



*D23/45423*

Ms Kathryn Bannon  
Acting Deputy Secretary and Chief Counsel  
Integrity, Regulation and Legal Services  
Department of Justice and Community Safety  
121 Exhibition Street  
MELBOURNE VIC 3000

6 April 2023

Dear Ms Bannon,

**REGULATORY IMPACT ASSESSMENT FOR THE LIQUOR CONTROL REFORM REGULATIONS 2023**

I would like to thank your staff at the Department of Justice and Community Safety (the Department) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Assessment (RIS) for the proposed Liquor Control Reform Regulations 2023 (the Regulations).

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 6 April 2023 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

## Background and problems

The Liquor Control Reform Act 1998 (the Act) and the Liquor Control Reform Interim Regulations 2022 (the current Regulations) are the key components of the regulatory framework for liquor in Victoria. The current Regulations support the Act and prescribe fees, security camera requirements and other technical matters. The current Regulations are due to sunset on 30 July 2023. The Victorian Liquor Commission (the Commission) is responsible for the regulation of liquor in Victoria. It is supported by a unit in the Department referred to as Liquor Control Victoria (LCV). Victoria Police also plays a key role in the regulatory framework.

The Act recently underwent significant changes through the *Liquor Control Reform Amendment Act 2021* (the Amendment Act). The Department explains that the intention of the amendments was to modernise the Act in line with economic and societal changes since the Act was established.

The Department explains that the proposed Regulations are intended to modernise the approach to liquor regulation and better target harms associated with the misuse and abuse of alcohol. It explains that the Regulations are intended to address two key problems:

- **That the social and economic costs associated with the misuse and abuse of alcohol are high.** The Department estimates that alcohol related harms cost the Victorian community about \$4.7 billion per year, which includes costs to Victorian productivity such as absenteeism and presenteeism (42.1 per cent of the \$4.7 billion cost estimate), costs associated with road traffic accidents (25.5 per cent) costs to Victoria's criminal justice system (20.6 per cent) and costs to Victoria's health system (11.7 per cent). The Department explains that the proposed Regulations will mitigate these harms.
- **That in the absence of the Regulations, there would be no fees for liquor licences and no recovery of regulatory costs.** The Department estimates that it costs Government at least \$37 million to regulate and manage harms from liquor, including administering liquor licences and regulations as well as Victoria Police activities attributable to liquor. If the current Regulations were allowed to expire, then no fees would be recovered by the Victorian Government from suppliers of alcohol.

## Analysis

In the RIS, the Department analyses options for three key areas of the Regulations:

1. *Liquor licence application fees* —the structure and level of application fees for liquor licences, Bring Your Own (BYO) permits and licence variations.
2. *Liquor licence renewal fees* — the structure and level of renewal fees for liquor licences.

3. *Security camera standards* — the minimum frame rate and location of security cameras required for certain premises where there is a condition on the liquor licence that is granted.

### *Methodology*

The Department uses a multi-criteria analysis (MCA) to analyse options for each of the three key areas. Each option is assessed against a 'reference case' where the current Regulations are remade in their current form with only minor changes to reflect the Amendment Act.

The Department explains in the RIS that cost recovery is an important consideration in analysing options for liquor regulations, as it ensures that the costs of the Government's regulatory activity is (at least partly) paid for by those who benefit from the licensing arrangements (in this case, the suppliers of liquor benefit from the permission to supply).

The Department estimates that under the current Regulations, application and renewal fees recover about 70 per cent of the Government's regulatory costs, which equates to a shortfall of \$10.4 million each year. The proposed Regulations seek to increase cost recovery to about 85 per cent of regulatory costs, saving taxpayers an approximately \$4.5 million per year.

The criteria and weightings in the MCA are:

- *Harm minimisation* (50 per cent weighting) — the degree to which (or likelihood that) the relevant option minimises harm and risks associated with the misuse and abuse of alcohol. This includes harms and risks associated with specific precincts and entertainment areas where alcohol is sold (risks such as a higher risk of random violence) and other harms and risks (such as family violence and consumption by minors).
- *Responsible development and facilitation of a diverse industry* (20 per cent weighting) — the degree to which the relevant option contributes to the development of industry, as long as such development does not significantly increase the risk of harm. This considers community expectations and the desire for harm minimisation and access to a diverse and vibrant hospitality industry and night-life culture.
- *Minimise regulatory burden for industry* (20 per cent weighting) — the degree to which the relevant option reduces the administrative and compliance costs borne by regulated entities (such as bars, clubs and restaurants, as well as packaged liquor retail outlets). This criterion covers the burden of paying fees.
- *Minimise the administrative burden for the Government* (10 per cent weighting) — the degree to which the relevant option reduces the administrative burden on the Government. This considers the complexity of the administrative processes of the regulatory activities, including fees collection.

The Department explains that cost recovery is not a stand-alone criterion in the MCA because it is similar for all of the Options analysed in the RIS.

### *Options Analysis*

The Department notes that it considered a range of regulatory and non-regulatory options, including education campaigns, industry self-regulation and codes of conduct, but non-regulatory options alone will not sufficiently reduce harm. In the RIS, the Department analyses two options against the reference case of the current Regulations for each of the three key areas of the Regulations.

#### *A. Liquor Licence Application Fees*

Under the current Regulations (or reference case), licence application fees are set as flat fees for each of the six different categories. The Department highlights a range of limitations with this approach, as these sets of fees are not reflective of differences in risk or levels of regulatory effort required for different types of venues (such as venue capacity, operating hours or floorspace).

In the RIS, the Department analyses two options for licence application fees against the reference case:

- 1. Option A1 (Risk-based application fee model):** update the licence application process to set fees based on risk factors, as follows:
  - a. A base fee – this categorises proposed liquor licences into a four tier risk hierarchy based on type, as follows:
    - i. *Very high base fee* – packaged liquor<sup>1</sup> and late-night packaged liquor
    - ii. *High base fee* – on-premises, late night on-premises, general and late-night general
    - iii. *Middle base fee* – full club, renewable limited, remote sellers, restaurant and café, BYO permit, producer
    - iv. *Low base fee* – pre-retail and restricted club
    - v. *Flat fee* – major events, temporary limited licences, variations or modifications to a licence.
  - b. Operating hours risk fee – higher fees for late night trading (after 1am).
  - c. Venue capacity –streamlined into three categories (of 0-100, 101-400 and 401+ patrons) with different fees for each category.
  - d. Floorspace size (retail and storage) – applies to packaged liquor licences with a floor space of more than 750 sqm and producers that have a licensed premises area greater than 150 sqm.

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<sup>1</sup> Packaged liquor is liquor sold in sealed containers to be consumed away from the premises of sale (e.g. liquor sold in a bottle shop).

This option would draw on data from liquor licence applications.

2. **Option A2 (Processing cost application fee model):** update the licence application processes and setting of fees to reflect the estimates of regulatory effort by:
  - a. increasing the number of application groupings from six to 12 (examples of groups provided on page 7 below); and
  - b. updating and/or setting prescribed fee units for each of the 12 groups to better reflect processing effort.

Option A1 is the preferred option. The Department explains that Option A1 will reduce harm more than Option A2 and the reference case because it explicitly links fees to application risk (reduced fees for lower risk applications and increased fees for higher risk applications).

Compared to Option A2, Option A1 will enable greater price signalling to applicants as fees better reflect risk and will support the Commission to better assess application risk when deciding whether to grant a licence and what conditions to impose on a licensee. Option A1 also better supports responsible industry development by reducing fees for lower risk applications.

The Department estimates that Option A1 will impose **\$5.4 million per year (\$43.5 million over 10 years)** in additional financial and administrative costs on industry. This is less than Option A2, which is estimated at **\$6 million per year (\$48.8 million over 10 years)**. However, Option A1 is more costly for the Government than Option A2 because it is more complex and costly to administer.

#### *B. Licence Renewal Fees*

Under the Current Regulations, there is a risk-based model for renewal fees, which includes a base fee, an operating hours risk fee and a compliance risk fee multiplied by venue capacity. The Department explains that the model is limited as:

- There is limited differentiation based on the regulatory effort required for different licences.
- By applying venue capacity (as a multiplier) it assumes that a licensee's operating hours and compliance history is only as risky as its capacity. However, there are a range of other relevant risk factors, such as floor space, location, density and online sales.
- The compliance risk fee only considers the previous 12 months.

In the RIS, the Department analyses two options for licence renewal fees against the reference case, which is the Current Regulations remade with slight changes to the base fee to reflect changes under the Amendment Act. The Department explains that Options A1 and B1 as well as Options A2 and B2 are packages of options (i.e. Option A1 and Option B2 cannot be preferred):

1. **Option B1 (Streamlined risk-based renewal fee model):** reconfigures the risk factors into a new structure, including:
  - a. *A base fee* – based on the risk hierarchy under Option A1.
  - b. *Operating hours risk fee* – as per Option A1.
  - c. *Venue capacity* – applied as an additional fee rather than a multiplier as per Option A1.
  - d. *Floorspace size* – as per Option A1.
  - e. *Compliance risk fee* – applied on a sliding scale for non-compliance by the licensee in the previous three years, instead of 12 months. This will apply from the commencement date to consider behaviour for the previous three years.
2. **Option B2 (Expanded risk-based renewal fee model):** implements a comprehensive model in addition to Option B1 that reflects further risk factors, including:
  - a. An additional fixed fee for all packaged liquor licenses based on the number of premises owned by the licensee.
  - b. An additional fixed fee for any licence that supplies liquor online (with limited exemptions)
  - c. An additional fixed fee for licences in high-risk areas that are subject to the compliance history risk fee.
  - d. A reduction in fees for licensees in regional areas.

Option B1 is the preferred Option. The Department explains that Option B1 better reflects the risk of different licensees compared to the reference case and has a simpler structure than Option B2. It explains that Option B1 will streamline the current fees model and better reflect the regulatory effort associated with monitoring and enforcing liquor regulations. Licensees will be incentivised to comply due to the non-compliance risk fee.

The Department explains that the benefits of additional risk factors under Option B2 are likely to be very limited. It notes that there is no evidence that two of the additional risk factors ('a' and 'c') would reduce harm. These additional risk factors (and associated fees) may adversely impact industry, for instance, 'a' may bias certain ownership structures; and 'c' may discourage licence applications in areas with a vibrant nightlife, impacting on Victorian industry.

The Department estimates that Options B1 and B2 would have the same overall level of fees (**\$26.5 million per year**), but Option B2 would impose additional costs on industry because it is more complex to understand. Option B1 will also be less costly and complex for the Government to administer.

#### *Overall impact of fees*

Under the preferred options (A1 and B1) application fees will increase by \$1.3 million per year and renewal fees will increase by \$3.2 million per year. Impacts will vary across licence types and other characteristics. Fee increases will generally be

higher for larger licence types. Fee changes for selected licence types are outlined in the table below.

Licence type	New Application Fees Per Year		
	Current Regulations (\$)	Proposed Regulations - Option A1 (\$)	Percentage change in fees (%)
Small restaurant and café	496.00	458.70	-7.5
Large restaurant and café	496.00	917.40	85
Small late night on-premises	496.00	1,146.75	131.2
Large late night on-premises	496.00	2064.15	316.2
Small packaged liquor	496.00	1,529.00	208.3
Large packaged liquor	496.00	2,522.85	408.6

Licence type	Renewal Fees Per Year		
	Current Regulations (\$)	Proposed Regulations – Option B1 (\$)	Percentage change in fees (%)
Small restaurant and café	256.00	346.82	35.50
Large restaurant and café (without compliance history risk fee)	256.00	346.82	35.5
Large restaurant and café (with compliance history risk fee)	256.00	2806.80	996.4
Small late night on-premises	1039.90	1175.35	13.0
Large late night on-premises	1039.90	3635.33	249.6
Small packaged liquor	2079.60	2350.70	13.0
Large packaged liquor (size applies as floor space risk fee if licensed floor space is 750m2+)	2079.60	11,985	476.3

*\*Renewal fees are estimated based on licence type and licensed premises size only. Other case-based risk factors that may apply (e.g. operating hours and compliance risk) are not considered in this table.*

### C. Security Camera Requirements

The Current Regulations prescribe a rate of image capture at 5 frames per second and allows digital and video cassette recorder (analogue storage). In the RIS, the Department analyses two options to update security camera requirements:

1. **Option C1:** 8 frames per second and digital recording, references to analogue storage are removed.
2. **Option C2:** Option C1 and prescribing security camera locations, which would require venues to install additional cameras in areas such as carparks, laneways and other outdoor areas.

Option C1 is the preferred option because Option C2 only has limited additional benefits and is more costly.

The Department explains that Option C1 imposes a low burden on industry, as almost all camera systems in use are digital and record at a much higher rate than



8 frames per second. Therefore, any newly purchased systems are likely to meet requirements. This means there are no costs for new entrants to the market. The Department conservatively estimates that up to 33 licensees will be required to replace their systems at a one-off cost of approximately \$10,000 (**total cost to industry \$330,000**).

The Department explains that Option C2, which prescribes security camera locations, has limited benefits. Additional security cameras are already prescribed on a case-by-case basis in venue licence conditions, and a fixed requirement (as proposed under Option C2) may lead to cameras being installed in areas where they are not effective. Venues may also change their operating conditions as a result, unnecessarily impacting on Victorian industry. The Department estimates that Option C2 would require approximately 647 licensees to install four additional camera systems, costing \$500 per camera, or \$2,000 per licensee, (**total cost to industry \$1.6 million, including the \$330,000 under Option C1**).

### **Implementation and Evaluation**

In the RIS, the Department explains that the proposed Regulations are intended to come into effect on 29 July 2023. Implementation of all aspects of the Regulations will be led by the Department. The Commission will also develop communications materials to inform stakeholders and other affected parties of the changes. These materials will be published on the Commission's website and distributed directly to current licence holders.

The Department in consultation with the Commission has developed an implementation plan, including a stakeholder engagement process which will commence on publication of the RIS; and the development of case studies and examples to explain the changes.

The Department explains that the proposed Regulations will be formally evaluated through a mid-term review within the first five years of operation (i.e. before mid-2029). The evaluation will review the effectiveness of the proposed Regulations in helping to meet the objectives of the Act.

Yours sincerely



**Anna Cronin**

Commissioner for Better Regulation