



Research Brief

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Liquor Control Reform Amendment (Licensing) Bill 2009

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NB: Readers should note that this Research Brief was current at the time of its preparation prior to the conclusion of debate on the Bill by the Victorian Parliament. For further information please visit the Victorian Legislation and Parliamentary Documents website @ <http://www.legislation.vic.gov.au>.

Introduction

On 12 August 2009 the Minister for Gaming Mr Tony Robinson gave the second reading speech for the Liquor Control Reform Amendment (Licensing) Bill 2009 ('the Bill'). The Bill amends the *Liquor Control Reform Act 1998* ('the Act') to create three

new licence categories for late-night licences, a new restaurant and café licence and a new category for major events.¹

The Bill also creates two new subcategories of temporary limited licences and renewable limited licences, provides for a process for licensees seeking to change the category of licence they hold and provides a new risk-based structure for licence fees.

1. Second Reading Speech

In his second reading speech, the Minister said that the Bill will implement commitments announced by the government in its Victorian alcohol action plan.² These commitments included reviewing the licence categories and introducing a risk-based fee structure so that licensees associated with the most harm pay a commensurate fee. The Minister stated that there was substantial evidence demonstrating that certain characteristics and practices of licensed venues are associated with a higher risk of alcohol-related harm, particularly the trading hours and compliance history of the licensee.

Furthermore, the Minister identified that some of the costs of regulating the licensing system are being borne by taxpayers and said that a 'liquor licence is not a right but a privilege and licensees should pay accordingly'.³ The Minister referred, in his second reading speech, to the Nieuwenhuysen report, published in 1986, which led to the deregulation of the hospitality industry and the growth in European café-style outlets.⁴

The Minister noted, however, that the increase in large nightclubs and bars that has subsequently accompanied the liberalisation of liquor laws was not accounted for at the time of the Nieuwenhuysen report. He said that these reforms were intended to help reduce alcohol-related violence and contribute to a safe community without penalising Melbourne's food and café culture, which present less risk to the community.

The Minister noted that the new risk-based liquor licensing system is part of a bigger package of reforms to reduce alcohol-fuelled violence. Other initiatives cited by the Minister include the increase of 120 more police on the streets, the introduction of a compliance directorate, bigger penalties for drunk and disorderly behaviour and for serving intoxicated patrons, and greater enforcement powers for the police and the Director of liquor licensing.⁵

¹ The *Liquor Control Reform Act 1998* superseded the *Liquor Control Act 1987* in 1999. The *Liquor Control Act 1987* was repealed on 17 February 1999 by section 181(Schedule 2) of the *Liquor Control Reform Act 1998*, No. 94/1998.

² Victoria, Legislative Assembly (2009) *Debates*, Bk. 10, pp. 2656-2658. For the report, which was developed by the Ministerial Taskforce on Alcohol and Public Safety, see Victorian Government (2008) *Restoring the Balance: Victoria's Alcohol Action Plan 2008-2013*, Melbourne, Victorian Government.

³ Victoria, Legislative Assembly (2009) *Debates*, Bk. 10, p. 2656.

⁴ See J. Nieuwenhuysen (1986) *Review of the Liquor Control Act 1968: Report*, Melbourne, Victorian Government.

⁵ Victoria, Legislative Assembly (2009) *Debates*, op. cit.

2. Background

Alcohol and Violence

Alcohol abuse and alcohol-related violence has featured extensively in the media recently.⁶ Several reports have also been published into what has been termed 'alcohol-fuelled violence' from Commonwealth and state governments, a Victorian parliamentary committee, emergency services, Victoria Police, and various government departments, such as Justice, Consumer Affairs and Human Services.⁷

The report *Violence in Public Places: Explanations and Solutions*, commissioned by Victoria Police, noted that in the past few years there had been an increase in both the incidence and the severity of violence in Victoria.⁸ The report by Richard Eckersley and Lynne Reeder cited that Melbourne metropolitan ambulance records showed that cases of assault have roughly doubled since 1999 and that, according to police, recorded assaults in the public domain had increased by over 20 per cent in the past five years, with most assaults occurring at night-time and many of these violent incidences alcohol or drug-related.⁹ Data from Victoria Police shows that the number of reported assaults in the Melbourne Local Government Area (LGA), which includes the CBD, rose by 13.2 per cent between 2007/08 and 2008/09.¹⁰

Eckersley and Reeder's report noted that there were many factors that may have contributed to producing social conditions conducive to violence, among which included that incidences of binge-drinking had risen, that there had been a simultaneous growth in a 'night-time economy' and also an increase in the number of licensed venues. Eckersley and Reeder report that 300,000 people come into the Melbourne central business district on Friday and Saturday nights and the number of licensed venues operating after 3.00 a.m. had increased from 55 in 2005 to 156 in 2008.¹¹

Many other research reports have affirmed a link between alcohol and violence. Research from a July 2009 report from the Australian Institute of Criminology found that nearly half (47 per cent) of homicides were classified as alcohol-related and of those, over half involved both the offender and victim consuming alcohol prior to the

⁶ See R. Millar (2009) 'In a drunken state – alcohol-related violence is rising and a free-market approach to booze is clearly failing. But is turning the clock back the answer?' *The Age*, 25 April, pp. 1, 4 (Insight); M. Johnston (2009) 'It's 9am and you'd hope to be safe, but violence never sleeps in our city', *Herald Sun*, 14 April, pp. 4-5; M. Dunn (2009) 'Drunken violence forces police to close nightclub – Viper loses its fangs', *Herald Sun*, 7 April, p. 11; M. Dunn (2009) 'Cops want club closed – Amber Lounge's file of violence', *Herald Sun*, 4 April, p. 11; P. Rolfe (2009) 'Danger in pubs and clubs – Sex crimes soar', *Sunday Herald Sun*, 26 April, p. 13; Editorial (2009) 'Final call on alcohol sales is up to the Government – A policy rethink is needed to balance industry and public interests', *The Age*, 28 April, p. 12; See also R. Millar (2009) 'Laws a licence for violence – Alcohol deregulation blamed for booze brawls', *The Age*, 25 April, p. 1.

⁷ See Part 8 of this Research Brief on Further Reading.

⁸ The report involved conducting a roundtable of participants drawn from a range of relevant scientific disciplines and Victorian Government departments, as well as agencies responsible for the development and implementation of policy. For more information on the methodology used, and the report, see R. Eckersley & L. Reeder (2008) *Violence in Public Places: Explanations and Solutions*, Melbourne, Australia 21, p. 7.

⁹ *ibid.*, p. 5.

¹⁰ Expressed as a rate per 100,000 of population, this represents an increase of almost 9 per cent for that period. Reported assaults in the Melbourne LGA are now running at just under 2,500 assaults per annum. Overall, reported assaults rose in number by 7.4 per cent across Victoria. Expressed as a rate per 100,000 of population, this represents a 5.4 per cent increase in assaults. For further details see Victoria Police (2009) *Victoria Police 2008/2009 Crime Statistics*, Corporate Statistics, Victoria Police, viewed 31 August 2009, <http://www.police.vic.gov.au/content.asp?Document_ID=782>.

¹¹ R. Eckersley & L. Reeder (2008) *op. cit.*, p. 11.

incident.¹² This is consistent with research from the World Health Organisation (WHO) that found alcohol to be strongly associated with violent crime.¹³

Recent Developments

In response to the increase in alcohol-related violence, the government committed \$37.2 million in May 2008 over five years into developing and implementing an action plan aimed at reducing the consequences of 'risky drinking' and alcohol-related violence. The plan was outlined in *Restoring the Balance: Victoria's Alcohol Action Plan 2008-2013*, which summarised many of the social impacts and health consequences of alcohol misuse.¹⁴ It listed the following statistics concerning how abusive alcohol consumption affects Victorians every year, resulting in:

- 24,714 inpatient hospitalisations
- over 8,000 emergency department presentations
- over 4,700 ambulance attendances in metropolitan Melbourne
- 64 per cent of 18-24 year olds and 32 per cent of 14-17 year olds binge drinking
- 759 alcohol-related deaths, 57 road deaths (this does not include passengers and pedestrians)¹⁵
- 487 infringements to licensees breaching liquor laws
- approximately 2,000 assaults involving young people affected by alcohol
- 16,500 drivers convicted of drink and/or drug offences
- 10,000-15,000 people apprehended for public drunkenness
- over 1,500 assaults in licensed premises¹⁶

Citing research conducted by the Turning Point Alcohol and Drug Centre, this report found that 18 per cent of 18-24 year olds undertook risky drinking at least weekly, 44 per cent at least monthly and 64 per cent at least yearly.¹⁷ The report also stated that in 2005-2006 twenty-six per cent of assaults occurred during high alcohol hours (Friday or Saturday night).¹⁸ The report outlined 35 policy initiatives and legislative changes that the government intended on implementing to combat the increase in alcohol-related violence. These initiatives impact on a wide range of policy areas including health, justice, consumer affairs and education. Strategies that were outlined included education programs in schools, alcohol withdrawal programs, awareness campaigns, reviewing alcohol advertising, introducing late-hour entry restrictions and new security camera regulations. The government also recently trialled a 'Lockout' initiative that prevented late-hour entry to venues.¹⁹ In terms of licensing, the government recently

¹² J. Dearden & J. Payne (2009) *Alcohol and Homicide in Australia*, Canberra, Australian Institute of Criminology.

¹³ World Health Organisation (2004) *Global Status Report on Alcohol*, Geneva, World Health Organisation, Department of Mental Health and Substance Abuse, viewed 26 August 2009, <http://whqlibdoc.who.int/publications/2004/9241562722_425KB.pdf>. There are various theories into the link between alcohol and violence, which have pointed to social learning and cultural norms about behaving in a certain way when intoxicated and also to the pharmacological properties of alcohol to lower inhibitions. See T. Makkai (2001) 'Alcohol and Disorder in the Australian Community: Some Results from the National Drug Strategy Household Survey' in P. Williams (ed.) *Alcohol, Young Persons and Violence*, Canberra, Australian Institute of Criminology, pp. 85-111.

¹⁴ Victorian Government (2008) *Restoring the Balance*, op. cit., pp. 31-32.

¹⁵ *ibid.*, p. 10.

¹⁶ *ibid.*, p. 6.

¹⁷ See Turning Point Alcohol and Drug Centre (2007) *Victorian Drugs Statistics Handbook: Patterns of Drug Use and Related Harms in Victoria*, Drugs Policy and Services Branch, Melbourne, State of Victoria, cited in Victorian Government (2008) *Restoring the Balance*, op. cit., p. 9.

¹⁸ Victorian Government (2008) *Restoring the Balance*, op. cit., p. 11.

¹⁹ KPMG's report, commissioned by the Department of Justice, provides an analysis and evaluation of the 2 a.m. Lockout, as well as jurisdictional comparison. See Department of Justice (2008) *Evaluation of the Temporary Late Night Entry Declaration: Final Report*, Melbourne, Victorian Government.

announced an extra 25,000 yearly inspections of licensed premises by civilian inspectors from July 2009.²⁰

Another report commissioned by the Department of Justice focused on the cost to the Victorian Government of alcohol abuse. This report specifically reviewed alcohol-related harm in relation to licensed premises and considered risk-based licensing models. The report estimated that in 2007-2008 the social cost of alcohol-related harm in Victoria was approximately \$4 billion, with approximately \$366 million of this (9 per cent) being borne by the Victorian Government.²¹ These costs included direct, indirect and intangible costs, such as costs associated with law enforcement, health care, pain and suffering associated with disability, loss of wellbeing and premature death, production losses in the workforce and at home, road accidents and the cost of crime.²²

According to Consumer Affairs Victoria, the liquor licensing system currently costs \$15 million a year to regulate, of which only \$9.8 million is paid for by the state's 19,000 licensees.²³ The remaining \$5 million is paid for from state government funds. All liquor licence renewal fees and some application fees were increased from 1 January 2009.²⁴

Legislative Changes

The Victorian Government's intention to review liquor licensing fees was signalled in the *2009 Annual Statement of Government Intentions* and in the Government's report *Restoring the Balance: Victoria's Alcohol Action Plan 2008-2013*.²⁵

As mentioned above, this Bill follows several other policy initiatives and legislative proposals in this area. In 2007 Parliament passed the Liquor Control Reform Amendment Bill 2007 which:

- gave police the power to ban troublemakers from the Melbourne central business district and the Chapel Street area for up to 24 hours;
- enabled courts to issue exclusion orders for up to 12 months for repeat offenders of offences that include assault, sexual offences, threats to kill, destroying or damaging property, drunkenness, offensive or obscene behaviour, weapons offences and failure to leave a licensed premises;
- gave the police the power to suspend a liquor licence for up to 24 hours;
- introduced greater controls on restaurants to prevent them from operating as a bar or nightclub; and,
- doubled penalties for serving alcohol to intoxicated patrons or allowing them to remain on licensed premises.

²⁰ J. Dowling (2009) 'Crackdown on liquor licence venues', *The Age*, 7 May.

²¹ Department of Justice (2009) *Alcohol-related Harm and the Operation of Licensed Premises*, Melbourne, The Allen Consulting Group, Victorian Government.

²² The Victorian estimations were taken from national studies done by Collins and Lapsley. See D. Collins & H. Lapsley (2008) *The Costs of Tobacco, Alcohol and Illicit Drug Abuse to Australian Society in 2004/05*, National Drug Strategy Monograph Series No. 66, Canberra, Australian Government. See also, D. Collins & H. Lapsley (2002) *Counting the cost: estimates of the social costs of drug abuse in Australia in 1998-9*, National Drug Strategy Monograph Series No. 49, Canberra, Australian Government. The national statistics were also cited in the 2006 report *National Alcohol Strategy 2006-2009* by the Ministerial Council on Drug Strategy, see Ministerial Council on Drug Strategy (2006) *National Alcohol Strategy 2006-2009*, Canberra, Commonwealth of Australia.

²³ Consumer Affairs Victoria (2009) 'Liquor licence fees to rise in 2009', viewed 27 August 2009, <<http://www.consumer.vic.gov.au/CA256EB5000644CE/page/Liquor-Liquor+Licensing+Newsflash-Liquor+licence+fees+to+rise+in+2009?OpenDocument&1=75-Liquor~&2=999-Liquor+Licensing+Newsflash~&3=980-Liquor+licence+fees+to+rise+in+2009~>>.

²⁴ Department of Justice (2008) *Liquor Licence Fees to Rise*, media release, 19 November.

²⁵ Victorian Government (2009) *Annual Statement of Government Intentions*, February, Melbourne, p. 54; Victorian Government (2008) *Restoring the Balance*, op. cit., pp. 31-32.

Following the release of a Regulatory Impact Statement in 2008, new regulations introduced minimum standards for security cameras used in licensed premises, which are contained in the Liquor Control Reform Regulations 1999.²⁶ Recently two other Bills that addressed alcohol consumption have been introduced into Parliament, these being the Liquor Control Reform Amendment Bill 2008 and the Liquor Control Reform Amendment (Enforcement) Bill 2008. The Liquor Control Reform Amendment (Enforcement) Bill 2008 established a new civilian Compliance Directorate and gave stronger powers to the Director of Liquor Licensing ('the Director') and police.²⁷ The Liquor Control Reform Amendment Bill 2008 addressed late-hour entry declarations and was passed in the Legislative Assembly in November 2008 although opposed by the Coalition. It has been second read in the Legislative Council but at the time of writing has not yet been debated.

3. Main Provisions in the Bill

The Liquor Control Reform Amendment (Licensing) Bill 2009 amends the Liquor Control Reform Act 1998 for the following purposes, as referred to in section 1(a) of the Bill:

- to strengthen the objects of that Act in relation to harm minimisation and the responsible consumption of alcohol;
- to create three new licence categories for late night licences, restaurant and café licences and major event licences;
- to create late night (general) licences, late night (on-premises) licences and late night (packaged liquor) licences as sub-categories of late night licences;
- to create renewable limited licences and temporary limited licences as sub-categories of limited licences;
- to simplify the process for licensees seeking to change the category of licence they hold; and
- to provide a new risk-based structure for licence fees.

Objects of the Act

As mentioned above, one of the primary purposes of the Bill is to strengthen the objectives of the Act with regards to harm minimisation and responsible alcohol consumption. The Act outlines three main ways in which it aims to minimise harm in its stated objectives in section 4, which are:

- to contribute to minimising harm arising from the misuse and abuse of alcohol by –
 - providing adequate controls over the supply and consumption of liquor (s. 4(a)(i));
 - ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life (s. 4(a)(ii));
 - restricting the supply of certain other alcoholic products (s. 4(a)(iii));
- to facilitate the development of a diversity of licensed facilities reflecting community expectations (s. 4(b)); and
- to contribute to the responsible development of the liquor and licensed hospitality industries (s. 4(c)).

²⁶ See Department of Justice (2008) *Regulatory Impact Statement: Security Camera Regulations*, Melbourne, Victorian Government. See also Victoria, Legislative Assembly (2008) *Debates*, Bk. 13, p. 4052.

²⁷ For a brief summary of the changes see Consumer Affairs Victoria (2009) 'Changes to the Liquor Control Reform Act 1998', viewed 26 August, <<http://www.consumer.vic.gov.au>>.

After section 4(a)(iii) of the Act the Bill inserts a new section which states, as one of the objectives, 'encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community'.

At the end of the section on the objects of the Act, the Bill also inserts a new section 4(2) which states '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'.

Categories of Licences and Permits

Section 7 of the Act lists eight categories of licences and permits that may be issued under the Act, which are: general licence, on-premises licence, club licence, packaged liquor licence, pre-retail licence, vigneron's licence, limited licence and BYO permit. The Bill adds a further three categories: restaurant and café licence, late night licence and major event licence. The Bill also clarifies the provisions and conditions of the existing licences to further distinguish licence categories.

General Licence

The Bill clarifies the hours in which a licensee with a general licence is authorised to supply liquor on the premises. Currently a general licence authorises the supply of liquor on the premises i) during ordinary trading hours; and ii) at any other times determined by the Director and specified in the licence (s. 8(1)). The Bill distinguishes a general licence from a late night licence by defining the hours in which a licensee of a general licence is permitted to supply liquor so that liquor can be supplied 'between 11 p.m. on any particular day until 1 a.m. on the following day, if so determined by the Director and specified in the licence' (new s. 8(1)(ii)). Furthermore, liquor cannot be supplied at a time earlier than 5 a.m. before the commencement of ordinary trading hours if so determined by the Director and specified in the licence (new s. 8(1)(iii)).

On-premises Licence

Similar to the changes to general licences, the Bill makes changes to on-premises licences to further regulate the hours in which a licensee may supply liquor to not later than 1 a.m. on the day following ordinary trading hours, nor to supply liquor before 5 a.m. before the commencement of ordinary trading hours.

With regards to on-premises licences, the Bill repeals sections 9(2)(a), 9(3), 9(4) and 9(5) of the Act. These repealed sections relate to licensed premises that are operating as restaurants. The Bill incorporates these repealed sections elsewhere under the new restaurant and café licence.

Restaurant and Café Licence

The Bill provides for a new licence for restaurants and cafes for premises where 'the predominant activity carried out at all times on the premises is the preparation and serving of meals to be consumed on the licensed premises' (new section 9A). This licence is subject to certain conditions.²⁸

²⁸ These conditions include that table seating must be available for at least 75 per cent of the patrons attending the premises at any one time and that the licensee must not permit either the live performance of any musical works or the playing of any recorded musical works on the premises at higher than background music level at any time outside ordinary trading hours (new section 9A(3)(a) and 9A(3)(b)). The Bill also specifies that 'background music level' in relation to the premises means 'a level that enables patrons to conduct a conversation at a distance of 600 millimetres without having to raise their voices to a

Packaged Liquor Licence

Section 10 of the Bill clarifies that a packaged liquor licence, which authorises a licensee to supply liquor on the licensed premises in sealed containers, bottles or cans, will not be able to supply liquor after 1 a.m. on the day following ordinary trading hours or prior to 5 a.m. before the commencement of ordinary trading hours. A licensee who wishes to trade outside of these hours will require a late night (packaged liquor) licence.

Late Night Licence

By restricting the hours of the existing licences, outlined above, the Bill sets out, in new section 11A, to establish a new late night licence which can be:

- a late night (general) licence; or
- a late night (on-premises) licence; or
- a late night (packaged liquor) licence.

Section 4(3) of the Bill inserts the definition of 'late night trading hours' to mean 'a continuous period from 1 a.m. on a particular day, where the licence or permit also authorises the supply of liquor up to 1 a.m. on that day'.

A late night (general) licence authorises a licensee to supply liquor during ordinary trading hours as well as at any other times determined by the Director and specified in the licence for consumption both on and off the licensed premises.²⁹

A late night (on-premises) licence allows a licensee to supply liquor during ordinary trading hours and at any other times determined by the Director and specified in the licence for consumption on the licensed premises.³⁰ New section 11A(3)(c) also allows a licensee of this particular licence, if specifically authorised by the Director, to supply liquor in an open container for consumption in a food court next to, or near, the licensed premises.

A late night (packaged liquor) licence authorises a licensee to supply liquor on the licensed premises in sealed containers, bottles or cans during ordinary hours and at any other times determined by the Director and specified in the licence for consumption off the licensed premises. The Bill establishes, in new section 11(5), that this licence is subject to several conditions, which include compliance with a planning scheme (s. 16 of the Act), that the licensee does not cause or permit undue detriment to the amenity of the area (s. 17(1) of the Act), that the licensee comply with the code of conduct (if any) determined by the Minister (s. 11(3)(aad) of the Act) as well as other conditions determined by the Director and specified in the licence.

Section 11(6) of the Bill sets out certain conditions contained in the packaged liquor licence which will also apply to the late night (packaged liquor) licence, these include the following:

substantial degree' (new section 9A(5)). This does not apply to music performed or played on the licensed premises outside ordinary trading hours as part of a function (see new section 9A(4)).

²⁹ The Bill also allows a licensee who resides on the licensed premises to supply liquor on that part of the licensed premises set aside for the licensee's private residence at any time to a guest of the licensee for consumption on that part of the licensed premises. This licence also allows a licensee to supply liquor on the licensed premises *at any time* to a resident of the licensed premises or a guest of the resident for consumption on the licensed premises.

³⁰ It also allows the licensee of this licence to supply liquor on any other premises that has been authorised by the Director and specified in the licence for consumption on those premises.

- if the licensed premises is located within a supermarket and the licence is held by the owner of a supermarket, then payment for liquor supplied on that premises may be received at any checkout located in the supermarket provided the person receiving the payment is of or over the age of 18 years (s. 11(2));
- that the Director may approve programs to be responsible service of alcohol programs (s. 11(4)). A packaged liquor licence is subject to a condition that a licence must be under the management or control of a person who has completed a responsible service of alcohol program (s. 11(3)(aab)); and
- the Small Business Commissioner may investigate the compliance by licensees of a code of conduct, consistent with the objects of the Act, that may be determined by the Minister (s. 11(8)).

Limited Licence

The Bill also makes changes to the limited licence in section 14(1) of the Act to divide this licence into two separate categories:

- a temporary limited licence; and
- a renewable limited licence.

Both licences authorise the licensee to supply liquor at the times determined by the Director and specified in the licence, the only difference being that the temporary limited licence is not renewable.

Major Event Licence

The Bill inserts a new section 14A that deals with a new major event licence. The Director may determine that an event is a major event 'only if he or she is satisfied that the event is likely to have a significant impact' (new s. 14B(2)). The Bill specifies in section 14B(4) that an event is likely to have a significant impact if:

- the event is likely to require significant effort or oversight by authorised persons;
- the event is likely to have a significant impact on the provision and organisation of public transport and emergency services; or
- the event is likely to have a significant impact on public safety or the amenity of the area or both in which the event is held.

An event is taken to be a major event if the Director determines that the event is likely to attract more than 5,000 patrons (new s. 14B(3)). However new section 14B(7) states that the Director may determine that an event that is likely to attract more than 5,000 patrons is not a major event if, in the Director's opinion, the event is unlikely to have a significant impact.

In determining whether an event is likely to have a significant impact the Director must also consider the following:

- the number of patrons;³¹
- the proposed date, time and duration of the event;
- the nature of the event;
- the location of the event;
- the potential impact on public transport, emergency services and the municipal council in which the event is to be situated;
- the potential impact on public safety and the amenity of the area;
- the cumulative impact of the grant of other licence applications in relation to the event;

³¹ New section 14B(5) sets out considerations that may assist the Director in determining the number of patrons.

- the impact of prior or similar events if the proposed event has previously been held;
- any relevant recommendations made by the Chief Commissioner.

A provision in section 26 of the Act requires that the Director may only grant a limited licence if satisfied 'that the scale and scope of the supply of liquor... is limited in nature'. This provision will also apply to the major event licence.

Furthermore, the Director must not grant a temporary limited licence for an event that would be considered a major event. If an application is made for a temporary limited licence in relation to a major event, the Director must notify the applicant that the Director will consider the application for a major event licence on payment of the fee specified for that type of licence. The importance given in the proposed legislation to distinguishing between a major event licence and a temporary limited licence is apparent when examining the proposed fee structure. The proposed fee payable for a major event licence, such as the Big Day Out, is \$778.54 or \$1116.78 per licence where multiple applicants make licence applications (the example given is the St Kilda Festival).³² The application fee for a temporary limited licence is \$90.50.³³

Determination of Applications

The Bill inserts new sections following section 44(4) and 47(3) that will allow the Director to grant other types of licences where the Director refuses to grant a late night licence in both contested or uncontested applications (i.e. the Director may refuse to grant a late night (general) licence but may grant a general licence instead).

The Bill also inserts a new section 58(2)(aa) to allow the Director to vary a licence at his or her own initiative with regards to changing the licence category from a late night licence to its related licence without the late night trading (i.e. from a late night (packaged liquor) licence to a packaged liquor licence). Conditions contained within this section (s. 58(2)) already allow the Director to vary the trading hours outside of ordinary trading hours, the size or perimeter of the licensed premises, impose new conditions on the licence or remove or vary conditions of the licence.³⁴

Provision of Information

The Bill inserts a new section Division 10 which addresses information in relation to fees. This section states that an authorised person may request a licensee to provide information about the conduct of the licensed premises or premises to which the permit applies for either or both of the following purposes:

- to assist in determining the relevant fee in relation to the licence or permit;
- to assist in identifying and measuring the factors that contribute to the risk of alcohol-related harms.³⁵

³² See Department of Justice (2009) 'Liquor Licence Application Fees', fact sheet, Victorian Government.

³³ *ibid.*

³⁴ As already specified in the Act, the Director must give written notice of the proposed variation - the licensee has 21 days to give the Director a written notice of objection. The Director must consider any submission made.

³⁵ The licensee must comply with this request and must notify an authorised person of any change in the information provided as soon as practicable (new s. 66A(2) and 66A(3)). An authorised person can be any person authorised by the Secretary and employed under Part 3 of the Public Administration Act 2004 in the Department of Justice or any person within the meaning of Division 3 of Part 8 of the Act which means the Director, a compliance inspector or a member of the police force.

Risk-Based Fee Calculation

Section 180 of the Act addresses the regulations that may be made with respect to the Act. With regards to fees payable for licensed venues, which are specified in the regulations, the Bill provides for certain factors to be taken into account in the calculation of fees by adding a new section after section 180(4). The following factors comprise:

- the nature and scale of the activities being carried out at the licensed premises;
- the type of venue;
- the number of patrons;
- any activities carried out by a licensee or permittee that reduces the risk of alcohol-related harm arising from the operation of a licence or permit;
- the previous conduct of a licensee or permittee in carrying out activities under a licence or permit;
- the previous history of a licensee or permittee in complying with this Act and the regulations;
- any other factors consistent with the objects of this Act.

The Bill also specifies that a fee provided for by the regulations is not limited to an amount that is related to the cost of providing a service (new s. 180(6)).

The Department of Justice has a page on their website that demonstrates how the new fees will work (see Appendix A).³⁶ The Department also released a Regulatory Impact Statement in August 2009 regarding the proposed changes to the licensing arrangement with particular focus on the move towards a risk-based model.³⁷

4. Position of the Parties

Opposition Leader Ted Baillieu MLA announced his support for the reforms, particularly regarding increased licence fees for high risk venues.³⁸ However, he has qualified his support with concern over a '500, 600 per cent increase on the licence fees for local bottle shops, RSLs, [and] small clubs'.³⁹ The Opposition Leader's position is that such increases are 'a pretty steep penalty' for antisocial behaviour which is not a product of those smaller businesses.⁴⁰

Shadow Minister for Police and Emergency Services Andrew McIntosh MLA has questioned whether the extra police resources provided by the fee increase will have an effect, stating that 'Victoria has record violent crime and the lowest number of police per person in the nation, and 120 extra cops will not change that'.⁴¹

³⁶ See Appendix A. Department of Justice (2009) 'How the new fees work', viewed 27 August 2009, <<http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/ebfa9b0556fd425/newflowchart.pdf>>.

³⁷ This report explains in greater detail how the risk fee will be added to the base fee and multiplied by the venue capacity. The report also includes example scenarios of how venues will be affected. Department of Justice (2009) *Liquor Control Reform Regulations: Regulatory Impact Statement*, August, Melbourne, Victorian Government, p. vii.

³⁸ S. Donovan (2009) 'Vic Govt proposes new era of liquor licensing', ABC News, viewed 25 August 2009, <<http://www.abc.net.au/pm/content/2008/s2651712.htm>>.

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ N. Wilson & M. Butler (2009) 'Liquor fee hikes will only shift violence problem, say clubs', *Herald Sun*, 10 August.

Ms. Colleen Hartland MLC, speaking on the earlier *Liquor Control Reform Amendment (Enforcement) Bill*, has stated that 'The Greens support the provision of greater powers and means by which problem venues can be managed'.⁴² Ms Hartland has also raised questions concerning the number of licensed venues in Melbourne's CBD and also the large crowd capacity of some venues.

5. Stakeholders

Licensed venues in Victoria have come under significant scrutiny in recent years due to the growing concern over alcohol-related violence. In this context, stakeholder views on the current liquor licensing reforms have largely been framed in terms of their potential impact on the incidence of alcohol-related violence. In particular, the efficacy of using resources for increased policing, as opposed to addressing the 'root causes' of alcohol abuse has been a point of debate. While all stakeholders agree that both of these perspectives must be addressed, there is disagreement over whether increasing licensing fees is the correct means to achieve that aim. Some of the views expressed by some key stakeholders are detailed below.

The Alcohol Policy Coalition – comprised of the Australian Drug Foundation, Cancer Council Victoria, Turning Point Alcohol and Drug Centre, and VicHealth – generally supports the changes to risk based liquor licensing fees 'in recognition of the significant impact alcohol has on the Victorian community' and the cost of regulating the industry.⁴³ The Coalition has called for the increased revenue to be used for funding research and programs into the prevention and treatment of alcohol-related harm, in addition to enhancing liquor licensing enforcement practices. The Alcohol Policy Coalition generally supports a harm-minimisation model similar to Queensland's model, outlined below, which came into effect on 1 January, 2009.⁴⁴

There has been a mixed response from industry leaders to the new licensing fees. Consumer Affairs Minister Tony Robinson announced the proposed changes in a Melbourne CBD restaurant, the owner of which supports the changes. According to the Minister, restaurants and cafes are 'low risk so there's a big reduction [in fees] for the low risk venues'.⁴⁵ These smaller venues account for around 20 per cent of licensed venues and are not expected to be negatively affected by the new licensing arrangements. Indeed, several operators of smaller venues have reportedly supported the changes if the increased funding can have a positive impact on the levels of violence on Melbourne's streets.⁴⁶

Members of the Nightclub Owners Association (NOA) have strongly opposed the changes.⁴⁷ NOA spokesman Peter Iwaniuk argues that nightclubs have already absorbed the high costs of extra security, CCTV and training. For the NOA '[t]he real problem in Melbourne is out in the streets'.⁴⁸ The NOA has argued that increased fees

⁴² Victoria, Legislative Council (2009) *Debates*, Book 4, p. 1318.

⁴³ Alcohol Policy Coalition (2008) *Regulatory Impact Statement – Review of Liquor Licensing Fees*, Melbourne, Alcohol Policy Coalition.

⁴⁴ *ibid.*

⁴⁵ Donovan (2009) *op. cit.*

⁴⁶ A. Devic (2009) 'Hot spots hit by \$25,000 liquor license fees clubs slugged', *Geelong Advertiser*, 11 August, p. 9.

⁴⁷ Nightclub Owners Forum (2009) 'Liquor license fee hike will marginalize low income youth', viewed 25 August 2009, <<http://nightclubownersforum.com/sitebuildercontent/sitebuilderfiles/170809.doc>>.

⁴⁸ *ibid.*

will only lead to higher drink prices in nightclubs which will result in increased drinking in public before people arrive at the venue.⁴⁹ The Association of Liquor Licensees Melbourne (ALLM) has stated in a submission to the Victorian Government that there is no correlation between increasing penalties and fees for licensees and decreasing levels of anti-social behaviour.⁵⁰

6. Other Jurisdictions

This section focuses on Queensland and New South Wales, where increasing incidences of alcohol-related violence have resulted in recent legislative reform. Queensland's new liquor licensing regime came into force on 1 January 2009 after the *Liquor and Other Acts Amendment Bill* was passed in 2008, and NSW has been implementing a range of new initiatives since passing the *Liquor Act 2007* on 1 July 2008.

Queensland

Following a recommendation from the 17-Point Brisbane City Safety Action Plan, the Queensland Government initiated a review of the *Liquor Act 1992*. After industry consultations a liquor reform framework was developed which resulted in 8,410 submissions in response to the Regulatory Impact Statement and the Draft Public Benefit Test.⁵¹ On 10 September 2008 the *Liquor and Other Acts Amendment Bill* was passed in Parliament. One of the key aims of the Bill was to make harm minimisation the focus. In this context, many of the changes are designed to change the drinking culture in Queensland and reduce the amount of liquor consumed in the community.⁵² Some of the specific changes include: reduced trading hours, ministerial banning powers, licence fees based on risk, mandatory training for all staff, and establishing an offence for irresponsible supply. A \$3.8 million social marketing campaign was also introduced in September 2008 to promote responsible drinking.⁵³

On 1 January 2009 the restructured licence and standard trading hours model commenced. The restructure of available licence types has been streamlined into 'commercial' and 'community' licences with subcategories in each. All licensees pay an annual fee based on the risk posed by the operation of the business. The new fee regime allows for licensees who only want to trade late on a Friday or Saturday to pay a proportional annual fee. Similar proportional fees are available for early morning weekend trading.⁵⁴

Ordinary trading hours are between 10am and 12am under the new system. Licensees can apply, up to four times per year, for pre-10am trading in two periods both of which incur a fee; 7am to 9am and 9am to 10am.⁵⁵ A new position of 'approved manager' has

⁴⁹ Donovan (2009) op. cit.; Devic (2009) op. cit.

⁵⁰ The Association of Liquor Licensees Melbourne (2008) *Strategies to Address Alcohol Related Violence and Anti-Social Behaviour: A submission to the Victorian Government*, Melbourne, ALLM, p. 9.

⁵¹ Queensland Government (2009) *Final Outcomes: Review of the Liquor Act 1992*, Brisbane, Queensland Government, p. 2.

⁵² *ibid.*, p. 2.

⁵³ *ibid.*, p. 4.

⁵⁴ *ibid.*, p. 4.

⁵⁵ The period 7am to 9am is only available to clubs that can prove a community need for this period (for example bowls and golf clubs). For all other licensees the 7am to 9am period will be restricted to functions only. There are also two periods of extended trading hours after midnight both of which incur additional fees; 12am to 3am and 3am to 5am. One off permits for post-12am trading are restricted to 12 per year. See *ibid.*, p. 5.

been introduced to replace the 'nominee' position. This was introduced to increase professionalism in the industry and clarify the responsibilities and obligations of managing licensed venues.⁵⁶ Also included in the legislation is recognition of licensing accords, similar to those that have been established in Victoria, as being 'an effective and sustainable' approach to dealing with alcohol abuse.⁵⁷ New penalties of up to \$6,000 for irresponsible supply also apply under the new legislation.

New South Wales

On 1 July 2008, the *Liquor Act 2007* was passed in NSW which created a new liquor regulatory authority, established different categories of liquor licences and implemented a new fee structure. A range of new policy initiatives are also being introduced to supplement the legislation and reduce the incidence of alcohol-related violence. Under the new regime the Casino, Liquor and Gaming Control Authority was established and replaced the Liquor Administrative Board and the Licensing Court of New South Wales.

Under the Act the Authority can 'consider disturbance complaints, issue closure notices, make late hour entry declarations ('lockouts') and impose other conditions or give directions in relation to liquor licences'.⁵⁸ The Authority has also assumed responsibility for granting liquor licences which was previously the responsibility of the courts. The new fee structure is a significant departure from the previous regime which was set by the *Liquor Act 1982*.⁵⁹

The new system creates six different categories of licences, viz: Hotel licences – for premises where the primary purpose is the sale and supply of alcohol; Club licences – for registered clubs that come under the *Registered Clubs Act 1976*; On-premises licences – for a range of businesses including accommodation venues, restaurants, catering services, vessels, tourism businesses, tertiary institutions, and public entertainment venues; Packaged liquor licences – for stores that only sell take away liquor; Limited licences – for functions or special events held by non-profit organisations or trade fairs such as wine or food shows; and, producer wholesaler licences – for wine producers, brewers, distillers, and wholesalers.⁶⁰ Standard trading hours in NSW from Monday to Saturday are 5am to midnight, and 10am to 10pm on Sunday. Licensees are able to apply for extended trading hours.

On 8 July 2009 the NSW Premier Nathan Rees announced a new safety regime for licensed venues consisting of three levels of restrictions. Different levels of restrictions apply according to the levels of violent assaults which occur on premises.⁶¹ There are currently 48 venues on the highest level of restrictions in NSW. The three levels and the relevant restrictions announced in the media release include:

⁵⁶ *ibid.*, p. 6.

⁵⁷ *ibid.*, p. 7.

⁵⁸ J. Arditi (2008) *Liquor, Licenses and Lockouts*, NSW Parliamentary Library Research Service, E-Brief 4/08, p.1.

⁵⁹ See the *Liquor Amendment (Dine-or-Drink Authority) Regulation 1998* under the *Liquor Act 1982*.

⁶⁰ For more information on these license categories see: NSW Office of Liquor, Gaming & Racing (2009) *Liquor Fact Sheets*, NSW Office of Liquor, Gaming & Racing, viewed 26 August 2009, <http://www.olgr.nsw.gov.au/liquor_fact_sheets.asp>.

⁶¹ Premier Nathan Rees (2009) *Alcohol Restrictions Continue for Violent Venues under New System*, media release, 8 July.

Level 1 (19 or more assaults per year)

- 10 minute time out or the provision of free water and food for 10 minutes every hour after midnight;
- cease service 30 minutes prior to closure;
- no glass after 12am;
- 2am lockout;
- no shots, no doubles no RTDs over 5 per cent;
- four alcoholic drinks per customer per order;
- extra security measures.

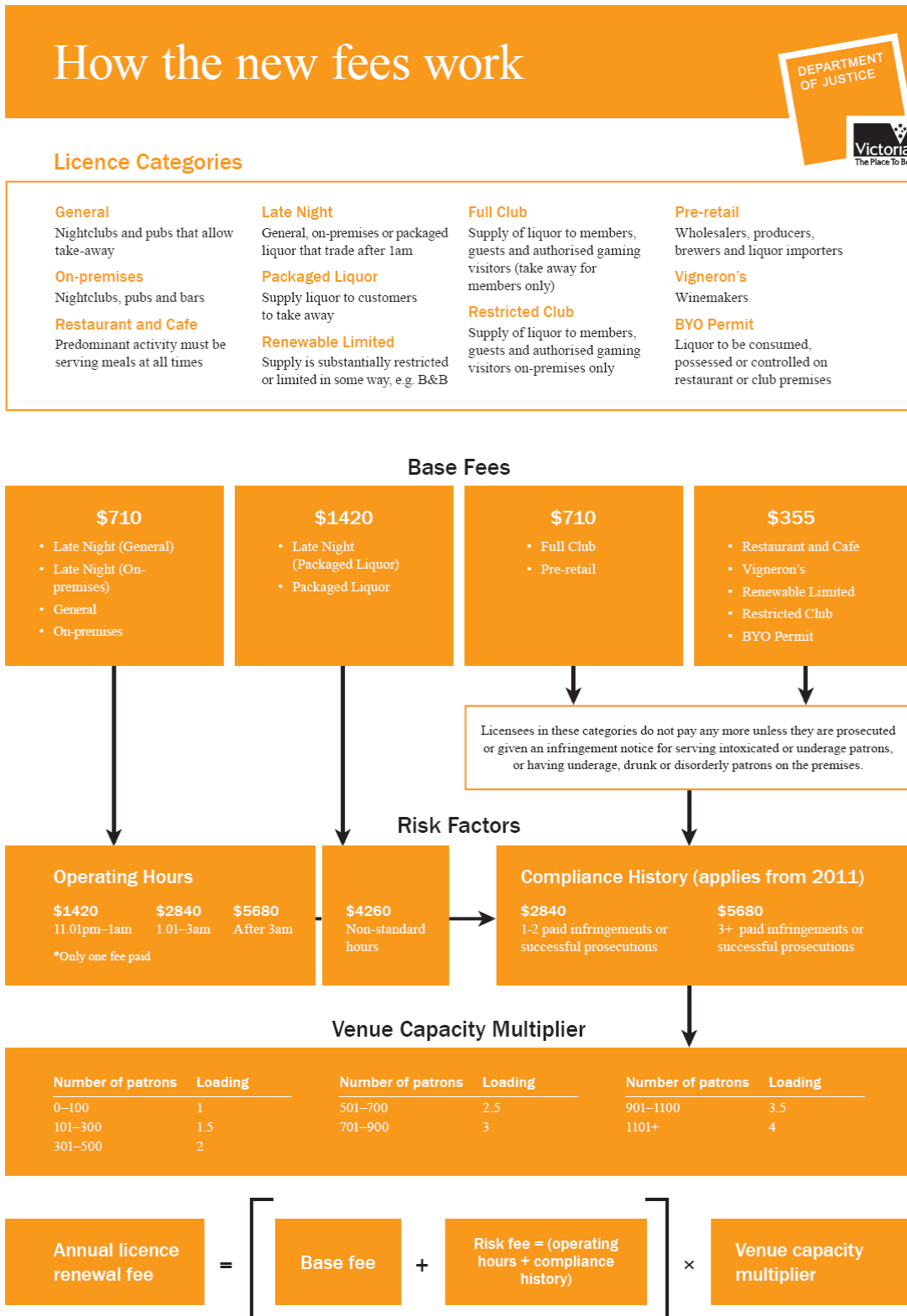
Level 2 (12-18 assaults per year)

- 10 minute time out or the provision of free water and food for 10 minutes every hour after midnight;
- cease service 30 minutes prior to closure;
- no glass after 12am.

Level 3 (8 to 11 assaults per year)

- lower risk premises will be given help by the NSW Office of Liquor, Gaming and Racing (OLGR) to strengthen alcohol and security management.

7. Appendix A



Source: Department of Justice (2009) 'How the new fees work', viewed 27 August 2009, <<http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/ebfa9b0556fd425/newflowchart.pdf>>.

8. Further Reading

For further reading on alcohol, alcohol-related violence, alcohol abuse and related matters, see the following reports and resources.

Research Reports

Chikritzhs, T., P. Catalano, T. Stockwell, S. Donath, H. Ngo, D. Young (2003) *Australian alcohol indicators: Patterns of alcohol use and related harms for Australian states and territories 1990–2001*, National Drug Research Institute and Turning Point Alcohol & Drug Centre, Melbourne.

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Recent Parliamentary Intern Reports: (available on the Library Catalogue)

Andrighetto, J. (2008) *Melbourne Locked Out? An Assessment of the 2 a.m. Entry Restrictions*, Melbourne, Victorian Parliamentary Intern Report, October.

Chow, K. (2008) *Time to Call it a Night: Reducing Alcohol Abuse among Victorian Youths*, Melbourne, Victorian Parliamentary Intern Report, June.

Walker, E. (2009) *Good Times Gone Bad: Alcohol-Related Violence amongst Young People*, Melbourne, Victorian Parliamentary Intern Report, June.

Further Resources

The following websites provide further information, reports and publications on alcohol and related issues:

State Websites

Consumer Affairs Victoria < <http://www.consumer.vic.gov.au/>>.

Department of Justice

<<http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Alcohol/>>.

VicHealth <<http://www.vichealth.vic.gov.au/Programs-and-Projects/Reducing-Alcohol-Misuse/Community-Attitude-Survey-on-Alcohol.aspx>>.

Victorian Alcohol and Drug Association < <http://www.vaada.org.au/>>.

Commonwealth Websites

Australian Drug Foundation <<http://www.adf.org.au/>>.

Australian Crime Commission <<http://www.crimecommission.gov.au/index.htm>>.

Australian Institute of Criminology

<http://www.aic.gov.au/crime_types/drugs_alcohol.aspx>.

Australian Institute of Health and Welfare <<http://www.aihw.gov.au/>>.

Community Alcohol Action Network <<http://www.caan.adf.org.au/>>.

Department of Health and Ageing (Alcohol) < <http://www.alcohol.gov.au/>>.

Drug Info Clearing House <<http://www.druginfo.adf.org.au/>>.

National Drug and Alcohol Research Centre

<<http://notes.med.unsw.edu.au/NDARCWeb.nsf/page/IDRSa>>.

National Drug Research Institute < <http://ndri.curtin.edu.au/>>.

National Health and Medical Research Council <<http://www.nhmrc.gov.au/>>.

Turning Point Alcohol and Drug Centre <<http://www.turningpoint.org.au/>>.

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Liquor Control Reform Act 1998

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Liquor Control Reform Amendment Bill 2007

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Millar, R. (2009) 'Laws a licence for violence – Alcohol deregulation blamed for booze brawls', *The Age*, 25 April, p. 1.

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