted beyond 10pm in 2014. In particular, research identified a statistically significant 1.4 per cent reduction in non-domestic assaults across the state.⁴⁷ Across the state of New South Wales, this reflects a reduction of several thousand incidents per year.

Current policy

Ordinary trading hours vary across different licence types. When assessing applications, the VCGLR may use its discretion to prescribe trading hours within these times. Ordinary trading hours are defined within the Act, and are summarised in Table 1 below.

Table 1 – Ordinary trading hours by licence type and day

Licence type	Each day except Sundays, Good Friday and ANZAC day	Sunday	Good Friday and ANZAC day
General, on-premises, restaurant and café licences	7am to 11pm	10am to 11pm	12pm to 11pm
Club licences	Anytime	10am to 11pm	12pm to 11pm
Packaged liquor	9am to 11pm	10am to 11pm	12pm to 11pm
Wine and beer producer	7am to 11pm	10am to 11pm	10am to 11pm

Source: *Liquor Control Reform Act 1998 (Vic)*

In addition, special trading hours are permitted for several licence classes to allow trade from 11pm to midnight on 31 December, then until 1am on 1 January. Licensees may also apply for approval to trade later than these ordinary times (late night licences from 11pm to 1am), with such applications granted subject to approval from the VCGLR. Licensees are then also able to apply for extended trading from beyond 1am, subject to approval from the VCGLR. In November 2016, there were 137 businesses licensed to trade 24 hours per day on any day of the year. This included 95 general licences, 30 on-premises licences, 11 restaurant and café licences, and one packaged liquor licence.

Table 2 – Extended trading licences by type, Victoria, November 2016

	On-premises	General	Packaged liquor	Restaurant and café
2am	22	21	1	17
3am	225	231		66
4am	18	7		7
5am	43	57		11
6am	2	1		
7am	35	77		8
24 hours x 365 days	24	89		11
Airport 24 hours	6	6	1	

A freeze on new late-night licences to trade past 1am was applied from 2008 in several inner-city suburbs, including Stonnington, Yarra, Port Phillip, and the Docklands. In decision-making guidelines approved by the Minister for Consumer Affairs, Gaming and Liquor Regulation on 25 June 2015, exemptions were granted to this freeze. These exemptions apply to venues that operate

predominantly as hotels, regularly provide live entertainment, or have food available at all times that alcohol is sold. In addition, eligibility is restricted to venues that have a capacity of no more than 200, a Venue Management Plan in place, and whose economic and social benefits outweigh their impact. Applications must also be supported by local council.

Future directions

Too many licensed premises in Victoria trade liquor for too many hours in the day. Trading hour restrictions are effective policy measures to reduce alcohol harm and should be introduced across the state.

It is important that a consistent standard is applied to venues across the state of Victoria. The ordinary hours for on-licence premises should remain in place and late-night licences should be restricted to serving liquor on-site (on-premises venues) till 2am. In addition, ordinary trading hours of all packaged liquor stores should be 9am to 10pm.

Recommendations

1. Amend the Liquor Control Reform Act 1998 to ensure extended trading hours are no later than 2am for the supply of alcohol for on-licence premises. Ordinary trading hours should remain restricted to 11pm for any business that has not sought and been approved for extended trade.
2. Amend section 11 of the Liquor Control Reform Act 1998 to make the ordinary hours of the supply of alcohol 9am to 10pm for all packaged (takeaway) liquor licences.
3. Remove section 111(b) from the Liquor Control Reform Act 1998 to ensure packaged liquor licences are not subject to late-night licences.

Outlet density

Research has consistently demonstrated that increased outlet density (both hotel, on- and off- licence types) contributes to alcohol harm.⁴⁸ A recent study found that a ten per cent increase in chain outlet density (such as Dan Murphy's and First Choice Liquor) is associated with a 35.3 per cent increase in intentional injuries (including assaults, stabbing, or shooting), and a 22 per cent increase in unintentional injuries (including falls, crushes, or being struck by an object).⁴⁹ A study by the New South Wales Bureau of Crime Statistics and Research found that "the concentration of hotel licences in a [local government areas, or LGAs], particularly at higher density levels, was strongly predictive of both intimate partner and non-intimate partner assault rates".⁵⁰

Research in Melbourne has found that there is a strong association between family violence and the concentration of off-licence (packaged or takeaway) liquor outlets in an area. The study concluded that a ten per cent increase in off-licence liquor outlets is associated with a 3.3 per cent increase in family violence. Increases in family violence were also apparent with the increase in general (pub) licences and on-premises licences.⁵¹ In Western Australia, a study concluded that for every 10,000 additional litres of pure alcohol sold at an off-licence liquor outlet, the risk of violence experienced in a residential setting increased by 26 per cent.⁵²

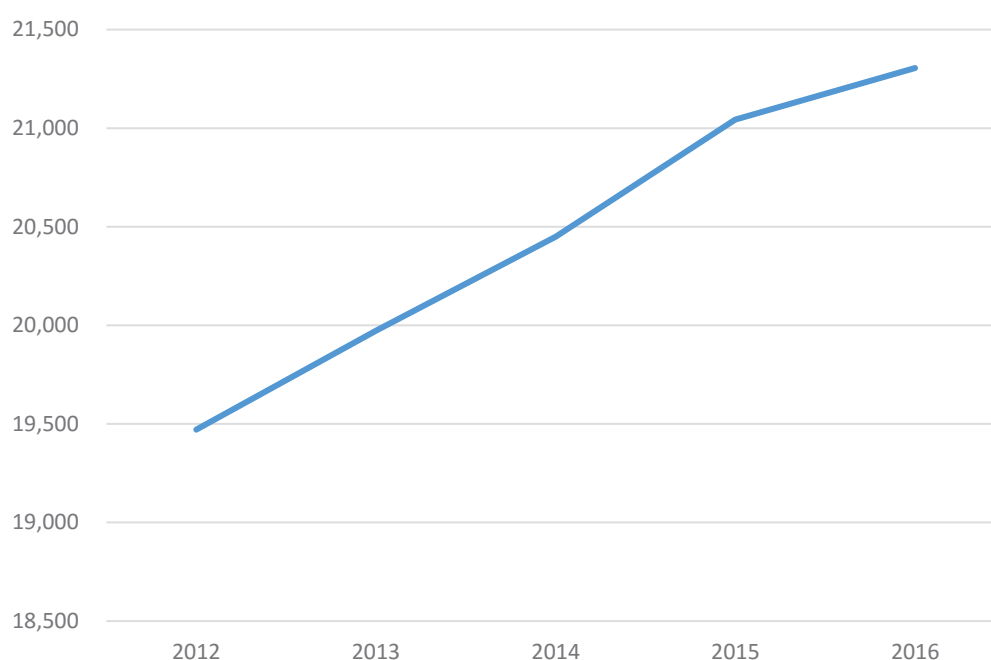
Research from Victoria found that people living in disadvantaged areas in and around Melbourne had access to twice as many bottle shops as those in the wealthiest areas. For rural and regional Victoria, there were six times as many packaged liquor outlets and four times as many pubs and clubs per

person.⁵³ Research also shows that the increased access to alcohol in disadvantaged communities may explain some socioeconomic disparities in health outcomes. Disadvantaged communities can find it harder to influence planning and zoning decisions. As such, their ability to prevent the continuing proliferation of outlets is hindered.⁵⁴

The World Health Organization has highlighted that neighbourhoods that have higher densities of alcohol outlets (both on- and off- licence) also have greater child maltreatment problems. These neighbourhoods are also more socially disadvantaged with fewer resources available to support families. This situation can lead to increased stress for families and restrict the development of social networks that can prevent child maltreatment.⁵⁵

Despite this evidence, year-on-year, the number of liquor licences in Victoria continues to grow. As of November 2016, there are 21,305 liquor licences in Victoria. There has been a five-fold increase in the number of liquor licences in Victoria over the past 30 years, from fewer than 4,000 in 1986⁵⁶ to more than 21,000 in 2016.⁵⁷ The number of licences has increased by 9.4 per cent over four years alone, from 19,471 in 2012 (see Figure 2).

Figure 2 – Liquor licences in Victoria, 2012 to 2016



The increase in packaged liquor licences, and in particular large ‘big-box’ stores offering cheap alcohol and bulk discounts is a concern. Over the past 15 years, the number of packaged liquor outlets in Victoria has increased by 49.4 per cent overall (from 1,354 in 2001 to 2,023 in 2016), and by 18.2 per cent relative to population (from 28.7 per 100,000 people in 2001 to 33.9 per 100,000 in 2016). The number of big-box stores has increased dramatically from three to 68 in that time – an increase of 2,000 per cent per capita.⁵⁸

Current policy

Under Clause 52.27 of the *Victorian Planning Provisions*,⁵⁹ the cumulative impact of new and existing licensed premises must be considered in evaluating changes to the amenity of an area during planning

permit applications. Councils are also permitted to consider the effect on the amenity of such factors as venues' hours of operation and capacity when making decisions on applications.

In addition, the Department of Planning and Community Development has defined cumulative impact as "the positive and negative impacts that can result from clustering a particular land use or type of land use".⁶⁰ Negative cumulative impacts include nuisance caused by crime, noise and antisocial behaviour of intoxicated persons, infrastructure capacity problems such as availability of transport and car parking, violence and perceived threats to safety.

In 2012, Decision Making Guidelines were issued by the Minister for Consumer Affairs on the Assessment of the Cumulative Impact of Licensed Premises. These guidelines require that, in meeting the harm minimisation objects of the Act, the VCGLR may also deem it necessary to consider cumulative impact when determining liquor licence applications in an area. Consideration may be given to, but is not limited to:

- the proximity to sensitive uses (such as schools, kindergartens, or drug and alcohol treatment facilities)
- existing levels of local amenity
- the number and types of existing licensed premises in an area and their patron numbers and operating hours
- whether the proposed use would generate unreasonable amenity impacts or significantly increase the number of people in the street
- whether the proposed use would contribute positively to the diversity of uses and activities in the area.

Future directions

Internationally, regulatory bodies have addressed the density of liquor outlets by introducing policies such as saturation zones where limitations are imposed on the introduction of new licences in areas that already have a high density of existing licences. Saturation zones in the United Kingdom have been determined based on outlet density, crime data, and domestic violence statistics.^{61,62} Saturation zones may be applied in Victoria to automatically freeze new licences where criteria have been met on measures of outlet density, crime statistics, availability of late-night transport, and other relevant factors.

While Decision Making Guidelines on the Assessment of the Cumulative Impact of Licensed Premises recognise the importance of considering the cumulative impact, they are non-binding and therefore fall short in protecting community members from increases in alcohol harm. Mandating the use of these guidelines in all liquor licence applications would strengthen the decisions and considerations made about the outlet density.

Recommendations

4. Amend the *Liquor Control Reform Act 1998* to empower the Commissioner declare 'alcohol harm zones' that stop future liquor licence applications, including packaged liquor for localities where alcohol harm is deemed to be significant.

5. Amend the *Liquor Control Reform Act 1998* to mandate the consideration of cumulative impact for every liquor licence application.
6. Update the Decision Making Guidelines on the Assessment of the Cumulative Impact of Licensed Premises under the *Liquor Control Reform Act 1998* to reflect the latest evidence.

Online purchase and delivery

A proliferation of delivery services has been observed in recent years, as technologies facilitate online order and coordination of home delivery services. Alcohol delivery has also seen strong growth. In 2015-16, it was estimated that online alcohol orders represented 3.5 per cent of alcohol sold in Australia.⁶³ Online beer, wine, and liquor sales averaged 10.9 per cent annual growth in the five years to 2015-16.⁶⁴

According to IBISWorld, “unlike many liquor related industries, the Online Beer, Wine and Liquor Sales industry operates under much lower levels of regulatory policy”.⁶⁵ The delivery of alcohol presents unique challenges in relation to ensuring responsible service. It is important that alcohol delivery services are subject to the same standards as other modes of alcohol supply.

Current policy

The *Liquor Control Reform Act 1998 (Vic)* currently allows the supply of liquor purchased online and delivered under licences allowing the sale of alcohol for consumption off-premises. The point of supply is recognised as being when the liquor is removed from the fridge. S.3B provides the following example:

A customer orders the home delivery of a carton of beer by phone from the manager of premises licensed to supply liquor for consumption off the premises. The customer pays for the beer by providing credit card details over the phone. The manager selects the beer from the fridge and a staff member delivers the beer to the customer’s house. In this scenario the beer is supplied to the customer at the fridge because that is where it was appropriated to the customer’s order.

Future directions

Given this is recognised as the location of supply, it would also appear to define the time of supply. However, this definition allows the delivery of alcohol to a home residence much later than it would be retrieved from in store and may increase the propensity for impulse purchases in the minutes leading to store closure. For these reasons, it is recommended that the definition of location and supply of alcohol is amended to reflect the physical transaction of the product. This will ensure that delivery services may not increase the availability of alcohol by allowing consumers to place orders that are fulfilled after the designated time for cessation of sales.

In addition, to ensure that the government maintains control over the supply of alcohol by delivery, it is important that restrictions are applied to the types of licences able to provide such services. Given the characteristic of liquor purchased for consumption off-premise, it is recommended that alcohol delivery is restricted to businesses with packaged liquor licences (and is prohibited for other licence classes, such as limited licences).

Recommendations

7. Amend section 3B of the *Liquor Control Reform Act 1998* to ensure that supply of delivered alcohol is considered the point at which the product is physically transferred from the store (or a staff member representing the store) to the customer.
8. Amend the *Liquor Control Reform Act 1998* to restrict alcohol delivery services to businesses with packaged liquor licences.
9. Amend the *Liquor Control Reform Act 1998* to apply ordinary trading hours (9am to 10pm) for packaged liquor licences for online and delivery services.

Community engagement

It is in the public interest for communities to have a say in the introduction of, or prevailing existence of, alcohol outlets in their local area. For this, it is essential that the regulatory system values community assent to such elements which affect local amenity, health and wellbeing.

Public notification

Enhancing community awareness, engagement and input in licensing matters is steeped in the principles of participatory governance and serves to make policy decision-making more responsive to local community interests in harm minimisation.

Current policy

Section 34 of the Act outlines the requirements for an applicant to display a public notice for their proposed liquor licence. This notice is required to be A3 size and visible to the public on the proposed licensed premises. The notice must be continuously displayed for a period of 28 days. It is a requirement that a public notice is displayed in a manner that invites public attention. At the end of the public notice display period, the applicant must print, complete and return the Statement of Display Form to VCGLR.

Section 35 of Act also requires an applicant for a new, variation, or relocation of a packaged liquor licence, a late-night (packaged liquor) or a prescribed licence[‡] to advertise in a newspaper within the local area.

Section 36 requires that the Commission may direct an applicant for a licence or for a variation or relocation of a licence to give notice of the application to a specified person or to persons in a specified area personally or by post.

Future direction

The current provisions of the Act are not sufficient to ensure that community members are made aware of liquor applications in their local area. Not all applications are required to be advertised in the local newspaper and the lack of an online database fails to provide communities with opportunities to have their say in the way alcohol is made available. Requiring all liquor licence applications to be

[‡] prescribed licence means a licence, other than a limited licence or a major event licence, of a class that is prescribed for the purposes of subsection 1.

advertised in the local newspaper and exist within an online database will allow for greater community notification and opportunities for consultation. In addition, consideration needs to be given to exploring other digital media for public notifications of new applications. This may include advertising in online newspapers or social media (such as Facebook or Twitter).

Licence applicants are not required to directly contact key stakeholders and notify them of their intention to apply for a liquor licence unless directed by the Commission. Notification of key stakeholders is an important element of ensuring that a potential liquor licence is in the public interest. All licence applicants should be required to notify in writing the owners and occupiers of nearby community buildings, facilities and places that may be sensitive to a new licensed premises (such as hospitals, places of worship, educational institutions, facilities for vulnerable persons, alcohol-free zones, public parks and sporting grounds) and notify them of their right to object to the potential licence.

Recommendations

10. Amend section 35 of the *Liquor Control Act 1998* to require all public notices to be advertised in local newspapers, both online and hardcopy.
11. Explore options for advertising new applications in digital media, including on social media platforms (such as Facebook and Twitter).
12. Amend section 36 of the *Liquor Control Reform Act 1998* to require the Commission to direct the applicant to notify nearby community buildings, facilities, and places that may be sensitive to a new licensed premises in writing for all licence applications.
13. Amend the *Liquor Control Reform Act 1998* to require the Commission to implement an online database for all liquor licence applications that are open for consultation.

Consultation and objections

The Auditor-General report identified that “the liquor licensing regime is not effectively minimising alcohol harm due to a lack of transparency of decision-making, guidance on regulatory processes and engagement from councils”.⁶⁶ Lack of engagement with councils, in particular, remains an issue for liquor licensing.

The challenges faced by local governments trying to intervene where applications are submitted for licences that are contrary to the public interest are rarely illustrated more clearly than in the City of Casey’s attempt to oppose a new packaged liquor establishment in 2016. Here, the council spent substantial time and resources unsuccessfully attempting to prevent the new establishment from being allowed in a region with high levels of alcohol harm. Despite the costly legal battle, pitting the views of democratically elected representatives against an unwanted establishment, the decision was in favour of the applicant. When community members bear the consequences of increased density of outlets, it is essential that adequate consultation is conducted with the community during liquor licensing decisions.

Current policy

Communities may be consulted during the planning approval and/or licence application stages. The *Victorian Planning Provisions* require consideration of the cumulative impact of new and existing

licensed premises and permit councils to consider the effect on the amenity of such factors as venues' hours of operation and capacity when making decisions on applications. If applicants are dissatisfied with the outcome of development applications to the council, these may be appealed to the Victorian Civil and Administrative Tribunal (VCAT).

Similar to the notification provisions of the Act, there is no formal requirement for the applicant to consult with stakeholders when an application is made. Community objections at the development approval stage are largely restricted to identifying harms emerging from the cumulative impact. Cumulative impact is defined within Practice Note 61, published by the Department of Planning and Community Development.⁶⁷ This is not sufficient for addressing the range of harm associated with cumulative impact of liquor outlets for the following reasons.

- The only factor that may be considered in relation to cumulative impact is the 'amenity' of the surrounding area,⁶⁸ with health and social harms linked to alcohol accessibility not considered under the current framework.⁶⁹
- Density considerations are not currently set at a level that would be considered appropriate. The rationale for applying a limit of three or more premises within 100 metres or 15 within 500 metres lacks appears to be based on the assumption that harm is confined to a short walking distance from premises. This is not a suitable measure of harm imposed by packaged liquor outlets in particular, or takeaway sales from pubs and clubs.⁷⁰
- The impact of packaged liquor outlets is only mentioned in the context of their exacerbation of harm from on-premises alcohol sales. In particular, the only impact considered is that such outlets may provide "an opportunity for patrons to purchase and consume alcohol before in between or after entering a licensed premise", which may "increase the likelihood of anti-social behaviour and public disturbances in some areas". There is no recognition of the various harms independently associated with packaged liquor outlets, including family and domestic violence. This is particularly concerning given packaged liquor accounts for 80 per cent of the alcohol sold in Australia.

In this way, community objections during the development application process are largely confined to poorly defined measures of cumulative impact. As such, it is important that provisions to facilitate community input to the licensing process are strengthened. In particular, this must involve regulation of outlet density to control its cumulative impact in line with community expectations.

Under section 38 of the Act, any person can object to an application on the basis that it would reduce amenity of the area or encourage misuse and abuse of alcohol. This provision is undermined by section 42, which allows for the Commission to refuse an objection if the Commissioner considers that the person making the objection is not affected by the application.

Consultation may also be sought in relation to disciplinary actions as outlined in section 92A of the Act. Advertisements of a disciplinary hearing are required to occur in a newspaper that is circulated throughout Victoria and on the Commission website. Section 92A(3) also allows the Commission to invite persons whose commercial or financial interest may be detrimentally affected by the inquiry to make a submission.

Future directions

Communities are affected by alcohol in a number of ways. They endure the noise and disruption from licensed venues, they avoid areas where alcohol use and misuse has led them to feel unsafe, they live

alongside and are affected by alcohol-related violence, and their children are witnesses of alcohol-fuelled violence. There is a clear need to strengthen the consultation and objection processes within the Act. The onus of proof on objectors hinders community engagement and input in licensing matters. Objectors are also burdened by drawn out and complex legal proceedings, as illustrated in the case of *Kordister Pty Ltd v Director of Liquor Licensing*.⁷¹ There is the need to encourage community engagement and input in licensing matters in order to balance representations. This can be achieved by reducing the burden of proof for objectors, and by enhancing access to information and resources for objectors.

Placing the onus on police, councils and local residents to demonstrate a cumulative impact that will affect the amenity of a region places undue burden on community members. Presently, Western Australia (WA) is the only jurisdiction that places the onus on the applicant to demonstrate that granting a liquor licence is in the public interest (under S.38(4) of the *Liquor Control Act 1988*).⁷² This provides the Western Australian licensing authority with greater power to reject unsuitable applications. A process that places the onus of proof on the applicant also empowers the community and better meets public expectations to reduce rates of alcohol harm.

Public interest assessments should be legislated to ensure that applicants provide sufficient evidence to address the positive and negative impacts of the requested licence. As in Western Australia,⁷³ it should not be sufficient that “applicants merely express opinions about the perceived benefits of their application without an appropriate level of evidence to support those opinions and assertions”. Public interest assessments may also be used to strengthen opportunities for objection on the basis of cumulative impact, addressing limitations in the scope for such objections during planning approval.

Community objectors do not necessarily have the capabilities (in terms of time, financial costs, and research capacity) that are needed to meet the burden of proof. It is particularly challenging for the average objector to articulate their case in line with VCGLR policy and to appropriately estimate the foreseeable impact of a licence approval.

The current arrangement of refusing to consider an objection because the Commissioner does not believe the opposing party is affected appears contrary to the public interest. In particular, it is fundamental that objections are evaluated on their merit rather than the objecting party.

There is a lack of targeted support for communities to interact with the liquor licensing or planning systems. This results in unsuccessful objections and complaints, and a lack of community engagement with these systems. The development and funding of a Community Defenders Office based on the Alcohol Community Action Project (ACAP) pilot would help individuals and communities in navigating and interacting with the liquor licensing system.

The Alcohol Community Action Project (ACAP), was a pilot project funded by the Australian Rechabite Foundation and administered by FARE. The purpose of ACAP was to assist individuals and organisations in New South Wales who wanted to interact with the liquor licensing and planning systems to reduce alcohol harm in their community. The pilot project consisted of two key resources: a community adviser and a website. ACAP successfully assisted numerous communities in New South Wales to lodge objections to liquor-related development applications and liquor licence applications, and provided advice to individuals who were not aware of their rights when dealing with licensing applications. The demand experienced by the ACAP project during the pilot demonstrates the need within the community for such a service.

Community consultation is also important for existing licences and community input to disciplinary hearings is essential. Limiting the Commission to inviting only persons whose commercial or financial interests may be detrimentally affected precludes consideration of the views of individuals who are affected in other ways by a venue's operation. Section 92A(3) should be amended to ensure that the Commission invites persons with an interest in the inquiry and venue's continued operation, whether or not that interest is commercial or financial.

Section 92 of the Act provides parties to whom the Commission must give notice regarding an inquiry into whether there are grounds to take disciplinary action. While it is stipulated that the licensee or permittee that is subject to the inquiry must be notified and that a public notice is made, it may be argued that the local council should also be informed. Councils' interest in the responsible and compliant operation of venues is already acknowledged in their ability to request such investigations; so it would be logical that they are also informed of when such inquiries have commenced at the behest of other parties.

Recommendations

14. Remove section 42(a) of the *Liquor Control Reform Act 1998* whereby the Commission may refuse to accept an objection if the person making such objections are deemed not to be personally affected.
15. Amend the *Liquor Control Reform Act 1998* to require licence applicants to prepare and submit Public Interest Assessments where the onus of proof sits with the applicant and where they must include compelling evidence that granting of the licence will be in the public interest.
16. Legislate to introduce a Community Defenders Office, based on the successful Alcohol Community Action Project (ACAP) pilot, to provide the Victorian community with greater access to resources that can assist them in participating in consultation around local liquor licensing.
17. Amend section 92A(3) of the *Liquor Control Reform Act 1998* to require that persons with interests of any variety are invited to make a submission to disciplinary inquiries.
18. Amend section 92 of the *Liquor Control Reform Act 1998* to require that local government is notified of inquiries into potential compliance breaches.

Supply to minors

Underage drinking is associated with a wide range of harms including physical injury, risky sexual behaviour, adverse behavioural patterns and academic failure, as well as long-term physical and mental health conditions.^{74,75} In recognition of this, the National Health and Medical Research Council's (NHMRC) *Australian guidelines on reducing health risks from alcohol consumption* recommend that for persons under the age of 18, not consuming alcohol is the safest option.⁷⁶

According to a survey of Australian school students, 40 per cent of underage drinkers are supplied alcohol by a parent, and 45 per cent of underage drinkers are supplied alcohol by someone else.⁷⁷ If someone else bought alcohol for minors, it was most likely to be a friend aged 18 years or over (73 per cent). The survey found that the majority of underage drinking occurred at three main locations: at a party, the family home, or a friend's home. Overall, most (64 per cent) current drinkers reported that they were supervised by an adult when having their last alcoholic drink. Despite this, there is

evidence to suggest that even with adult supervision, students will still drink at risky levels (for instance, 32.1 per cent reported this behaviour in a Western Australian school students' survey).⁷⁸

Current policy

Division 2 of the Act outlines special provisions relating to minors (persons under 18 years). Section 119 of the Act states that a licensee or a permittee must not supply liquor to a person under the age of 18 years. Section 1195(a) of the Act provides exemptions from this provision and states that:

to the supply of liquor to a person under the age of 18 years for consumption as part of a meal if the person is accompanied by his or her spouse, being a person of or over the age of 18 years, or his or her parent or guardian.

Section 1195(e) of the Act allows for alcohol to be supplied to a minor in a residential setting if it is supplied by:

- a parent, guardian, or spouse of the person (if the spouse is of or over the age of 18 years)
- someone who is authorised by a parent, guardian, or spouse of the person (if the spouse is of or over the age of 18 years) to supply liquor to the person.

Future directions

There are clear deficiencies within the Act to allow alcohol to be supplied to minors both at on- and off-licence premises. In Victoria, minors are able to consume alcohol with a meal at on-licence premises if it is supplied by a parent or guardian. This exemption within the Act contradicts the NHMRC guidelines, which recommend that minors should not consume alcohol. It also has the potential to create loopholes for licensees to provide alcohol to minors when a parent or guardian is not present. This also brings into question the tactics that could be used by licensees to undertake promotions that appeal to minors when they know that they are able to consume alcohol on their premises.

There are also concerns with the secondary supply laws and their promotion in Victoria. Firstly, the current laws do not require the safe and responsible supervision of alcohol consumption by minors. Irresponsible supply laws prohibiting the unsafe provision of alcohol (for instance, excessive amounts) or the inadequate supervision of a minor's alcohol consumption are currently in place in Queensland and Tasmania and need to be incorporated into Victorian laws.

Secondly, the Act does not specify what constitutes parental authorisation for another adult to supply alcohol to their child under section 5(e). Authorisation should occur in the form of written consent. Requiring written consent will not only remove legal ambiguity but may also encourage dialogue between parties. This provision may encourage parents and guardians to more carefully consider their decision to provide alcohol to their child.

Thirdly, there is a lack of public awareness of the secondary supply laws in Victoria. A comprehensive public education campaign is needed to inform parents, guardians, alcohol servers and adults in general what their responsibilities are for minors under these laws, and what health and safety risks are associated with underage alcohol consumption.

Recommendations

19. Remove section 1195(a) from the *Liquor Control Reform Act 1998* so minors cannot consume alcohol at an on-licence premises.
20. Amend the *Liquor Control Reform Act 1998* to incorporate irresponsible supply laws that prohibit the unsafe provision of alcohol to a minor (for instance, excessive amounts) or the inadequate supervision of the minor's alcohol consumption.
21. Amend section 1195(e) of the *Liquor Control Reform Act 1998* to require adults to obtain written permission from a minor's parent or guardian consenting to the supply of alcohol to their child by the adult in question.
22. Develop a comprehensive public education campaign that informs the general public of the laws surrounding the supply of alcohol to minors and the associated risks with underage alcohol consumption.

Harm minimisation as the primary object

The Victorian Government has an obligation to protect its citizens against agents of harm, including alcohol, which can have wide-reaching negative impacts on individuals and the community.⁷⁹ The impacts of alcohol misuse are not limited to the drinkers themselves – third parties often suffer as a result of someone else's drinking.⁸⁰ Aspects of the physical and social environment that have been demonstrated to contribute to alcohol harms should be subject to government regulation.⁸¹ Australian Governments have adopted a harm minimisation approach to addressing alcohol policy and regulation. The Commonwealth Government has defined harm minimisation as aiming to "...address alcohol and other drug issues by reducing the harmful effects of alcohol and other drugs on individuals and society."⁸² To protect the public from alcohol harm, it is the role of all levels of governments to implement prevention and intervention measures.

The importance of harm minimisation was recognised in the New South Wales *Liquor Act 1982*. The previous version of the Liquor Act included harm minimisation as a primary object of the Act. The object stated that:

A primary object of this Act is liquor harm minimisation, that is, the minimisation of harm associated with misuse and abuse of liquor (such as harm arising from violence and other anti-social behaviour). The court, the Board, the Director, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for liquor harm minimisation when exercising functions under this Act. In particular, due regard is to be had to the need for liquor harm minimisation when considering for the purposes of this Act what is or is not in the public interest.

An example of how the object of harm minimisation can be applied may be seen in the case of *Kordister Pty Ltd v Director of Liquor Licensing* ('Kordister') in Victoria.⁸³ In 2009, an application for reducing trading hours of an off-licence venue was made by police and approved. However, the licensee requested a review this decision by the Victorian Civil and Administrative Tribunal (VCAT) and as a result of the appeal the decision to reduce trading hours was removed.

The VCAT decision was appealed in the Supreme Court on the grounds that the decision was not upholding the objects of the Act (harm minimisation). It was argued that VCAT had misinterpreted the

request, which was to consider if ceasing late-night trading would have contributed to harm minimisation rather than the removal of harm altogether. The Supreme Court found that the decision made by the VCAT was not in line with the principle of harm minimisation, and the decision by the VCAT failed to uphold the primary objects of the Act. This case provides a clear example of the importance of harm minimisation and the difficulty in ensuring its proper application.

Current policy

Under section 4(1), one stated object of the Act is to contribute to minimising harm arising from the misuse and abuse of alcohol, including by:

- i. providing adequate controls over the supply and consumption of liquor
- ii. ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life
- iii. restricting the supply of certain other alcoholic products
- iv. encouraging a culture of responsible consumption of alcohol and its impact on the community.

However, the Act includes several other objects such as “to facilitate the development of a diversity of licensed facilities reflecting community expectations” and “to contribute to the responsible development of the liquor, licensed hospitality and live music industries”. The final object stated in the Act is to “regulate licensed premises that provide sexually explicit entertainment”.

The Act acknowledges the need to consider harm minimisation, stating in section 4(2) that, “It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol”. Despite this, primacy is not specifically given to the object of harm minimisation.

Future directions

Although the *Kordister* case set a precedent for considering harm minimisation above other objectives, case law should not be relied upon to ensure its due consideration relative to other objects. In addition, issues are apparent in the manner in which the Act defines harm minimisation; “encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community”. It could be argued that the government shouldn’t have a role in “encouraging a culture of responsible consumption”, but just in “reducing risky consumption”.

It is also apparent that other objectives within the Act are unnecessary. It is counter-intuitive that the Liquor Control Act should include an objective “to facilitate the development of a diversity of licensed facilities reflecting community expectations” and “contribute to the responsible development of the liquor, licensed hospitality and live music industries”. Facilitating business activity is a responsibility of government more broadly but has no place in the objectives of the Liquor Act specifically.

The statement that, “It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol” is ambiguous with respect to “due regard”. To instil primacy of harm minimisation, this article may be reconsidered. It is recommended that this article is used to instil primacy of harm minimisation by replacing “prioritise harm minimisation above all other considerations” (or words to that effect).

In addition, there is potential to improve the descriptions of avenues for minimising harm. Currently, the Act does not expressly identify the specific harm that must be minimised. Section 4(1)(ii) provides only a vague notion of ensuring that the supply of liquor does not “detract from the amenity of community life”. In South Australia, for example, the *Liquor Licensing (Liquor Review) Amendment Bill 2016 (SA)* identifies the harms associated with the supply of alcohol that must be considered in determining how these harms might be minimised. In particular, the *Liquor Licensing (Liquor Review) Amendment Bill 2016 (SA)* identifies:

- i. the risk of harm to children, vulnerable people and communities
- ii. the adverse effects on a person’s health
- iii. alcohol abuse and misuse
- iv. domestic violence or anti-social behaviour, including causing personal injury and property damage.

The Act would benefit from more specifically identifying such harm for consideration in licensing decisions.

Recommendations

23. Amend section 4(2) of the *Liquor Control Reform Act 1998* to state that, “It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must prioritise harm minimisation above all other considerations”.
24. Amend the *Liquor Control Reform Act 1998* to remove irrelevant objects, including those intending to “facilitate the development of a diversity of licensed facilities reflecting community expectations” and to “contribute to the responsible development of the liquor, licensed hospitality and live music industries”.
25. Amend section 4 of the *Liquor Control Reform Act 1998* to specifically identify harms associated with alcohol consumption (including family violence) for consideration in liquor licensing decisions and to better achieve harm minimisation.

Promotions and marketing

Promotion and price

A variety of studies has demonstrated strong associations between exposure to alcohol advertising and subsequent consumption. A review of 12 longitudinal studies of more than 38,000 young people has shown that the volume of alcohol advertising they are exposed to influences both the age at which young people start drinking and levels of consumption.⁸⁴ An Australian cross-sectional survey of 1,113 Australian adolescents (aged 12 to 17 years) explored the relationships between multiple drinking behaviours (initiation, recent consumption, and regular consumption) and various types of advertising (television, magazine, newspaper, internet, billboard, packaged liquor, bar and promotional material). Alcohol advertising across a range of media was found to strongly influence the drinking patterns of young people, with the impact most pronounced on initiation into drinking.⁸⁵ A cross-sectional survey of 6,651 school students across four countries found that exposure to online alcohol marketing, and exposure to alcohol-branded sports sponsorship, increased both young adolescents’ intention to drink and the odds that they had been drinking in the past 30 days.⁸⁶

Liquor promotions heavily centre on price as an enticement to purchase the product. There is an inverse relationship between the price of alcoholic beverages and levels of consumption and harms.⁸⁷ The problem of consumption encouraged by cheap alcohol was tackled in Canada through increases in the minimum alcohol price in British Columbia (ten per cent) and Saskatchewan (ten per cent), which reduced alcohol consumption overall and for all beverage types by 3.4 per cent and 8.4 per cent respectively.⁸⁸

Shopper dockets are liquor promotion vouchers located on supermarket shopping receipts. A prominent theme in shopper docket promotions is “buy some get some free”. In 2015, one in six (16 per cent) Australian drinkers bought a particular alcohol product because of a shopper docket, an increase from 12 per cent of drinkers in 2014.

A report prepared for the NSW Office of Liquor, Gaming and Racing (OLGR) cautioned that promotions which lead people into buying more alcohol than they had originally intended are likely to increase consumption and that this is particularly the case for young people.⁸⁹ The report also notes that shopper dockets and other linkages between liquor and everyday grocery items sends a message to consumers, particularly children and young people, that alcohol is a normal everyday product. The NSW Office of Liquor, Gaming and Racing conducted a six-month investigation into shopper dockets, concluding that shopper dockets were “likely to encourage the misuse and abuse of liquor”.⁹⁰ The agency consequently recommended that shopper dockets promoting discounted alcohol should be banned.⁵

Alcohol marketing also occurs through the use of point of sale (POS) promotions. POS refer to promotional materials found within or on the exterior of licensed premises at the point where an alcohol purchase is made (for instance, happy hours, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices). POS promotions involving price or volume discounts have been found to be particularly effective in encouraging the purchase of increased volumes of alcohol.^{91,92} POS liquor marketing is “ubiquitous” and “aggressive”.⁹³ In Sydney, for example, liquor outlets host an average of 30.2 POS promotions per outlet.⁹⁴

POS promotions are likely to affect the overall alcohol consumption of underage drinkers, as well as the consumption patterns of harmful drinkers and regular drinkers.⁹⁵ This is partly because young people are less capable of critically assessing the messages and images of alcohol advertisements.⁹⁶ Impulse purchases are encouraged by offering discounts for bulk purchases, including giveaways, ‘two-for-one’ or ‘any three for \$X’ sales. Consumer studies also reveal that exposing young people to alcohol advertising increases the likelihood that they will start to consume alcohol in the 12 months following, and increases consumption in those already drinking alcohol.^{97,98,99}

Current policy

The Commission has published *Guidelines for responsible liquor advertising and promotions* that “provide licensees with a quick reference guide for responsible advertising and promotion of liquor”. In all, there are 12 principles contained within the guidelines, outlining practices that are considered acceptable and those that are not. These principles predominantly relate to the contents of the advertising material, rather than advertising mediums or other features such as timing. They are also

⁵ Regrettably, the Director General of OLGR decided not to support his agency’s recommendations, thus allowing this harmful practice to continue.

non-binding guidelines, advising businesses of what would ordinarily be considered acceptable rather than setting a mandatory standard for alcohol advertising practices.

The guidelines do not appropriately address the promotion practices of off-licence premises. This is an oversight because a significant amount of alcohol consumption takes place in a domestic setting.¹⁰⁰ In addition, the guidelines do not contain any specific guidance relating to shopper docket promotions.

The guidelines are also relatively vague. For instance, principle 5 states that the advertising or promotion of liquor “involving ‘happy hours’, free drinks and discounted drinks must have reasonable limits and controls to minimise the risk of rapid, excessive or irresponsible consumption of liquor”. No definition is provided for ‘reasonable limits and controls’. In addition, because promotional activities are prescribed only within guidelines, the principles are not binding.

Future directions

The current iteration of the *Guidelines for responsible liquor advertising and promotions* fails to appropriately regulate promotions within the contemporary market dynamics for liquor (for instance, that most Australian consumers drink alcoholic beverages in a domestic setting¹⁰¹) and promotional methods of liquor promotion on premises (such as POS liquor marketing). As a result, these guidelines do not adequately address harm minimisation in the promotion of liquor, nor do they adequately address on- and off-licence venue practices and public health concerns regarding liquor promotions.

To ensure a consistent standard for all alcohol advertising material, regulatory measures should be employed rather than relying on voluntary adherence to guidelines. These should remain broadly in line with the principles already identified within the guidelines.

Measures to limit harmful price discounting should be introduced, as companies like BWS sell three five-litre casks of wine for \$33 (the equivalent of 22 cents a standard drink) as part of bulk buying promotions. This should involve ensuring that alcohol products are only sold on the basis of a simply advertised price. Point of sale promotions that encourage impulse purchases with the intention of ‘up-selling’ should be banned, including giveaways, ‘two-for-one’ or ‘any three for \$X’. Ceasing harmful price discounting will reduce risky alcohol consumption and discourage risky practices such as preloading by minimising the price differential between on- and off- licence premises.

Shopper docket liquor promotions should be banned in Victoria. A ban on shopper dockets as a promotional activity for liquor avoids positioning alcohol as an ordinary consumer commodity.

The Victorian Government has a role to play in protecting children from exposure to alcohol advertising by removing advertisements from state property, such as at bus stations and in and on public transport. Both South Australia and the Australian Capital Territory have policies in place that do not allow alcohol advertising to occur on public transport. In its decision to remove gambling advertising from public transport,¹⁰² the Victorian Government has recognised the need to ensure that advertising platform to which children are likely to be exposed are free from inappropriate content.

Recommendations

26. Strengthen the *Liquor Control Reform Act 1998* to prohibit the harmful discounting and promotion of alcohol products by including provisions relating to prohibited liquor promotions within the *Liquor Control Reform Regulations 2009*, and ensuring that these are adequately enforced. These provisions should address both on- and off-licence premises with equal weight.

27. Include a provision within the *Liquor Control Reform Regulations 2009* with a requirement that alcohol is sold for a basic advertised price, removing discounts and special offers.
28. Amend the *Liquor Control Reform Act 1998* to prohibit the production and redemption of shopper docket promotions of alcohol.
29. Introduce a policy to remove alcohol advertising on publicly owned assets, such as public transport infrastructure.

Undesirable liquor products

In order to provide a means for government to quickly and effectively reduce the supply of products deemed to be undesirable, legislation is often used to allow development of regulations which may be updated as issues emerge. For example, section 52 of the New South Wales *Liquor Regulations 2008* identifies products such as alcoholic ice blocks, aerosol containers, and vapour as undesirable. Undesirable products are proscribed from sale within the legislation. This system allows for flexible adjustments to restrict the sale of specific alcohol products or product classes where appropriate.

The *Liquor Act 2007* (NSW) also provides clear powers to the Minister to declare a product undesirable under the regulations if the Minister is of the opinion that:

- (a) the name of the liquor product, or its design or packaging, is indecent or offensive, or*
- (b) the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product, or*
- (c) the name of the liquor product, or its design or packaging, is likely to be attractive to minors, or*
- (d) the liquor product is likely, for any reason, to be confused with soft drinks or confectionery, or*
- (e) the liquor product is, for any other reason, likely to have a special appeal to minors, or*
- (f) it is otherwise in the public interest to declare the liquor product to be an undesirable liquor product.*

Current policy

Under section 115A, the Commission may give notice to a licensee banning them from advertising or promoting in a way that is considered likely to encourage the irresponsible consumption of alcohol or is otherwise not in the public interest. These provisions do not adequately address harmful products that are available in Victoria. The regulation of undesirable products has not been legislated, meaning that riskier alcohol products that are proscribed in other jurisdictions are treated like other liquor in Victoria. This includes frozen liquor products and powder.

Future directions

To reduce alcohol harm and allow government greater and more flexible control over liquor supply, the Act should be updated to allow designation of individual products or classes of products considered to be undesirable. Currently, regulatory frameworks are not sufficient to easily prevent the sale of undesirable products.

An example of the need to reform the legislation is the introduction of *POPS – premium ice popsicles* on to the Victorian market. The following case study highlights the deficiencies within the legislation and the need for a greater focus on regulating harmful products.

Case study: POPS – premium ice popsicles.

In November 2016, FARE became aware that *POPS – premium ice popsicles* would be launching in Melbourne in December 2016. The *POPS* premium ice popsicle range includes two alcoholic popsicles, Classic/Champagne (4.3% ABV) and Bellini/Prosecco & Peach (3.8% ABV).

On 3 November, FARE lodged a formal complaint with VCGLR on the basis that the promotion of these products contravened components of the Act and the Victorian *Guidelines for Responsible Liquor Advertising and Promotion*. In particular, the promotion breached section 115A(1) of the Act as it was likely to encourage irresponsible consumption of alcohol and was not in the public interest. This was due to the novelty nature of the products, the fact they could easily be mistaken as non-alcoholic popsicles like Calippos, and the association of drinking with fun, parties and festivals. In addition, the company's use of celebrities such as Miley Cyrus and Andy Murray to promote the products was likely to have special appeal to minors. This contravenes Principle 14 of the advertising guidelines which states that "advertising or promotion of liquor must not encourage underage drinking".



As of 14 December, FARE has received two responses from VCGLR outlining that its Compliance division is currently investigating the complaint and will advise us of the outcome in due course. FARE is aware that *POPS* officially launched in Melbourne on 1 December and is now available for purchase in Victoria.

Despite this product having clear appeal to minors, it remains available for purchase across Melbourne. *POPS* are precluded from sale in other jurisdictions, including New South Wales, where they are captured within the definition of an undesirable product.

Adopting an approach similar to that in place in New South Wales would allow the Victorian Government a larger degree of control and responsiveness to such undesirable products.

Recommendations

30. Amend section 115 of the *Liquor Control Reform Act 1998* to include 'undesirable' products under the *Liquor Control Regulations 2009* to restrict the sale of such products.
31. Amend section 115 of the *Liquor Control Reform Act 1998* to provide the Minister the power to declare a product undesirable if:
 - the name of the liquor product, or its design or packaging, is indecent or offensive, or
 - the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product

- the name of the liquor product, or its design or packaging, is likely to be attractive to minors
- the liquor product is likely, for any reason, to be confused with soft drinks or confectionery
- the liquor product is, for any other reason, likely to have appeal to minors, or
- it is otherwise in the public interest to declare the liquor product to be an undesirable liquor product.

Risk-based licensing

A report commissioned by the Victorian Department of Justice found that the social cost of short and long-term alcohol harm in Victorian in 2007-08 was \$4.3 billion. In the same year, alcohol sales in the café, bar, catering service, and restaurant industry contributed \$3.4 billion to the Victorian economy.

Risk-based licensing is a system whereby licence fees are charged annually, and are scaled according to the risk that particular venues present. Risk-based licensing has been applied in a number of jurisdictions. There is some variation in the factors used to weight risk, which comprise some combination of trading hours, occupancy, compliance, licence type, volume of alcohol sold and whether or not the venue provides substantive meals. The risk factors applied across jurisdictions are summarised below in Table 3.

Table 3 – Factors considered in risk-based licensing across jurisdictions

	Victoria (introduced August 2009)	Queensland (introduced January 2009)	ACT (introduced December 2010)	NSW (introduced February 2014)
Trading hours	✓	✓	✓	✓
Occupancy	✓	✓	✓	✓
Past conduct/ compliance	✓	✓		✓
Licence type	✓		✓	✓
Volume sold (off-trade)		✓	✓	
Provision of meals		✓		

Risk-based licensing appears to rely predominantly on a theoretical basis, whereby externalities are addressed through financial incentives. However, one study has attempted to assess the impact of risk-based licensing on alcohol harm in the Australian Capital Territory.¹⁰³ Although the evaluation concluded that it was difficult to demonstrate that its implementation was responsible for the observed decline in alcohol-related offences, its continuation was recommended.¹⁰⁴ The authors cited stakeholder support for the measure, its role in recovering public costs associated with alcohol consumption, its equity among businesses (whereby those with demonstrated higher risk pay more), and a lack of adverse impact on the liquor industry.¹⁰⁵

The breadth of licence classes covered and scale of risk weighting applied to fees are both likely to influence the extent to which risk-based licensing is effective in recovering costs and shaping more

responsible business practices. For this reason, risk-based licensing fee systems may be strengthened by increasing fees to recover a larger portion of the public costs associated with the sale of alcohol and improving the accuracy of the risk weighting applied to different business licences.

Current policy

Risk-based licensing was introduced to Victoria in 2010. Several criteria are used to define this risk, including operating hours, compliance history and venue capacity. Risk weighting is applied on top of base fees, which are provided with minor variations in Table 4 below.

Table 4 – Annual base fees by licence type, 2016-17^{106,107}

Licence type	Base fee
Restaurant and café licence	\$233.36
Restricted club licence	\$233.36
Renewable limited licence	\$233.36
BYO permit	\$233.36
Wine and beer producer	\$233.36
Wine and beer producer – with promotional events	\$341.25
General	\$948.06
On-premises	\$948.06
Pre-retail	\$948.06
Full club licence	\$466.57
Full club licence – with gaming machines	\$948.06
Packaged liquor	\$1,895.98

Extended hours for General and On-premises Licences attract additional fees, based on the level of extension. Those permitted to trade until 1am attracted an additional \$1,895.98 in 2016-17, while those trading until 3am paid \$3,791.10 on top of their base fees. Licences to trade past 3am attracted an additional charge of \$7,584.06 for the privilege. At the same time, packaged liquor stores wishing to trade during non-standard hours attracted an additional fee of \$5,688.08 in 2016-17.

Compliance history is factored into all licence and permit fees in Victoria. One or two incidents of non-compliance in the preceding 24 months attracted an additional charge of \$3,792.10 in 2016-17. Three or more such incidents resulted in an increase in fees of \$7,584.06.

In addition to other risk-loading, venues involved in the on-site supply of alcohol (on-premises, general, restaurant and café, and club licences) attract a venue capacity loading for their liquor licence. This charge is calculated on the basis of a multiplier of other fees (including both the base fee and other risk loading such as compliance). Venues with a capacity between 201 and 300 (inclusive) are charged 1.25 times the amount they would normally pay. This amount increases incrementally with each additional 100 patrons (by 0.25 basis points) to the largest venue class (with a capacity greater than 1,300), which attracts a multiplier charge of four (that is, quadruple the fees that the licence would otherwise attract).

Future directions

The efficacy of risk-based licensing may be improved by better aligning fee structures with costs. This may be achieved by increasing the fees charged under risk-based licensing or improving calibration of risk loading. Further research may be used to quantify the differential costs associated with different licence classes, compliance history and other factors. Given the well-established relationship between outlet density and harm, a risk multiplier based on outlet density in the Local Government Area should be introduced. In addition, while venue capacity is currently used as a risk multiplier for on-premises venues, packaged liquor venues are not currently subject to risk loading based on their size. A floor-space multiplier may be introduced to better account for business size in risk-based licensing.

Consistent with the economies of scale achieved by larger enterprises, research suggests that large liquor outlets and chains offer lower prices on alcohol products than independent counterparts.¹⁰⁸ As a consequence, alcohol sold from such venues contributes disproportionately to the level of harm in communities. Evidence suggests that each additional chain outlet is associated with a 35.3 per cent increase in intentional injuries and a 22 per cent increase in unintentional injuries in local areas.¹⁰⁹ Given that packaged liquor represents the distinct majority of alcohol consumed in Australia, and that enterprises with multiple outlets are associated with greater harm, there is a strong case for including the number of licensed venues owned by an operator as a weighting factor within the risk-based licensing system. This approach has already been applied in New South Wales, with owners of one to three takeaway outlets charged base fees of \$500 per licence, while those with four to nine outlets are charged \$1,000 per licence, and those with more than nine are charged \$2,000 per licence. By reducing the propensity for larger enterprises to dominate the market, this fee system will also support greater diversity to encourage competition. For this reason, it is recommended that the number of licensed venues is included as a risk loading in the fee structure for packaged liquor stores.

Recommendations

32. Amend the *Liquor Control Reform Act 1998* to increase licence fees by at least ten per cent.
33. Amend Part 5 of the *Liquor Control Reform Regulations 2009* to include risk loading based on outlet density within Local Government Areas.
34. Amend Part 5 of the *Liquor Control Reform Regulations 2009* to include floor-space as a risk-loading factor for packaged liquor venues.
35. Amend Part 5 of the *Liquor Control Reform Regulations 2009* to include the number of licensed venues owned by an operator as a risk loading factor for packaged liquor venues.

Compliance and enforcement

Where legislation aims to reduce alcohol harm by ensuring that businesses operate in a manner that achieves this objective, it is important that incentives are provided for businesses to abide by these restrictions. Compliance may be improved by increasing the probability that businesses behaving in such a manner will be caught out, or by increasing the punishment for businesses doing the wrong thing.

Controlled purchase operations

Current policy

The probability of identifying businesses that are doing the wrong thing may be improved through Controlled Purchase Operations (CPOs). Such operations involve supervised minors attempting to buy liquor from licensed premises to test licensees' compliance with supply laws. New Zealand currently utilises CPOs for alcohol service. These have worked effectively for many years to support New Zealand police in their applications to licensing authorities for the suspension or cancellation of offenders' liquor licences.^{110,111} Section 28 of the *Crimes (Controlled Operations) Act 2004* provides the powers for CPOs to be undertaken.

Future directions

To ensure that the supply of alcohol to minors is not occurring at licensed premises, the implementation of the CPO should be a priority of the Victorian Government. In the same way that CPOs are carried out for tobacco control purposes, the use of minors in these operations should be legislated. Using the existing powers within the *Crimes (Controlled Operations) Act 2004* to conduct CPOs will make licensees more attentive in their observation of 'supply to minors' legislation so as to avoid being exposed by a CPO for contravening the *Liquor Control Reform Act 1998*.

Recommendation

36. Use the existing powers within the *Crimes (Controlled Operations) Act 2004* to conduct Controlled Purchase Operations, whereby supervised minors attempt to purchase alcohol from licensed venues to test compliance.

Swift and certain sanctions

Swift and certain sanctions are an effective approach to deterring contravention of the liquor laws and regulations by licensees, permit holders and applicants for licences and permits. The 'swift and certain' approach follows the argument that:

*If punishment is swift and certain, it need not be severe to be efficacious. If punishment is uncertain and delayed, it will not be efficacious even if it is severe.*¹¹²

Professor Mark Kleimann at the University of California contends that this approach is applicable to most contexts of law enforcement.¹¹³ This approach of swift and certain sanctions should be applied to breaches of the *Liquor Act*, *Liquor Regulations* and *Liquor Promotion Guidelines*.

Swift and certain sanctions create strong and predictable deterrents and penalties for offensive and dangerous conduct by licensees, permit holders, and their staff on licensed premises. All recommendations in this submission, as well as existing provisions within the legislation, would be supported by swift enforcement and certain warnings and penalties.

Current policy

Section 96A of the Act provides authority for a senior police officer to suspend a licence for a period not to exceed 24 hours. This is an important policy measure to allow police to suspend activity where malpractice is suspected, however, it does not appear to be sufficiently long enough to allow time for

the matter may be examined more thoroughly. If a police officer identifies a need to suspend a licence over the weekend, a period of at least 72 hours would be required before this could be investigated in the following week.

Under Part 4A, the Act requires that the Commission maintain a Demerits Register and record against a licence or permit any demerit points that are incurred. If a specified number of demerit points are accrued, licences must be suspended for a particular period of time. This includes a 24-hour suspension if five points are accrued over three years, a seven-day suspension if ten demerit points are accrued over the same period and a 28-day suspension if 15 demerit points are accrued in that time. The current demerit points register indicates that no venues have accrued a sufficient number of demerit points to warrant suspension of their licence.

As defined under section 106(D) of the Act, barring orders allow licensees, permittees, responsible persons or police officers to serve an order on a person preventing them from entering or remaining on a premise. Such orders are made where a person is drunk, violent, or quarrelsome, or it is believed that the safety of the person or any other person on the premise is at substantial or immediate risk. Currently, section 106J imposes a penalty for persons that enter or remain on a licensed premise or remain in the vicinity of a licensed premise, after application of a barring order. These clauses fail to acknowledge venues' responsibility in ensuring that individuals banned from attending their venues abide by such orders. In particular, section 106J(1) relates to attendance on a venue after a banning order has been issued and may be extended to include responsibility of the venue operators.

Future directions

The suspension period that may be imposed by senior police officers should be increased to allow sufficient time for investigation and enforcement of punitive action in circumstances where businesses have done the wrong thing. A period of 72 hours would allow sufficient time to suspend activity over the weekend to allow adequate resources for this task in the following week. The need for a period of this length was recently demonstrated in New South Wales, where police were required to close a venue for 72 hours to allow time for a thorough investigation.¹¹⁴

To maximise compliance with barring orders, legislation should recognise the responsibility of a licensee to ensure that individuals who are subject to barring orders are not supplied with alcohol. Section 106J(1) should be amended to include penalties for businesses that supply alcohol to individuals who are subject to a barring order.

To date, no venue has reached the threshold of five demerit points to warrant suspension of any kind. Considering the current level of alcohol harm in the Victorian community, this suggests that the demerit point system is not being effectively deployed as a deterrent to non-compliance. The effectiveness of the demerit point system may be improved by reducing thresholds for sanctions. In particular, the Victorian government should consider reducing the thresholds for suspension so that three points over three years results in a 24-hour suspension, six points in the same time results in a seven-day suspension and a 28-day suspension is warranted by accrual of ten points.

Recommendations

37. Amend section 96A of the *Liquor Control Reform Act 1998* to allow police officers to suspend licences for up to 72 hours to ensure sufficient time to investigate and act on breaches of compliance.

38. Amend Part 4A of the *Liquor Control Reform Act 1998* to reduce the threshold for suspension under the demerit points system, so that three points over three years results in a 24-hour suspension, six points in the same time results in a seven-day suspension, and a 28-day suspension is warranted by the accrual of ten points.
39. Amend section 106(J) of the *Liquor Control Reform Act 1998* to include penalties for businesses and licensees that sell alcohol to individuals who are currently subject to barring orders.

Violent venues

It is important that venues are held accountable for the standard of patron behaviour that they instil, including the prevention and control of violent incidents. A violent venues register is used in New South Wales to take punitive action against businesses at which a disproportionate level of violent incidents occurs. Under the scheme, licensed venues are graded according to the number of alcohol-related violent incidents that have occurred on or near their vicinity over the period. Venues are assigned a classification from one to three, based on the number of assaults (with one representing the highest number of incidents). Special conditions are applied to venues in the highest violence category, including restrictions on glass containers and implementation of one-way doors. The violent venues register incentivises businesses to foster environments that are safe and peaceful. The system includes a process for reviewing the attribution of violence to a particular venue, to ensure that venues are able to dispute attributions where they are deemed inaccurate.

Current policy

While other measures focus on enforcing laws relating to responsible service of alcohol, and hold venues accountable to these standards, they do not directly address the issue of violent behaviour in and around venues.

Future directions

Legislation should be amended to incorporate provisions for the establishment and operation of a violent venues register. This should follow the example provided in New South Wales, where venues with a disproportionate rate of violence have special conditions applied to reduce such harm. The list should also be publicly available to provide further disincentive for businesses fostering violent cultures.

Recommendations

40. Amend the *Liquor Control Reform Act 1998* to establish and maintain a violent venues register that names venues with a disproportionate rate of violent incidents and applies strict conditions to reduce alcohol harm.

Responsible service

The Responsible Service of Alcohol (RSA) is essential to reducing the risk of alcohol harm. In Australia, all persons involved in alcohol service are required to complete RSA training. However, this training is only useful if it is applied fully and consistently by staff. Without appropriate enforcement mechanisms, RSA measures have limited impact on the behaviour of people working in licensed

venues and do not reduce alcohol harm.¹¹⁵ A recent observational study of licensed premises across five Australian cities found that 85 per cent of patrons judged by the study's fieldworkers to be too intoxicated to remain in the venue were still being served alcohol.¹¹⁶ This supports contentions that people continue to be served alcohol until they are heavily intoxicated and are then removed from the premises.

A recent study has also noted that the imposition of licence conditions on beverage types, quantities, and time limitations on beverage sales allowed servers to more easily enforce RSA guidelines.¹¹⁷

Current policy

Like many jurisdictions, Victorian legislation attempts to foster responsible service through a variety of mechanisms, including requirements that individuals involved in the supply of alcohol have received accreditation through an approved RSA course. In particular, section 26B of the Act requires that the Commission only grant general, on-premises, packaged and late-night licences to applicants that have achieved such qualifications no more than three years prior to submission of the application. Additionally, this qualification must remain current, with section 108AA of the Act requiring that a refresher course is completed by the licensee every three years. Other staff involved in the supply of alcohol are also held to the same standard, with the licensee held responsible for ensuring that this is the case. Like other jurisdictions, licensees are required to maintain a register of RSA status of staff members (section 108AD) and this must be produced for inspection when requested by a police officer or gambling and liquor inspector (section 108AE).

Future directions

Product consumption at on-premises venues

A study examining alcohol harm and the night-time economy observed the practices of licensed premises in the Australian cities of Geelong, Victoria, and Newcastle, and noted that "late-night venues are significantly more likely to adopt practices if they are mandatory compared to voluntary. This is especially the case for strategies involving the responsible service of alcohol".¹¹⁸

The study also noted that the imposition of licence conditions on beverage types, quantities, and time limitations on beverage sales allowed servers to more easily enforce RSA guidelines.¹¹⁹ To reinforce RSA compliance, and to assist licensees to enforce RSA requirements, such licence conditions should be imposed as a standard requirement for the operation of all existing and new on-premises licensed venues in Victoria.

Evidence has previously demonstrated that there is a large disparity between the number of people who are refused service due to intoxication and the number of people being removed from premises because of intoxication.¹²⁰ This supports contentions that people continue to be served alcohol until they are heavily intoxicated and are then removed from the premises.

Other jurisdictions have achieved these objectives through regulatory measures. In New South Wales, for example, section 116A of the *Liquor Act 2007* (NSW) allows the development of regulations to impose conditions on the use of glass and various aspects of the supply of liquor in Kings Cross. These are activated under sections 53E and 53F of the *Liquor Amendments (Kings Cross) Regulation 2012*.

Section 53E of the *Liquor Amendments (Kings Cross) Regulation 2012* specifies that any drink (whether or not it contains alcohol) sold or supplied for consumption on subject premises must not be served

or supplied in a glass. Section 53F prohibits a variety of drinks from being sold or supplied during the weekend late trading period, including any drink that is designed to be consumed rapidly (such as shots), any drink containing more than 50 per cent spirits or liqueur, any ready-to-drink beverage with an alcohol by volume content of more than five per cent, and any drink prepared on the premises that contains more than one 30mL nip of spirits or liqueur.

In addition, section 53F bans the supply of more than four alcohol drinks or the contents of one bottle of wine during the weekend late trading period. This measure is designed to prevent stockpiling, whereby a patron purchases multiple alcohol beverages for personal consumption over a short period.

RSA qualifications for BYO venues

Under section 108(AB), only staff working at general, on-premises, packaged or late-night licensed venues must have completed appropriate Responsible Service of Alcohol (RSA) qualifications. Other states, such as New South Wales, require those involved in the supply of liquor at restaurants (such as BYO permit holders and their employees) to have completed accredited RSA courses. In facilitating the consumption of alcohol in a public place, permit holders should be accountable for ensuring that it is consumed responsibly. Updating section 108AB would necessitate that other sections relating to responsible service, such as section 108AD on RSA registers and section 108AE on RSA inspections are also updated.

Vending machine sales

Section 109A allows for the sale of alcohol from vending machines under certain conditions. There are no circumstances in which the sale of alcohol through a vending machine should be deemed appropriate, given difficulties in ensuring responsible service. By its very nature, automated sale of alcohol does not pass the appropriate tests for ensuring that the purchaser is not intoxicated. It is recommended that all alcohol sales through vending machines are restricted, rather than allowing special permission to be sought.

Recommendations

41. Amend the *Liquor Control Reform Act 1998* to introduce legislation to allow for the development of regulations that can enforce compliance with Responsible Service of Alcohol (RSA) guidelines. These regulations should include measures to:
 - prevent the service of alcoholic drinks in glass containers after midnight in high-risk areas
 - restrict the sale of alcohol products that are designed to be consumed rapidly
 - prevent the supply of four or more alcoholic drinks to any single patron.
42. Amend section 108A of the *Liquor Control Reform Act 1998* to require completion of Responsible Service of Alcohol (RSA) accreditation for individuals involved in the supply of alcohol at restaurants.
43. Remove section 109A of the *Liquor Control Reform Act 1998* to ensure that alcohol may not be made available through vending machines.

Data collection and accessibility

Evidence-based policy should be based on the best available information. The wide variety of policy areas relevant to regulating the sale and consumption of alcohol necessitates the use of a broad range of information sources. These include sources of crime, health, and industry statistics. While some of the necessary information may be obtained from other sources, incompatibility and gaps in information have been noted previously.

Current policy

The 2012 Auditor-General report highlighted the need for a database of alcohol harm information that could be used to improve the effectiveness and efficiency of efforts to minimise this harm. Such a database would be important in addressing information gaps that currently exist for robust strategy development, focusing enforcement and compliance on high-risk areas, and encouraging greater inter-agency cooperation. The audit recommended that the Department of Health should lead the development of a consolidated database to facilitate meaningful and accessible analysis of alcohol consumption and harm data.

Within the legislation, reporting of sales is mandated under section 66AD, which states that, “A reporting licensee who has conducted a wholesale liquor transaction in a prescribed period must provide the information specific in subsection (2) to a prescribed person on a prescribed day of every year”. The Act also specifies that regulations may be developed for data collection, and may prescribe the form and manner in which the wholesale liquor supply information must be provided, the purposes for which the information may be used, the persons to whom a prescribed person may disclose the information, as well as limitations on the use or disclosure of the wholesale liquor supply information.

Future directions

A substantial body of evidence suggests that per capita consumption is strongly associated with alcohol harm.¹²¹ For this reason, it is essential that evidence-based policy may be informed by data reflecting rates of consumption. Sales data is more reliable of consumption than other measures, including survey and tax revenue data. As such, it allows for better design and evaluation of liquor control measures and targeted services to reduce alcohol harm. However, while these data are not made publicly available, the level and quality of research examining alcohol policy is restricted. Opening access to this data would facilitate the robust analysis of policy and development of effective policy to reduce alcohol harm.

Despite the provision for collection of wholesale data in Victoria, researchers have stated that, “the current lack of adequately detailed and reliable data is hindering licensing and planning processes in local governments, as the impact from alcohol outlets in a given area cannot be quantified”.¹²² It has been argued that, “local level sales data could provide crucial evidence to enable decision-making and vastly improve the quality of evidence brought to bear in planning and liquor licensing hearings”.¹²³ In addition, the growing prevalence of alcohol delivery necessitates collection and analysis of delivery sales data to better inform evidence-based policy. Local point of sale data should reflect whether sales are in-store, online and/or delivered.

Recommendations

44. Amend section 66AD of the Liquor Control Reform Act 1998 to strengthen the collection of wholesale data to:
 - permit the release of data (subject to appropriate confidentiality and de-identification requirements) to qualified researchers and local councils for the purpose of detailed analysis
 - require wholesale liquor supply information to include the date of delivery or dispatch of the liquor that is subject to the transaction
 - explicitly provide for the use and the information in liquor licensing and planning decisions
 - mandate the collection and reporting of point of sale data reflecting whether a transaction is conducted in-store or online, and whether or not it is delivered
 - provide Local Governments with access to point of sale alcohol volumetric sales data (such as litres/units of alcohol sold per premises by local geographic regions).
45. Work with all states and territories and the Commonwealth Government to develop nationally consistent and comprehensive data collection on liquor licences and associated alcohol harm.

Other issues

Definitions

The Act defines intoxication under section 3AB as “a person is in a state of intoxication if his or her speech, balance, co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor”. Liquor Acts in other jurisdictions include in this definition intoxication by substances other than alcohol. For example, the definition of ‘unduly intoxicated’ in section 9A of the *Liquor Act 1992 (Qld)* includes instances where there are reasonable grounds for believing that affected speech, balance, coordination or behaviour is “the result of the consumption of liquor, drugs or another intoxicating substance”.

In addition, the word “drunk” is not defined but is currently used in several places within the Act. It would be more appropriate to use the word “intoxication”, for which a formal definition has been provided.

Licence exemptions

Most businesses that supply alcohol require a liquor licence or permit. There are exemptions, however, including to Bed & Breakfast businesses, as well as florists and butchers. This presents a regulatory loophole, whereby such businesses are subject to a different set of rules regarding the supply of alcohol. In particular, restrictions on the amount of alcohol allowed to be sold by florists (and gift makers) are applied by simplistic volumetric standards. For example, florists and gift makers are restricted to the supply of “not more than 1.5 litres of alcohol... to each recipient in any one day”. Lack of any requirement that operators of these businesses are qualified to provide responsible service of alcohol, coupled with a loose and vague limit, presents serious concern with respect to alcohol harm. Replacing these restrictions with those applied to other facilities (such as aged-care) will ensure that alcohol is served in a responsible manner while avoiding burdensome certification

requirements. In particular, businesses that currently receive an exemption from the licensing requirement should instead be restricted to supplying a maximum of two standard drinks to each individual patron in any 24-hour period.

Surveillance

Section 18B of the Act allows the Commission to impose conditions requiring licensed venues to conduct surveillance using security cameras. Section 18(2) allows regulation of various aspects of the camera quality and use. Currently, section 7(2) of Part 3 of the *Liquor Control Reform Regulations 2009* requires that a video recorder on licensed premises must, if it is a digital video recorder, record at least five images per second for each security camera connection to the digital video recorder; or if it is a video cassette recorder, continuously record the images from the security camera. Given developments in camera and storage technologies, and the marked reduction in cost that has occurred in recent years, the quality required by these regulations may be increased at very limited cost to industry. In particular, it is recommended that the regulations are amended to require a minimum resolution of 720p.

Onus of proving intoxication

To demonstrate intoxication under section 108(4), the onus of proof is on law enforcement to demonstrate that the person appeared intoxicated. Police have reported that it is difficult to provide the required evidence to establish that an individual was intoxicated, with licensees often arguing that a person was not visibly affected to avoid prosecution.

In Western Australia, for example, it is sufficient for an authorised officer to claim that a person was intoxicated, with this assumed unless evidence is provided to the contrary. This places the onus on licensees to defend against prosecution where police make the case that a person appeared to be intoxicated.

Recommendations

46. Amend section 3AB of the *Liquor Control Reform Act 1998* to include “drugs or another intoxicating substance” in the definition of intoxication.
47. Amend the *Liquor Control Reform Act 1998* to replace the word “drunk”, where it appears, with the word “intoxication”.
48. Amend the *Liquor Control Reform Act 1998* where business types are exempt from requiring a licence to supply alcohol, restrict such businesses to supplying no more than two standard drinks to any one individual over a 24-hour period.
49. Amend section 7(2) of Part 3 the *Liquor Control Reform Regulations 2009* to require a minimum resolution of 720p on video surveillance to improve the identification of persons of interest.
50. Amend the *Liquor Control Reform Act 1998* to reverse the onus of proof of intoxication, so that an authorised officer’s testimony is taken as proof that a patron was intoxicated unless evidence is provided to the contrary.

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