

10 November 2008

Ms Julianne Brennan  
Director, Responsible Alcohol Victoria  
Department of Justice  
Level 30, 121 Exhibition Street  
Melbourne Vic 3000

Dear Ms Brennan,

***Regulatory Impact Statement – Review of Liquor Licensing Fees***

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 the 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 Department of Justice's (the Department) *Regulatory Impact Statement – Review of Liquor Licensing Fees* (the RIS).<sup>1</sup> The RIS represents the first part of a two stage Department review of liquor license fees. As the current level of fees does not adequately recover all of the government's costs of administering and enforcing Victorian liquor licensing laws, the RIS proposes new liquor licensing fee regulations to recoup these costs. The Department intends these new regulations to be an interim measure to remain in place for 12 months. During this period, the Department will also undertake the second stage of the review – an examination of all liquor license fees and types and consider a differentiated, risk-based fee model under which the licensed premises associated with the most alcohol-related harm would pay an equivalent fee.

***Executive Summary***

In relation to the *Liquor Licensing (Fee) Regulations 2008*, the Coalition:

- supports the proposed increase in Victoria's liquor licensing fees in recognition of the significant impact alcohol has on the Victorian community; and
- considers it reasonable that Victorian liquor license fees are set at a rate that accurately reflects the cost of regulating the liquor industry.

However, the Coalition has concerns about the information gaps in the RIS. In particular, the Coalition believes the RIS should detail how the Victorian Government will spend the additional \$4.76 million it will receive under the proposed regulations.

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<sup>1</sup> Department of Justice, Victoria, *Regulatory impact statement – Review of liquor licensing fees* (RIS), October 2008.  
Accessed at

[http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV\\_Publications\\_Liquor\\_Licensing\\_2/\\$file/RIS\\_Review\\_of\\_Liquor\\_Licence\\_Fees.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Liquor_Licensing_2/$file/RIS_Review_of_Liquor_Licence_Fees.pdf).

In relation to the proposed risk-based Victorian liquor license fee regime, the Coalition

- strongly supports such a regime in principle and believes that:
  - it should be based on harm minimisation;
  - the amount of liquor license fees for individual licensees should be determined according to risk factors such as trading hours and compliance history;
  - revenue derived from a risk-base fee regime should be especially utilised to:
    - (i) fund research and programs into the prevention and treatment of alcohol related harm; and
    - (ii) enhance liquor licensing enforcement practices.
- 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:
  - more data and information is needed on the current status of “high-risk” premises in Victoria; and
  - 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 offers the expertise and knowledge of its member organisations to assist with the development of a Victorian risk-based liquor licensing fee regime and looks forward to being involved in this important process.

### ***Liquor Licensing (Fee) Regulations 2008***

Currently, the Victorian Government recoups \$10.25 million in liquor licensing fees per annum. However, the RIS estimates that the direct costs to government of assessing, monitoring and enforcing liquor licensing activities in Victoria is \$15.2 million per annum, a shortfall of \$4.76 million. Consequently, the RIS proposes that the Department will introduce new liquor license fee regulations - the *Liquor Licensing (Fee Regulations) 2008* (the Regulations) – to fully recover this shortfall amount. To achieve this, the Department intends to increase the annual renewal fees for each liquor license type with the increase based on the estimated regulatory effort associated with each type of license. The more regulatory effort involved, the higher the relevant renewal fee will be.

The Coalition supports the current review of, and proposed increase, in Victoria’s liquor licensing fees in recognition of the significant impact alcohol has on the Victorian community.

Alcohol remains the mostly widely used drug in Victoria with nearly half of Victorians over the age of 14 years being daily or weekly drinkers.<sup>2</sup> Misuse of alcohol can contribute to a range of well-known negative social and health effects such as violence, injuries, hospitalisations and alcohol related diseases. In turn, significant amounts of government resources are utilised each year to regulate, prevent and respond to the health and social harms resulting from alcohol use.

The Coalition considers it reasonable and appropriate that Victorian liquor license fees are set at a rate that accurately reflects the cost of regulating the liquor industry.

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<sup>2</sup> Australian Institute of Health and Welfare. *2007 National Drug Strategy Household Survey: State and territory supplement*. Drug Statistics Series, Number 21, August 2008, p. 5

However, the Coalition is concerned about the information gaps in the cost assumptions underlying the RIS. For instance, the RIS excludes a number of important costs that impact on the liquor licensing regime. It refers to the local council's role in the liquor licensing process but does not provide any cost breakdowns or estimates for this process.<sup>3</sup> The RIS indicates that only costs that relate to activities currently undertaken by Consumer Affairs Victoria (CAV) and Victoria Police can be directly attributed to liquor licensing activity and, therefore, recoverable through the proposed Regulations. Yet, even here, relevant costs are excluded such as the cost of training police officers in licensing related duties.<sup>4</sup> In particular, the RIS does not detail how the Victorian Government would spend or allocate the additional \$4.76 million it will receive under the proposed Regulations. In the Coalition's view, this lack of information undermines the effectiveness and transparency of what the RIS is trying to achieve.

### ***Proposed risk-based liquor license fee regime***

Under the *Victorian Alcohol Action Plan*, the Victorian Government has committed to reviewing liquor license fees and types, including consideration of a differentiated, risk-based license fee structure to ensure that licensees associated with the most harm pay a commensurate fee.<sup>5</sup>

In principle, the Coalition strongly supports a risk-based license fee regime. The Coalition believes that:

- (1) the fee regime should be based on harm minimisation principles;
- (2) the amount of liquor license fees for individual licensees should be determined based on risk factors such as trading hours and compliance history; and
- (3) revenue raised by the liquor license fees should be allocated to:
  - (i) fund research and programs into the prevention and treatment of alcohol related harm; and
  - (ii) enhance liquor licensing enforcement practices.

Each of these components is explored in further detail below.

A useful model is the new Queensland liquor license risk-based fee regime, which will come into effect from 1 January 2009 following recent amendments to the *Liquor Act 1992 (Qld)* (the Queensland Act).

#### **(1) Harm minimisation**

In the Coalition's view, the proposed review and restructure of Victorian liquor licensing fee regime must be based on harm minimisation principles, which focus not only on minimising the health impacts of alcohol consumption but also physical harm, personal and property damage, violence and anti-social behaviour.

Such a regime could have a positive impact on harmful alcohol consumption. Increasing fees may discourage operators who do not have a strong commitment to regulatory compliance and harm minimisation from being involved in the liquor industry. These operators may be more likely to engage in practices that expose their patrons to a greater risk of harm. Therefore, the Coalition considers it appropriate that venues and license types that cause the most alcohol

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<sup>3</sup> According to the RIS, this is because local councils levy rates on businesses, including liquor licensees, and receive State and Commonwealth Government grants to recover costs associated with service provision. As these other mechanisms exist to recover the councils' costs of liquor licensing activities, it is not appropriate to recover them from liquor licensing fees. See RIS, p. 20.

<sup>4</sup> This is due to a lack of reliable data and concerns about possible double counting with other police activities. See RIS, p. 32.

<sup>5</sup> *Victoria's Alcohol Action Plan 2008-2013*, May 2008, p. 32. Accessed at [http://www.health.vic.gov.au/drugservices/downloads/action\\_plan.pdf](http://www.health.vic.gov.au/drugservices/downloads/action_plan.pdf)

related harm and require the most enforcement resources should pay the most in liquor license fees as a result.

This approach is also consistent with the *Liquor Control Reform Act 1998*'s objective to minimise harm arising from the misuse and abuse of alcohol.<sup>6</sup> Indeed, the Coalition believes that this should be the Act's primary objective as has now occurred in Queensland.<sup>7</sup>

## **(2) Risk factors**

The Queensland Act has created a new risk-based liquor licensing fee model. Under the Act, each liquor licensee will pay a set fee according to license type on an annual basis. Licensees may also then pay additional annual fees according to the level of risk that is posed to the community's safety and amenity by their premises.

The level of risk will be determined by each individual licensee's trading hours, noise levels, service of food and compliance history. Licensees that follow practices in these areas that focus on harm minimisation will pay less in liquor licensing fees. Conversely, licensees that follow practices that negatively impact on the community's safety and amenity will be required to pay more.

The Queensland Government has particularly focused on trading hours as an issue that can have a significant, detrimental community impact. Research demonstrates that late hour trading by licensed premises contributes to both increased violence and levels of alcohol consumption.<sup>8</sup> On this basis, the Queensland Act established 10am to 12am as the standard liquor trading hours and indicated that premises that wish to trade outside these hours must pay higher liquor license fees in order to do so.<sup>9</sup> This reflects the higher level of risk and the consequential regulatory cost to the Government.

Compliance history is another means of determining the risk levels of licensed venues. Several alcohol related incidents at the one venue can suggest poor management practices and, in turn, a negative impact on community safety and amenity. Under the Queensland Act, licensees will be evaluated on their previous year's compliance activities. If licensees receive warning letters to management, infringement notices or are prosecuted in one year, they will be liable for up to \$20,000 extra in liquor license fees the following year.

The Queensland Act provides a practical example of how a risk-based fee model could work in practice. Licensees must pay a fee according to their level of risk but can also minimise this cost if they implement harm minimisation practices. The Coalition fully endorses this approach and believes it could be successfully implemented in Victoria.

One important point of difference between Queensland and Victoria may be the factors used to assess the risk levels of Victorian licensed premises. The RIS has already identified trading hours, venue type and location, patron numbers and compliance history as issues that impact on risk levels<sup>10</sup> but more information is needed to assess and determine what matters are

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<sup>6</sup> Section 4(a) *Liquor Control Reform Act 1998* (Vic).

<sup>7</sup> Section 3(a) *Liquor Act 1992* (Qld) (Queensland Act).

<sup>8</sup> Liquor Licensing Division, Queensland Treasury. *Regulatory Impact Statement / Draft Public Benefit Test*, February 2008, p. 60. Accessed at <http://www.liquor.qld.gov.au/Documents/2006+Application+Forms/RIS+and+DPBT.pdf>.

<sup>9</sup> Licensees wishing to trade from 12am-3am must pay an additional liquor license fee amount to reflect the higher risk to the community's safety and amenity. If licensees wish to trade between 3am and 5am, they must pay a further, additional risk-based fee. Trading from 7am-10am will also incur a fee though this will be much lower than post-12am trading.

<sup>10</sup> See RIS, p. 6.

appropriate for assessing risk in the Victoria context. Therefore, the Coalition supports the CAV's intention to collect further data on all these factors as part of the upcoming liquor license fee review.

### **(3) Liquor license fee revenue**

#### **(i) Utilising liquor license fee revenue to address alcohol related harms**

The Queensland Act provides that all liquor license fees raised under the risk-based model are to be paid into a Community Investment Fund<sup>11</sup> on a monthly basis. Out of this Fund, the Minister may allocate monies to be paid for alcohol consumption research, dealing with the social issues arising from alcohol abuse and misuse.<sup>12</sup>

The Coalition strongly supports this idea in principle. In its view, the most critical part to the success of any Victorian risk-based fee regime will be its ability to demonstrate, and be seen to demonstrate, a beneficial impact on alcohol related harm. Monies raised by the proposed fee regime must, therefore, be explicitly linked to positive interventions and initiatives that both target and help prevent alcohol abuse in Victoria. Utilising liquor license fee revenue to address and prevent alcohol related harm is an ideal way to help achieve these objectives.

Consequently, the Coalition believes that the fees raised from a risk-based Victorian liquor licensing scheme could be allocated to the Community Support Fund (CSF)<sup>13</sup> – the Victorian equivalent of the Queensland Community Investment Fund - to fund alcohol consumption research, prevention and treatment programs.

While the Queensland Act states the Minister may allocate Community Investment Fund monies towards alcohol related research and programs, this money may also be used to fund the administration of its liquor licensing regime.<sup>14</sup> It is to be expected that money sourced from liquor licensing fees will be put towards liquor licensing administration costs. Nevertheless, the Coalition would be concerned about the potential impact on harm minimisation initiatives - if Victoria followed the Queensland example and paid liquor license revenue into a CSF - and administration costs subsequently consumed all this revenue.

Therefore, to avoid this possibility in Victoria, the Coalition proposes that a certain proportion of the monies raised by liquor licensing fees under a risk-based licensing regime be dedicated to addressing alcohol consumption and harm related research. This approach should also be made clear in the legislation governing both the CSF and the risk-based liquor licensing fee regime.

In the Coalition's view, taking this approach strikes an appropriate policy balance – utilising a proportion of those funds derived from businesses profiting from the service of alcohol to address some of the harms that alcohol can cause. Such a view is also in accordance with how monies are currently paid out of the CSF. The CSF, which is funded from Victorian gaming taxes, must first and foremost utilise these monies to provide for research and treatment into the harms caused by problem gambling.<sup>15</sup>

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<sup>11</sup> The Queensland Community Investment Fund was established under section 314 of the *Gaming Machine Act 1991 (Qld)*. Each month, the Queensland Gaming Minister must pay into the fund a designated percentage of all gaming machine tax from the previous month.

<sup>12</sup> Sections 219 and 220 Queensland Act.

<sup>13</sup> The Community Support Fund (CSF) was established under section 10.3.1 of the *Gambling Regulation Act 2003 (Vic)*. The Act prescribes that 8.3% of hotel gaming revenue is paid into the CSF each year.

<sup>14</sup> Section 220(3) Queensland Act.

<sup>15</sup> Section 10.3.3 (a)(i) *Gambling Regulation Act 2003(Vic)*

Further, the CSF governing legislation already provides the mechanism for the specific allocation of monies to drug and alcohol programs. From 1 July 2004, \$45 million from the CSF has been set aside each financial year as consolidated revenue to fund these services.<sup>16</sup> Recently, this was extended by an additional four years.<sup>17</sup> The Coalition considers that this statutory provision could be amended to provide for monies to fund alcohol harm minimisation initiatives out of the funds raised by the proposed Victorian risk-based licensing fee regime.

## **(ii) Utilising liquor license fee revenue to improve liquor enforcement practices**

If liquor license fees are to increase in proportion to the risk of particular venues, the Coalition also considers it is reasonable to expect, and see evidence of, increased licensing enforcement within these premises in terms of more patrols and spot inspections.

One area that would benefit from improved liquor enforcement practices is Victorian community sporting clubs, which hold either a Club (Restricted) license or a Limited (Renewable) liquor license. Under the Regulations, these licenses will attract a fee increase of 181% and 59% respectively.

Since 2001, the Australian Drug Foundation's *Good Sports* program has been working with Victorian community sporting clubs, aiming to encourage them to manage alcohol responsibly and reduce alcohol related problems such as binge drinking.<sup>18</sup> However, a major obstacle for the program has been encouraging some sporting clubs to achieve these goals in an environment where their liquor licenses are rarely subject to any kind of follow-up such as licensing inspections. While the Regulations have proposed a significant fee increase for community sporting club liquor licenses and the final fee amount under a risk-base fee regime is as yet unknown, the Coalition considers that this increase is reasonable *provided* that the extra funding raised will be used to assist alcohol management across the Victorian community, including increased licensing inspection of sporting clubs.

### ***Future research and data needs***

The Coalition strongly believes that the development of any future risk-based liquor licensing fee regime must be based upon, and informed by, strong data and policy.

However, in the Coalition's view, there is currently information lacking in several important areas. One is data on the amounts and types of current Victorian liquor license premises, which could be deemed risky under the proposed risk-based license regime. The recent CAV RIS on security cameras<sup>19</sup> demonstrated that there is inadequate data on this issue.<sup>20</sup>

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<sup>16</sup> Section 3.6.12(1A) *Gambling Regulation Act 2003 (Vic)*.

<sup>17</sup> This occurred in 2007 to fulfil a Victorian government election promise to provide a further \$180 million funding over four years from gaming taxation revenue for the provision of Victorian drug and alcohol programs.

<sup>18</sup> For more information on the Good Sports program, see: <http://www.goodsports.com.au/>

<sup>19</sup> Consumer Affairs Victoria, *Regulatory Impact Statement: For proposed Liquor Control Reform (Amendment) Regulations 2008 to prescribe standards for security cameras in high-risk licensed premises in Victoria*, May 2008. Accessed at [http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/LiquorControlReform\(Amendment\)Regulations2008\(SecurityCameraRegulations\)RIS/\\$File/Liquor%20Control%20Reform%20\(Amendment\)%20Regulations%202008%20\(Security%20Camera%20Regulations\)%20RIS.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/LiquorControlReform(Amendment)Regulations2008(SecurityCameraRegulations)RIS/$File/Liquor%20Control%20Reform%20(Amendment)%20Regulations%202008%20(Security%20Camera%20Regulations)%20RIS.pdf)

<sup>20</sup> As above, p. 6. This RIS proposed minimum performance standards for surveillance equipment in "high risk" licensed premises. "High risk" licensed premises were those that traded after 1am and had live or amplified music. CAV identified that there were 719 high-risk premises in Victoria but it was not possible to produce a report on these premises for particular years as this data had not been captured electronically or manually. Nor, was it possible to provide a breakdown of high-risk premises by style or type of venue such as bars, nightclubs, restaurants as these were not fields on the licensing database.

Another area is research that links social harms and licensed premises. The RIS specifically identifies this as an issue requiring further investigation to inform the development of the proposed risk-based fee model. Research that investigates whether the number and density of alcohol related outlets make a difference to alcohol consumption and related harm rates is critical in this respect. For instance, recent research based on Melbourne liquor license outlets demonstrated a significant positive relationship between alcohol outlet density and assault rates<sup>21</sup> but the Coalition considers that much more is needed to provide a sound policy foundation for the risk-based liquor license fee regime. It is also important to be aware of, and overcome, the limitations of such research.<sup>22</sup>

An additional important data source in this context is information on the volume of wholesale alcohol purchases made by licensed premises. This data is vital for estimating per capita consumption of alcohol beverages at the state and local levels. It provides valuable insight into community drinking patterns of different types of alcoholic beverages, particularly those associated with high-risk consumption levels.<sup>23</sup> Recent research also demonstrates how this data can be effectively used to inform better licensing decisions and develop alcohol related policy.<sup>24</sup> However, currently only the Western Australia and the Northern Territory collect wholesale alcohol purchase data. Other Australian states and territories ceased collecting this data following a 1997 High Court decision, which held that the States could not levy taxes on alcohol.<sup>25</sup> The Victorian Parliament's Drug and Crime Prevention Committee 2006's *Final Report: Inquiry into Strategies to Reduce Harmful Alcohol Consumption* (the Victorian Parliamentary Final Report) recommended the ongoing collation of wholesale alcohol purchase data in Victoria.<sup>26</sup> The Coalition fully endorses this recommendation.

From the Coalition's perspective, translating alcohol harm reduction research into interventions that will impact on, and reduce, the future risk of alcohol abuse is also crucial. for the future success of any risk-based license fee regime. An example of this is the Alcohol Linking Project (ALP), an intelligence-based method of policing utilised to enforce liquor law and serving regulations in licensed venues.<sup>27</sup> In 2002, the ALP was implemented in western NSW and the Hunter Region, resulting in a 13% reduction in alcohol related crime associated with targeted licensed premises. In partnership with NSW Police, the program is being implemented as routine practice throughout NSW. An evaluation of the ALP trial demonstrated that enforcement

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<sup>21</sup> M. Livingston (2008). Alcohol outlet density and assault: a spatial analysis. *Addiction*, 103, 619-628.

<sup>22</sup> Studies focusing on the link between alcohol outlets and alcohol related harm may assume that every outlet within broad license categories is equivalent e.g. both a small bar and a large nightclub are counted as the one on-premise license. However, this problem could be overcome through, firstly, data relating to the amount of alcohol sold by premises to enable both density and consumption of alcohol to be studied and, secondly, data linking alcohol related harm to specific premises would facilitate a greater understanding of specific drivers of alcohol-related harm relevant for particular premises. See M. Livingston, T. Chikritzhs, R. Room. (2007). 'Changing the density of alcohol outlets to reduce alcohol-related problems.' *Drug and Alcohol Review*, 26:5. 557-566, p. 562.

<sup>23</sup> Parliament of Victoria. Drugs and Crime Prevention Committee. *Inquiries into Strategies to Reduce Harmful Alcohol Consumption: Final Report*. Vol 1, March 2006, p. 102 (Victorian Parliamentary Final Report).

<sup>24</sup> See, for example, T. Chikritzhs et. al. (2008). *Predicting alcohol-related harms from licensed outlet density: A feasibility study*. Monograph Series No.28. National Drug Law Enforcement Research Fund, Hobart, Tasmania and Hall et. al. (2008). *Alcohol sales data are essential for good public policies towards alcohol*. *MHA*. 189(4), p. 188 – 189.

<sup>25</sup> *Ha v New South Wales* (1997) 189 CLR 465.

<sup>26</sup> Victorian Parliamentary Final Report, p. 103.

<sup>27</sup> Under the ALP, when NSW police are called to attend an incident where alcohol was involved, they record the location of that person's drinking and ask routine questions about the nature of alcohol's involvement. Responses to these questions are entered into the NSW Police computer system and analysed to identify premises whose intoxicated patrons become involved in police attended incidents. Police provide a report to all licenses involved in alcohol related incidents. Those licensees that demonstrate a trend of incidents involving high levels of intoxication receive a covert audit and follow up visits by police. Over time, premises that are identified as an ongoing problem are targeted with increased enforcement activity. See: J. Wiggers et. al. (2004). 'Strategies and outcomes in translating alcohol harm reduction research into practice: the Alcohol Linking Program.' *Drug & Alcohol Review* 23:3: 355-364.

focused on alcohol serving practices could impact on reducing crime, improve safety and reduce the burden on law enforcement.<sup>28</sup>

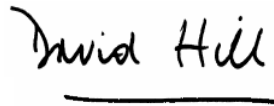
Similarly, Victoria Police have been trialing a software package called Alcohol and Drug Recorded Intelligence for Tasking (ADRIFT). ADRIFT enables police to record the last place of alcohol consumption and subsequently ‘map’ those licensed venues that are the most problematic in terms of alcohol related violence and act accordingly. The Victorian Parliamentary Final Report recommended that ADRIFT be evaluated 12 months after its inception.<sup>29</sup> The Coalition also supports this recommendation.

The Coalition welcomes the opportunity to provide further feedback on any aspect of the RIS or this submission. Please contact Elissa Campbell, Legal Policy Officer – Alcohol, Cancer Council Victoria on (03) 9635 5614 or [elissa.campbell@cancervic.org.au](mailto:elissa.campbell@cancervic.org.au)

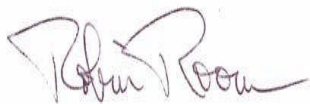
Yours sincerely,



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<sup>28</sup> As above.

<sup>29</sup> Victorian Parliamentary Final Report, p. 638.