



Alcohol Policy Coalition

17 December 2019

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

Dear Sir/Madam

Phase Two of the *Liquor Control Reform Act 1998* Review

Thank you for the opportunity to comment on the Consultation Paper on Phase Two of the Review of the *Liquor Control Reform Act 1998*. A submission from the Alcohol Policy Coalition is attached.

Please contact Sarah Jackson, Senior Legal Policy Adviser, Cancer Council Victoria if you would like to discuss the submission or need further information (sarah.jackson@cancervic.org.au, (03) 9514 6463).

Yours sincerely

Erin Lalor

CEO
Alcohol and Drug Foundation

On behalf of the Alcohol Policy Coalition

Alcohol Policy Coalition submission: Consultation paper - Phase Two of the Review of the *Liquor Control Reform Act 1998*

About the Alcohol Policy Coalition

The [Alcohol Policy Coalition](#) (APC) is a collaboration of health and allied agencies that share concerns about the harmful impacts of the alcohol industry and its products in Victoria. The Alcohol Policy Coalition campaigns for regulation of the alcohol industry to protect the community from the harm it causes, and to provide balance to the industry's aggressive marketing and normalisation of alcoholic products.

The members of the Alcohol Policy Coalition are:

Australasian College of Emergency Medicine	Royal Australasian College of Surgeons
Alcohol and Drug Foundation	St Vincent's Health Australia
Cancer Council Victoria	The Salvation Army
Centre for Alcohol Policy Research (CAPR), La Trobe University	Turning Point
Foundation for Alcohol Research and Education	Uniting Church in Australia, Synod of Victoria and Tasmania
Jewish Community Council of Victoria	Victorian Alcohol and Drug Association
Public Health Association of Australia (Victoria)	Violence Prevention Group, School of Psychology, Deakin University

Contents

Summary	4
Recommendations	5
Introduction	9
Responding to the Consultation paper	11
3. The Act, its object and harm	11
3.2 Objects of the Act	11
3.3 Harm and amenity	13
4. Liquor licensing	14
4.1 Licence Categories and 4.2 Defining ‘restaurant and café’ and issues relating to licensing fast food outlets.....	14
4.3 Online packaged liquor supply and delivery provisions.....	15
4.3.1 Packaged Liquor Code of Conduct	15
4.3.2 Online supply and delivery and harm minimisation provisions.....	16
4.3.3 Licensing online supply	20
5. Other licensing issues.....	25
5.1 Licence application process	25
5.2 Objection process at the application stage.....	34
5.4 Club rules in Schedule 1 of the Act	36
5.5 Prohibitions – Business that cannot obtain a liquor licence.....	37
5.6 Extending Ordinary Trading hours	38
6. Concept of licensed premises	39
6.1 Food court businesses and on-premises licensing.....	39
7 Compliance and enforcement.....	40
7.1 Advertising and promotion	40
7.2 Review of licensing decisions.....	42
7.4 Responsible Service of Alcohol (RSA).....	42
7.5 Drunken or disorderly	43
Other	48
References	50

Summary

- Everyone should have the opportunity to live in a community that keeps them and their family safe and free from harm.
- Alcoholic products cause significant harm to individuals, families and communities.
- We know more alcohol being sold means more harm for individuals, families, and their communities. More street violence. More domestic assaults.
- In Victoria, alcohol use is present in 44.2 per cent of all family violence incidents, with intimate partner violence accounting for slightly higher proportions of alcohol involvement.¹
- The role of alcohol in family violence incidents has been recognised by the Victorian Government in its proposals outlined in the *Consultation Paper – Phase Two of the Review of the Liquor Control Reform Act 1998*.
- The Alcohol Policy Coalition welcomed the outcomes of phase one of the review of the *Liquor Control Reform Act 1998 (Act)*.
- However, more needs to be done to reduce the harm alcohol businesses are causing across Victorian families and communities.
- The Victorian Government is leading the country in responding to the devastation of family violence.
- Phase two of the review of the Act represents a continuation of work commenced during the Royal Commission into Family Violence.
- The priority focus for the outcome of phase two is ensuring policies and amendments to the Act are focused on keeping families safe from alcohol fuelled harm.
- The Alcohol Policy Coalition recommends the following policies as a matter of priority:
 - The introduction of a definition of harm within the Act. This will provide greater accountability for regulators and the alcohol industry.
 - Ensuring the cumulative impact of alcohol outlets is considered in the liquor licence application process. This will provide communities with greater protection and prevention.
 - The introduction of a Public Interest Test and Community Impact Assessment to provide evidence to satisfy the Victorian Commission for Gambling and Liquor Regulation (Commission) of the community impact the proposed licence will have.

Recommendations

1. The APC supports the introduction of a harm definition in the *Liquor Control Reform Act 1988*.
2. The APC recommends broadening the proposed definition of harm to include road trauma and physical and sexual violence in addition to family violence.
3. The APC recommends that the objects set out in subsections 4(1)(b) and (c) of the *Liquor Control Reform Act 1998* should be redrafted to remove reference to 'facilitating' or 'contributing' to the 'development' of the alcohol industry or licensed premises.
4. The APC recommends that the *Liquor Control Reform Act 1998* include a new secondary object that refers to giving appropriate regard to the reasonable expectation of the community that there be a licensed supply of alcohol and a range of licensed premises.
5. The APC recommends that the *Liquor Control Reform Act 1998* should state explicitly that harm minimisation is the primary object and that any other objects are secondary.
6. The APC supports the introduction of a harm definition in the *Liquor Control Reform Act 1988*.
7. The APC recommends broadening the proposed definition of harm to include road trauma and physical and sexual violence in addition to family violence.
8. The APC recommends that the objects set out in subsections 4(1)(b) and (c) of the *Liquor Control Reform Act 1998* should be redrafted to remove reference to 'facilitating' or 'contributing' to the 'development' of the alcohol industry or licensed premises.
9. The APC recommends that the *Liquor Control Reform Act 1998* include a new secondary object that refers to giving appropriate regard to the reasonable expectation of the community that there be a licensed supply of alcohol and a range of licensed premises.
10. The APC recommends that the *Liquor Control Reform Act 1998* should state explicitly that harm minimisation is the primary object and that any other objects are secondary.
11. The APC recommends that the Packaged Liquor Code Committee membership and reviews of the Packaged Liquor Code of Conduct include representation from health, law enforcement and harm reduction stakeholders.
12. The APC recommends that the *Liquor Control Reform Act 1998* should require that alcohol may only be delivered (or supplied at a collection point) to the person who ordered or purchased the alcohol upon signature, identification and evidence of age.
13. The APC recommends that the *Liquor Control Reform Act 1998* should provide that alcohol must not be left unattended at the delivery address.
14. The APC recommends that a new offence prohibiting a person from delivering alcohol to a person in a state of intoxication should be enacted in the *Liquor Control Reform Act 1998* and attract an appropriate penalty.
15. The APC recommends that this offence should apply to licensees as well as any other person delivering alcohol (including third party delivery agents and interstate alcohol retailers that are not required to have a Victorian licence).
16. The APC recommends when alcohol delivery is refused because the recipient is intoxicated, the *Liquor Control Reform Act 1998* should require delivery to be re-attempted no fewer than 24 hours after the previous attempt, or the alcohol to be returned to a collection point and not supplied to the recipient for at least 24 hours after the delivery attempt.
17. The APC supports the options proposed in the Consultation Paper for licensing online supply and delivery of alcohol.
18. However, the APC recommends that if an interstate retailer does not receive or appropriate orders from premises in Victoria but delivers alcohol to Victorian residents on the same day an order is received, the premises where the order is appropriated should be licensed under the *Liquor Reform Control Act 1998*.
19. The APC recommends that the *Liquor Control Reform Act 1998* require Victorian liquor licensees to have a specific licence condition (Liquor Delivery Condition) to deliver alcohol in Victoria.

20. The APC recommends that new licence applicants and existing licensees should be required to apply for a Liquor Delivery Condition to deliver alcohol in Victoria.
21. The APC recommends that an application for a Liquor Delivery Condition should be required to specify the local government areas in which the applicant delivers or proposes to deliver alcohol, and local councils and residents should have the right to object to applications.
22. The APC recommends that applications for a Liquor Delivery Condition should be required to satisfy a test based on community impact and public interest and provide a Community Impact Assessment.
23. The APC recommends that a new Responsible Service of Alcohol program should be developed for online sale and delivery of alcohol. The Act should require completion of the RSA program by licensees and employees and other persons who deliver alcohol as well as the completion of a refresher program every three years.
24. The APC recommends that the *Liquor Control Reform Act 1998* prohibit the delivery of alcohol within two hours of the sale or order of the alcohol, except for restaurant and café licences where the alcohol is being delivered with a meal.
25. The APC recommends the *Liquor Control Reform Act 1998* prohibit the delivery of alcohol between 10pm and 10am.
26. The APC recommends that *Liquor Control Reform Act 1998* require that alcohol delivered under a Victorian licence must be delivered by the licensee (including an employee) (with exceptions for restaurants and cafes, and wineries that do not offer same day deliveries).
27. The APC recommends that the Act should prohibit delivery of alcohol by a person under the age of 18 years.
28. The APC recommends that restaurants and cafes should only be allowed to deliver a reasonable quantity of alcohol with a meal and should not be permitted to deliver spirits.
29. The APC recommends the *Liquor Control Reform Act 1998* prohibit unsolicited direct electronic marking of online alcohol sale and alcohol delivery to Victorians.
30. The APC recommends that the *Liquor Control Reform Act 1998* prohibit Victorian liquor licenses from engaging in online advertising of inducements to purchase alcohol. An inducement should be any offer or benefit designed to persuade a person to purchase alcohol.
31. The APC recommends that the *Liquor Control Reform Act 1998* prevent the use by Victorians of 'buy now, pay later services' to buy alcohol online.
32. The APC recommends that the definition of high-risk applications should be extended as follows:
 - All applications for on-premises venues trading until 1am or late should be considered high risk (irrespective of whether food or entertainment is provided).
 - Applications for on-premises venues above a certain patron capacity (e.g. 300) should be considered high risk.
 - Applications for packaged liquor licences offering same day alcohol delivery should be considered high risk.
33. The APC recommends that low risk applications be defined narrowly and conservatively according to objective criteria to ensure that only clearly low risk applications are fast tracked and exempted from requirements to provide evidence as to how they will impact on the community.
34. The APC recommends that the identification of low risk applications should not rely on assessment of situational risk factors and evidence in a preliminary assessment stage.
35. The APC recommends that assessment of risk factors, particularly situational risk factors and evidence relevant to harm, should be the main exercise in the Commission's decision making and should not be relegated to a preliminary assessment stage.
36. The APC recommends that the *Liquor Control Reform Act 1998* require the Commission to have regard to the cumulative impact of existing licences in the area in assessing whether a licence application satisfies a test based on community impact and public interest and is consistent with the objects of the Act.

37. The APC recommends that the *Liquor Control Reform Act 1998* set out non-exhaustive factors that the Commission may consider in assessing cumulative impact.
38. The APC recommends new Ministerial guidelines be issued to provide guidance on assessing cumulative impact.
39. The APC recommends that the *Liquor Control Reform Act 1998* give the Minister the power to 'declare' an area where there is evidence of significant harm fuelled by alcohol or a relatively high concentration of liquor licences, as proposed in the Consultation Paper.
40. The APC recommends that objections based on harm should be allowed to any intermediate or high risk application.
41. The APC recommends that objection grounds should be:
 - a) that the licence would detract from the safety and wellbeing of the community, or
 - b) would not be in the public interest.
42. The APC recommends that if an unincorporated club is licensed to sell or supply alcohol, there is a minimum level of governance and proper management system in place to ensure all licence conditions can be expected to be complied with.
43. APC supports the continued prohibition on drive-in cinemas, petrol stations and convenience stores being granted a liquor licence.
44. The APC recommends that that no exemption should apply to the prohibition on licensing of premises used primarily by minors.
45. The APC supports the proposal that objective measure be set and used by the Commission in deciding whether to grant exceptions for convenience stores.
46. The APC recommends that the *Liquor Control Reform Act 1998* be amended to prevent the supply of liquor for on-premises consumption under extended trading hours after 2am.
47. The APC recommends ordinary trading hours should remain restricted to 11pm for any premises that has not been licensed for extended trade.
48. The APC recommends that in restaurants and cafes in food courts, alcohol only be consumed in dedicated seating areas, and there should be limits on the quantity of alcohol that may be served to customers who are not purchasing food.
49. The APC recommends that licensed premises other than restaurants and cafes in food courts must be in separate areas sectioned off with walls or barriers.
50. The APC supports the proposal to ban advertising and promotions that encourage the irresponsible consumption of alcohol or are otherwise not in the public interest, including those that appeal to minors or disrespect women.
51. The APC recommends that these types of advertising and promotion should be directly prohibited under section 115B of the *Liquor Control Reform Act 1998*, with examples for guidance provided in the Regulations.
52. The APC recommends that volume discounts of 50 per cent or more are prohibited under section 115B of the *Liquor Control Reform Act 1998*.
53. The APC supports a low-cost conference process designed following public consultation.
54. The APC recommends that Responsible Service of Alcohol training be required for all staff in licenced premises.
55. The APC recommends greater monitoring of venues to ensure compliance with Responsible Service of Alcohol.
56. The APC recommends a review of the effectiveness and relevance of current Responsible Service of Alcohol training.
57. The APC recommends a new Responsible Service of Alcohol program be developed for online sale and delivery of alcohol.
58. The APC recommends Responsible Service of Alcohol training should be reformed to provide catered training based on where a person is working. Staff working in a liquor outlet should be required to have completed the relevant RSA training module to that type of business.

59. The APC recommends Responsible Service of Alcohol training for on-premise licenced venues and live music events should include how to deal appropriately with reports of sexual assault and sexual harassment.
60. The APC recommends the definition of intoxication in the *Liquor Control Reform Act 1998* be amended to include intoxication from the consumption of liquor or other substances, as is already the case in other jurisdictions.
61. The APC recommends the reference to 'drunken' be removed from the *Liquor Control Reform Act 1998* and only 'intoxication' be referred to.
62. The APC recommends that the *Liquor Control Reform Act 1998* be amended so that once a person becomes intoxicated the venue must take reasonable steps to ensure they are able to safely exit the premises for another location.
63. The APC recommends that the obligation to take reasonable steps to ensure the safety of patron should mean the intoxicated person can remain on the premises until it is safe for them to leave. However, the venue should not be permitted to continue to sell them alcohol once they have become intoxicated.
64. The APC recommends responsible service of alcohol training should include a requirement for venue staff for on premises outlets to identify signs of sexual harassment and respond appropriately to ensure the safety of patrons in the venue. The training should be of both a basic level for all staff and an advanced level for certain staff and management. Staff trained at the basic level would respond appropriately to a report of sexual assault or sexual harassment and then refer the person to the staff member with the advanced training.
65. The APC recommends the Victorian Government should implement compliance and enforcement measures that have been empirically proven to be effective at driving behaviour change among licensees that are reckless or willful in causing harm in their pursuit of profits.

Introduction

Everyone should have the opportunity to live in a community that keeps them and their family safe and free from harm.

Alcoholic products cause significant harm to individuals, families and communities. Alcohol causes chronic disease including cancer, mental health conditions, interpersonal and family violence, injury and death.

We know more alcohol sold means more harm for individuals, families, and their communities. More street violence. More domestic assaults. More road accidents. And more people diagnosed with preventable cancers and liver disease.

Each year alcohol products are responsible for 1,200 deaths among Victorians aged 15 years and older, and more than 39,000 hospitalisations.²

Alcohol-related disease has also substantially increased in Victoria across numerous indicators. This includes alcohol-related ambulance attendances in metropolitan Melbourne, which have increased by 304 per cent between 2004-05 and 2017-18. Regional Victoria have also seen an increase in alcohol-related ambulance attendances of 83 per cent between 2011-12 and 2017-18.³

In addition to ambulance attendances, other indicators of alcohol-related harm have also risen. For example, in Victoria the number of alcohol-related hospital admissions has increased by 74 per cent from 2007-08 to 2016-17 from 21,239 to 39,974.⁴ Concerning trends have emerged from results from the Driving Change – Last Drinks project – which asks patients where they obtained and consumed their last drinks before coming to harm and presenting to an emergency department. Data from this research consistently shows that the majority of patients presenting due to alcohol purchase their alcohol from packaged liquor outlets.⁵

The sale of alcohol products fuels both the likelihood of family violence occurring and the severity of harms that result from this violence⁶ and is a significant contributor to family violence in Victoria. In Victoria, alcohol use is present in 44.2 per cent of all family violence incidents, with intimate partner violence accounting for slightly higher proportions of alcohol involvement.⁷

The number of liquor licences in Victoria has proliferated in recent years, from 19,200 total licences in 2011 to 22,145 in 2017.⁸ Packaged liquor outlets are outstripping population growth in Victoria; the rate of packaged liquor outlets per 100,000 residents has increased from 28.7 per 100,000 in 2001 to 33.9 in 2016.⁹ This rapid increase in liquor outlets can be linked to increases in harm in Victoria, including increases in family violence. A longitudinal study spanning from 1996 to 2005 using data from 186 postcodes in Melbourne found that increasing density of liquor licenses is associated with increasing rates of family violence over time with a particularly large effect seen for off-trade or packaged liquor outlets.¹⁰

The role of alcohol in family violence incidents has been recognised by the Victorian Government with the proposals outlined in the *Consultation Paper – Phase Two of the Review of the Liquor Control Reform Act 1998* (Consultation Paper).

The proposals within the Consultation Paper provide an opportunity to prevent further harm fuelled by alcohol for families and children across Victorian Communities. It is essential that the way alcohol products are sold across Victorian communities does not result in greater harm. APC welcomed the outcomes of phase one of the review of the Act, particularly reforms that protect young Victorians from the harm caused by the sale of alcohol products. These reforms included removing static advertising of alcohol products within 150 meters of a school, removing the loophole that allowed children to be served alcohol in a licensed premises, preventing delivery of alcohol to children and introducing responsible supply laws. The introduction of these reforms will go some way towards

keeping our children safe from potential harm. However, more needs to be done to reduce the harm caused by the sale of alcohol across Victorian families and communities.

The Victorian Government is leading the country in responding to the devastation of family violence. The leadership shown in Victoria began with the Royal Commission into Family Violence. Phase two of the review of the Act represents a continuation of work commenced during the Royal Commission. The priority focus for the outcome of phase two is ensuring policies and amendments to the Act are focused on keeping families safe from alcohol fuelled harm.

The introduction of a definition of harm within the Act will provide greater accountability to ensure that those selling alcohol products in our communities will not lead to increases in levels of harm.

Ensuring that the harm and community impact of alcohol outlets is considered in the licence application process is an important policy that will provide communities with greater protection and prevention of the harm fuelled by alcohol products. To do this liquor licence applicants should have to provide a Community Impact Assessment to provide evidence to satisfy the Victorian Commission for Gambling and Liquor Regulation (Commission) of the community impact the proposed licence will have. A similar process exists in other jurisdictions across the country.

The increase in online alcohol product sales and deliveries also poses risk of harm to Victorians. The current legislation is not designed to regulate this form of alcohol product sale and delivery which the Government acknowledges as requiring urgent attention. To reduce the risk posed to children deliveries of alcohol products should not be left unattended. In addition, alcohol deliveries to intoxicated people should be prohibited and alcohol deliveries within two hours of purchase should not be permitted.

Significantly, the regulation of alcohol in Victoria and alcohol fuelled harms also engage human rights, and in Victoria we have a legally entrenched human rights culture through the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (Charter). The United Nations Committee on the Convention on the Rights of the Child has commented in General Comment 15 –‘that States, acting in the best interests of children (and fulfilling their right to health) should take measures to protect children from solvents, alcohol, tobacco and illicit substances and take appropriate measures to reduce the use of such substances among children.’^a Australia is a signatory to the treaty on the UN Convention on the Rights of the Child and therefore is under a legal obligation to act consistently with treaty provisions (including the principle of the best interests of the child), as well as international commentaries on the Convention.

In addition, at a domestic level, as mentioned above, under section 38 of Charter, the Victorian Government *must* make laws, including reforms to the Act, that are consistent with the obligation in section 17 of the Charter to protect human rights, in particular, the rights of families and children. This includes an obligation to include provisions in the Act that allow for effective regulation to protect children and young people from foreseeable harms to health and life - directly engaging the section 9 right to life in the Charter. It also includes provisions that minimise harm and promote health and the right to life in section 9 of the Charter.

The APC welcomes the opportunity to provide a submission to the second phase of the review of the Act. This submission addresses the questions posed in the Consultation Paper and follows the same numbering system.

^a Committee on the Rights of the Child, General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art.24), CRC/C/GC/15, 15.

Responding to the Consultation paper

3. The Act, its object and harm

3.2 Objects of the Act

The harm caused by alcohol products is significant, not only to those who consume it but also those around them. In order to protect the community, the sale and supply of liquor must be regulated, with the primary objective of minimising harm.

In *Kordister Pty Ltd v Director of Liquor Licensing* [2012] VSCA 325 the Victorian Court of Appeal held that harm minimisation is a fundamental principle of the Act and can properly be regarded as the primary regulatory object of the Act, and therefore the primary consideration in liquor licensing decisions.^b However, as discussed in the APC's 2016 submission to the first phase of the Review, provisions of the Act and licensing decisions do not give primacy to harm minimisation. The Victorian Auditor-General reported in 2012 that the liquor licensing regime was not effectively minimising harm fuelled by alcohol.¹¹

The APC supports the statement in the Consultation Paper that the objects of the Act do not adequately address harm, which has implications for licensing decisions. This includes the absence in the Act of a definition of harm or a list of factors or evidence relating to harm to be taken into account in licensing decisions, as exists for amenity.

This contributes to an inappropriate focus of regulatory provisions and licensing decisions on amenity issues and failure to address the range of alcohol-related harms. In particular, the provisions of the Act and licensing decisions fail to address broader and cumulative alcohol-related harms and impacts, including harms associated with packaged liquor that occur over wider spatial areas than the vicinity of venues, such as family violence.

This was demonstrated in the Commission's decision on the application for a Dan Murphy's store in Cranbourne East.¹² As noted in the Consultation Paper, the Act limited the Commission's ability to consider these broader harms. The decision also demonstrated how difficult it is for local councils and communities to successfully object to liquor licence applications on the grounds of harm under the Act and is an example of the Act's failure to ensure appropriate vetting or limiting of new licences on the basis of harm minimisation.

This contributes to the proliferation of liquor outlets in Victoria, including in areas which are already saturated. It also contributes to the prioritisation of industry development, which is inconsistent with harm minimisation as the primary aim of the licensing regime.

Questions from the consultation paper

- What are your views on the proposed definition of harm?
- Are there any other 'harms' that should be specified?
- In your view are the objects of the Act consistently applied throughout its provisions or can you identify inconsistencies that need to be addressed and how?
- Is the current collection of objects coherent and consistent in terms of the aim of liquor supply regulation?

Response to questions in the consultation paper

The APC supports the proposal to include a definition of harm in the objects of the Act.

^b [19] (Warren CJ and Osborn JA), [188] (Tate J).

This is an important reform that would provide more clarity and certainty about how the Act should be interpreted and help to ensure the range of alcohol fuelled harms are effectively considered and addressed in liquor licence decisions.

It is particularly positive to see the inclusion of family violence in the definition of harm; it is crucial that this be included given the strong relationship between alcohol availability and family violence, and the high level of alcohol availability in Victoria. To strengthen the definition, road trauma and physical and sexual violence in addition to family violence should be also included.

As discussed in the APC's 2016 submission, many provisions of the Act do not give appropriate priority or weight to harm minimisation, which is inconsistent with the primacy of this object. For example, the current provisions of the Act:

- do not define harm, or set out factors or evidence relating to harm to be considered in licensing decisions (objects and definitions),
- impose high evidentiary requirements in relation to harm minimisation, and give precedence to competing secondary objects (in sections 4(1)(b) and (c)) relating to diversity and industry development (e.g. Division 4 of the Act),
- do not adequately control the supply and consumption of liquor (as required under section 4(1)(a)(i)) (e.g. Division 4 of the Act, trading hours, offences under section 108(4)),
- focus on amenity rather than harm impacts (e.g. definition of amenity under section 3A and evidence relating to amenity under section 3AA; amenity objection ground for all licence types under section 38(1); amenity inquiries under section 94), and
- do not apply equivalently to on-premises and off-premises licence types (e.g. objection ground under section 38(1A), evidence of amenity impacts under section 3AA, risk-based fee multiplier for venue capacity under the *Liquor Control Reform Regulations 2009*, the Commission's *Guidelines for responsible liquor advertising and promotions*).

Given the proliferation of liquor licences and increases in alcohol fuelled harm, as well as the link between alcohol outlet density and family violence, in the APC's view it is not appropriate for the objects of the liquor licensing regime to continue to include facilitating the development of a diversity of licensed facilities or contributing to the responsible development of the industry. The APC does not believe liquor licensing legislation should be a tool for facilitating or contributing to the development of the alcohol industry or alcohol outlets. We acknowledge, however, that when considering licence applications and regulatory interventions, it may be appropriate for the Commission to balance the need to minimise harm against the community's reasonable expectation that there be a licensed supply of alcohol and a range of licensed premises.

The APC recommends that the objects set out in subsections 4(1)(b) and (c) of the Act should be redrafted to remove reference to 'facilitating' or 'contributing' to the 'development' of the alcohol industry or licensed premises. Instead, the Act should include a new secondary object that refers to giving appropriate regard to the reasonable expectation of the community that there be a licensed supply of alcohol and a range of licensed premises.

In addition, the APC recommends that the Act should state explicitly that harm minimisation is the Act's primary object to make it clear that this continues to be the legislative intent, and that any other objects are secondary.

Recommendations

1. The APC supports the introduction of a harm definition in the *Liquor Control Reform Act 1988*.
2. The APC recommends broadening the proposed definition of harm to include road trauma and physical and sexual violence in addition to family violence.

3. The APC recommends that the objects set out in subsections 4(1)(b) and (c) of the *Liquor Control Reform Act 1998* should be redrafted to remove reference to ‘facilitating’ or ‘contributing’ to the ‘development’ of the alcohol industry or licensed premises.
4. The APC recommends that the *Liquor Control Reform Act 1998* include a new secondary object that refers to giving appropriate regard to the reasonable expectation of the community that there be a licensed supply of alcohol and a range of licensed premises.
5. The APC recommends that the *Liquor Control Reform Act 1998* should state explicitly that harm minimisation is the primary object and that any other objects are secondary.

3.3 Harm and amenity

We know that more alcohol sales fuels more harm, negatively impacting on individuals and communities. For this reason, the supply of alcohol is regulated under a licensing scheme to ensure it is subject to a high degree of regulatory control. For the same reason, licences to supply alcohol are a privilege granted by the state, not a right. In return for the privilege of a licence, and the profit it returns, licensees must accept appropriate regulatory responsibilities and requirements. The overriding object of the Act and liquor licensing regime should be to prevent the substantial harms and social impacts caused and fuelled by alcohol products.

Questions from the Consultation paper

- What do you think of the proposal? What alternatives do you think there are to the proposal?
- How important is it to clarify the meaning of harm and amenity in the Act? If it is important, how would you proposed alternatives (if you have some) achieve this?
- Are the terms ‘risky’ or ‘harmful drinking’ more useful than the term misuse and abuse? Is there another term you can propose?

Response to questions in the consultation paper

The APC supports the proposal to replace ‘misuse and abuse of alcohol’ with ‘harm’, based on the new definition of harm.

This better reflects the breadth of possible harm, accounting for a range of types of harm and locations in which harm occurs, and reflects best practice terminology; ‘misuse’ and ‘abuse’ are now considered to be outdated terms because:

- a. they carry stigma through the placing of blame on an individual; and
- b. there is now indisputable evidence that alcohol is a group one carcinogen that causes harm to the individual consumer at any level of consumption.¹³

‘Harmful drinking’ is now considered to be an outdated term because there is now indisputable evidence that alcohol is a group one carcinogen that causes harm to the individual consumer at any level of consumption.¹⁴ ‘Harmful drinking’ incorrectly implies that there is a safe level of drinking, inconsistent with a recent review which concluded that the level of alcohol consumption that minimised harm across health outcomes was zero.¹⁵

‘Risky’ drinking can be used appropriately, depending on the context. As with ‘harmful’, ‘risky’ should not be used to imply that there is a level of drinking that carries no risk. ‘Low risk’ is a useful term when used in conjunction with the National Health and Medical Research Council *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (NHMRC Guidelines), with ‘high risk’ or ‘higher risk’ being used to describe drinking in excess of Guideline 1: Reducing the risk of alcohol-related harm over a lifetime and Guideline 2: Reducing the risk of injury on a single occasion of drinking.¹⁶

‘Irresponsible drinking’ should not be used because ‘responsible’ and ‘irresponsible’ drinking are vague terms which will muddy the application of the Act rather than make it clearer. The NHMRC Guidelines note that ‘responsible’ drinking means different things to different people¹⁷, and a 2019 representative poll found that even 68 per cent of very high-risk drinkers consider themselves to be a responsible drinker.¹⁸

The concept of amenity should encompass the extent to which people in the community feel safe, welcome and able to use and move freely through public spaces, free from the risk or fear of intimidation, harassment or violence. The APC recommends that the definition of amenity should be redrafted to include the word “safe” so that licence and regulatory decisions take into account the impact that a licensed premise in a local area may have on the extent to which all people in a community feel safe and welcome to use and move through public spaces.

Recommendations

6. The APC supports the proposal to replace ‘misuse and abuse of alcohol’ with ‘harm’, based on the new definition of harm.
7. The APC recommends that the definition of amenity be redrafted to include the words “safe” so that licence and regulatory decisions consider the impact of a licensed premises on the extent that people feel welcome and safe to use public spaces in a local area.

4. Liquor licensing

4.1 Licence Categories and 4.2 Defining ‘restaurant and café’ and issues relating to licensing fast food outlets

The liquor licencing system should seek to create a system to prevent harms from the sale of alcohol in Victoria by creating responsibilities on licence holders which increase the amounts and types of alcohol they can sell.

The current licensing system is not creating an environment where irresponsible licence holders are held to account for the harm they cause. It is also resulting in a saturation of alcohol supply in many communities, well beyond what natural demand would require.

Questions from Consultation paper

- What do you think of the licence category and type approach? Can you suggest an alternative approach?
- Are there any liquor supply activities that are not captured adequately in the proposed new model?
- Are there problems that need to be addressed in the proposed model?
- Are there particular transitional arrangements you think need special attention or transitional issues you would like to highlight?
- What do you think of the proposed definition for restaurant and cafes? What else should be included? Does the proposed definition of restaurant and cafe sufficiently ensure restaurants and cafes don’t morph into bars or fast food outlets? What other factors should be included?
- How should fast food outlets be considered in the above context? What should be in guidelines for applications for licensing fast food and take away? Should there be restrictions on those types of premises?

Response to questions in the consultation paper

The APC agrees that there are currently too many renewable limited licences in Victoria with the number of limited licences having grown from 4342 in 2011 to 5023 in 2017.¹⁹ The APC supports the

Consultation Paper's approach towards rationalising the licence categories and tying them to the main form of alcohol supply of the business. The reason that licensing is needed is that selling alcohol can result in significant harm to the people that then consume the alcohol or to others. In order to prevent such harm, government needs to place restrictions on how, when and where alcohol can be sold.

The licence categories themselves are just labels. What is important is the conditions that each licence category imposes on a business supplying alcohol. Restrictions that are relevant include:

- which businesses are permitted to sell alcohol;
- hours in which alcohol can be sold;
- the amount of alcohol that can be sold;
- the types of alcohol that can be sold and if there are restrictions on the sale of some types of alcohol at specific times;
- requirements on the staff selling the alcohol, such as training requirements and the number of staff that need to be present on the premises at specified times;
- if the sale of alcohol needs to be tied to other activities of the business. For example, a restaurant being required to sell a meal with any supply of alcohol.

In our view the Victorian Government should not allow the licence system to result in businesses being able to push alcohol onto the community, to drive up consumption beyond what would have resulted but for the marketing and advertising activities of the businesses selling the alcohol.

The APC also opposes changes in the licensing system that would allow new types of business to gain a liquor licence. The Act should outline the specific conditions associated with the various categories of licence and should also outline the matters that the Commission must consider in setting licence conditions.

The APC would suggest that the conditions of restaurant and café licences under section 9A of the Act be reviewed. Currently section 9A allows the venue to sell alcohol to patrons who are not in the venue to purchase food. The existing conditions under section 9A may be contributing to a small number of venues claiming to be a restaurant or café but operating as a bar. It may be worthwhile to restrict the amount of alcohol that can be sold to a person who is not ordering food within the restaurant or café.

Recommendations

8. The APC opposes changes in the licensing system that would allow new types of business to gain a liquor licence.
9. The APC recommends that the *Liquor Control Reform Act 1998* or regulations provide greater specification of the types of conditions that the Commission should impose for different licence categories, and the Act outlines the matters that the Commission must consider in setting licence conditions to prevent harm being caused by the sale of alcohol from the particular business in question.
10. The APC recommends the conditions of restaurant and café licences under section 9A of the *Liquor Control Reform Act 1998* be reviewed to impose limits on the supply of alcohol to patrons who are not purchasing and consuming food.

4.3 Online packaged liquor supply and delivery provisions

4.3.1 Packaged Liquor Code of Conduct

Questions from Consultation paper

- Are there any issues with this approach?

Response to questions in the consultation paper

The APC supports the approach proposed in the Consultation Paper. However, we recommend that the Packaged Liquor Code Committee as well as consultation on reviews of the Code (as referred to in clauses 3 and 12 of the Code) should not be confined to packaged liquor licensees and should include other stakeholders, including health, law enforcement and alcohol harm reduction stakeholders.

Recommendation

11. The APC recommends that the Packaged Liquor Code Committee membership and reviews of the Packaged Liquor Code of Conduct include representation from health, law enforcement and harm reduction stakeholders.

4.3.2 Online supply and delivery and harm minimisation provisions

Effective regulation of the online supply and delivery of alcohol in Victoria is needed to protect children and other vulnerable people at risk of harm.

In recent years there has been an increase in alcohol retailers aggressively promoting online sale and home delivery of alcohol products in Victoria. This has made alcohol products more accessible than ever in our state, exacerbating the harms caused by existing liquor licenses that sells cheap alcohol products and placing children and other vulnerable people at significant risk of harm. The Act has failed to keep pace with the changing nature of alcohol product retail, and the alcohol industry has acted quickly to exploit this regulatory gap. In the past few years, major retailers have begun delivering alcohol directly to Victorians' doorsteps, and rapid delivery services have promoted delivery of alcohol in less than 30 minutes.

Greater availability of alcohol from online sales and home delivery will cause increased harm in Victorian communities. A strong body of Australian and international research shows that increases in the availability of alcohol through increases in the number of liquor outlets in a community leads to increases in violence, family violence, injury and chronic disease.²⁰ Victoria has the highest number of liquor outlets of any state or territory in Australia. The harms caused by the enormous number of liquor outlets pushing alcohol into Victorian communities are likely to be exacerbated by retailers selling alcohol products online and further increasing the supply of alcohol.

Industry forecasts have highlighted online sales as a key growth area for alcohol products and predict increases at 14.1 per cent per annum over the next five years through 2018-19.²¹

Providers such as Jimmy Brings advertise their services with online marketing slogans such as, "you can expect it on your doorstep in just 30 minutes, which means the party doesn't have the chance to slow down before the next round."²² Jimmy Brings also aggressively promotes its services by letterboxing Victorians with fridge magnets and other marketing material.

Under this model, alcohol products are extremely easy to access, and allowing people to continue a drinking session with little interruption, compounding the risk of harm.

Australian research indicates that 28 per cent of people who received a rapid alcohol delivery (within 2 hours) would have otherwise had to stop drinking alcohol, and that 69 per cent drank at a risky levels on the occasion of receiving a rapid delivery. Twenty-two per cent of people who received a rapid delivery said part of the reason for using the service was because they were over the blood alcohol limit to drive. The research also indicates that people who recently received a rapid alcohol delivery were more likely to drink alcohol at risky levels in general, compared to people who recently received a non-rapid alcohol delivery.²³

The potential harms caused by easy access to online sales and delivery of alcohol products put the whole community as well as vulnerable people at risk. These vulnerable people include children, young people, people at risk of family violence and suicide, and people who use alcohol at risky levels.

A study has shown that online sale of alcohol and home delivery is a 'previously unidentified source of alcohol for underage drinkers that could be curtailed with effective alcohol policies.'²⁴

Further, evidence in overseas jurisdictions shows that ineffective regulation of online sales of alcohol and deliveries has led to more easy access to alcohol by those under 18 years. For example, a study found that almost half of online alcohol orders placed by underage drinkers in the United States were delivered. Less than 40 per cent of orders were rejected because of age-related reasons, such as age verification, delivery driver ID check, or no-one being at home to receive the alcohol. Age verification at delivery was inconsistently conducted and, when attempted, failed about half of the time.'²⁵ Research undertaken in a survey involving 14-17-year old youth in Wales, found that 15 per cent of respondents could successfully purchase alcohol online for themselves or someone else. Most found it 'easy to do so' and that age verification systems were quickly and easily bypassed.²⁶

More recently, an Australian survey of 528 participants aged 18 to 69 who used an online alcohol delivery service in the last month found that more than one-third of respondents aged 25 years and under did not have their ID checked when receiving their last order. A further 24 per cent did not personally receive their delivery (i.e. the delivery was left unattended at home or they had the order accepted by someone else). The results of this study indicate that young people who consume alcohol can access alcohol through an unattended delivery at their home or are able to organise for another person to collect the order. This emphasises the need for more effective regulation in relation to deliveries of alcohol that are unattended.²⁷

Questions from consultation paper

- What do you think of the proposal to provide for obligations for online liquor supply in the Act?
- Are these the right provisions to regulate online supply? Do you think any further requirements should apply to the sale of liquor online?
- Would licensing the premises where the order is taken as well as the premises where supply is appropriated to the customers' orders on the same licence for Victorian licensees create any unintended consequences?

Response to questions in the consultation paper

Online supply and delivery of alcohol provisions in the Act

Currently, the provisions of the Act are designed to regulate licenses based on their physical location and assume face to face interaction with consumers. New business models in the online sale and delivery of alcohol products allow alcohol retailers to avoid the responsible service of alcohol principles in the Act because of the lack of direct contact between the licensee and the customer.

Online sale and delivery of alcohol products poses a substantial risk of harm to vulnerable people and communities in Victoria. It is essential that all licensees that supply alcohol online and deliver alcohol, as well as other people that deliver alcohol, are regulated appropriately under the Act.

The APC strongly supports the proposal to provide for obligations for online liquor supply and delivery in the Act.

Obligations that will apply to all licensees who supply liquor online

a) Unattended deliveries

Currently, under the LCRA, alcohol can be left unattended at the delivery address, allowing access by children or people who are already intoxicated.

The proposed options in the Consultation Paper for regulating unattended deliveries of alcohol would allow alcohol to be left unattended in circumstances where the customer has ordered alcohol before from the licensee, left instructions on where to leave the delivery, and an order is placed the day before the alcohol is delivered or earlier.

The APC supports these options as an important step forward in regulating unattended deliveries. However, this may continue to leave open some risk of children accessing alcohol – for example, if children are at home unsupervised when an unattended delivery arrives.

The APC's preferred approach would be for the Act to prohibit alcohol deliveries from being left unattended at the delivery address in any circumstances to ensure that alcohol deliveries cannot be accessed by children. We believe that any inconvenience to consumers would be minor and would be outweighed by the object of harm minimisation, noting that that alcohol is a toxic and harmful substance and that many deliveries of benign items must either be received in person or collected from a post office or collection depot.

b) Website notice

We support the proposal for a licensee to be required to display a notice on its website or anywhere where an order can be placed about the prohibitions on minors being supplied, purchasing or receiving liquor. (However, we note that this is unlikely to deter minors from attempting to order alcohol online and further safeguards are required as recommended in this submission.) We recommend that the notice also set out the prohibition on intoxicated people receiving alcohol.

c) Age verification

The APC supports the proposal that an online ordering system must have adequate procedures to verify that customers are 18 or over and not only rely on the manual date of birth age verification check by the customer.

d) Evidence of age

The APC supports the proposal that the licensee is responsible (as well as the delivery driver) to ensure evidence of age (as defined in section 3(1) of the Act) is sought upon delivery of the alcohol purchased online. These requirements should apply to licensees as well as any other person delivering alcohol (including third party delivery agents, exempt businesses and interstate alcohol retailers that are not required to have a Victorian licence).

However, the APC does not support the proposal that there be a defence available to the licensee that they provided reasonable training for an employee who delivers alcohol. There is no such defence available to a licensee where alcohol is supplied to a person under the age of 18 years on-premises in breach of section 119 of the Act, and it is fundamental to meeting the harm minimisation object of the Act that alcohol is not supplied to children.

e) Delivery to intoxicated people

Allowing alcohol deliveries to, or that can be readily accessed by, people who are intoxicated exposes these people and others to significant risk of harm and is inconsistent with Responsible Service of Alcohol (RSA) principles and the primary harm minimisation object of the Act.

Currently, there is no restriction in the Act on the delivery of alcohol to a person who is intoxicated or drunk. Section 108(4) of the Act prohibits a licensee (or permittee) from supplying liquor to a person who is in a state of intoxication – however the Act does not extend this offence to a licensee or another person who *delivers* alcohol to a person in a state of intoxication.

The APC supports the proposal to prohibit the delivery of alcohol to people who are intoxicated. The APC recommends that the Act should include a new offence of delivering alcohol to a person in a state of intoxication. The offence should be drafted in the same manner as section 108(4), except that it should apply to any person that delivers alcohol (not just a licensee or permittee). (The definition of intoxication should be changed as recommended in section 7.5 of the submission.)

When alcohol delivery is refused because the recipient is intoxicated, the Act should require delivery to be re-attempted no fewer than 24 hours after the previous attempt, or the alcohol to be returned to a collection point and not supplied to the recipient for at least 24 hours after the delivery attempt.

f) *Attended deliveries*

As discussed above, a 2019 research study of the ways people use online sales and delivery services to purchase alcohol, found that more than one-third of respondents aged 25 years and under did not have their ID checked when receiving their last order. Overall, 12.1 per cent received their order in person and did not have their ID checked, while a further 24 per cent did not personally receive their delivery (the order was left at unattended home or they had the order accepted by someone else).²⁸

In addition, it is currently possible for a sober person to receive an alcohol delivery on behalf of an intoxicated person who ordered the alcohol. This may put vulnerable people at risk, such as people drinking at risky or heavy levels.

The APC supports the proposed requirement for the purchaser or alcohol to be present to receive the delivery and to have their age and identify verified with an accepted evidence of age document (according to the definition in section 3(1) of the Act). In addition, the APC recommends that the delivery recipient should be required to provide a signature (as is generally required for non-alcohol deliveries).

The Act should provide that if the person who ordered the alcohol is not present at the address to receive the delivery, delivery should be re-attempted or the person who placed the off-premises order for the delivery of alcohol should be required to collect the order of alcohol from a staffed post office or collection depot upon providing evidence of age and a signature. (The delivery should not be allowed to be left unattended, as recommended above.)

The APC also recommends that the Act should prohibit the supply of alcohol at a collection point to a person who is younger than 18 years of age, or to a person in a state of intoxication.

These requirements should apply to licensees as well as any other person delivering alcohol (including third party delivery agents, exempt businesses and interstate alcohol retailers that are not required to have a Victorian licence).

As noted above, we believe that any inconvenience to consumers of having to receive or collect alcohol deliveries in person would be minor and is outweighed by the risk of harm in allowing unattended deliveries of alcohol.

g) *Notification of online selling and delivery of alcohol*

See the APC's recommendation below on requiring a specific licence condition to sell alcohol online and deliver alcohol.

Recommendations

12. The APC recommends that the *Liquor Control Reform Act 1998* should require that alcohol may only be delivered (or supplied at a collection point) to the person who ordered or purchased the alcohol upon the person providing a signature, identification and evidence of age.

13. The APC recommends that the *Liquor Control Reform Act 1998* should provide that alcohol must not be left unattended at the delivery address.
14. The APC recommends that a new offence prohibiting a person from delivering alcohol to a person in a state of intoxication should be enacted in the *Liquor Control Reform Act 1998* and attract an appropriate penalty.
15. The APC recommends that this offence should apply to licensees as well as any other person delivering alcohol (including third party delivery agents and interstate alcohol retailers that are not required to have a Victorian licence).
16. The APC recommends when alcohol delivery is refused because the recipient is intoxicated, the *Liquor Control Reform Act 1998* should require delivery to be re-attempted no fewer than 24 hours after the previous attempt, or the alcohol to be returned to a collection point and not supplied to the recipient for at least 24 hours after the delivery attempt.

4.3.3 Licensing online supply

Response to questions in the consultation paper

The APC supports the proposed options for licensing online supply and delivery of alcohol.

However, if both premises where an alcohol order is taken and where an order is appropriated are interstate, and the alcohol retailer delivers alcohol to Victorian residents on the same day as the order is received, the APC recommends that the premises from which the order is appropriated should be required to be licensed under the Act.

It is important that retailers that deliver alcohol to Victorians within short timeframes are subject to the Victorian liquor licensing regime to ensure they can be vetted and regulated to minimise the risk of harm consistent with the primary object of the Act.

In addition, an interstate licence recognition system like that recently introduced in South Australia could be considered. Interstate businesses delivering alcohol into Victoria could be required to register with the Commission so that they have clear picture of the number of online vendors operating in the state.

Recommendations

17. The APC supports the options proposed in the Consultation Paper for licensing online supply and delivery of alcohol.
18. However, the APC recommends that if an interstate retailer does not receive or appropriate orders from premises in Victoria but delivers alcohol to Victorian residents on the same day an order is received, the premises where the order is appropriated should be licensed under the *Liquor Reform Control Act 1998*.

Additional provisions for online supply and delivery

The APC recommends the following additional requirements to ensure the effective regulation of online supply and delivery of alcohol, consistent with the harm minimisation aims in the Act:

Requirement for a Liquor Delivery Condition for the online supply and delivery of alcohol

As outlined above, the APC is concerned about the proliferation of retailers offering online sale and home delivery of alcohol and the lack of regulation in the Act. Currently, there are several different licence types that authorise a licensee to supply packaged liquor online. These include packaged liquor, general, renewable limited or a producer's licence. Online sales and delivery of alcohol may

be made by several providers with differing service models. These include wineries (including interstate and overseas), major supermarket chains, restaurants and rapid delivery outlets. Businesses that wish to supply alcohol online usually choose to apply for a packaged liquor licence or a renewable limited licence. However, each provider uses differing licence categories which result in differing conditions and a lack of consistent regulation.

Only packaged liquor licences are subject to the Packaged Liquor Code of Conduct that contains specific provisions about the online supply of alcohol, which has led to further inconsistencies in the conditions that apply to the online sale and home delivery of alcohol in Victoria.

Further, a licensee who wishes to engage in the online sale and delivery of alcohol is not required to seek approval from the Commission before they commence delivering alcohol (if they are authorised to supply packaged liquor under their licence). This makes regulation and oversight of online supply and delivery of alcohol in Victoria difficult, allows the proliferation of alcohol delivery services to continue and undermines the harm minimisation object of the Act.

The APC recommends that a new requirement should be introduced in the Act requiring a licence applicant or an existing licensee to apply to the Commission for a specific licence condition (Liquor Delivery Condition) permitting them to supply alcohol online and deliver alcohol in Victoria.

An application for a Liquor Delivery Condition should be required to specify the local government areas in which the applicant delivers or proposes to deliver alcohol.

Local Governments and community members should have the right to object to an application for a Liquor Delivery Condition in their area.

An application for a Liquor Delivery Condition should be required to satisfy the APC's recommended Community Impact and Public Interest test for liquor licence applications. This is discussed below in section 5.1.

The APC believes that a Liquor Delivery Condition requirement is needed to allow the Commission and local governments to have knowledge and oversight of retailers delivering alcohol in local communities. This would allow the Commission to consider the risk of harm and community impact in applications for Liquor Delivery Conditions, and to impose specific conditions to minimise the risk of harm (e.g. restrictions on delivery areas and times and restrictions on quantity or types of alcohol that may be delivered), or refuse to grant Liquor Delivery Conditions where this would contribute to harm and cumulative impact and be inconsistent with the public interest and the harm minimisation object of the Act. It would also enable local councils and community members to object to applications for Liquor Delivery Conditions and provide relevant evidence.

Responsible Service of Alcohol Program

Currently there is no requirement in the Act for a staff member of a licensee, or a person that delivers alcohol who is not the licensee (or an employee) to complete a Responsible Service of Alcohol (RSA) program in relation to the delivery of alcohol.

There is a need to introduce a requirement in the Act for licensees, employees and other persons that deliver alcohol to undertake a specific RSA program in relation to off-premises sale and delivery of alcohol, which is a specific mode of supply of alcohol involving particular risks that differ from those associated with on-premises supply of alcohol.

The APC recommends that a new RSA program for online sale and delivery of alcohol should be developed that is tailored to address issues impacting on the health and safety of the community in relation to this mode of supply.

The Act should require licensees and employees who deliver alcohol, as well as any other person who delivers alcohol (e.g. third-party agents delivering from restaurants and cafes or wineries, and exempt businesses) to complete the RSA course, as well as a refresher program every 3 years

Mandatory time restriction between purchase and home delivery of alcohol

As set out above, the APC is particularly concerned about online ‘rapid delivery’ retailers who deliver alcohol within short time intervals following the sale or supply of the alcohol.

For example, the rapid delivery retailer Jimmy Brings deliberately targets parties, offering large amounts of alcohol through ‘party starter’ bundles, ‘weekender packs’ and ‘big night in’ bundles with large discounts, and using phrases like “right now your cart is empty; hope your friends like water” and “Need to recharge? This quickie will do the trick”.²⁹

The rapid delivery business model targets young people. Young drinkers (18-34-year olds) are more likely than older drinkers (35+ year olds) to use on-demand delivery services that deliver alcohol in an hour or two such as Jimmy Brings, Tipple, Boozebud and Uber Eats.³⁰

Rapid delivery of alcohol enables impulsive purchases and promotes the continuation of an existing alcohol use session when the alcohol supply has been exhausted due to risky levels of alcohol use. It is therefore a business model that enables increasing intoxication. This is likely to lead to significant harm to vulnerable people, including young people, people at risk of suicide and people experiencing family violence.

A recent Australian survey of 528 participants aged 18 to 69 who used an online alcohol delivery service in the last month found that 28 per cent of respondents who received a rapid alcohol delivery would have otherwise had to stop drinking alcohol, and that 69 per cent drank alcohol at a risky level on that occasion. Twenty-two per cent of people who received a rapid delivery said part of the reason for using the service was because they were over the blood alcohol limit to drive. The research also shows that respondents who recently received a rapid alcohol delivery were more likely to drink alcohol at risky levels in general, compared to people who recently received a non-rapid alcohol delivery.³¹

The APC therefore recommends that the Act should prohibit the delivery of alcohol within 2 hours of the order or sale of the alcohol.

An exception could be created for restaurant and café licences, subject to effective safeguards to minimise the risk of harm. These safeguards should include limiting alcohol delivery by restaurants and cafes to reasonable quantity of alcohol with a meal and not allowing delivery of spirits, as recommended below.

Hours of delivery

Time is a critical factor affecting levels of alcohol harm. Evidence shows that the increased availability of alcohol within extended hours leads to alcohol fuelled harm to the community, which include assaults, suicides and domestic violence (see discussion below in section 5.6 and the APC’s 2016 submission to the first phase of the Review. Late night deliveries of alcohol also pose a significant risk of harm as they allow people to continue to drink at home, uninterrupted and may exacerbate harms associated with packaged liquor, including family violence.

Alcohol-related assaults increase substantially between 6pm and 3am (peaking between midnight and 3am), with 37 per cent of alcohol-related assaults occurring in the home, and more than half (57 per cent) of those being domestic violence.³²

Acute alcohol consumption increases the risk of attempted suicide,³³ and at a population level, greater levels of consumption are associated with increased suicide risk.³⁴ In Australia, suicides and

sudden or unnatural deaths involving alcohol predominantly happen at night, in the home environment.³⁵

Research linking alcohol and family violence is highly relevant to the online sale and delivery of alcohol, given the relative ease of access to online sale and delivery of alcohol and its rapid availability.

In light of the strong evidence of the relationship between alcohol availability at night and levels of harm, the APC recommends that the delivery of alcohol should not be allowed between the hours of 10pm and 10am. This should apply to licensees as well as any other person delivering alcohol (including third party delivery agents and interstate alcohol retailers that are not required to have a Victorian licence).

Delivery must be by the licensee or employee of the licensee

To allow strict licence conditions to be imposed in relation to alcohol delivery, and to better ensure responsible delivery of alcohol by making the licensee directly subject to alcohol delivery requirements, the APC recommends that the delivery of alcohol may only be undertaken by the licensee or by an employee of the licensee.

An exception to this requirement could be created in relation to lower risk alcohol delivery, that is delivery by wineries (other than wineries that deliver on the same day as the purchase of the alcohol) or restaurants and café licensees, which should only be allowed to deliver a reasonable quantity of alcohol with a meal and should not be allowed to deliver spirits (as set out below).

Prohibition on alcohol delivery by a minor

We recommend that the Act should prohibit delivery of alcohol by a person under the age of 18. A child younger than 18 years would be less likely than an adult to challenge a person's age or intoxication level or have the experience to judge it. They could also be put at risk by being required to withhold a delivery from an intoxicated person.

Restaurant and café licensees

Restaurant and café licensees selling alcohol for off-premises consumption should only be permitted to sell a reasonable quantity of alcohol with a meal and should not be permitted to sell spirits.

A meal should be defined as 'food of sufficient quantity and comprised of such courses as to be ordinarily accepted as a meal'. The Act or guidance materials should provide examples of food and quantities that would be considered to constitute meals.

Consideration should be given to how to define a reasonable quantity of alcohol. This should take into account the NHMRC Guidelines.

Exempt categories

Victorian businesses that are exempt from the requirements of the Act under sections 6A-6H of the Act should also be prevented from delivering more than a reasonable quantity of alcohol (which should be defined taking into account the NHMRC Guidelines), and from delivering spirits.

Exempt businesses that deliver alcohol should be subject to the recommended requirements for alcohol delivery, including delivery time restrictions, RSA requirements, requirement to deliver to the person who ordered the alcohol and not leave alcohol unattended, and the prohibition against delivering to a person who is intoxicated.

Advertising and promotion

The APC is concerned about online alcohol retailers engaging in direct online advertising, including through smart phone apps, and offering inducements that are likely to encourage immediate and impulsive purchases of alcohol. This type of online advertising carries particular risks of harm that are distinct from advertising of alcohol from bricks and mortar stores and that are likely to have particular impacts on vulnerable people, as it encourages people to react to promotions immediately and impulsively and allows repeated and constant direct prompts on a person's phone.

For example, the APC is aware of Jimmy Brings sending promotions of inducements to buy alcohol directly to people's phones.

The APC is also concerned about the availability of 'buy now, pay later' services to purchase alcohol online. These services also encourage impulsive purchases of alcohol, remove price barriers that might otherwise prevent people buying any or large quantities of alcohol, and pose particular risks to vulnerable people.

The APC recommends that the Act should prevent unsolicited direct electronic marketing of online alcohol sale and alcohol delivery to Victorians.

In addition, the Act should prevent Victorian liquor licenses from engaging in online advertising of inducements to purchase alcohol. An inducement should be any offer or benefit designed to persuade a person to purchase alcohol.

The Act should also prevent the use by Victorians of 'buy now, pay later services' to buy alcohol online.

Recommendations

19. The APC recommends that the *Liquor Control Reform Act 1998* require Victorian liquor licensees to have a specific licence condition (Liquor Delivery Condition) to deliver alcohol in Victoria.
20. The APC recommends that new licence applicants and existing licensees should be required to apply for a Liquor Delivery Condition to deliver alcohol in Victoria.
21. The APC recommends that an application for a Liquor Delivery Condition should be required to specify the local government areas in which the applicant delivers or proposes to deliver alcohol, and local councils and residents should have the right to object to applications.
22. The APC recommends that applications for a Liquor Delivery Condition should be required to satisfy a test based on community impact and public interest and provide a Community Impact Assessment.
23. The APC recommends that a new Responsible Service of Alcohol program should be developed for online sale and delivery of alcohol. The Act should require completion of the RSA program by licensees and employees and other persons who deliver alcohol as well as the completion of a refresher program every three years.
24. The APC recommends that the *Liquor Control Reform Act 1998* prohibit the delivery of alcohol within two hours of the sale or order of the alcohol, except for restaurant and café licences where the alcohol is being delivered with a meal.
25. The APC recommends the *Liquor Control Reform Act 1998* prohibit the delivery of alcohol between 10pm and 10am.
26. The APC recommends that the *Liquor Control Reform Act 1998* require that alcohol delivered under a Victorian licence must be delivered by the licensee (including an employee) (with exceptions for restaurants and cafes, and wineries that do not offer same day deliveries).

27. The APC recommends that the Act should prohibit delivery of alcohol by a person under the age of 18 years.
28. The APC recommends that restaurants and cafes should only be allowed to deliver a reasonable quantity of alcohol with a meal and should not be permitted to deliver spirits.
29. The APC recommends the *Liquor Control Reform Act 1998* prohibit unsolicited direct electronic marketing of online alcohol sale and alcohol delivery to Victorians.
30. The APC recommends that the *Liquor Control Reform Act 1998* prohibit Victorian liquor licenses from engaging in online advertising of inducements to purchase alcohol. An inducement should be any offer or benefit designed to persuade a person to purchase alcohol.
31. The APC recommends that the *Liquor Control Reform Act 1998* prevent the use by Victorians of 'buy now, pay later services' to buy alcohol online.

5. Other licensing issues

5.1 Licence application process

Communities should have more control over how alcohol sold in their neighbourhood. It is important that the liquor licence application process in the Act appropriately vets, filters and limits new liquor licences to ensure they do not lead to alcohol fuelled harm and negative impacts in our communities. The licence application process should also contain measures to stem the proliferation of liquor licences in Victoria, which fuels increasing family violence, street violence and harm across the state.

As identified in the Consultation Paper and the 2017 Victorian Auditors General's Office (VAGO) report *Regulating Gambling and Liquor (2017 VAGO Report)*,³⁶ and as discussed in the APC's 2016 submission to the first phase of the Review of the Act, the licence application provisions in the Act does not provide for adequate assessment of the risk of harm posed by liquor licences in the licence assessment process. Consequently, the licence application provisions in the Act do not ensure that new applications are consistent with the Act's primary harm minimisation object.

As set out in the APC's 2016 submission, the problems with the licence application process include the following:

- It places the evidentiary burden on objectors to satisfy objection and refusal grounds relevant to harm and imposes no evidentiary requirements on licence applicants.
- These grounds establish an unrealistically high evidentiary threshold, and do not allow sufficient consideration or weighting of harm in licensing decisions.
- The difficulty, time, resources and cost involved in objecting to licence applications places an unreasonable burden on local council and community objectors and creates a barrier to engagement in the licensing process.
- The overwhelming majority of applications are uncontested, and the Commission is unlikely to consider evidence of harm in these decisions.
- The focus of the licensing scheme on individual licence applications does not allow effective consideration of cumulative impact and harm levels across local areas.
- The system is inconsistent with the primacy of the harm minimisation object of the Act and is resulting in the proliferation of liquor licences in Victoria.

Liquor licence applicants are not subject to any onus of proof, do not have to provide a community impact assessment, and do not have to provide evidence to meet any grounds or tests relevant to harm minimisation. In contrast, an objection to a liquor licence application must include evidence to meet grounds set out in the Act. The grounds include that the licence would be 'detrimental to the amenity of the area' (in relation to any type of licence), or would 'encourage the misuse or abuse of

alcohol' (in relation to applications for packaged liquor (bottle shop) licences only).³⁷ This means that factors relevant to the harm minimisation object of the Act are subject to high evidentiary requirements in licence determinations, whereas no evidentiary requirements at all apply in relation to considerations supporting licence applications, or competing secondary objects in section 4(1)(b) and (c), which support the interests of the alcohol industry.

In 2012, VAGO reported that the liquor licensing process is “complex, inconsistent and lacks transparency”, that “grounds for objecting to a licence are narrow”, and “the evidentiary requirements and decision-making process ... are unclear.” The Auditor-General concluded that the liquor licensing process is weighted in favour of the liquor and hospitality industries and is not effectively minimising alcohol-related harm.³⁸

The 2017 VAGO Report found that the Victorian Commission for Gambling and Liquor Regulation (Commission) did not consider the relevant grounds in the Act when deciding licence applications if no objection to the application had been made, but had been incorrectly assuming that a lack of objections indicated that an application was in accordance with the grounds.³⁹ This means the potential impact of new licences on alcohol fuelled harm or local amenity was not being considered unless there was an objection to the licence application.

This is a significant problem, as objections are only made in relation to a very small proportion of liquor licence applications. For example, in 2018-19, objections from Victoria police, local councils or community members were received in relation to only 1.5 per cent of finalised licence applications.⁴⁰

The low rate of objections to liquor licence applications may be related to factors such as the significant resources, time and costs (including the need to engage legal representation and expert witnesses), and the complexity of legal analysis and evidence, required to make objections.^{41 42} Further, the very low rate of success when objections have been mounted has also deterred both local government and the police from making objections, as it is seen as a waste of time and resources.

The effect of these problems is that the current licence application process is weighted heavily in favour of granting applications. The process does not ensure that potential harm and community impacts, including cumulative impacts, of new licences are effectively considered, and is not appropriately filtering or limiting new licences. In both 2018-19 and 2017-18, the VCGLR granted 97 per cent, and refused only one per cent, of all finalised licence applications (three per cent were withdrawn by the applicant).⁴³⁴⁴

The current system has allowed the alcohol industry to open vast numbers of new alcohol outlets in Victoria, driving increases in harm.

The number of liquor licenses in Victoria has increased close to six-fold from fewer than 4,000 in 1986⁴⁵ to more than 23,000 in 2019.⁴⁶ This increase in liquor outlets has led to widespread availability of alcohol, driving outlets to aggressively push and market alcoholic products in the community, and fuelling harm on the streets and in people's homes. A higher number of alcohol outlets in an area is linked to increases in harm to the local community, including street violence, family violence and health problems.⁴⁷

Questions from consultation paper

- What do you think of the proposed changes to the application process? What alternatives, if any, would you propose?
- What factors present the greatest risk of harm and should be considered in determining the risk of harm at application stage?
- What applications or activities should be considered low risk in this context?

- How should the cumulative impact of licensed premises in an area be considered in the licence application process? What are the useful elements of the Decision-Making Guidelines on Cumulative Impact (2012) (see Attachment C) that should be utilised to develop a sound harm minimisation approach?

Response to questions in the consultation paper

The APC strongly supports the Consultation Paper's proposal to change the liquor licence application process to require appropriate consideration of harm, including harm from family violence.

The APC supports in part the proposed approach of assessing the risk of licence applications to guide the assessment process and expectations for an application.

We strongly support the following proposals set out in the Consultation Paper:

- Intermediate and high-risk applications should be required to submit details about how the proposed licence will impact on the local community.
- The Commission's assessment of potential harm from a proposed licence should be required to include consideration of crime statistics, alcohol-related health and medical information for the area, and an assessment of existing licensed premises in the locality and their compliance history.
- High risk applications should be required to submit feedback from local community consultation regarding the application.

As part of this approach, we make the following key recommendations:

Introduce Community Impact and Public Interest Test for intermediate and high-risk applications

A new test based on community impact and the public interest should be introduced for all liquor licence applications assessed as intermediate or high risk.

This would be consistent with approaches taken in the Northern Territory, Western Australia and South Australia of requiring liquor licence applicants to satisfy tests based on community impact and/or public interest.^{48, 49, 50}

The Act should allow the Commission to grant a liquor licence application only if it is satisfied that the licence:

- a) will not detract from the safety and wellbeing of the community, and
- b) is in the public interest.

The Act should set out factors, including the following, that the Commission should consider in determining whether a licence application meets this test:

- The risk of harm or ill-health to people, or a group of people;
- The risk of negative social and amenity impacts in the local area; and
- The cumulative impacts of liquor licences in the local area.

Introduce a Community Impact Assessment

To apply for a liquor licence, the applicant should have to provide evidence to satisfy the Commission of the community impact and public interest test. This should include providing a Community Impact Assessment (CIA).

The Act should require the Minister to publish CIA guidelines. The CIA guidelines should provide guidance on the level of risk that an application is likely to pose based on risk criteria, and on the level of detail and evidence required in the CIA according to the application's risk level

The applicant should be guided by the CIA guidelines, and should be advised to consult with the Commission, to determine the level of detail and amount of evidence they should provide in the CIA. Applicants should be advised that failure to provide sufficient evidence and detail may result in the application failing to meet the community impact and public interest test and the application being refused. High risk applications should be expected to provide a higher level of detail and evidence in the CIA to satisfy the test, as it is reasonable to expect that these licences would be more likely to have a negative impact on community safety and wellbeing. This would follow the approach in the Northern Territory where the 'Community impact assessment guidelines' state that it is up to the applicant to determine how much information to provide to the Northern Territory Liquor Commission and the expected level of detail is subject to the complexity of the application and the impact the premises will have on the surrounding community. The guidelines recommend that applicants discuss their application with the Commission to determine what level of detail is expected and the definition of the 'community area' that the community impact assessment should address.⁵¹

The CIA guidelines should set out factors that the licence applicant must address in providing a CIA. The factors should include the following:

a. Features of the licence

Factors to be taken into account should include features of the licence that are relevant to its potential impact on the safety and well-being of the community, such as:

- licence type
- location
- trading hours
- venue capacity or retail floor space
- patron or customer numbers
- types of alcohol to be sold
- past and/or projected alcohol sales volumes
- in the case of applications for licence variation or relocation, compliance history and trading record of the licensee, management of the licensed premises, and any licence conditions.

b. Features of the local area

The factors should also include characteristics of the area in which the premises would be situated (or in the case of a home delivery licence, the area it would service) that are relevant to the impact of the licence on the safety and wellbeing of the community, such as:

- rates or trends of alcohol-related harm
- 'at risk' groups or sub-communities, such as children, young people and families, Aboriginal people and communities, and migrant groups from non-English speaking countries
- community facilities, centres and areas, such as schools, childcare centres and educational institutions, hospitals, drug and alcohol treatment centres, recreational areas, area where young people may congregate or be attracted to
- socio-economic and social factors, such as rates of crime, violence and family violence and homelessness.

The geographical area of assessment should depend on the type of liquor licence and the local circumstances. A broader area should be considered for packaged liquor licences and home delivery services than for on-premises licences (pubs and bars), as the impacts of packaged liquor licences and home delivery services are likely to be across a wider area.

Definition of high-risk applications

The APC supports the inclusion of large packaged liquor outlets, venues providing sexually explicit entertainment and late trading on-premises venues in the definition of high-risk applications.

Large packaged liquor outlets

As discussed in the APC's 2016 submission to the first phase of the Review, packaged liquor outlets are associated with the risk of violence, including family violence. Victorian longitudinal research examining the relationship between alcohol outlet density and rates of family violence incidents reported to the police in Melbourne over a ten-year period found that each additional new packaged liquor outlet per 1,000 residents in a postcode increased the family violence rate by an average of 29 per cent.⁵²

In addition, a cross-sectional study from Western Australia incorporating measures of both alcohol outlet density and alcohol sales found that it was the amount of alcohol sold via packaged liquor outlets that predicted violence rates, rather than just the density of outlets.⁵³ This finding was replicated (for injury outcomes) in a high-quality longitudinal study,⁵⁴ and using a case-crossover approach.⁵⁵

This suggests that both the density of packaged liquor outlets in an area, as well as the amount of alcohol sold, are important factors for predicting the risk of harm.

We propose that retail floor space of a packaged liquor outlet is a suitable proxy determinant of risk for volume of alcohol sales, and that outlets of 400 square metres or more should be considered high risk.

Late trading on-premises venues

The APC supports the inclusion of on-premises venues selling alcohol until 1am or later in the definition of high-risk applications. As discussed in detail in the APC's first submission to the Review, there is a large body of Australian and international research clearly establishing the relationship between trading hours of liquor outlets and levels of harm.

However, we do not support the exemption of venues that offer food and entertainment from the definition of high risk on-premises venues, as it is not clear how offering these services would reduce the risk posed by venues, and noting an intention to offer these services would be an easy means for applicants for late trading venues to bypass categorisation as high risk and the associated licence application requirements.

Other high-risk applications

In addition to the categories of high-risk applications proposed in the Consultation Paper, the APC recommends the inclusion of:

- applications for packaged liquor licences that will offer same day delivery of alcohol, and
- applications for large on-premises venues.

For the reasons discussed in our response to section 4.3.2 of the Consultation Paper, packaged liquor licensees offering rapid alcohol delivery are likely to pose a high risk of harm.

On-premises venues over a certain patron capacity (e.g. 300 people) are also likely to pose a high risk of harm due to the volumes of alcohol sold as well as the risks posed by large groups of people congregating and drinking and leaving the venue together at closing time.

Risk factors for harm

See our recommendation above in relation to CIA requirements for factors we believe should be considered in determining the risk of harm at the application stage.

In our view, these are factors that should be addressed in an applicant's CIA and should be considered by the Commission in its decision to grant or refuse an application, along with the cumulative impact of existing licences in the local area (discussed below).

However, we do not support a preliminary risk assessment that involves assessment of risk factors beyond consideration of whether an application meets objective high risk or low risk criteria. We believe assessment of risk factors and evidence relevant to harm should be the main exercise in the decision of the Commission to grant or refuse an application, consistent with the harm minimisation object of the Act, and should not be relegated to a preliminary assessment stage. In particular, risk factors and evidence relating to the situational context of an application (e.g. as to levels of harm and cumulative impact in an area) are likely to require complicated assessment and weighing of risk that would be inappropriate in a preliminary assessment stage. The APC would also be concerned about such assessments being made at a preliminary stage based only on evidence provided by the licence applicant if this could lead to fast tracking of applications as low risk and remove the opportunity for objections based on harm. Assessments of risk factors may differ depending on, for example, how statistics and evidence are presented and analysed, and the geographic area selected for analysis. Objections based on harm should be allowed to enable counter evidence and analyses to be provided.

Instead, we recommend clear definitions of high risk and low risk applications based on objective factors, as well as the issuing of guidelines that set out the level of detail and evidence that an applicant is expected to provide in their CIA according to risk level, as described above.

Low risk applications

Low risk applications should be defined narrowly and conservatively according to objective criteria to ensure that only clearly low risk applications are fast tracked and exempted from requirements to provide details and evidence as to how they will impact on the community.

We propose that the following application types could be considered low risk:

- Restaurants and cafes with ordinary trading hours.
- Wineries (other than wineries offering alcohol delivery on the same day as the order or sale of the alcohol).
- On-premises venues under a certain patron capacity (e.g. 75 people) with ordinary trading hours.

However, we recommend that if applications are granted on the basis of being low risk, licence conditions should be imposed to ensure the premises remains low risk, and the licensee should be required to apply for a licence variation to change any of the low risk criteria that would move it out of the low risk category (e.g. to extend floor space or patron capacity). An application for variation should be required to satisfy the relevant licence application test and provide a CIA.

Cumulative Impact

The APC strongly support consideration of the cumulative impact of licensed premises in the licence application process. As discussed in the APC's submission to the first phase of the Review, the current licence application process does not sufficiently enable consideration of licence applications in the context of the cumulative or aggregate impacts of existing licences in the area.

Requirement for Commission to have regard to cumulative impact

We note that the *Decision-Making Guidelines on Cumulative Impact (2012)* are discretionary, and that consideration of the cumulative impact of liquor licences is not mandatory in the licence application process. Given the strong evidence base of harms associated with liquor outlet density,

the cumulative impact of existing licences in an area should be a mandatory consideration under the Act in all licence applications to ensure that harm minimisation objects are met.

In assessing an intermediate or high-risk licence application, the Act should require the Commission to have regard to the cumulative impact of existing licences in the area in determining whether a test based on community impact and public interest is satisfied, and whether granting the application would be consistent with the objects of the Act.

This would ensure that the Commission considers whether the grant of an application would support the object of harm minimisation and be in the public interest in the context of the cumulative impact of existing licences in the area. This would better allow licensing decisions to respond to the strong evidence of the relationship between outlet density and harms, including family violence.

Factors for assessing cumulative impact

The Act should set out a non-exhaustive list of factors that the Commission may consider in assessing the cumulative impact of licences in an area. This should include factors relating to existing licences, including the types, number, density, mix, locations, trading hours, patron capacity or retail floor space, patron or customer numbers, alcohol sales, compliance history and management of licensed premises. These factors would reflect the strong and consistent evidence base on how the number, distribution, type, sales and trading hours of liquor outlets at the local level drives alcohol-related harm.⁵⁶ Inclusion of reference to retail floor space or alcohol sales would be important to ensure cumulative impact factors are relevant to packaged liquor licences, as evidence demonstrates that it is the amount of alcohol sold via packaged outlets that predicts violence rates, rather than just the density of outlets.^{57 58 59 60} The Act should also set out factors relating to harm in the area that may be driven by existing licences, including levels of alcohol consumption, violence, family violence, crime, alcohol-related injuries, road accidents and drink driving. These considerations are highly relevant to assessing whether the cumulative impact of existing licences is such that the grant of a licence application would be inconsistent with harm minimisation and the public interest.

New Ministerial guidelines on cumulative impact

Ministerial decision-making guidelines should provide clear guidance on how to assess and weigh these factors and impacts in order to determine cumulative impact. The guidance should build on the *Decision-Making Guidelines on Cumulative Impact*.

Problems with Decision-Making Guidelines on Cumulative Impact

As set out in the APC's submission to the first phase of the Review, the *Decision-Making Guidelines on Cumulative Impact (2012)* (Guidelines) do not sufficiently provide for consideration of individual licence applications in the context of the cumulative impact of existing licences in the area.

The Guidelines focus on diversity of uses and amenity impacts and give little attention to the broader cumulative harms associated with high outlet numbers or density. For example, the examples of negative cumulative impact set out in the Guidelines are "crime, a loss of amenity, and anti-social behaviour". There is no specific mention of harms associated with outlet density, such as violence and family violence. In addition, the Guidelines set out 'existing levels of amenity' as a consideration relevant to the situational context but do not refer to existing levels of harm.

In addition, the Guidelines are directed to on-premises licences and give inadequate attention to packaged liquor outlets. For example, the situational context considerations include matters relevant to on-premises licences, such as patron behaviour, patron numbers, increases in the number of people in the street and venue management plans, and do not include matters specifically relevant to packaged liquor, such as floor space, volume of sales or delivery areas.

We note that our recommendation is for a non-exhaustive list of cumulative impact considerations to be set out in the Act, and for the role of the Guidelines to be to provide further explanation of the factors and guidance on to how to assess and weigh the factors and how to determine the area for assessing cumulative impact. In addition, we note that our view is that cumulative impact assessment should be primarily focused on considering cumulative *harm* from licences, consistent with the harm minimisation object of the Act.

However, the APC would not be opposed to retention of the situational context factors set out in the existing Guidelines, including those addressing amenity, provided that additional factors are included that allow for assessment of the cumulative impact of licences other than just on-premises licences, and that shift the focus of cumulative impact assessment to harm (in the Act and/or the Guidelines).

For example, the APC recommends that the following factors should be added:

- floor space and volume of sales of packaged liquor outlets
- delivery areas and timeframes for alcohol delivery
- levels of harm, including violence, family violence and alcohol-related injuries
- levels of alcohol consumption.

In addition, the Guidelines should provide guidance on determining the appropriate area for assessing cumulative impact. This should be based on the circumstances of each application, including:

- the type, size (retail floor space or venue capacity) and location of the proposed new, varied or relocated licence
- the type and locations of existing licences (including the concentration or dispersal of licences, and the existence of any clusters of licences)
- the area in which the impacts of existing licences occur
- the locations of any sensitive uses in the area, and
- physical, geographical, zoning or other relevant features of the area.

The Commission should have discretion to consider broad cumulative impacts occurring over a wide geographic area. For example, impacts such as family violence and adverse health impacts that may be associated with existing packaged liquor licences in an area, but may occur over a much wider area than the vicinity of licences.

Finally, the Guidelines require the Commission to assess the *contribution* of a new licence (or a licence variation or relocation) 'to the cumulative impact of a concentration of licensed premises in an area', but do not direct the Commission to consider the more general question of whether the grant of a new licence would support the object of harm minimisation in the context of the cumulative impact of existing licences. For example, if there is a very high existing number or concentration of licences, and/or a very high level of alcohol harm in an area, the contribution of one more licence to the level of harm or cumulative impact may be relatively small. However, it may nevertheless be contrary to the object of harm minimisation to grant yet another licence, and contribute to further cumulative impact and harm, in the area.

There is a need for the cumulative impact of licences in local areas to be considered as a whole, rather than only in the context of individual licence applications, and for introduction of a mechanism to prevent or control any further increase in licences in areas that have a high risk or levels of harm, or high cumulative impacts from existing licences.

To address this, the APC recommends that the Commission should be required to take into account the cumulative impact of existing licences in the local area in determining whether an application satisfies a community impact and public interest test and is consistent with the primary harm

minimisation object of the Act. This requirement should be drafted such that the Commission is not required to consider only the extent to which the single application will contribute to this cumulative impact.

In addition, the APC strongly supports the proposal for introduction of a Ministerial power to declare areas where there is high level of alcohol fuelled harm or high numbers or concentration of liquor licences as a mechanism for addressing aggregate or cumulative impacts of liquor licences across local areas.

Declared areas

As discussed in the APC's 2016 submission to the first phase of the Review, there is strong and consistent evidence that changes in the number of alcohol outlets lead to changes in alcohol consumption and harm.⁶¹ Studies have shown that restricting outlet density within a local area may be effective to reduce alcohol-related harm. This is because it increases the time and inconvenience in obtaining alcohol, limits competition between retailers and the likelihood of discounting and other promotions and avoids crowd density that leads to higher incidences of violence.⁶²

The current focus of the licensing scheme on individual licence applications does not allow effective consideration of cumulative impact and harm levels across local areas.

We support the proposal in the Consultation Paper that the Act should give the Minister the power to 'declare' an area where there is evidence of significant alcohol fuelled harm, and the area has a relatively high concentration of liquor licences, as an area that may require a pause or restriction on the granting of further licences.

This approach should be a key element of regulation to address the association between alcohol outlet density and levels of harm, including in particular the relationship between alcohol outlet density and family violence. This would also have the advantage of better empowering local councils and communities to respond to the impact of alcohol in local areas and would reduce the burden on councils of objecting to individual licence applications to attempt to control alcohol harm and amenity impacts in a local area.

As recommended in the APC's 2016 submission, this approach could be similar to Cumulative Impact Policies in England and Wales.

The APC recommends that the Act should provide that the Minister should consider a non-exhaustive list of factors in deciding whether to declare an area, including:

- the types, number, density, mix, locations, trading hours, patron capacity or floor space, patron or customer numbers, alcohol sales, compliance history and management of licensed premises in the area
- levels of alcohol fuelled harm in the area
- cumulative impacts of liquor licences in the area (on harm and amenity)
- characteristics of the area that indicate a high risk of or vulnerability to alcohol fuelled harm, such as:
 - 'at risk' groups or sub-communities in the area (e.g. children and young people, Aboriginal and Torres Strait Islander people and communities, culturally and linguistically diverse communities)
 - sensitive uses in the area (e.g. schools, childcare centres, hospitals, drug and alcohol treatment centres, recreational areas, areas frequented by young people)
 - socio-economic and social factors (e.g. rates of crime, violence and family violence, unemployment, homelessness, and the socio-economic profile of the area).

The right to apply for Ministerial declaration of an area should be open to local councils, police and licensing inspectors.

The Minister could be given discretion to decide that declaration of an area would mean a pause or restriction on the grant of further licences, in general or of a particular type, or the imposition of standard licence conditions or restrictions on all future licences in the area. For example, a declaration could result in: a restriction on the grant of any intermediate or high-risk applications; a restriction on the grant of packaged liquor licences; a floor space limitation on packaged liquor licences; a restriction on the grant of late trading on-premises licences.

Recommendations

32. The APC recommends that the definition of high-risk applications should be extended as follows:
 - All applications for on-premises venues trading until 1am or late should be considered high risk (irrespective of whether food or entertainment is provided).
 - Applications for on-premises venues above a certain patron capacity (e.g. 300) should be considered high risk.
 - Applications for packaged liquor licences offering same day alcohol delivery should be considered high risk.
33. The APC recommends that low risk applications be defined narrowly and conservatively according to objective criteria to ensure that only clearly low risk applications are fast tracked and exempted from requirements to provide evidence as to how they will impact on the community.
34. The APC recommends that the identification of low risk applications should not rely on assessment of situational risk factors and evidence in a preliminary assessment stage.
35. The APC recommends that assessment of risk factors, particularly situational risk factors and evidence relevant to harm, should be the main exercise in the Commission's decision making and should not be relegated to a preliminary assessment stage.
36. The APC recommends that the *Liquor Control Reform Act 1998* require the Commission to have regard to the cumulative impact of existing licences in the area in assessing whether a licence application satisfies a test based on community impact and public interest and is consistent with the objects of the Act.
37. The APC recommends that the *Liquor Control Reform Act 1998* set out non-exhaustive factors that the Commission may consider in assessing cumulative impact.
38. The APC recommends new Ministerial guidelines be issued to provide guidance on assessing cumulative impact.
39. The APC recommends that the *Liquor Control Reform Act 1998* give the Minister the power to 'declare' an area where there is evidence of significant harm fuelled by alcohol or a relatively high concentration of liquor licences, as proposed in the Consultation Paper.

5.2 Objection process at the application stage

Local councils deal with the sizable financial costs associated with alcohol-fuelled harm and amenity impacts, and are experts in the social, economic and health conditions of their municipalities. Similarly, police are at the forefront of addressing alcohol fuelled crime and harm. Community members experience directly the harm and negative amenity impacts fuelled by licensed premises. It is important that these groups are empowered to respond to alcohol impacts in local areas, and that they can engage effectively in the licence application process and present evidence as to the impact liquor licences will have on a local community.

The findings of the VAGO 2012 *Effectiveness of Justice Strategies in Preventing and Reducing Alcohol-Related Harm* Report included that, "The number of objections to liquor licence applications by councils is exceptionally low" and "Councils' ability to influence the liquor and hospitality industry on behalf of the communities they represent is restricted by shortcomings in the planning permit and liquor licence application processes. The grounds for objecting to a licence are narrow, and the evidentiary requirements and decision-making process for contested applications are unclear."⁶³

Currently under the Act, to object to a liquor licence application, a local council, licence inspector or community member must provide evidence to meet narrow grounds, including that the licence would be 'detrimental to the amenity of the area' (in relation to any type of licence), or would 'encourage the misuse or abuse of alcohol' (in relation to applications for packaged liquor licences only).⁶⁴

As discussed in the APC's 2016 submission, producing the requisite evidence to satisfy the amenity and misuse grounds, particularly in relation to proposed licensed premises that are not yet in existence, is likely to be complex, costly and resource intensive, and places a large burden on objectors, who are likely to have limited resources.

The time, resources and cost involved in objecting to licence applications, and the difficulty in satisfying objection and refusal grounds, is highly likely to deter objections. This creates a significant barrier to community engagement in the licence application process.

Questions from the Consultation paper

- What do you think of this proposal?
- Can you suggest other ways to reduce the timeframe for approvals?

Response to questions in the consultation paper

The APC does not support the revised objection process set out in the Consultation Paper. In particular, we are concerned about the proposal that objections to intermediate risk applications only be allowed on amenity grounds, which we believe is contrary to the Act's primary object of harm minimisation.

As discussed, we are concerned that the proposed definition of high-risk applications is too narrow. Even if it were broadened, applications in the intermediate risk category may still involve a significant degree of risk of harm depending on the situational context. For example, a mid-sized packaged liquor outlet in an area with a high density of packaged liquor outlets and a high level of family violence, or a pub situated next to a sensitive use such as an alcohol or drug rehabilitation facility, would be likely to pose significant risk of harm.

The APC is very concerned that under the proposed objection process, the Commission's consideration of harm in intermediate applications would be based only on evidence provided by the applicant without any opportunity for objections based on harm. We believe this would not allow the Commission to ensure consistency with the Act's primary object of harm minimisation. As discussed in section 5.1 above, assessment of evidence relating to harm and risk factors may differ depending on, for example, how statistics and evidence are presented and analysed, and the geographic area selected for analysis. Objections based on harm are necessary to enable counter evidence and analyses to be provided. We do not believe there is any policy rationale for limiting objections to intermediate risk applications to amenity grounds given the primary harm minimisation object of the Act.

As an alternative to the proposed revised objection process, the objection grounds should be:

- a) that the licence would detract from the safety and wellbeing of the community, or
- b) would not be in the public interest.

These objection grounds should apply for any objector in relation to any intermediate or high-risk application (provided that low risk applications are defined narrowly as recommended in section 5.1).

These reforms to the objection grounds would broaden the range of evidence of harms and amenity impacts of licences that could be provided. This would help to promote local government and

community engagement in licensing decisions, and greater consideration of community views and impacts.

This would be similar to approaches under Northern Territory and Western Australian liquor legislation, which provide for objections to licence applications by broad categories of objectors based on broad grounds relating to amenity and community impact and/or the public/community interest.

Section 47F(2) of the Northern Territory *Liquor Act* allows objections on the grounds that the grant of an application will adversely affect:

- (a) the amenity of the neighbourhood where the premises are or will be located, or
- (b) health, education, public safety or social conditions in the community.

Section 47F(3) of the Northern Territory *Liquor Act* allows objections by:

- residents, workers, land owners and lease holders in the neighbourhood,
- police, and fire and rescue services,
- an agency or public authority that performs functions relating to public amenity, including health, education and public safety, and
- a community-based organisation or group (e.g. a local action group or a charity).

The Western Australian *Liquor Control Act 1988* allows objections to licence applications by any person on grounds that granting the application would:

- a) not be in the public interest
- b) cause undue harm or ill-health to people due to the use of liquor
- c) be likely to cause undue offence, annoyance, disturbance or inconvenience to people in the area
- d) be likely to lessen the amenity, quiet or good order of the locality.⁶⁵

Recommendations

40. The APC recommends that objections based on harm should be allowed to any intermediate or high risk application.

41. The APC recommends that objection grounds should be:

- c) that the licence would detract from the safety and wellbeing of the community, or
- d) would not be in the public interest.

5.4 Club rules in Schedule 1 of the Act

Questions from Consultation paper

- What do you think of the above proposal?
- Should other rules be amended or a different approach to regulating clubs be adopted?
- Is there a way to ensure unincorporated small clubs are operating as not for profit entities and adequately protect the interests of their members consistent with the use of a club licence without using Schedule 1?
- Are there any adverse consequences for unincorporated clubs from this proposal?

Response to questions in the consultation paper

The APC believes that it is important that any club allowed to sell or otherwise supply alcohol be required to have proper governance and management in place. It is important to ensure that it is

clear who has responsibility to ensure alcohol is only sold or served in compliance with any licence conditions and the obligations of the *Liquor Control Reform Act 1998* more generally.

To that end, there is little point for incorporated clubs to be subject to operational and governance rules in Schedule 1 of the Act that are replicated by the model rules under the *Associations Incorporation Reform Act 2012*.

At the same time, there is a need within the alcohol regulatory system to ensure that if an unincorporated club is licensed to sell or supply alcohol, there are minimum levels of governance and proper management systems in place to ensure all licence conditions can be expected to be complied with. Any reform in this area needs to ensure that this outcome is achieved. Individuals need to know they will be held accountable for compliance with any liquor licence and other relevant requirements of the *Liquor Control Reform Act 1998*.

Recommendation

42. The APC recommends that if an unincorporated club is licensed to sell or supply alcohol, there is a minimum level of governance and proper management system in place to ensure all licence conditions can be expected to be complied with.

5.5 Prohibitions – Business that cannot obtain a liquor licence

Governments have longed tried to shift the drinking culture among Australians, particularly youth. Constant exposure to alcohol “normalises” its consumption while availability of alcohol is strongly linked with alcohol related harms and diseases.

Questions from Consultation Paper

- Should premises used primarily by minors remain unable to obtain a liquor licence?
- Is the power given to the Commission to grant a licence where minors are the primary users satisfactory?
- Should drive-in cinemas, petrol stations, milk bars, convenience stores and mixed businesses be able to apply for a liquor licence?
- Should there be other factors considered to determine whether large service centres on highways can be described as a petrol station?
- Is the term ‘convenience store’ suitable as an umbrella term to include ‘convenience store, milk bar and mixed business’ as per the Act?
- Should objective measures be set to determine:
 - whether there are “adequate existing facilities” in an area?
 - whether an area is a tourist area

Response to questions in the consultation paper

The APC supports retention of the Act’s prohibitions as alcohol is already conveniently available across Victoria. The growth of stores such as 7/11 in the Melbourne CBD strengthens the case against convenience stores selling alcohol, while the selling of alcohol at petrol stations and drive-in cinemas would associate drinking with driving.

The APC recommends that no exemption should apply to the prohibition on licensing of premises used primarily by minors. The supply of alcohol should not be allowed in premises used primarily by minors, such as junior sporting clubs and schools, in any circumstances, as this normalises alcohol use for children and is likely to present risks of children accessing alcohol irrespective of any controls.

As for exceptions for convenience stores, the APC supports the proposal for the Commission to decide applications based on objective measure or indicators. This would increase confidence that decisions are evidenced-based and made independently.

Recommendations

43. The APC supports the continued prohibition on drive-in cinemas, petrol stations and convenience stores being granted a liquor licence.
44. The APC recommends that that no exemption should apply to the prohibition on licensing of premises used primarily by minors.
45. The APC supports the proposal that objective measure be set and used by the Commission in deciding whether to grant exceptions for convenience stores.

5.6 Extending Ordinary Trading hours

Reducing the risk of alcohol-related violence is one of the key goals of regulating the supply of alcohol late at night. Alcohol contributes to a significant amount of violence in Victoria. Victorian data on alcohol involvement in assault offences is unavailable, but in 2016-17, there were over 6,000 assaults recorded by Victorian Police during high alcohol hours (between 8pm and 6am on Friday and Saturday nights). Analyses by the Crime Statistics Agency showed that more than half of all assault, sexual assault and disorderly conduct offences in night-time entertainment precincts occur during these hours, and alcohol is a key driver of these harms.

Questions from consultation paper

- Under what circumstances or conditions should the extension be considered and for which licences?
- Should extended hours only apply on some days?
- What will be the effect of introducing this proposal?

Response to questions in the consultation paper

The APC does not support the proposal to extend ordinary trading hours outlined in Section 5.6 of the consultation document. There is clear and consistent evidence that permitted hours of trade for licensed premises late at night are related to rates of violence. When trading hours are extended, rates of assault generally increase and when they are restricted, assaults generally fall.⁶⁶ In particular, compelling evidence from Newcastle and Sydney in New South Wales highlight the marked impacts that restrictions on late night alcohol sales can have on assault rates.^{67,68,69} In general, the evidence is strongest for limiting trading hours for venues involving on-premise drinking (bars, pubs, nightclubs etc), but there is compelling evidence from overseas that similar relationships exist for packaged liquor.⁷⁰

With this evidence in mind, we strongly oppose a move towards extending the ordinary trading hours that apply in Victoria. Under the current act, 24-hour trading is available via extensions of late-night (general) and late-night (on-premise) licences, while almost all categories of licences can be extended beyond ordinary trading hours if approved by the VCGLR. We see no compelling argument to remove this oversight via setting default trading hours that extend beyond the current ordinary trading hours.

In fact, if the aim of this review of the Act is to reduce alcohol-related harm, then measures that *reduce* late-night trading hours are among the most strongly evidence-based policy options available. Queensland has recently implemented state-wide 'last drinks' laws at 2am (and 3am within designated entertainment precincts) and key precincts in Sydney CBD, Kings Cross and Newcastle have implemented last drinks restrictions for 3am (with lockouts from 1:30am). The

Victorian government recognised the risk of late trading via the implementation of the freeze on late-night licences in four inner-city municipalities from 2008, although a variety of exceptions to the freeze have been subsequently implemented.⁷¹

On the basis of the evidence, the Victorian Government must impose effective restrictions on on-premises trading hours across Victoria under the revised Act if it is committed to reducing alcohol harms. There are currently 130 venues licensed to trade 24-hours per day, seven days per week – a situation that is patently inconsistent with harm minimisation, and gives precedence to industry development objectives

The APC recommends that 2am close of on-premises trading across Victoria would strike an appropriate balance between minimising the harms associated with late night trading and other objects of the Act.

Recommendations

46. The APC recommends the *Liquor Control Reform Act 1998* amended to prevent the supply of liquor for on-premises consumption under extended trading hours after 2am.

47. The APC recommends ordinary trading hours should remain restricted to 11pm for any premises that has not been licensed for extended trade.

6. Concept of licensed premises

6.1 Food court businesses and on-premises licensing

Food courts in shopping centres have traditionally not been areas where alcohol products have been served. However, this is changing with more of food courts areas selling alcohol products with meals. Conditions imposed on the sale and consumption of alcohol in food courts are not as strict as elsewhere.

Questions from the Consultation paper

- Do you think this proposal adequately deals with the issue of licensed food court businesses?
- What else needs to be considered in this context?

Response to questions in the consultation paper

The APC believes the proposed options are an improvement, although much will depend on the proposal “to develop guidelines about the treatment of applications for liquor licences by take away outlets and fast food premises”. There should be consideration of dedicated seating areas for the consumption of alcohol under restaurant and café licences in food courts, rather than allowing consumption of alcohol in common areas.

In restaurants and cafés in food courts, there should be restrictions on the quantity of alcohol that can be purchased by a customer who is not consuming food (as recommended above in 4.2).

Licenses other than restaurant and café licences should only be allowed in food courts in separate areas, sectioned off from other areas of the food court with walls or barriers.

Consumption of alcohol in food courts poses a particular risk in terms of “normalisation” of alcohol consumption. In that regard, stricter conditions may need to be imposed on liquor licence applications in food courts, for example in relation to advertising.

Recommendations

48. The APC recommends that in restaurants and cafes in food courts, alcohol only be consumed in dedicated seating areas, and there should be limits on the quantity of alcohol that may be served to customers who are not purchasing food.
49. The APC recommends that licensed premises other than restaurants and cafes in food courts must be in separate areas sectioned off with walls or barriers.

7 Compliance and enforcement

7.1 Advertising and promotion

All Victorian communities should be free from advertising and promotions that encourage risky drinking and resultant alcohol harms. Children and young people should never be exposed to advertising and promotions for alcohol products.

Alcohol advertising and promotions that reduce the price of alcohol or require purchasing a greater amount than intended encourage risky drinking. Research has demonstrated that people who regularly use point of sale promotions typically purchase greater quantities of alcohol, including young people aged 16-25.^{72 73} There is also evidence that packaged liquor outlets that are part of supermarket chains have more POS promotions, more price-based promotions and require more alcohol to be purchased to participate in the promotion.⁷⁴ Packaged liquor outlets that are part of chains also have a stronger association with community level rates of hospitalisation for alcohol-related injury, which is due in part to their ability to offer lower prices for alcohol products.⁷⁵

Questions from consultation paper:

- What is your view on the proposals regarding amendments to advertising and promotions? Which approach do you prefer – using examples in section 115A for promotions that may be banned or setting out prohibitions in section 115B of the Act?
- What alternatives (if any) do you suggest?
- Should volume discounts be prohibited or banned?

Response to questions in the consultation paper

The APC supports the direction of the proposal outlined in the Consultation Paper to prohibit alcohol product advertising and promotions that either encourage irresponsible consumption or are otherwise not in the public interest. As noted in the Paper, the bans that have been issued by the Commission have largely focused on advertising and promotions from on-premises venues, rather than those from packaged liquor outlets, who supply 80 per cent of the alcohol purchased for consumption. To give effect to the primary object of the Act, it is important that bans on alcohol advertising and promotions apply to both on and off premises licensees. Given this, the Act should set out a non-exhaustive list of advertisements and promotions that encourage the irresponsible consumption of alcohol or are otherwise not in the public interest including:

- Price-based promotions, such as volume or bulk purchase discounts
- Shopper docket promotions
- Competition and game of chance promotions
- Gifts with purchase
- Incentives to consume alcohol rapidly or excessively such as drinking games or competitions
- Non-standard drink sizes
- Happy hours and events with unlimited supply of alcohol for a set price and defined time period.

The key issue as outlined in the Consultation Paper is how this is best achieved – whether under section 115A of the Act, with examples of the types of promotions that may be banned or under section 115B in which well-defined types of promotions are explicitly prohibited. Providing examples of potential breaches under section 115A may provide some clarity but would do so at the expense of efficiency. For instance, a licensee that has issued a promotion that encourages the irresponsible consumption of alcohol would be able to do so until a complaint has been filed and a banning notice issued by the Commission. The promotion would remain in the public domain while the complaint was being considered. This would also mean that the Act would fail to effectively deter licensees from engaging in irresponsible promotions. Currently, a licensee that engages in irresponsible promotions does not breach the Act unless a banning notice is issued by the Commission under section 115A, and the licensee then breaches the banning notice. This means that licensees can engage in irresponsible promotional activity with no risk of penalty until a banning notice is issued. This approach would run counter to the primary object of the Act.

On this basis the APC recommends that alcohol product advertising and promotions that encourage irresponsible alcohol consumption, appeal to minors or disrespect women are explicitly prohibited under section 115B of the Act. The phrasing of the prohibited advertising and promotions can remain broad within the Act and be given meaning with specifics within the Regulations. This will be more effective as any licensees issuing advertising or promotions that encourage irresponsible alcohol consumption would immediately be in breach of the Act and would attract a penalty. This approach will better protect the community from advertising and promotional content that contributes to alcohol harm.

Volume-related discounts should be included as a prohibited promotion under 115B. The link between volume discounting and alcohol consumption and related harms is documented in the Consultation Paper. On this basis the APC recommends that volume discounts of 50 per cent or more be prohibited as has occurred in other jurisdictions, such as the Australian Capital Territory (ACT).⁷⁶ This should apply to both on and off-premises licensees to any alcohol products supplied under the licence.

The Consultation Paper also notes that advertising and promotions contribute to social norms and that the acceptance of unequal treatment of women in advertising has been linked to violence against women. Examples are provided in which Queensland and the ACT prohibit advertising and promotions that are ‘indecent or offensive’ and that ‘use images that are directly or indirectly sexual, degrading, sexist or otherwise offensive in nature.’ The APC would welcome a similar prohibition within the Act. It should be noted however that attitudes that promote rigid gender roles, stereotypes and expressions undermine gender equality more broadly.⁷⁷ Similarly, content analysis of alcohol advertising has found that these advertisements often depict traditional forms of masculinity with women presented in the periphery.⁷⁸ It is therefore suggested that the proposal to ban advertising or promotions that are disrespectful to women be complemented with a ban on advertising or promotions that depict rigid gender roles, stereotypes and expressions, contained in section 115A of the Act with examples.

Recommendations

50. The APC supports the proposal to ban advertising and promotions that encourage the irresponsible consumption of alcohol or are otherwise not in the public interest, including those that appeal to minors or disrespect women.
51. The APC recommends that these types of advertising and promotion should be directly prohibited under section 115B of the *Liquor Control Reform Act 1998*, with examples for guidance provided in the Regulations.

52. The APC recommends that volume discounts of 50 per cent or more are prohibited under section 115B of the *Liquor Control Reform Act 1998*.

7.2 Review of licensing decisions

Questions from the Consultation Paper

- What do you think of the proposed options?
- What are your views of the proposed conferencing option? Are there other processes that should be considered?
- Should an appeal for high risk applications be able to be referred to VCAT?
- Are there other options you would prefer and why?

Response to questions in the consultation paper

The APC welcomes the proposed conferencing option as it offers the potential for better community access to the review process. According to the 2018-19 Victorian Civil and Administrative Tribunal (VCAT) Annual Report, the resolution rate for cases at compulsory conference or mediation was 56 per cent. This suggests this option is worth pursuing. Given the public interest in liquor licence applications, the appropriateness of confidentiality agreements – common in conferencing – will need to be considered in process design. As communities have limited financial resources, the Commission’s power to hold compulsory conferences will be of little value if exercised after a lengthy VCAT process.

Recommendation

53. The APC supports a low-cost conference process designed following public consultation.

7.4 Responsible Service of Alcohol (RSA)

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.⁷⁹

Current legislation does not impose RSA training for staff on some licence categories, such as restaurants cafes and sporting clubs. Furthermore, there is no RSA requirement for alcohol delivery agents.

Questions from the consultation paper

- Are there any types of licensees or staff who supply alcohol directly to customers on licensed premises or premises subject to a BYO permit who should not be required to undertake RSA training? If so, which ones and why?
- Should RSA refresher training be required every three years? If so, who should do it, what should be its purpose and focus?
- Should additional training requirements be placed on licensees / managers /responsible persons / nominees?

Response to questions in the consultation paper

The APC supports the proposed option and believes a transition period is reasonable. However, the Commission’s current discretionary power to exempt some licensees from the requirement to undertake RSA may need refinement. Much evidence suggests staff are more likely to abide by RSA

when licensees and managers actively promote and support staff to do so. (The Alcohol and Drug Foundation's successful Good Sports program requires staff to undertake RSA). The Commission should play a greater role in ensuring RSA compliance.

As set out above, the Act should require licensees and employees who deliver alcohol, as well as any other person who delivers alcohol to complete a specific RSA course for online supply and delivery of alcohol.

There is also a need to ensure RSA training is appropriate for the type of business the person will be working in. The skills needed for a person working in a pub or club will be different to those of a person selling alcohol from a packaged liquor outlet. The RSA training should be reformed to provide catered training based on where a person is working. Staff working in a liquor outlet should be required to have completed the relevant RSA training module to that type of business.

Recommendations

54. The APC recommends that Responsible Service of Alcohol training be required for all staff in licenced premises.
55. The APC recommends greater monitoring of venues to ensure compliance with Responsible Service of Alcohol.
56. The APC recommends a review of the effectiveness and relevance of current Responsible Service of Alcohol training.
57. The APC recommends a new Responsible Service of Alcohol program be developed for online sale and delivery of alcohol.
58. The APC recommends Responsible Service of Alcohol training should be reformed to provide catered training based on where a person is working. Staff working in a liquor outlet should be required to have completed the relevant RSA training module to that type of business.
59. The APC recommends Responsible Service of Alcohol training for on-premise licenced venues and live music events should include how to deal appropriately with reports of sexual assault and sexual harassment.

7.5 Drunken or disorderly

There is a need to ensure that venues take responsibility for their practices in selling alcohol and the harms that might result.

Questions from Consultation paper

- What do you think of the proposed option? Do you have an alternative approach?

Response to questions in the consultation paper

The current arrangements in Victoria allow licensed venues to profit from serving alcohol to people at dangerous levels. Then when the person is drunk or disorderly the venue owner and management can wash their hands of the person and eject them from the venue. This has resulted in ejected people being assaulted, sexually assaulted and sexually harassed, as well as being placed in unsafe situations where serious harm could result to them or others.

The APC's 2016 submission set out research indicating that many Victorian on-premises licensees continue to serve alcohol to intoxicated patrons. A 2013 study investigating alcohol and drug use of

night-time patrons in licensed venues in Australian cities found that patrons in almost 40 per cent of venues in Melbourne, and 50 per cent of venues in Geelong, were assessed as exhibiting high visible intoxication levels at certain points throughout the night.⁸⁰ The study also found that in venues across Australia an alarmingly high proportion of patrons — 85 per cent — classified as intoxicated by the study's fieldworkers were continuing to be served alcohol.

The current approach also creates confusion and enforcement difficulties, in part because section 108(4) of the Act refers to both 'intoxication' and 'drunken', and due to limitations of the definition of intoxication.

The proposal in the consultation paper fails to address both problems. The proposal in the consultation paper to allow a passively drunk person to remain on the premises gives a venue the discretion not to eject the person. However, the venue owner could still decide they prefer to eject a person who is drunk and can still place them in unsafe situations with no consequences on the venue owner. The proposal is unlikely to change the behaviour of badly managed venues where the owner places their profits ahead of the well-being of patrons.

Further, the APC has heard from people who report venue owners have misused their ejection power to expel people they do not wish to assist. People ejected include those who have become ill or who have had their drinks spiked.

Intoxication and drunkenness under section 108(4)

Currently section 108(4) of the Act makes it an offence for a licensee or permittee to:

- (a) supply alcohol to a person who is in a state of intoxication, or
- (b) permit drunken or disorderly persons to be on the licensed premises or on any authorised premises.

However, the APC is concerned that these offences are not effective to minimise harm and are extremely difficult to enforce in practice.

Key reasons include problems with the definition of intoxication in section 3AB, and the reference to 'drunken' in section 108(4)(b). The APC is disappointed that the Consultation Paper does not include proposals to amend the definition of 'intoxication', or to remove 'drunken' from section 108(4)(b) or clarify the meaning of the term.

Definition of intoxication

It is contrary to harm minimisation and the public interest for a person to be served alcohol if they are noticeably intoxicated by any substance, whether it is alcohol or drugs.

The Act defines intoxication in section 3AB:

[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.

The Commission has published Intoxication Guidelines, which provide guidance for licensees on determining whether a person is intoxicated based on visible signs such as affected speech, balance or behaviour.⁸¹

As set out in the APC's 2016 submission, the definition requires that there be reasonable grounds for believing that a person's intoxication was 'the result of the consumption of liquor' (emphasis added). The effect of this is that a licensee or permittee does not commit an offence by supplying alcohol to a person who is noticeably affected by drugs.

This also creates practical enforcement difficulties in determining whether a patron is intoxicated by drugs or alcohol and makes the offence difficult to prosecute.⁸² A licensee can avoid prosecution if it cannot be proven that there were reasonable grounds for believing that a person was intoxicated as a result of consuming alcohol, and not other substances.

Liquor legislation in other Australian jurisdictions addresses this issue by defining intoxication to include intoxication from the consumption 'of liquor or other substances'.⁸³

The APC recommends that this approach should be followed in Victoria. A licensee should not be allowed to supply alcohol to a person who is clearly affected by drugs and removing this distinction would also simplify enforcement of section 108(4)(a).

'Drunken' in section 108(4)(b)

As we stated in our 2016 submission, the reference to both intoxication and drunkenness within section 108(4) creates confusion and uncertainty for police and makes enforcement of the offences extremely difficult in practice.⁸⁴

The Act does not define 'drunken' and there appears to be confusion as to its common law meaning.

The 2012 VAGO *Effectiveness of justice strategies in preventing and reducing alcohol-related harm* report stated that courts have defined a drunk person as, "someone who has a gross or severe impairment to mental and/or physical faculties as a result of the consumption of liquor, and is so incapable of managing his/her affairs that they disregard their safety or the safety of others." (Page 40).

The APC is concerned that this definition may be misunderstood as the common law meaning of 'drunken' by licensees and others.

It is clear this definition does not represent the common law meaning of 'drunken'. We understand this definition was derived from a decision of the South Australian Supreme Court in *Normandale v Rankine* (1972) 4 SASR 205. However, this was in fact the definition of drunk given by the South Australian Special Magistrate, which was overturned by the Supreme Court in the *Normandale* decision. Walters J states that the Special Magistrate was wrong in giving that definition and that drunk should be given its ordinary meaning (page 211).

The Victorian Supreme Court decision in *Bannerman v Victoria* [2009] VSC 438 is the only Victorian authority on the meaning of drunk. The Supreme Court states (page 3) that drunk means what an ordinary person would consider as such (citing Walters J in *Normandale*) and that this is a question of degree depending on the facts (citing *R v Ormsby* [1945] NZLR 109).

This suggests the meanings of intoxication and drunken largely overlap, as it is unlikely an ordinary person would understand drunken to mean something substantially different from noticeably affected by alcohol. The Cambridge Dictionary meaning of drunk is 'unable to speak or act in the usual way because of having had too much alcohol'. This does not suggest that 'drunken' involves a higher degree of impairment than 'intoxication'.

The fact that section 108(4) uses the two terms may suggest that Parliament intended the two terms to have different meanings and for 'drunken' to mean a higher degree of impairment than 'intoxication'. We suggest that the reference to 'disorderly' in section 108(4)(b) may indicate that 'drunken' was intended to mean intoxication to the degree that it affects a person's behaviour and makes them disorderly, although this is contraindicated by the use of the word 'or' in 'drunken or disorderly'. However, if this is the case, there is no clarity as to the degree of impairment meant by 'drunken', other than that the definition referred to by VAGO is clearly wrong.

The APC recommends that the reference to 'drunken' in the Act should be removed and only 'intoxication' remain in the Act.

Introduce a venue 'duty of care' to intoxicated patrons

The APC is aware of reports that people ejected from venues have been subsequently harmed, including assaults and sexual assaults. Sometimes people are ejected without their personal belongings, such as their mobile phone. Having their phone may be crucial to contact family or friends for assistance.

In September 2018, *The Age* reported on a number of such cases.⁸⁵ In one case a 19-year-old woman had planned to spend that Saturday night dancing at a club in the city. But while separated from her boyfriend, bouncers demanded she leave the venue for being drunk.

"I was stranded in the city all night," she said. "I got kicked out without my boyfriend, who had my phone and wallet. I had no way of getting home or contacting him."

Her boyfriend noticed she was missing but alleged his questions to bouncers were treated as a joke.

"They said I was dead. Then 30 minutes later they said my mum picked me up. Neither was true. My boyfriend spent hours looking for me. He called my family."

Heavily intoxicated, she was left to wander the CBD before her boyfriend finally found her: "My boyfriend searched for five hours."

In another case a woman was forced out on the street after collapsing in a club. She was left throwing up in a dark alcove around the corner from the club's entrance.

"I felt really dizzy and was seeing stars ... once we got outside [the bouncer] just kind of threw me aside, around the corner, and he just walked off," she said.

"I didn't feel safe there ... At the time I just assumed there would be laws saying they had to protect me."

Thorne Harbour Health also asked young people they have contact with for examples of their experiences with venues as part of the APC response to this consultation. One woman reported that she was ejected from a bar while dizzy and disoriented after her drink was spiked. Staff ignored her pleas that "I'm not that drunk I promise, I've been given something. Please I'm not lying."

Another person reported:

A friend of mine had her drink spiked at a bar. When she started blacking out the venue's response was to rush her off the property (I assume for liability reasons). Good thing she had her friends with her!

Another woman reported being placed in an unsafe situation by venue staff who ejected her for being drunk:

They tricked me into believing that I picked up my bag from the cloak room when they still had it, laughed at me and wouldn't let me back into the venue to get it. My phone was in there and all my friends were inside and I couldn't get home. Eventually I befriended a random who gave me a lift.

Fileborn reported that young women had to adopt a range of strategies to try and feel safer in licenced venues in Victoria. These included using elaborate signals to friends when they needed to be 'rescued' from a persistent man, not going to venues alone, pretending to be a lesbian and watching their drinks against the danger of spiking.⁸⁶

It would appear the majority of licensed venues do not operate in such a way that people become intoxicated. On the other hand, there are clearly venues that create an environment in which people drink to become severely intoxicated and the venue management seek to attract such people. Fileborn also reported that women were able to identify certain licenced venues as carrying a greater risk of sexual harassment than others, by the tone and culture set by venue owners and managers.⁸⁷

Sexual predators are able to take advantage of licenced venues that lack a duty of care towards the people in the venue. As one woman told Fileborn:⁸⁸

There's always one really dodgy guy that's in there that's waiting for someone to get sufficiently drunk enough for him [to] latch on to her... he'll just kind of be waiting on the outside and then he'll see someone ... stumbling everywhere and then he'll pick her up and he'll dance with her and feel her up... and he's completely sober.

It would be the preference of the APC that licensed venue owners should be required to take reasonable steps to ensure the safety of people on their premises. Where the licensee has allowed people to become intoxicated, the licensee should make reasonable efforts to ensure the person is able to safely return home or are able to safely stay on the premises and not be sold more alcohol until such time that they are able to safely leave the venue. Such an approach is likely to encourage venues to not create environments in which people consume alcohol to levels that makes them a danger to themselves or others.

It is clear that some licensed venues already do take reasonable steps to ensure the safety of their patrons. *The Age* Reported that Michael Humphrey has been a club manager and promoter for three years.⁸⁹ He said that the clubs he has worked for always ensured that young girls who were ejected had a friend or taxi to take them home. He said ejecting patrons was an important part of business.

“You want to create an environment that everyone is comfortable in ... and when someone is too intoxicated that can really affect the environment of the place.”

It needs to be noted that placing an intoxicated woman in a taxi or Uber by herself, can still result in some level of risk, but is still better than ejecting her onto the street with no one to provide assistance.

Where a person is acting aggressively towards others in a venue, it is reasonable that the person should be ejected from the venue to ensure the safety of the other patrons.

As the venue owner has benefited from allowing someone to become dangerously intoxicated, they should be the party that carry the costs of keeping a person safe on their premises.

The APC is also aware of reports that venue staff have failed to take reasonable actions when a person in their venue is being sexually harassed, where the consumption of alcohol is often a contributing factor to the unwanted and inappropriate behaviour. For example, in 2015 Katie Pearson was ejected from Yah Yah's in Collingwood for reporting being sexually harassed by a drunken patron.⁹⁰ The drunken patron was also ejected at the same time. As a result of this incident Yah Yah's changed its treatment of reports of sexual assault and provided training to its security staff.⁹¹

In April 2015, Monica Ludekens reported she was plied with drinks and sexually harassed by the co-owner of a venue.⁹²

The APC welcomes the \$200,000 pilot *Sexual Harassment and Assault in Licensed Live Music Venues Pilot Program* the Victorian Government launched in early 2018 to train staff at nine venues to respond appropriately to reports of sexual harassment and assault.⁹³ However, as this project focused on voluntary support of venues to address sexual assault and sexual harassment, it is

unlikely to be effective at addressing what is a widely present problem. Training for staff to respond appropriately to sexual assault and sexual harassment must be mandatory.

In order to ensure safe venues, venue staff in areas where patrons are present should be required to be trained to identify the indicators of sexual harassment and how to respond to such behaviour.

The training could be at two levels. All staff could be trained to respond appropriately to a report of sexual assault or sexual harassment and then refer the person making the report to a person in the venue who has had advanced training in how to address the report.

The APC recognises that the training also needs to apply to security staff.

Recommendations

60. The APC recommends the definition of intoxication in the *Liquor Control Reform Act 1998* be amended to include intoxication from the consumption of liquor or other substances, as is already the case in other jurisdictions.
61. The APC recommends the reference to 'drunken' be removed from the *Liquor Control Reform Act 1998* and only 'intoxication' be referred to.
62. The APC recommends that the *Liquor Control Reform Act 1998* be amended so that once a person becomes intoxicated the venue must take reasonable steps to ensure they are able to safely exit the premises for another location.
63. The APC recommends that the obligation to take reasonable steps to ensure the safety of patron should mean the intoxicated person can remain on the premises until it is safe for them to leave. However, the venue should not be permitted to continue to sell them alcohol once they have become intoxicated.
64. The APC recommends responsible service of alcohol training should include a requirement for venue staff for on premises outlets to identify signs of sexual harassment and respond appropriately to ensure the safety of patrons in the venue. The training should be of both a basic level for all staff and an advanced level for certain staff and management. Staff trained at the basic level would respond appropriately to a report of sexual assault or sexual harassment and then refer the person to the staff member with the advanced training.

Other

Currently, poorly run and managed liquor outlets are able to continue to sell alcohol and the compliance and enforcement tools at the disposal of the Victorian Commission for Gambling and Liquor Regulation have been proven to be inadequate to drive behaviour change amongst the cohort of outlet owners who are reckless or willful in the harm they cause in the pursuit of profits for themselves. The Victorian Government has consistently failed to explore options employed in other jurisdictions that would drive the necessary behaviour change amongst this cohort of outlet owners.

It is disappointing that the consultation paper has failed to explore effective measures to curb the growing number of assaults associated with licensed venues. Data from the Crime Statistics Agency on the number of assaults associated with licensed venues in Victoria is shown in the following table.

	Jan to Dec 2016	Jan to Dec 2017	Jan to Dec 2018
Assault and related offences associated with licensed venues	669	738	757

In addition to the damage done to victims of these assaults, this increases the strain on our public hospital system through increased emergency department presentations at peak times and

increases the waiting lists of maxillofacial surgeons. Alcohol use also contributes to emergency service workers experiencing verbal or physical aggression and assaults.

In Victoria it seems badly managed venues are only occasionally fined; the costs easily absorbed; and poor management practices continued.

As one possible approach, the APC has raised the NSW initiative where liquor outlets associated with more than 10 violent incidents in a year are publicly listed and subject to a range of restrictions, mainly around the service of alcohol, until the annual number of violent incidents have been reduced. The scheme appears to have driven venue owners and managers to implement measures to reduce violent incidents.

The NSW scheme has resulted in violent incidents in listed venues dropping by 86 per cent since its inception in 2008, when 48 venues were associated with 1,270 violent incidents. In 2018 there were 12 listed venues associated with 183 violent incidents.⁹⁴

The Victorian Government may be able to identify other compliance and enforcement mechanisms that have been used in other jurisdictions. What is essential is that the VCGLR and Victoria Police are given effective tools to drive behaviour change in liquor outlet owners that are happy to put their profits ahead of community well-being. Effective tools are those that can be used in a timely manner, do not require unrealistic levels of proof that the venue is responsible for harm and impose a sanction that is sufficient to deter a liquor outlet owner from regarding it as simply a cost of doing business. The APC would support the Victorian Government implementing any compliance and enforcement regime that has been empirically demonstrated to drive the necessary behaviour change amongst the worst outlet owners.

Recommendation

65. The APC recommends the Victorian Government should implement compliance and enforcement measures that have been empirically proven to be effective at driving behaviour change among licensees that are reckless or willful in causing harm in their pursuit of profits.

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