

A new test for liquor licence applications: community impact and public interest

Background

To operate an alcohol outlet in Victoria, it is necessary to obtain a liquor licence for the sale and consumption of alcohol and in most cases a planning permit to use land as licensed premises.

Under Victorian planning legislation, planning permit decisions about alcohol outlets are unlikely to take into account potential health and social impacts of the supply of alcohol, as planning approval is concerned with the location of outlets, and impacts on the amenity of surrounding areas.ⁱ

In contrast, the Victorian *Liquor Control Reform Act 1998* ('Liquor Act'), which regulates the Victorian liquor licensing scheme, has the primary object of minimising harm from the misuse or abuse of alcohol, including by controlling the supply and consumption of alcohol.ⁱⁱ

Despite this, the current process for assessing liquor licence applications does not give effective consideration to the potential harm and social impacts of liquor licences, and is not ensuring that the harm minimisation object of the Liquor Act is met.

Why do we need a new liquor licence test?

Minimal information is currently needed to obtain a liquor licence

To obtain a new liquor licence in Victoria (or a variation or relocation of an existing liquor licence), applicants only have to provide basic information and meet minimal requirements. Applicants are not subject to any onus of proof, and do not have to provide evidence to meet any grounds or tests relevant to harm minimisation. For example, they do not have to provide evidence to show that the licence will be of benefit to, and not have a negative impact on, the community.

On the other hand, anyone who wishes to object to a liquor licence application (this can be a local council, licence inspector or community member) must provide extensive evidence to meet grounds set out in the Liquor 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).ⁱⁱⁱ

Liquor licence applications in Victoria are decided by the Victorian Commission for Gambling and Liquor Regulation (VCGLR). The VCGLR may decide to refuse a licence application on grounds including the same grounds relating to misuse or abuse of alcohol, or detriment to amenity, or on the ground that an applicant is not a suitable person to hold a liquor licence.^{iv}

Potential harm and community impacts of licences are not considered in most applications

In 2012, the Victorian Auditor-General 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.^v

In 2017, the Victorian Auditor-General again reported on liquor regulation, and found that the VCGLR did not consider the relevant grounds in the Liquor 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.^{vi} 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 an extremely small proportion of liquor licence applications. For example, in 2016/17, objections were received in relation to only 1.8 per cent of finalised licence applications.^{vii} According to the Auditor-General's 2017 report, this means the VCGLR did not consider potential harm and amenity impacts of new liquor licences in the vast majority of applications.¹

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.^{viii,ix}

Granting new liquor licences is the default outcome

The effect of these problems is that the licence application process is weighted heavily in favour of granting applications to the extent that this is the default outcome. 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 2017/18 the VCGLR granted 97 per cent, and refused only one per cent, of all finalised licence applications.^x Similarly, in 2016/17, the VCGLR granted 94 per cent, and refused only two per cent, of all licence applications.^{xi}

Huge increases in liquor licences and harm caused by alcohol in Victoria

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

The number of liquor licenses in Victoria has increased more than five-fold from fewer than 4000 in 1986^{xii} to more than 22,000 in 2018.^{xiii} 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.^{xiv}

Increased competition between alcohol outlets also places pressure on the viability of businesses, leading some outlets to take compliance risks and engage in harmful or risky practices.

This has devastating impacts on the health and wellbeing of Victorian communities. For example, there have been dramatic increases in alcohol-related ambulance attendances and hospital presentations in Victoria in recent years:

¹ It is not possible to assess whether the VCGLR has since changes its approach to assessment of uncontested liquor licence applications, as its decisions on uncontested applications are not publicly available.

- Alcohol-related ambulance attendances increased by more than 200 per cent overall and by 180 per cent relative to population between 2007-08 and 2014-15.^{xv}
- Alcohol-related hospital presentations increased by 56 per cent overall, and by 33 per cent relative to population between 2005-06 and 2014-15.^{xvi}

What should the new test be?

Community impact and public interest test for liquor licences

To address these issues, a new test based on community impact and the public interest should be introduced for all liquor licence applications in Victoria.

The test should be modelled on the new community impact and public interest test for liquor licence applications in the Northern Territory,^{xvii} and the public interest test for liquor licence applications in Western Australia,^{xviii} as well as the new community interest test that will soon come into effect in South Australia under amendments to South Australian liquor legislation.^{xix} (A summary of these public interest and community interest tests is set out in Attachment 1.)

The new test should apply to all applications for new liquor licences, variations of licences, and relocations of licences.

How would the new test work?

The Liquor Act should allow the VCGLR 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 Liquor Act should set out factors, including the following, that the VCGLR should take into account 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.

The Liquor Act should state expressly that convenience for consumers is not sufficient ground for determining that the grant of a liquor licence application is in the public interest. Given the significant health, safety and social impacts of increasing the availability of alcohol, it would be inconsistent with the Liquor Act's primary object of harm minimisation if ease and convenience of buying alcohol were grounds for determining that an application is in the public interest.

Onus of proof on licence applicants

The test should place the onus of proof on applicants for liquor licences. This would help to decrease the system's current reliance on objections to ensure potential harm and amenity impacts of licence applications are considered.

To apply for a liquor licence, the applicant should have to provide evidence to satisfy the VCGLR of the community impact and public interest test. This should include providing a Community Impact Assessment, according to guidelines published by the Minister.

The test should apply to applications for all types of liquor licences. However, the level of detail and amount of evidence required would depend on the level of risk posed by the application. For example, higher-risk applications, such as for large bottle shops, large pubs and nightclubs, late night alcohol outlets and home delivery services, would be required to provide a higher level of detail and evidence 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. The Community Impact Assessment guidelines published by the Minister should provide guidance on the level of detail and evidence required according to different licence types.

Broad objection grounds for all licence types

Any person, including community members, local councils and licensing inspectors, should continue to be allowed to object to a licence application. The grounds for objection should be that the licence would detract from the safety and wellbeing of the community, or would not be in the public interest, and these objection grounds should apply for any objector in relation to any licence type.

Community Impact Assessment guidelines

The Liquor Act should require the Minister to publish Community Impact Assessment guidelines. These guidelines should set out factors that the VCGLR must take into account in deciding whether a liquor licence application satisfies the community impact and public interest tests, and which the licence applicant must address in providing a Community Impact Assessment.

The factors should include the following:

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.

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
- current alcohol consumption rates
- socio-economic and social factors, such as rates of crime, violence and family violence, unemployment, homelessness, and the socio-economic profile of the area.

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.

Cumulative impact of liquor licences

The Community Impact Assessment guidelines should set out a non-exhaustive list of factors that the VCGLR may consider in assessing the cumulative impact of existing licences in the local area, including the types, number, density, mix, locations, trading hours, capacity or retail floor space, patron or customer numbers, volume of alcohol sales, compliance history and management of licensed premises, in the area.

The guidelines should provide clear guidance on how to assess and weigh relevant factors to determine cumulative impact.

The guidelines should also provide guidance on determining the appropriate area for assessing cumulative impact. This should be based on the circumstances of each application, including the following:

- the type, size (retail floor space or venue capacity) and location of the proposed 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
- 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, and may occur over a much wider area than the vicinity of licences.

Consultation

The Community Impact Assessment guidelines should require applicants for higher risk licences (e.g. large bottle shops, large pubs and nightclubs, late night alcohol outlets and home delivery services) to provide evidence of consultation with the local community, and of community attitudes towards the application.

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- ⁱ *Hunt Club Commercial Pty Ltd v Casey CC* [2013]VCAT 725.
- ⁱⁱ *Liquor Control Reform Act 1998*, s 4(1).
- ⁱⁱⁱ *Liquor Control Reform Act 1998*, ss 38-41.
- ^{iv} *Liquor Control Reform Act 1998*, 44(2), 47(2).
- ^v Victorian Auditor General's Report (2012), *Effectiveness of justice strategies in preventing and reducing alcohol-related harm*.
- ^{vi} Victorian Auditor-General. *Regulating Gambling and Liquor*. February 2017. Victorian Auditor-General's Office. Available at <https://www.audit.vic.gov.au/sites/default/files/20170208-Gambling-Liquor.pdf>, accessed 26 July 2018.
- ^{vii} State of Victoria (The Victorian Commission for Gambling and Liquor Regulation). *Annual Report 2016-2017*. State of Victoria. Available at https://www.vcglr.vic.gov.au/sites/default/files/VCGLR_Annual_Report_2016-17.pdf, accessed 26 July 2018.
- ^{viii} Foundation for Alcohol Research and Education. *Breaking down barriers: Community involvement in liquor licensing decisions in NSW*. 2013. Available at <http://fare.org.au/wp-content/uploads/Breaking-Down-Barriers-FINAL.pdf>, accessed 8 November 2018.
- ^{ix} Buffington, L 2014 'Community engagement in liquor licensing', in Manton, E, Room, R, Giorgi, C & Thorn, M (eds.) 2014, *Stemming the tide of alcohol: liquor licensing and the public interest*, Foundation for Alcohol Research and Education, pp. 55-61.
- ^x State of Victoria (The Victorian Commission for Gambling and Liquor Regulation). *Annual Report 2017-2018*. State of Victoria. Available at State of Victoria (The Victorian Commission for Gambling and Liquor Regulation). *Annual Report 2016-2017*. State of Victoria. Available at https://www.vcglr.vic.gov.au/sites/default/files/VCGLR_Annual_Report_2016-17.pdf, accessed 26 July 2018, accessed 31 October 2018.
- ^{xi} State of Victoria (The Victorian Commission for Gambling and Liquor Regulation). *Annual Report 2016-2017*. State of Victoria. Available at https://www.vcglr.vic.gov.au/sites/default/files/VCGLR_Annual_Report_2016-17.pdf, accessed 26 July 2018.
- ^{xii} Alcohol Working Group 2009, *Australia: the healthiest country by 2020, Technical Report 3: Preventing alcohol-related harm in Australia*, Preventative Health Taskforce (Cth), p. 21, figure 8.
- ^{xiii} State of Victoria (The Victorian Commission for Gambling and Liquor Regulation). *Annual Report 2016-2017*. State of Victoria. Available at https://www.vcglr.vic.gov.au/sites/default/files/VCGLR_Annual_Report_2016-17.pdf, accessed 26 July 2018.
- ^{xiv} Livingston, M, Wilkinson, C & Room, R 2016, *Community impact of liquor licences*, Sax Institute for the Ministry of Health (NSW), <<http://www.saxinstitute.org.au/wp-content/uploads/Community-impact-of-liquor-licences-1.pdf>>.
- ^{xv} Turning Point, *AODstats*, as updated 16 June 2017 <http://www.aodstats.org.au/>.
- ^{xvi} Turning Point, *AODstats*, as updated 16 June 2017 <http://www.aodstats.org.au/>.
- ^{xvii} *Liquor Act* (NT), s 6.
- ^{xviii} *Liquor Control Act 1988* (WA), s 38.
- ^{xix} *Liquor Licensing (Liquor Review) Amendment Act 2017* (SA), s 53A.