

VicHealth's submission to the review of the *Liquor Control Reform Act 1998*

December 2016

Executive summary

VicHealth believes factors associated with gender inequality are the most consistent predictors of violence against women, however a range of reinforcing factors including alcohol can interact to increase the probability, frequency or severity of such violence.

Among the range of interventions required to create a future free from family violence, there is a need to better regulate the availability of alcohol through packaged liquor outlets. While it is widely recognised that the alcohol industry makes a contribution to Victoria's economy, this can be overstated. For example, alcohol sales revenue makes up only 13 per cent of core revenue in Melbourne's night time economy, whereas food sales generates 62 per cent of revenue.[1] It is more important to recognise the devastating social and health harms caused by alcohol, particularly the role of alcohol in family violence.

VicHealth's submission has a primary focus on the role of packaged liquor and its contribution to health and social harms in Victoria, specifically family violence. The submission identifies a number of issues which directly relate to packaged liquor and responds to questions 7-13 in the *Review of the Liquor Control Reform Act 1998 Consultation Paper* (Consultation Paper). The submission also explores a number of other known issues with the liquor regulatory framework that do not necessarily relate to family violence but should be considered as part of the review.

The recommendations suggested within the submission have been informed by VicHealth's previous and current work in preventing violence against women and preventing alcohol-related harm, and through engagement with VicHealth's broad range of stakeholders in the preventing violence against women and alcohol harm reduction sectors.

Summary of issues

VicHealth has identified the following issues with the LCRA that are likely to be contributing to alcohol-related harm in Victoria:

- 1) The absence of an effective regulatory mechanism to stem the proliferation of packaged liquor outlets.
- 2) No remedy within the LCRA to limit packaged liquor outlets in areas experiencing high levels of alcohol-related harms.
- 3) Failure of packaged liquor licence fees for large packaged liquor outlets to reflect the harm associated with alcohol purchased from these type of premises.
- 4) Exposure of children to static outdoor alcohol advertising.
- 5) Inappropriate in-store promotion and inappropriate bulk discounting through shop-a-dockets.
- 6) Lack of secondary supply to minors to be responsible and supervised.
- 7) Inability to enforce aspects of section 108 of the LCRA.
- 8) Lack of adequate regulation of late night home delivery of packaged liquor.

Summary of recommendations

VicHealth recommends the following amendments to the Liquor Control Reform Act:

- 1) Expand the Objects of the Act to include protection from alcohol-related harm to others.
- 2) Overhaul the liquor licensing application process including:
 - Reversing the onus of proof requiring liquor licence applicants to satisfy harm and public interest tests.

- Allowing any person (including members of the public and local councils) to object to any liquor licence application on the grounds that the application does not satisfy the harm test or public interest tests.
 - Limiting the Victorian Commission for Liquor and Gaming Regulation's (the Commission) discretion to grant licence applications only where it is satisfied that applications meet the harm and public interest tests.
- 3) Provide the Minister with the power to designate alcohol harm zones.
 - 4) Introduce cumulative impact assessments for packaged liquor.
 - 5) Introduce a floor space multiplier licence fee structure for packaged liquor.
 - 6) Ban alcohol advertising on public transport and within 150m of schools.
 - 7) Ban inappropriate in-store promotions and bulk discounting including shop-a-dockets.
 - 8) Amend the secondary supply laws in Victoria to include a responsible supervision requirement.
 - 9) Amend Section 108(4) to improve enforcement of the offences of supplying a person in a state of intoxication or permitting drunken and disorderly person to be on a licence premises.
 - 10) Introduce a new licence category for late night packaged liquor delivery.

Issue 1 – The absence of an effective regulatory mechanism to stem the proliferation of packaged liquor outlets

What is the issue?

Victoria, along with New South Wales, has the highest level of packaged liquor availability of all states. Over the past 15 years, the number of packaged liquor outlets in Victoria has increased by nearly 50 per cent, which far exceeds population growth. The number of new outlets in Victoria keeps increasing each year.[2]

Of particular concern is the number of large format stores increasing from 3 to 68 between 2001-2016.[2] It is the characteristics of large format stores, particularly their ability to promote themselves and sell liquor at cheaper prices relative to their independent competitors that contribute most significantly to trauma risk and harm.

The relative affordability of alcohol sold in packaged liquor outlets has contributed to an increase in the rate of alcohol consumed in the home or other private locations and away from licensed premises, with an estimated 80 per cent of alcohol consumed in Victoria purchased from packaged liquor outlets.[3]

Why is this a concern?

There is a clear link between packaged liquor outlet density and family violence. Research shows that the higher density of outlets, particularly of packaged liquor outlets, is associated with increased rates of family violence. A 10 per cent increase in the density of packaged liquor outlets is associated with a 3.3 per cent increase in domestic assaults.[4]

What is the cause of the issue?

There are a number of causes contributing to the proliferation of packaged liquor outlets in Victoria. Diagram 1 below highlights the issue and contributing causes.

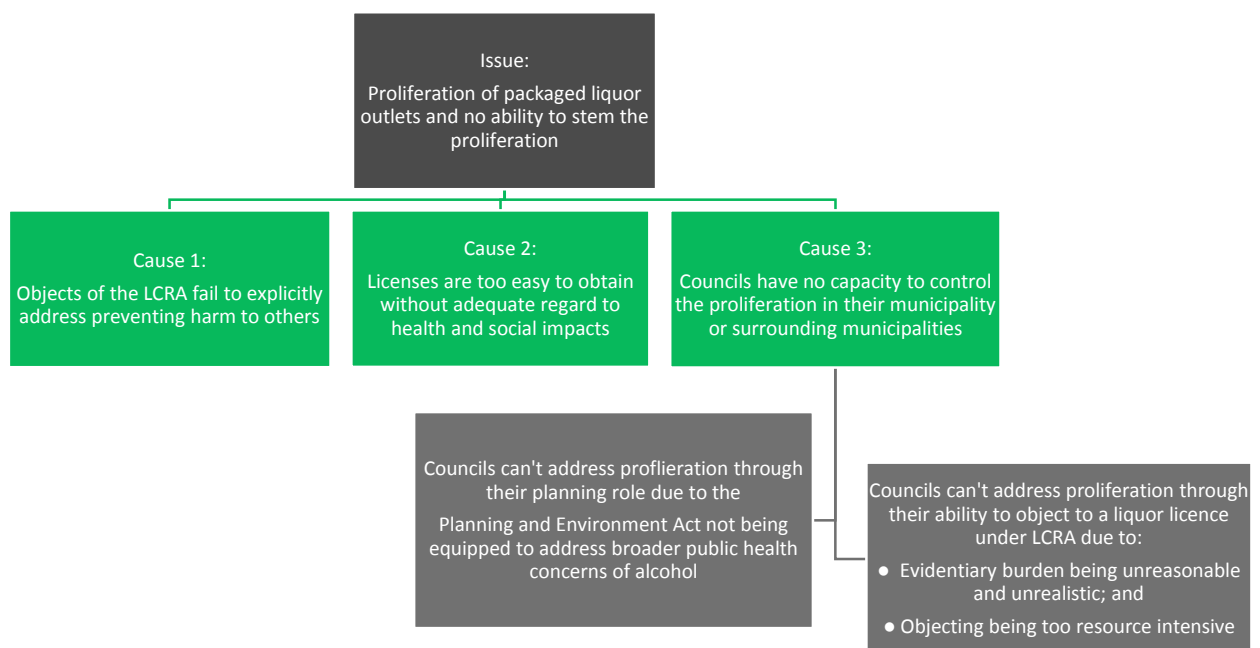


Diagram 1: Contributing causes of the proliferation of packaged liquor outlets

Objects of the LCRA fail to explicitly address preventing harm to others

The primary contributing cause of the proliferation of packaged liquor outlets in Victoria is the failure of the Objects of the Liquor Control Reform Act (LCRA) to explicitly state the intention of the Act is to minimise the 'harm to others' associated with alcohol. Alcohol consumption can have a significant negative effect on drinkers and people around the drinker, and the range and magnitude of such harm is considerable. A substantial number of Australians are affected by other people's drinking, including families, friends, co-workers and strangers.[5]

Although the Objects of the LCRA explicitly state that it is '*...the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol*', the LCRA does not provide adequate supply controls of alcohol through packaged liquor outlets to properly minimise the level of alcohol-related harm to others, including family violence. It is worth noting that the protection of children from harm is one of four statutory licensing objectives of the Licensing Act for England and Wales.

Licenses are too easy to obtain without adequate regard to health and social impacts

A second and significant contributing cause is the ease in which packaged liquor licenses can be obtained without due consideration to the broader health and social impacts the licence may have on the immediate and surrounding community. Licence applicants are only required to provide relatively basic information and the licence is generally granted unless an objection is made. Few objections are made and a scarce number of objections are successful.

Councils have no capacity to control the proliferation in their municipality or surrounding municipalities

A third contributing cause is that local councils do not have the capacity to control the proliferation of packaged liquor outlets in their municipality even when there is strong local community concern.

Under the *Public Health and Wellbeing Act 2008* (PH&WB Act) councils have a statutory role to '*protect, improve and promote public health and wellbeing within the municipal district*'. This includes protecting the community from alcohol related harm, including alcohol-related family violence. Although intimate partner violence is the leading contributor to death, disability and illness in Victorian women aged 15-44[6], the existing regulatory framework does not enable councils to effectively uphold their statutory role to protect their communities from intimate partner violence by restricting the number of packaged liquor outlets within their municipality.

Although Councils theoretically have the ability to control the development of licensed premises in their municipality through: i) the planning permit application process for licenced premises under the *Planning and Environment Act 1987* (the PEA), and ii) objecting to liquor licenses through the LCRA, the reality is quite different.

Councils are unable to prevent the development of liquor licenses though their planning role under the PEA largely because planning laws focus primarily on a narrow range of amenity issues. Broader public health concerns do not fit within the concept of amenity. The Objectives of the PEA are not adequately equipped to handle broader public health concerns associated with alcohol misuse, and hence, the proliferation of packaged liquor outlets cannot be addressed through the PEA.

Councils are unable to prevent the development of licence premises by objecting to a licence application through the LCRA because of the high threshold of evidence required to satisfy the grounds for objecting to a liquor licence. In practice, when objecting to a liquor licence, councils must prove a causal relationship between the prospective licensed premises and harm. It may be

possible to demonstrate that an additional licensed premises within a local area will 'generally' contribute to increased alcohol-related harms, however it is impossible to prove a 'clear causal link between a specific venue and harm' prior to the licensed premises being built.

The evidentiary burden for councils to object to a liquor license is too high. It is also prohibitively costly. The financial and human resources that are needed to object to liquor license applications is unsustainable for many councils, particularly when there are a large number of applications.

Further, a system that requires individual councils to resource objections to liquor licenses on a case-by-case basis leads to an inconsistent approach across the state as decisions to object will be influenced by the financial position of a council, rather than the public health needs of the community.

How can the issue be addressed through the LCRA?

The Objects of the LCRA should be amended to explicitly state that preventing alcohol related harm to others is an Object of the LCRA. Amending the Objects of the LCRA will ensure that harm to others, including family violence, is considered in the interpretation and application of the LCRA, including in the assessment of packaged liquor licence applications.

The onus of proof should be reversed with applicants having to prove that the proposed license premises will not contribute to increased alcohol related harm and will have a positive public interest impact. This is in contrast to the current situation where applicants provide little material in their application about addressing potential alcohol-related harms.

A 'harm test' and a 'public interest test' should be included in the LCRA so the broader health, economic and social impacts associated with alcohol are considered for all applications.

The 'public interest test' should require the applicant to satisfy the Commission that the proposed licence premises would have a positive impact on the public interest. The Act should include a clear definition of public interest. The definition should set out non-exhaustive factors that the Commission must take into account in determining whether a licence application is in the public interest, including:

- a) the likely impact of the application on the amenity of the area; and
- b) the likely economic impact of the application.

The LCRA or Ministerial guidelines should set out examples of positive and negative amenity and economic impacts.

The 'harm test' should require the applicant to demonstrate that their proposed licensed premises will not detract from the safety and wellbeing of the community. The applicant should demonstrate that the type of licensed premises and its features will not contribute to harm, and the area in which the proposed license premises is to be located is not already subject to high levels of alcohol-related harm and vulnerability (e.g. areas of low socioeconomic status, experiencing high rates of family violence and other alcohol harms, within close proximity to alcohol and drug treatment services, schools, or other vulnerable population groups).

The Commission should assess all applications on these tests and be obliged to decline applications that do not satisfactorily meet them. Having a system that assesses all applications based on these tests will increase the consistency of licence applications and determinations across the state. This will benefit business as it will provide certainty on how licence decisions will be made, while at the

same time restoring the balance by no longer requiring councils bear full responsibility for undertaking and considering health and social impact assessments.

Recommendations

1. Expand the Objects of the Act to include protection of alcohol-related harm to others

Although the primary Object of the Act is to contribute to minimising harm arising from the misuse or abuse of alcohol, this is not explicit about the protection of 'others'

2. Overhaul the liquor license application process

The liquor licence application process should be overhauled to include the following:

- Reverse onus of proof requiring applicants to satisfy harm and public interest tests.
- Allow any person (including members of the public and local councils) to object to any licence application on the grounds that the application does not satisfy the harm test or public interest test.
- Limit the Commission's discretion to grant licence applications only where it is satisfied that applications meet the harm and public interest tests

Issue 2: No remedy within the LCRA to limit packaged liquor outlets in areas experiencing high levels of alcohol-related harms

What is the issue?

Victorians living in disadvantaged areas are generally faced with higher levels of alcohol availability. The higher levels of exposure to alcohol outlets may play a role in explaining socioeconomic disparities in health outcomes.[7]

Research shows that not only are disadvantaged populations exposed to more outlets, the outlets to which they are exposed sell cheaper alcohol.[8] Lower priced alcohol encourages consumption as the cost of alcohol and average consumption are closely linked; when the price increases, consumption falls.[9]

A study of young adult drinkers (aged 16- 24) in Victoria, examined factors that predicted very high-risk drinking patterns (20+ drinks in a session, monthly or more often for males and 11+ drinks in a session, monthly or more often or females) and found that packaged liquor outlet density was significantly related to this type of harmful drinking.[10]

Disadvantaged groups have a greater burden from alcohol-related chronic disease than more advantaged population groups. The most disadvantaged groups are substantially and statistically significantly more likely to experience hospitalisation or death due to wholly attributable alcohol-related chronic diseases (WACD), and the most disadvantaged populations are statistically significantly at greater risk of being a WACD hospital patient than the least disadvantaged populations.[11]

An analysis of AODStats[12] of the range of alcohol indicators by local council area found that there are a number of local council areas with significant levels of alcohol-related harm across multiple alcohol harm indicators. For example:

- Latrobe City Council ranked second in family violence, sixth assaults, and tenth for alcohol related ambulance attendances
- Mildura Rural City Council ranked first in family violence, eight in assaults, and sixteenth in alcohol-related emergency department presentations.

- East Gippsland Shire Council ranked fourth in family violence, seventh in assaults, ninth in ambulance attendances, thirteenth in hospitalisations and twelfth in emergency department presentations.
- Frankston City Council ranked first in hospitalisations, third in emergency department presentations and seventeenth in Family violence.

Why is this a concern?

There are a number of local government areas in Victoria that experience high rates of alcohol-related harm. These areas are likely to have their alcohol-related harms exacerbated if the number of packaged liquor outlets were to increase.

Further, a continued increase in packaged liquor outlets in disadvantaged areas and areas where harms are already high is likely to contribute to alcohol-related health inequities.

A study commissioned by VicHealth to undertake a review of alcohol consumption and related harms from a social determinants and inequalities perspective found that using planning and/or licensing regulatory frameworks to prevent disproportionate clustering of outlets in disadvantaged areas would have the greatest potential to decrease inequalities in alcohol consumption and alcohol-related harms.[13]

What is the cause of the issue?

The Minister for Consumer Affairs, Gaming and Liquor Regulation has published decision-making guidelines for administering the LCRA that enable late night liquor licences to be considered differently in areas of high alcohol harms (known as the 'Freeze'). The 'Freeze' on late night liquor licenses was introduced to reduce social problems associated with late night liquor licenses within certain council areas. There is currently no similar mechanism to limit packaged liquor outlets in areas experiencing high rates of alcohol-related harms associated with packaged liquor outlets.

Another decision-making guideline published by the Minister on the assessment of the cumulative impact of on-premises liquor license applications does not give consideration to the cumulative impact of packaged liquor licences. Cumulative impact refers to the impacts that result from a concentration of licensed premises in a defined area and currently there is no mechanism for the cumulative impact from a cluster of packaged liquor outlets within a concentrated area to be considered when assessing packaged liquor applications.

It is worth noting that in the United Kingdom, where several recent legislative changes have strengthened the ability of local authorities to address public health through licensing policies, local Cumulative Impact Zones have been introduced. This includes the ability to designate Cumulative Impact Zones that enable local authorities to control new alcohol outlets in areas where the cumulative stress caused by existing overprovision of alcohol outlets threatens the licensing objectives. Cumulative Impact Zones can apply to on-premises or to packaged liquor licence applications. They require applicants to demonstrate how they will avoid threatening the licensing objectives, which is a reversal of the normal burden of proof for licence applicants. Research shows there was a greater reduction in alcohol related hospital admissions in local government areas where Cumulative Impact Zones were present and where there was more intense scrutiny of alcohol licence applications.[14]

How can the issue be addressed through the LCRA?

The LCRA should provide the Minister the power to designate an alcohol harm zone in areas at risk of or currently experiencing high rates of alcohol related harm, particularly areas experiencing high rates of family violence. Similar to the 'Freeze', this would create a presumption that packaged liquor applications would be refused or subject to conditions (e.g. reduced trading hours, limitation on size).

The LCRA should require the Commission to have regard to the cumulative impact of existing packaged liquor licences in licence determinations. To ensure consistent application, the LCRA should also include a clear definition of cumulative impact that applies specifically to packaged liquor licence applications. The definition should require that the cumulative impact of a concentration of packaged liquor outlets not just be considered within the council area relevant to the application but also in the general area. This is to take into account that packaged liquor outlets service more than just the community within the local council area in which it is located.

Recommendations

3. Provide a power for Minister to designate alcohol harm zones

Create a power for the Minister to designate an alcohol harm zone to prevent or restrict new packaged liquor outlets within the area, particularly for areas with high rates of alcohol-related family violence.

4. Introduce cumulative impact assessments for packaged liquor

Introduce the requirement for the cumulative impact of a cluster of packaged liquor outlets to be considered in the assessment of new packaged liquor licence

Issue 3: Failure of packaged liquor licence fees for large packaged liquor outlets to reflect the harm associated with alcohol purchased from these type of premises

What is the issue?

Approximately 80 per cent of alcohol consumed in Australia is sold through packaged liquor outlets.[3] The volume of alcohol sold through these venues means packaged liquor outlets considerably contribute to alcohol-related harm in the community.

Since 2000, where the legislative restriction that no person or corporation was permitted to own more than 8 per cent of the general or packaged liquor licences was removed, there has been a significant and fundamental change to the packaged liquor market in Victoria. The change contributed to the number of packaged liquor licences increasing by 49 per cent between 2001 and 2016, and a rapid expansion in the number of packaged liquor outlets owned by supermarket chains - with an increasing concentration of ownership between two companies.

A recent review of packaged liquor licences in Victoria found that in 2016, there were 2,023 active packaged liquor licences in Victoria, including 294 (14.5%) owned by Woolworths, 216 (10.7%) by Wesfarmers, 127 by Aldi (6.3%) and 754 (37.3%) operating under one of the Metcash brands. There were a further 632 (31.2%) independent packaged liquor outlets.[2]

More concerning is the dramatic increase in the number of 'big box' format stores in Victoria which have increased from 3 in 2001 to 68 in 2016. The majority of these (43, or 63%) were Dan Murphy's stores.[2]

Why is this a concern?

The increase in packaged liquor outlets, particularly 'big box' outlets has led to increased accessibility of alcohol in the community and cheaper prices due to the buying power of these big retailers. The price of alcohol influences rates of intimate partner violence, with research indicating that increases in the price of alcohol result in lower rates of intimate partner violence.[15]

It is chain outlets which contribute most significantly to trauma risk, with each additional chain outlet associated with a 35.3 per cent increase in intentional injuries and a 22 per cent increase in unintentional injuries.[16]

It is unlikely that the current fee structure for packaged liquor outlets is reflective of the potential harms caused by this category of liquor licence. As noted by Mr T R Anderson QC when reviewing the fee structure for packaged liquor outlets in South Australia as part of a broader independent review of the South Australian *Liquor Licensing Act 1997*:

'The annual fee structure also needs to recognise the risks associated with the sale of packaged liquor and that it does anecdotally contribute to social harms and impacts on the health and wellbeing of the community (i.e. through domestic violence, road traffic accidents and chronic diseases).'[17]

What is the cause of the issue?

Although Victoria has higher annual licence renewal fees compared to other states and has an increased fee for packaged liquor licences that operate during non-standard hours, the current application and annual renewal fee structure does not reflect the harm to the community caused by alcohol purchased through packaged liquor outlets, particularly 'big box' outlets.

How can the issue be addressed through the LCRA?

The LCRA should impose higher fees on larger and 'big box' packaged liquor outlets to reflect the increased harm to the community these venues are likely to contribute to.

Similar to the existing 'venue capacity multiplier' fee structure for on-premises licenses, a floor space multiplier should be introduced for packaged liquor, requiring annual license fees to be higher for larger retailers.

This will ensure that the fee structure is consistent with harm minimisation principles, those who potentially create the greater risks for excessive consumption or misuse of alcohol pay more. As noted by Mr T R Anderson QC, the additional fees collected could be allocated for additional enforcement, including more police officers dedicated to liquor licensing matters and/or so that the Commission can have more inspectors who are pro-active and inspect licensed premises more often, particularly to assess compliance with harm minimisation practices.[17]

Recommendations

5. Introduce a floor space multiplier fee structure for packaged liquor

Introduce a floor space multiplier fee structure for annual licence renewals for packaged liquor licenses.

Issue 4: Exposure of children to static outdoor alcohol advertising

What is the issue?

In 2015, Australian alcohol advertisers spent \$26.9M on outdoor advertising, which amounted to 36 per cent of the total spend on alcohol advertising.[18] Outdoor alcohol advertising includes advertising on public transport (e.g. on trams and buses), convenience-advertising including at train, tram and bus stops, and at sporting venues and events.

Public transport and public transport hubs are places where children and young people are frequently present. Data from the Victorian Integrated Survey of Travel and Activity shows that teenagers are the highest users of public transport compared to any other age groups and the use of public transport peaks when children are in secondary school.[19]

Given the high use of public transport by minors and given that outdoor advertising makes up a significant proportion of alcohol advertising, there should be regulations to limit alcohol advertising in public places where young people most frequent.

Why is this a concern?

Young people are particularly susceptible to alcohol advertising messages[20] and to harm from drinking.[21]

Research has consistently found that young people's exposure to alcohol advertising increases the likelihood that they will start drinking, or drink more frequently and heavily if they already drink. The more advertising they are exposed to, the greater the effect.[22]

What is the cause of the issue?

Alcohol advertising in Australia is subject to general advertising regulations as well as alcohol specific regulation, through both legislation and self-regulated codes. For the most part, regulation of alcohol advertising in Australia is best characterised as being self-regulated through industry codes of practice.

Existing codes can be limited and have a narrow focus, and do not cover the full range of alcohol marketing. The placement of alcohol advertising in most media is largely unrestricted, especially outdoor advertising.

The Outdoor Media Association (OMA) Code of Ethics and the OMA Alcohol Advertising Guidelines: (self-regulatory regime developed by the industry association) is relevant to outdoor alcohol advertising in Australia. The OMA Code of Ethics requires members to "*limit the advertising of 'alcohol products' on fixed signs that are located within a 150 metre sight line of a primary or secondary school*". This restriction does not apply where the school is in the vicinity of a club, pub or bottle shop or where the advertising appears on transit vehicles such as buses and taxis.

There is no monitoring of outdoor alcohol advertising near schools, and no penalties for breaching the 150m rule. There have been many examples of outdoor alcohol advertising placed near schools in breach of the guidelines.[23]

A 2011 House of Representatives Standing Committee inquiry into billboard and outdoor advertising concluded that loopholes in the guidelines make them '*little more than a token gesture*' and recommended limiting outdoor alcohol advertising given its exposure to children.[23]

How can the issue be addressed through the LCRA?

Due to constitutional limitations, the Victorian Government does not have broad powers to introduce comprehensive alcohol advertising bans. For example, the Victorian Government does not have the ability to regulate broadcast advertising, print advertising and sponsorships. However, the Victorian Government does have the power to regulate alcohol advertising in public spaces, such as on public transport, and alcohol advertising by licensees.

The LCRA can be strengthened to explicitly ban static alcohol advertising on public transport infrastructure and within a certain distance from schools.

It is worth noting that in August 2016 the South Australian Government announced that it will ban alcohol advertising from buses, trains and trams from 2017.

Recommendation

6. Ban alcohol advertising on public transport and within 150m of schools

To reduce exposure by children and young people to alcohol advertising, the LCRA must be strengthened to explicitly ban static alcohol advertising on public transport infrastructure and within 150m of schools.

Issue 5: Inappropriate in-store promotion and inappropriate bulk discounting through shop-a-dockets

What is the issue?

Point-of-sale strategies in packaged liquor outlets are a prominent marketing tool for alcohol products. Examples of point-of-sale strategies include free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases (e.g. shop-a-dockets, 3 for the price of 2).[24, 25]

Research examining the extent of in-store promotion found that in a sample of 24 hotel bottle shops and liquor stores across Sydney and Perth, an average of 33 promotions featured per outlet. Just over 50 per cent were classified as 'non-price' promotions.[26]

Packaged liquor outlets that are part of supermarket chains have a higher number of promotions, more price-based promotions, and required a greater quantity of alcohol to be purchased to participate in the promotion.[26]

The use of shop-a-dockets to promote bulk purchasing and discounted alcohol has dramatically increased in recent years. Shop-a-dockets are now used as a tool to advertise alcohol directly to customers of any age, and is an incentive to consumers to buy bulk and discounted alcohol.

Marketing at the point-of-sale has become widespread with the expansion of alcohol sales into more retail outlets. With this, the promotion of bulk discounting has increased with the change in the composition of packaged liquor outlets to ownership by supermarket chains.

Why is this a concern?

Point-of-sale displays and shop-a-docket alcohol advertising are important ways for alcohol marketers to reach consumers as this form of advertising has wide exposure, including to children.

VicHealth does not believe that discounted alcohol should be promoted on a receipt through a shop-a-docket to someone who has merely attended a supermarket to buy bread and milk.

The prominence and regular advertising on shop-a-dockets raises the visibility of alcohol products, acts to normalise alcohol consumption, and promotes impulse purchasing, both of which will encourage increased consumption of alcohol.

What is the cause of the issue?

Point-of-sale displays and in-store advertising like shop-a-dockets are the least regulated marketing channel for alcohol.

Although Section 115A of the LCRA confers a power to the Commission to ban inappropriate advertising, the Commission has historically taken a narrow view of this power. To date, enforcement of this provision has focused predominantly on on-premises venues and drinking promotions at the point-of-sale. Currently the power is not being used effectively to prohibit in-store and point-of-sale advertising that works to normalise alcohol consumption, encourages impulse purchasing, and promotes alcohol to children.

The *Guidelines for responsible liquor advertising and promotions* released by the Commission do not adequately cover in-store and point-of-sale advertising, and the list of promotions banned by the Commission is essentially silent on inappropriate point-of-sale or in-store advertising in packaged liquor outlets.

The *Liquor Licensing Code of Conduct Packaged liquor licensees* (the Code) aims to establish and require best practice by licensees in meeting the objects of the LCRA. It is overseen by a Packaged Liquor Code Committee (Code Committee) which has no public health or harm reduction representation. This limits the effectiveness of both the Code and the Code Committee to consider the public health impact from in-store promotion and bulk discounting through shop-a-dockets.

How can the issue be addressed through the LCRA?

The LCRA must be strengthened to explicitly ban point-of-sale advertising and in-store advertising that:

- children and young people are exposed to
- encourages impulse purchasing and/or irresponsible consumption through bulk discounting e.g. shop-a-docket advertising and promotions
- acts as an incentive to purchase alcohol e.g. gifts with purchase, competitions.

The Code and the Code Committee should be replaced with specific clauses within the LCRA and Ministerial guidelines.

Recommendations

7. Prohibit inappropriate in-store promotion and bulk discounting by packaged liquor outlets

Strengthen the LCRA to directly prohibit advertising that encourages irresponsible consumption of alcohol or is otherwise not in the public interest by packaged liquor outlets. The LCRA should set out what is considered to encourage irresponsible consumption including:

- Shop-a-dockets
- Bulk discounts
- Competitions
- Gifts with purchase.

Other issues

VicHealth is aware of a number of other issues with the LCRA that prevent it from fully meeting its Object of minimising harm arising from the misuse and abuse of alcohol. These issues should be explored as part of the review and the Victorian Government should give due consideration to addressing these issues in addition to the other issues outlined in this submission.

Issue 6 – Lack of secondary supply to minors to be responsible and supervised

In Victoria, an adult who has been given permission to supply a minor with alcohol in a private residence has no requirement for the supply to be responsible or supervised. Victoria is now lagging behind other states and territories in the introduction of a responsible supervision requirement when supplying alcohol to minors.

The secondary supply laws in Victoria should be amended to align with the respective laws in Queensland, NSW, Tasmania, WA, NT, and ACT which all encompass some form of responsible supervision requirement.

Issue 7 - Inability to enforce aspects of section 108 of the LCRA

Section 108(4) of the LCRA makes it an offence to supply liquor to a person who is intoxicated and an offence to permit a drunken and disorderly person to be on a licensed premises. These offences place an onus on the licensee to serve alcohol responsibly.

In discussions with stakeholders, VicHealth has regularly been made aware of the barriers to enforcing the offences described in Sections 108 (4)(a) and 108 (4)(b). The barriers are caused by the wording of the Section 108(4) which makes the offences difficult to be prove and essentially unenforceable.

Given the seriousness of the harms associated with permitting intoxicated person on premises and supplying alcohol to intoxicated person, it is important to ensure the offences are practical and enforceable. Section 108(4) should be amended to make it enforceable. Given there is no objective measure for intoxication and it is so difficult to prove intoxication, consideration should be given to adopting a similar approach to that used in Western Australia where the onus of proof in relation to intoxication is reversed so the accused bears the onus of proving they are not intoxicated.

Issue 8 - Lack of adequate regulation of late night home delivery of packaged liquor

In discussions with stakeholders, VicHealth has become aware of an increasing number of businesses operating in Victoria that deliver alcohol late at night

A simple Google search using the following key words 'late night alcohol home delivery Melbourne' found that:

- '*Liquorun*' advertises that it delivers alcohol to the home between the hours of 5pm – 2am, 7 days a week
- '*Tipple*' advertises that it delivers alcohol within 60 minutes and is available from midday until 11pm, 7 days a week
- '*Deliver me drinks*' delivers alcohol within 45 minutes from 6pm -12am.

Given these business are providing easy access to alcohol in the home, there is a need for home delivery packaged liquor business that operate during non-standard hours to be regulated

differently to packaged liquor business based in a static location which operate during standard hours.

A new licence category should be developed for late night packaged liquor delivery that has adequate controls to prevent the range of harms that are likely to be associated with the delivery and consumption of alcohol in the home in late night/early morning hours.

Recommendations

- 8. The secondary supply laws in Victoria should be amended to include a responsible supervision requirement**
- 9. Section 108(4) should be amended to make the offence of supplying a person in a state of intoxication or permitting drunken and disorderly person to be on a licence premises enforceable**
- 10. Introduce a new licence category for late night packaged liquor delivery**

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