

18 September 2009

Julianne Brennan
Liquor Control Reform Regulations 2009 RIS
Responsible Alcohol Victoria
GPO Box 4304
Melbourne, VIC 3001

Dear Ms Brennan,

Regulatory Impact Statement – Liquor Control Reform Regulations 2009

The Alcohol Policy Coalition (“the Coalition”) is a coalition of health agencies – Australian Drug Foundation, Cancer Council Victoria, Turning Point Alcohol and Drug Centre, and VicHealth - who share a concern about the level of alcohol misuse and its health and social consequences in the community. The Coalition’s long-term goal is to promote a safer drinking culture in the community.

The Coalition welcomes the opportunity to provide comment on the *Liquor Control Reform Regulations 2009* (“the regulations”) Regulatory Impact Statement (“the RIS”).¹

Executive Summary

In relation to the regulations the Coalition broadly supports a risk-based fee model for Victoria’s liquor licensing fees, recognising the significant impact alcohol has on the Victorian community. The implementation of a risk-based licensing scheme is an important part of an overall strategy to reduce the physical availability of alcohol and consequently, the harmful consumption of alcohol.

However, the Coalition submits that there is potential for these regulations to be strengthened by including outlet density factors in the risk-based fee model. For future action, the Coalition recommends research into other risk factors including (but not limited to) crowding and venue design; and for amendment of the *Liquor Control Reform Act 1998* (“the Act”) to introduce a public impact assessment.

¹ Department of Justice (Victoria), *Liquor Control Reform Regulations: Regulatory Impact Statement* (2009).

Background

In November 2008, the Coalition made a submission in response to Review of Liquor Licensing Fees - Regulatory Impact Statement², which represented the first part of a two-stage review of liquor licence fees. For ease of reference the Coalition's position in relation to that review is set out below.

The Coalition:

- 1) strongly supported the regime in principle and believed that:
 - i) it should be based on harm minimisation;
 - ii) the amount of liquor license fees for individual licensees should be determined according to risk factors such as trading hours and compliance history;
 - iii) revenue derived from a risk-base fee regime should be especially utilised to:
 - iv) fund research and programs into the prevention and treatment of alcohol related harm; and
 - v) enhance liquor licensing enforcement practices.

- 2) considers that the development of any risk-based liquor licensing fee regime in Victoria must be based upon, and informed by, strong data and policy. The Coalition believes that:
 - i) more data and information is needed on the current status of "high-risk" premises in Victoria; and
 - ii) more research that links alcohol related harm to licensed premises in Victoria is needed along with the implementation of projects that combat this harm.

The Coalition further notes that the Government recently introduced legislation to Parliament to amend the Act to:

- strengthen the object of the Act to minimise the harm arising from the misuse and abuse of alcohol
- create three new categories of liquor licences - 'late night', 'restaurant and cafe' and 'major event' licences
- split the existing limited licence category into two new sub-categories - a renewable limited licence and a temporary limited licence
- provide the necessary authority for the introduction of differentiated, risk-based liquor licence renewal fees.³

² Department of Justice (Victoria), *Review of liquor licensing fees* (2009) Accessed at http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Liquor_Licensing_2/file/RIS_Review_of_Liquor_Licence_Fees.pdf.

The Coalition is pleased to note that both the *Liquor Control Reform Amendment (Licensing) Bill 2009* and the accompanying regulations show a firm commitment by the Victorian Government to implement a harm minimisation approach to the liquor licensing regime.

Characteristics excluded from the proposed risk based liquor licensing fee model

The RIS has already identified operating hours, venue type (restaurants) and compliance history as risk factors to be included in the proposed licensing system.⁴ These factors have been included based on an assessment of the available evidence in relation to each risk factor. Risk factors where the data is either inconclusive or does not support inclusion in the proposed licensing system are:

- venue type (sexually explicit entertainment, gaming, bars, nightclubs and pubs)
- location (regional, postcode and precinct level)
- noise
- crowding.
- staffing and management practices

Outlet density

Under the current system, the number of active liquor licences in Victoria has roughly doubled since 1998, with particularly significant increases in the number of on-premise licences granted. Similarly, the number of late-night and 24-hour trading premises has increased substantially since the introduction of the current Act (although it is worth noting that there is currently a freeze on new late-night licences in Melbourne central suburbs).

There is increasingly well-developed Australian evidence highlighting the relationship between high densities of alcohol outlets and alcohol-related violence. On-premises licences are of particular concern in the inner-city, while packaged liquor outlets are more problematic in suburban areas. However, studies have also shown that alcohol-related problems do not necessarily increase consistently with outlet density, and these results provide an avenue for the development of appropriate caps on liquor licences in local areas.

³ Liquor Control Reform Amendment (Licensing) Bill 2009, section 1.

A recent review of Victorian Planning Provisions has seen changes to Victorian Planning legislation allowing for the consideration of the cumulative impact of both existing and proposed licensed premises when considering planning permit applications.

The Coalition supports measures that restrict the proliferation of alcohol outlets and limit the trading hours of licensed premises (including retail outlets) as essential components of any strategies to reduce alcohol related harm. On the basis that cumulative impact matters are now a consideration in planning decisions, we suggest that such considerations should also form play a part in licensing decisions. We acknowledge that further research into the best approaches to minimise alcohol-related harm based on outlet density matters is required; however immediate changes are necessary in the short term to counter the proliferation of licenses in Victoria, and to achieve consistency with Victorian Planning Provisions.

Crowding

We note that crowding has not been included as a risk factor in the risk-based fee structure, on the basis that establishing an objective assessment of crowding factors is inherently difficult.⁵ The evidence currently available relating to the impact of crowding and the design and arrangement of internal space is limited, and, as is recognised in the RIS, inconclusive as to the relationship between internal space and crowding and the consequential impact that these factors have on risk of alcohol related harm. However, in general terms, there exists practical knowledge of how architecture and design can speed up drinking, and how the arrangement of furniture and the position of entrances, partitions etc. in on premises licensed venues can contribute to (or lessen) the likelihood of alcohol related harm.⁶

We note that the Government are considering making changes to the principal Act, to enable it to collect information for use in calculating future licence fees.⁷ The Coalition submits that priority should be given to the need to collect and analyse data on the design and arrangement of internal spaces in licensed venues, to determine how and to what extent different features relate to the risk of trouble.

⁴ Liquor Control Reform Amendment Regulations RIS, above n 1, 6.

⁵ Ibid. 21

⁶ Email from Professor Robin Room to Sondra Davoren, 16 September 2009.

⁷ Ibid. 45

Information accompanying liquor licence applications

The Act currently provides that an application for the grant, variation, transfer and relocation of a licence must be accompanied by prescribed information. Part 4 of the regulations prescribe the information required for each licence type. Currently, the prescribed information requirements are largely administrative in nature – for example requiring accurate descriptions of premises, proposed size of the premises, and owner of the premises.

The RIS outlines the problem with the current regulations – that only limited reference is made in the Act to what information must accompany an application – as a consequence, insufficient information is available to the Director of Liquor Licensing when making their decision. The proposed changes to the regulations, as outlined in the RIS are ‘minor, “housekeeping” changes and impose no further burden on applicants.’

The Coalition is of the opinion that applicants for new or varied licenses should provide even more information than is currently prescribed in the Act and regulations. In New South Wales and Queensland liquor licence applicants have a statutory obligation to supply information with their licence application addressing the public or social impact of the proposed licence. In New South Wales applicants for hotel and liquor store licences are required to demonstrate that the granting of a licence will not result in a detrimental impact to the community.⁸ Assessments must include information in relation to numbers of existing licences, social health indicators and demographic profiles.⁹

Similarly in Queensland applicants are required to demonstrate that the granting of a liquor licence is not contrary to the public interest.¹⁰ The specific information that is required varies considerably however commonly includes health and social impacts, the nature and type of facilities to be provided and information about facilities already existing in the locality and impact on the local community especially within 200m from the premises.¹¹

⁸ The Allens Consulting Group ‘Assessment of the Impact of Liquor Licensing Reforms’ Department of Racing, Gambling and Liquor (Western Australia) http://www.rgl.wa.gov.au/ResourceFiles/reforms/allens_report_2006_05_11.pdf at 3 September 2009, 32.

⁹ Ibid.

¹⁰ Ibid. 30

¹¹ Ibid.

We acknowledge that the appropriate process to introduce a requirement of this sort is by way of an amendment to the principal Act. That said, the Coalition strongly supports the Victorian Act being amended to introduce a similar public or social impact assessment, and for Part 4 of the regulations to be amended to outline mandatory requirements for an assessment. Broadly, the Coalition considers that any assessment should be based on the New South Wales model, and thus should consider the following:

1. the impact on particular groups within the community;
2. the impact on the character and amenity of the locality;
3. the potential for anti-social behaviour;
4. the cumulative impact that any development may have;
5. where appropriate, suggestions by the applicant to reduce any identified negative impact on the local community.¹²

Requiring applicants to turn their minds to public and social impact issues when making an application for the grant or variation of a license will have an overall positive effect, at minimum cost to the system. Where any cost does arise, it should largely be borne by the applicant. Such a step may also encourage greater compliance by licensees with harm minimisation principles in the Act.

We accept that licensed premises are not the sole cause of alcohol related harm in the community and for the most part, licensed premises have substantial economic, social and cultural benefits. However, the Coalition believes that the current situation, whereby local governments and communities bear the obligation of establishing amenity and misuse/abuse of alcohol issues (i.e. by lodging an objection), is to assign responsibility for minimising alcohol related harm in a disproportionate manner. Requiring licensees to address these concerns in the context of their application, acknowledges community concerns and expectations in relation to alcohol harm and liquor licences.

¹² Local Government and Shires Association of New South Wales 'Liquor Licensing Laws and Community Impact Statements: Guidelines for New South Wales Councils' (2009) http://www.lgsa.org.au/resources/documents/guidelines-for-nsw-councils_160109.pdf at 15 September 2009

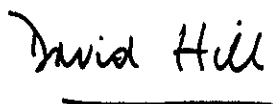
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The Coalition welcomes the opportunity to provide further feedback on any aspect of the RIS or this submission. Please contact Sondra Davoren, Legal Policy Advisor – Alcohol, Cancer Council Victoria on (03) 9635 5062 or sondra.davoren@cancervic.org.au

Yours sincerely,



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