

# VCGLR Regulatory Impact Statement for five Designated Area Orders

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Victorian Commission for  
Gambling and Liquor Regulation

## Contents

<b>1</b>	<b>Executive Summary</b> .....	<b>4</b>
1.1	Written submissions .....	5
<b>2</b>	<b>Background</b> .....	<b>6</b>
2.1	Role of the Commission and why a RIS is required .....	6
2.2	Regulatory environment in which the Commission operates .....	6
2.3	The impacts of alcohol-related violence and disorder .....	7
2.4	The geographical concentration of crime .....	7
2.5	Human rights issues associated with Designated Area Orders .....	7
<b>3</b>	<b>Legislative basis</b> .....	<b>9</b>
3.1	Designated Area Orders .....	9
3.1.1	Banning notices .....	9
3.1.2	Exclusion orders .....	10
3.2	Process for the Commission to make a Designated Area Order .....	10
3.2.1	Geographical design .....	10
3.3	Variation and revocation of a Designated Area Order .....	10
<b>4</b>	<b>Existing Designated Area Orders</b> .....	<b>11</b>
4.1.1	The number of banning notices issued and exclusion orders made in 2013-2018 .....	11
4.1.2	Offences recorded in individual designated areas .....	13
4.1.3	Conclusion .....	16
<b>5</b>	<b>Identification of the problem</b> .....	<b>17</b>
5.1	Unnecessary administrative burden .....	17
5.2	Effectiveness of short-term Orders .....	17
<b>6</b>	<b>Objectives of remaking the Designated Area Orders</b> .....	<b>19</b>
6.1	The Commission's responsibilities .....	19
6.2	Objectives of Designated Area Orders .....	19
6.3	How Designated Area Orders achieve their objectives .....	19
6.3.1	Harm minimisation .....	19
6.3.2	Avoid infringing unnecessarily on human rights .....	20
6.4	Minimising administrative burden and ensuring consistency and transparency .....	20
<b>7</b>	<b>Options, costs and benefits</b> .....	<b>21</b>
7.1	The options for Designated Area Orders .....	21
7.1.1	No Designated Area Orders .....	21
7.1.2	To remake the Designated Area Orders for 12 months (status quo) .....	22
7.1.3	To remake the Designated Area Orders for five years .....	22
7.1.4	To remake the Designated Area Orders for ten years (preferred option) .....	22
<b>8</b>	<b>Implementation and evaluation</b> .....	<b>24</b>
<b>9</b>	<b>References</b> .....	<b>25</b>
<b>10</b>	<b>Appendix 1: Specified offences table</b> .....	<b>27</b>

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<b>11</b>	<b>Appendix 2: Specified offences table under Liquor Control Reform Act 1998.....</b>	<b>31</b>
<b>12</b>	<b>Appendix 3: Designated Areas .....</b>	<b>32</b>

# 1 Executive Summary

This Regulatory Impact Statement (**RIS**) has been prepared to facilitate public consultation on the remaking of five Designated Area Orders (**Orders**) by the Victorian Commission for Gambling and Liquor Regulation (the **Commission**). The Commission's preferred option is to remake the five Orders for a ten-year term.

Orders provide additional discretionary power to police, under the *Liquor Control Reform Act 1998* (the **Act**), allowing them to take immediate action against any person committing, or at risk of committing, alcohol-related violence or disorder within a geographical area declared to be a designated area by the Commission. Police can ban a person from the area for up to 72 hours or apply to a court to have a person excluded from the area for up to 12-months.

The geographical areas of the five Orders, subject to this RIS, are confined to the Central Business District (**CBD**) of a suburb or town. See **Appendix 3** for a map of each designated area.

In Victoria, legislative instruments, such as Orders, require the preparation of a RIS and other documents under the *Subordinate Legislation Act 1994* (**SLA**), unless exempt. The amendments to the SLA came into effect on 1 July 2011 so legislative instruments proposed on or after this date generally require a RIS before they can be made. The Subordinate Legislation (Legislative Instruments) Regulations 2011 exempts Orders of 12 months or less duration from this requirement. Accordingly, Orders proposed to be made for more than 12 months require a RIS.

There are currently 20 Orders in Victoria, five of which were made on or after 1 July 2011. The Commission's current practice in relation to the five Orders, the subject of this RIS, has been to remake them for 12-months' duration after consulting with Victoria Police, each year.

This practice is an unnecessary regulatory burden on Victoria Police and the Commission. Annual designation does not provide the community, Victoria Police or the Commission with long-term certainty in regards to alcohol policy and is unnecessarily administratively onerous for the Commission and Victoria Police. Crime statistics analysis found that Orders are likely to reduce the rate of assault and related offences, compared to not making Orders. Remaking the Orders for a longer term will support the Commission's legislative objective to minimise harm and risks associated with the misuse and abuse of alcohol and reduce the regulatory burden on the Commission and Victoria Police.

Publishing a RIS also increases transparency and the opportunity for public input into decision-making and helps the Commission to inform and educate the public about its regulatory practices and requirements.

This RIS explains the rationale for remaking the Orders for a longer term (> 1 year), identifies and evaluates alternatives, and compares the costs and benefits of the Commission's preferred option (to remake the five existing Orders for a ten-year term) and the alternatives.

## 1.1 Written submissions

We invite written submissions from the public regarding this RIS. Unless otherwise requested in your submission, all submissions will be treated as public documents and will be published on the Commission's website at [vcglr.vic.gov.au](http://vcglr.vic.gov.au) and the OCBR website at [betterregulation.vic.gov.au/Current-and-Past-RIS](http://betterregulation.vic.gov.au/Current-and-Past-RIS). The closing date for submissions is midnight on Friday 19 June 2020.

Please provide all written submissions to the Commission at:

Designated Area Order 2020 Submissions

Policy Team, Legal Services Division

Victorian Commission for Gambling and Liquor Regulation

GPO Box 1988

MELBOURNE VIC 3001

[designatedareas@vcglr.vic.gov.au](mailto:designatedareas@vcglr.vic.gov.au)

## 2 Background

### 2.1 Role of the Commission and why a RIS is required

The Victorian Commission for Gambling and Liquor Regulation (the **Commission**) is the independent statutory authority that regulates Victoria's gambling and liquor industries. It is responsible for gambling and liquor licensing and for promoting and enforcing compliance with all relevant legislation and regulations. This includes informing and educating both industry and the Victorian public about regulatory practices and requirements.

The Commission oversees approximately 22,500 liquor licences, more than 620 Keno outlets and almost 740 wagering and betting agents – while also managing the state-wide cap of up to 30,000 electronic gaming machines across approximately 500 individual gaming venues and a single casino operator. It also assesses and determines more than 6000 gambling activities annually.

As an independent statutory authority, the Commission's obligations are set out in several Acts of Parliament including the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (the **VCGLR Act**).

The Commission regulates:

- all forms of legalised gambling in accordance with the *Gambling Regulation Act 2003*, the *Casino Control Act 1991*, the *Casino (Management Agreement) Act 1993* and the *Racing Act 1958*; and
- the supply and consumption of liquor in accordance with the *Liquor Control Reform Act 1998* (the **Act**).

Relevant objects of the Act include:

- *“to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—*
  - *ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and*
  - *encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community”.*

The Act also states that it is an object of the Act, and 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”.

In Victoria, legislative instruments, such as Orders, require the preparation of a RIS and other documents under the *Subordinate Legislation Act 1994* (**SLA**), unless exempt. The Subordinate Legislation (Legislative Instruments) Regulations 2011 exempts Orders of 12 months or less duration from this requirement. Accordingly, Orders proposed to be made for more than 12 months require a RIS.

This RIS explains the rationale for remaking the Orders for a longer term (> 1 year), identifies and evaluates alternatives, and compares the costs and benefits of the Commission's preferred option and the alternatives.

### 2.2 Regulatory environment in which the Commission operates

The Commission's vision is that Victorians and visitors can enjoy safe and responsible gambling and liquor environments. The Commission operates in a complex regulatory environment, is subject to high community expectations and regulates industries with products that pose a risk of harm.

## 2.3 The impacts of alcohol-related violence and disorder

Alcohol-related violence and disorder negatively impacts the community in many ways, including ‘...road trauma, assaults, family violence, property damage, child abuse, victimisation and public safety issues’ (Policing Alcohol Harm in Victoria 2014-2024). A considerable proportion of police resources are required to respond to alcohol-related incidents (Morgan et al., 2018), with alcohol involved in approximately 60 per cent of all police attendances (Policing Alcohol Harm in Victoria 2014-2024). Similarly, the criminal justice, courts and hospital systems also carry a significant burden in responding to alcohol-related violence and disorder (Morgan et al., 2018).

Members of the community can also be personally affected by alcohol-related violence. Alcohol is acknowledged as a contributing factor in the occurrence of family violence (Royal Commission into Family Violence 2016). The consumption of alcohol has also been associated with acts of violence (ABS 2013). Assaults have also been found to be highly concentrated around licensed premises (Burgess and Moffatt 2011). Alcohol-related violence can also negatively influence an individual’s feeling of safety in the community (Morgan & McAtamney 2009) and intimidate those looking to enjoy the night-time economy (Jones et al., 2003). Residents living within proximity to licensed venues may experience noise late at night or in the early hours of the morning and anti-social behaviour such as: littering, urinating in public and criminal damage to cars, other property and community facilities (Jones et al., 2003).

## 2.4 The geographical concentration of crime

Studies of crime patterns over time show crime does not occur randomly but is concentrated by geographical location, known as “hotspots of crime” (Norton et al., 2018). A high proportion of crime occurs in specific places, while other places may experience little or no crime (Norton et al., 2018). Specific types of crime occur at each hotspot and offences differ in levels of harm to the community (Norton et al., 2018). For example, alcohol-related violence offences may occur at one hotspot while theft and vandalism offences may occur in another. It follows that police intervention needs to be implemented within hotspot areas (Ratcliffe 2014) and targeted to the harm occurring within that hotspot (Norton et al., 2018).

The Order provisions of the Act outline two regulatory interventions that are intended to target and reduce or prevent geographically concentrated alcohol-related violence or disorder.

First, banning notices allow police officers to take immediate action by banning individuals suspected of committing specific offences or raising a risk of alcohol-related violence or disorder in the designated area from a designated area for up to 72 hours. Police have the power to ban a person without laying charges and can remove that person immediately from the licensed premises or area. Specific offences include:

- assault;
- offences related to drunkenness; and
- offensive and obscene behaviour.

Second, court-imposed exclusion orders, excluding a person from an area for up to 12 months, allow longer-term intervention in cases where the court decides that it is warranted.

## 2.5 Human rights issues associated with Designated Area Orders

On 1 November 2007, the Liquor Control Reform Amendment Bill 2007 (the **2007 Amendment Bill**) was introduced to the Legislative Assembly of the Victorian Parliament. The Statement of Compatibility made by the then Minister for Consumer Affairs stated the 2007 Amendment Bill had been assessed against the human rights requirements set out in the *Charter of Human Rights and Responsibilities Act 2006* (the **Charter**) and was found to be compatible.

The Statement of Compatibility made by the then Minister for Consumer Affairs stated the 2007 Amendment Bill had been assessed against the human rights requirements set out in the Charter and was found to be compatible with the Charter. The assessment considered whether individuals' and offenders' rights would only be subject to such reasonable limits as can be demonstrably justified in a free and democratic society, based on human dignity, equality and freedom, and took into account all relevant factors including the nature of the rights, the importance of the purposes of the limitation, the relationship between the limitation and its purpose, and whether any other less restrictive means are reasonably available to achieve the purpose of the limitation.

Potential human rights issues raised by the 2007 Amendment Bill particularly relate to the increase of police officers' discretionary powers to ban individuals suspected of, or at risk of, committing a specified offence without the requirement for police to provide proof of their suspicions, or of the person's intent to commit the offence. To counter the potential for vulnerable people in the community being disproportionately affected by these powers, a requirement was included in the Act to require the Chief Commissioner of Victoria Police to submit reports to the applicable Minister for Police on the use of banning notices and exclusion orders during each financial year. The Minister for Police is then required to table these annual reports to both houses of the Victorian Parliament.

Banning notices and exclusion orders may divert vulnerable individuals from the criminal justice system and the imposition of criminal sanctions and a criminal record. Diversion may also assist vulnerable individuals to retain or obtain employment, remain in the community and avoid costs associated with interaction with the criminal justice system.



### 3 Legislative basis

#### 3.1 Designated Area Orders

Section 147 of the Act gives discretion to the Commission to declare an area to be a designated area if it believes:

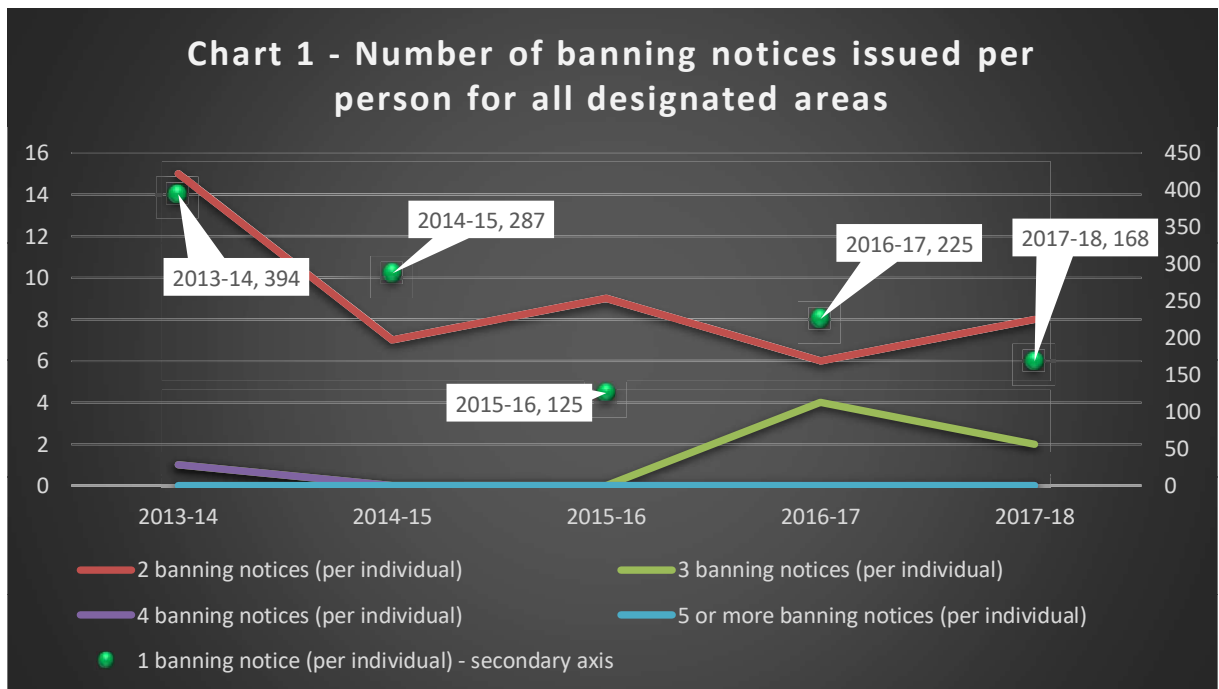
- alcohol-related violence or disorder has occurred in a public place that is in the immediate vicinity of licensed premises within the area; and
- the exercise of banning or exclusion powers in relation to the area is reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the area.

Once an Order is declared by the Commission additional powers are given to a court to exclude (see para. 3.1.2 below) or Victoria Police to ban (see para. 3.1.1 below) a person, for a specified period, suspected of committing an offence related to alcohol-related violence or disorder, from the boundaries of the designated area.

##### 3.1.1 Banning notices

Once an area has been declared to be a designated area, a police officer who suspects a person may have committed a 'specified offence' in that designated area may issue a notice banning the person from the area, or all licensed premises in the area, for up to 72 hours. A notice can only be given if the officer believes on reasonable grounds that it may be effective in preventing the commission of a 'specified offence' involving, or raising a risk of, alcohol-related violence or disorder in the designated area (s 148B of the Act). The offences identified as 'specified offences' include indictable and summary offences. A table of 'specified offences', together with penalties imposed, is at **Appendix 1**.

Several offences apply to a banned person who enters or re-enters a designated area, or fails to comply with police directions within a designated area. **Appendix 2** lists offences relating to banning notices and exclusion orders.



<sup>1</sup> Victoria Police, *Liquor Control Reform Act 1998. 2013-18 Annual Reports by the Chief Commissioner Victoria Police. Section 148R (Banning Notices and Exclusion Orders)*. Victoria Police, Victoria.

The above chart shows most banning notices, issued in all 20 Victorian designated areas, from 2013-2018 were issued once to a single individual. A small number of persons were issued with more than one banning notice. A total of 45 persons over five years have been issued with two banning notices, seven were issued with three and one person was issued with four.

### 3.1.2 Exclusion orders

Section 148I of the Act gives the court discretion to make an exclusion order in respect of a person who has committed a 'specified offence' within a designated area. An exclusion order excludes the person from the designated area, or from one, some or all licensed premises in the area, for a specified period of up to 12 months.

The court may only make an exclusion order if it finds the person guilty of a 'specified offence' that was committed wholly or partly in a designated area; does not sentence the person to a term of imprisonment of 12 months or more; and is satisfied that the order may be an effective and reasonable means of preventing the commission of further 'specified offences' in the area.

Several offences apply to an excluded person entering or re-entering a designated area or failing to comply with police directions within a designated area (see **Appendix 2** for a list of offences relating to banning notices and exclusion orders).

No more than one exclusion order was issued to any one individual each year in any of the 20 Victorian designated areas from 2013-2018.

## 3.2 Process for the Commission to make a Designated Area Order

Prior to making an Order, the Commission must consult with the Chief Commissioner of Victoria Police. The Commission generally requests that Victoria Police supply information to assist the Commission in deciding whether to make an Order, as well as confirm the appropriate geographical boundaries of a proposed designated area. Victoria Police may also request that the Commission make an Order. The steps required for the making of an Order are detailed at para. 5.1 of this paper.

### 3.2.1 Geographical design

The Act does not specify the geographical parameters of a designated area, except that the Commission must consult with Victoria Police before making an Order. In practice, the Commission consults with Victoria Police to understand issues regarding alcohol-related violence within each geographical location and what the appropriate geographical design may be, noting that Victoria Police must be able to monitor these areas to detect people breaching banning notices and exclusion orders. It is usual for the mapped areas to remain unchanged year to year.

## 3.3 Variation and revocation of a Designated Area Order

The Commission may vary or revoke an Order at any time. The Commission must revoke an Order if it believes that the grounds for making the Order no longer exist.

## 4 Existing Designated Area Orders

Five of the 20 Orders current in Victoria, were made on or after 1 July 2011 when the requirement that a RIS be published in relation to Orders exceeding 12 months duration came into effect.

The Commission's practice in relation to these five Orders to date has been to remake the Orders for 12-months duration, each year. As a result, the Commission requests information from Victoria Police every 12 months to consider each of the five Orders. This practice represents a regulatory burden for Victoria Police and the Commission. Remaking the Orders for a longer term (> 1 year) will support the Commission's legislative objective to minimise harm and risks associated with the misuse and abuse of alcohol and reduce the regulatory burden on the Commission and Victoria Police.

Publishing a RIS also increases transparency and the opportunity for public input into decision-making and helps the Commission inform and educate the public about its regulatory practices and requirements.<sup>2</sup>

The five Orders made after 1 July 2011 with a 12-month term include:

- Mildura CBD, designated on 16 May 2012.
- Footscray CBD, designated on 15 August 2013.
- Colac CBD, designated on 20 June 2014.
- Mornington CBD, designated on 22 May 2014.
- Sunshine CBD, designated on 12 September 2015.

This RIS proposes remaking the five Orders on a longer-term basis (> 1 year). A map of each of these designated areas is at **Appendix 3**.

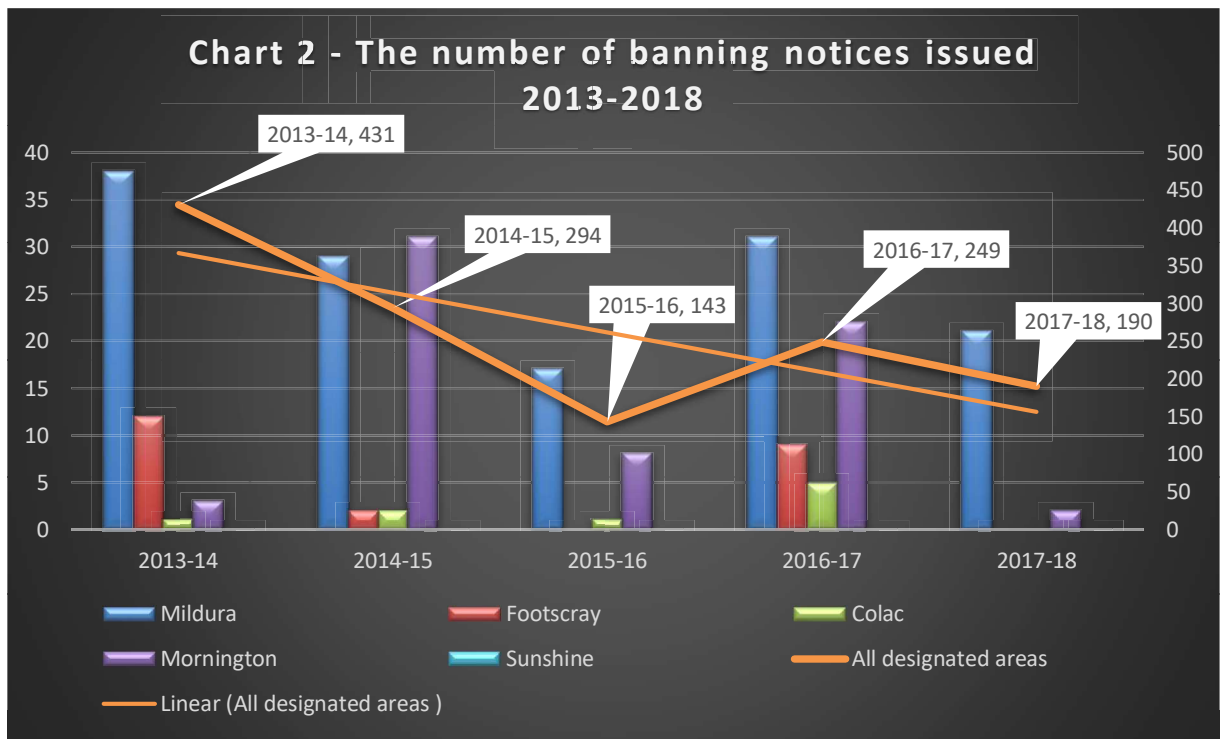
### 4.1.1 The number of banning notices issued and exclusion orders made in 2013-2018

The VCGLR analysed the number of banning notices issued and exclusion orders made each financial year in each of the designated areas from 2013-14, when Mildura was first designated, until 2017-18. The analysis was undertaken to assess the potential effectiveness of designation over time. A reduction in the use of banning notices and exclusion orders may, at least partly, be the outcome of less violent alcohol-related offences being committed in these designated areas and may, as such, suggest the effectiveness of the designation. Clearly there are other contributing factors. For example, the availability of Order powers may be used as a valuable deterrent and an alternative to the actual use of the powers. The use of Order powers as a deterrent has real benefits to the individual, criminal justice system and general community, and the Commission's view is this deterrent strategy contributes to the Orders' effectiveness.

An assessment was also taken of the number of alcohol-related offences being committed in the designated areas before and after the designation of each area. This is discussed at para. 4.2 of this paper.

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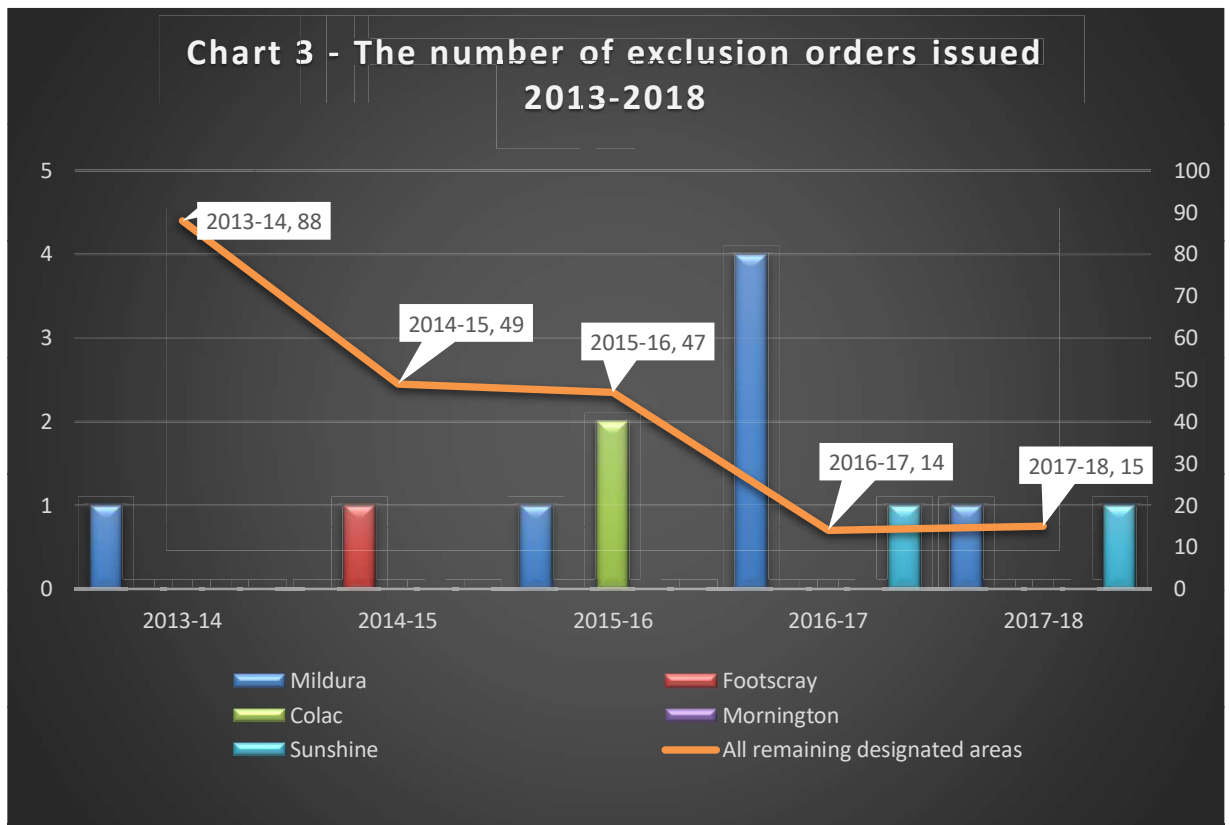
<sup>2</sup> See s 9(1)(h) *Victorian Commission for Gambling and Liquor Regulation Act 2011*.  
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The above chart displays the number of banning notices issued by Victoria Police in the 2013-2018 financial years in each of the designated areas subject to this RIS. Mildura was the designated area with the highest number of banning notices issued each year, except in the 2014-15 financial year when Mornington had the highest number. The overall use of banning notices in all 20 designated areas in Victoria generally declined over the five years from 2013-2018. No banning notices were issued by Victoria Police in the Sunshine designated area.

Victoria Police advise that an overall increase in resources around licensed premises, such as a high visible police presence, covert patrols, foot patrols, marked vehicle patrols and the establishment of dedicated tasking teams has aided in the decline in specified offences occurring in designated areas and the reduction of banning notices being issued. Also, police members may consider alternative enforcement options such as arrests, issuing Infringement Notices and directions to move on if a person is breaching the peace.

<sup>3</sup> Victoria Police, *Liquor Control Reform Act 1998. 2013-18 Annual Reports by the Chief Commissioner Victoria Police. Section 148R (Banning Notices and Exclusion Orders)*. Victoria Police, Victoria.



The above chart displays the number of exclusion orders made (as reported by Victoria Police) in the 2013-2018 financial years in each of the five designated areas the subject of this RIS. Mildura was the designated area with the highest number of exclusion orders with a total of seven made over the five-year period. Colac and Sunshine each had two made in the same period and Footscray had one. Mornington did not have any exclusion orders made in this period.

The making of exclusion orders across all 20 Victorian designated areas has declined over five years. As previously discussed, Victoria Police advised that an overall increase in resources around licensed premises aided in the decline of specified offences occurring in designated areas and that alternative enforcement options (as discussed above) may explain this trend.

#### 4.1.2 Offences recorded in individual designated areas

To help measure the effectiveness of the Orders in the five areas subject to this RIS, the VCGLR undertook an assessment of the crime rates within each designated area in the years before and after each Order was made.

Attention was paid to the following violent offences which may be alcohol-related:

- assault and related offences;
- property damage; and
- disorderly and offensive conduct.

For each designated area, the offences were assessed by calculating the percentage change in the average number of offences in the three years prior to compared to the three years after designation. Due to changes in the recording of offence data from 2010, only two years of data

<sup>4</sup> Victoria Police, *Liquor Control Reform Act 1998. 2013-18 Annual Reports by the Chief Commissioner Victoria Police. Section 148R (Banning Notices and Exclusion Orders)*. Victoria Police, Victoria.

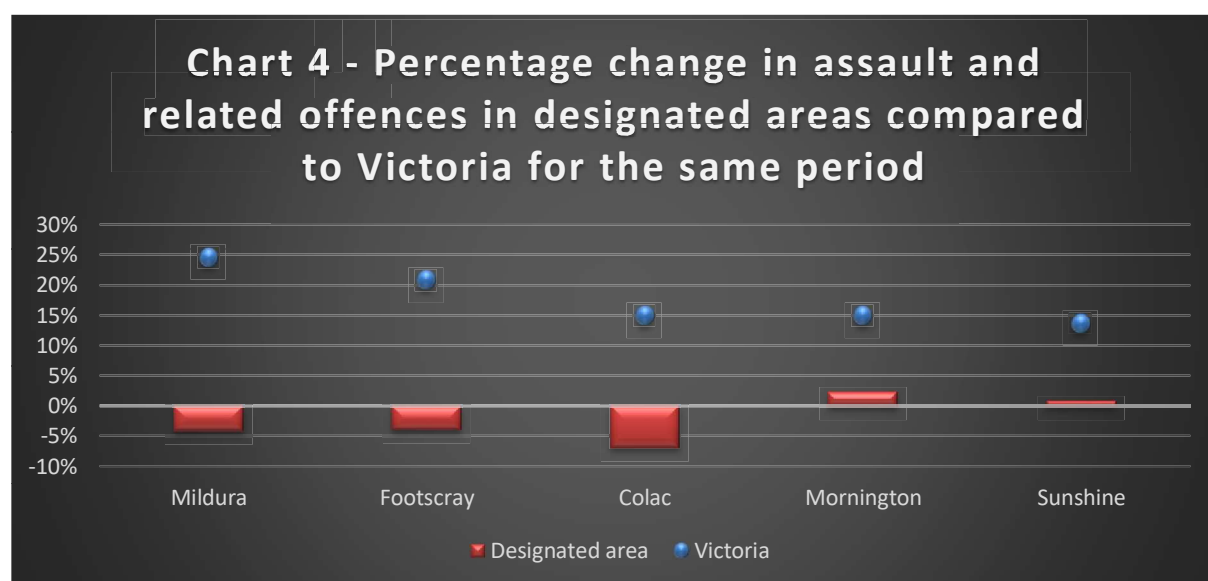
was assessed for Mildura to cover the period prior to designation. The offences were compared against the Victorian trend over six years, by calculating the percentage change in the average number of offences committed in the three years before each Order was first made to the three years after each Order was first made. For Mildura, only the two years before the Order was first made was used, due to changes in data reporting in 2010 which makes earlier data not directly comparable. It should be noted that designated area data is reported by financial year while the Victorian offence data is reported per calendar year. Note that conclusions reached are not affected by shifting the Victorian data used by one year. Ten years of Victorian data, however, shows a steady increase in assault and related offences, and a steady decline for property damage and disorderly and offensive conduct. This comparison was made to establish whether areas have over or under performed state-wide trends following the declaration of the Orders.

Orders can affect crime rates in two ways:

- The use of banning notices could directly reduce the number of alcohol-related offences police serve on individuals.
- Orders can also act as a deterrent, in practice police may use verbal warnings of banning notices and exclusion orders and encourage individuals to go home or move on. Staff in licensed venues may also inform individuals that Order powers operate in the area.

Note that banning notices are most frequently used by police where individuals are suspected of committing, or to be at risk of committing, summary offences such as those relating to drunkenness, offensive and obscene behaviour and disorderly conduct, rather than more serious offences.

The assessment of each offence and area is set out below:

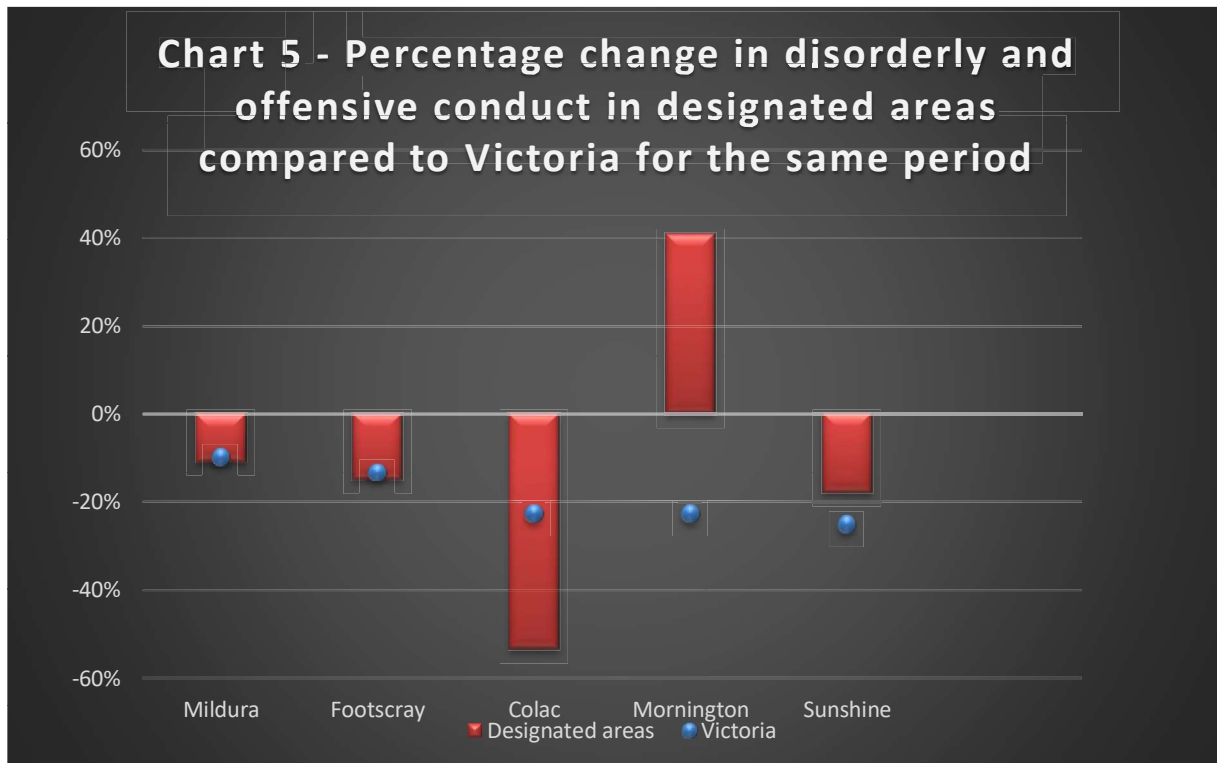


In Mildura, Footscray and Colac there was a decrease in the average number of assault and related offences recorded in the three years after designation compared to the three years, (two for Mildura) prior to designation. These three areas had a decrease at a time when for Victoria generally there was a considerable increase. Mildura had a decrease of 4% while Victoria generally had an increase of 25%. Footscray also had a decrease of 4% while Victoria rose 21%. Colac had a decrease of 7% while Victoria increased 15%.

Mornington and Sunshine saw a slight increase in percentage in the average number of assault and related offences in the three years after designation compared to the three years prior.

However, the increase in percentage was not to the extent as the increase in these offences for Victoria generally. For Victoria, the increase was 15% during the same period Mornington only rose 2%. Sunshine only rose 1% at a time when Victoria rose 14%.

All five designated areas saw less than the Victoria wide average increase for assault and related offences in the years assessed. This affect might be attributed to the designation of the areas, however further analysis would be required to confirm causality.



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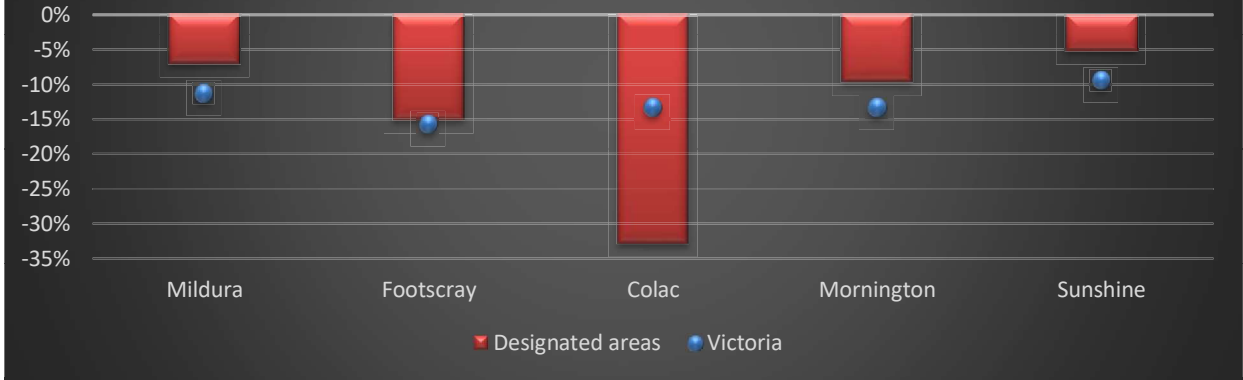
Mildura, Footscray and Sunshine, all had a decrease in disorderly and offensive conduct approximately in line with Victorian trends. Colac had a considerable decrease compared to Victoria generally for the same period. Mornington had a considerable increase compared to Victoria generally for the same period.

Many factors other than designation may have influenced the variation in percentage change for Colac and Mornington, compared to Victoria. Based on the data, it is unclear that the making of an Order had a significant impact on disorderly and offensive conduct.

<sup>6</sup> Crime Statistics Agency Victoria



**Chart 6 - Percentage change in property damage in designated areas compared to Victoria for the same period**



Property damage for all designated areas decreased approximately in line with Victorian trends, except for Colac, which had a considerable decrease of 33% at a time when Victoria generally had a percentage change of -13%.

#### 4.1.3 Conclusion

Assault and related offences for all areas either decreased or did not increase at the same rate as Victorian trends. Three designated areas had a decrease in assaults and related offences at a time when for Victoria generally there was a considerable increase. This was against the trend for Victoria generally. The remaining two areas increased in these offences but at considerably less than the increase for Victoria generally.

The data suggests designation contributed to a reduction in assaults and related offences in these areas, which are some of the worst community impacts of the misuse of alcohol. However, as crime rates and policing are complex policy areas, it is difficult to robustly establish causality using this data alone. Therefore, this conclusion should be treated as some, but not conclusive, evidence that Orders decrease the rate of assault and related offences in the areas they are made compared to not making the Orders. Therefore, the Commission's view in relation to these areas, is designation is reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the areas.

<sup>7</sup> Crime Statistics Agency Victoria.



## 5 Identification of the problem

### 5.1 Unnecessary administrative burden

The objective of Order powers is to minimise harm by reducing or preventing the occurrence of alcohol-related violence or disorder in and around licensed premises in the area. The legislative provisions enabling the Commission to declare an area to be a designated area already exist, only the geographical design of each designated area and the duration of each Order are the matters the Commission is required to determine when making an Order under the Act.

In practice, the geographical design of the area reflects consultation with Victoria Police who operationalise the powers under the Orders and are responsible for developing and implementing policing strategies to minimise alcohol-related crime and disorder. The geographical design is discussed at para. 3.2.1 of this paper.

Accordingly, this RIS will focus on the issues associated with the duration of the Orders. Remaking each of the five Orders every 12 months is unnecessarily administratively burdensome for the Commission and Victoria Police, as discussed at para. 5.1 of this paper. The Commission's current process for remaking each Order requires approximately one month and includes:

- Seeking a statement (and updated map) from the Victoria Police Licensing Inspector in the relevant area/s that:
  - alcohol-related violence or disorder has occurred in a public place that is in the immediate vicinity of licensed premises within the area, including a brief description of one or more incidents; and
  - in the opinion of the Licensing Inspector the Order powers are reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the area (including reasons for forming that opinion).
- The preparation of the updated map of the Order – maps are nearly always unchanged each year, for approval by a Commissioner and for publication. Complex maps require preparation by an external party. All maps are reviewed by a VCGLR legal officer.
- The preparation of a paper seeking approval of the updated map of the Order by a Commissioner, giving reasons and the updated map.
- A Commissioner reviews the request for remaking the Order and either approves the Order or does not approve the Order.
- If the Order is approved, coordinate the publication of the updated map of the Order for publication in the Victorian Government Gazette. If not approved, advise all parties accordingly.
- Notification of the making of the Order is released on VCGLR media and published on the VCGLR website.

The steps above describe those undertaken by the Commission but do not include all the steps required by Victoria Police and the Victorian Government Gazette to remake an Order. The remaking of the Orders annually is unnecessarily administratively burdensome for all parties involved and is not an efficient use of public funds considering each of the five Orders have been remade every year for at least four years with Mildura having been remade each year for the last seven. Alcohol-related violence and disorder remains in these areas and a long-term strategy is required.

### 5.2 Effectiveness of short-term Orders

Remaking the Orders for 12 months does not support a long-term strategy to address alcohol-related violence and disorder, or the objects of the Act as discussed at para. 2.1 of this paper.

Addressing alcohol-related violence and disorder is a long-term, multi-faceted strategy. Orders are one of several policing strategies used to address alcohol-related violence and disorder. Victoria Police's current Alcohol Strategy<sup>8</sup> is ten years which offers a long-term strategy to address alcohol-related violence or disorder. This long-term strategy acknowledges the complexity in responding to alcohol-related harm and provides a consolidated whole of government approach to promote safe alcohol consumption, using new and flexible approaches. Orders are one of several policing strategies used to address alcohol-related violence and disorder. An assessment of alcohol-related crime rates prior to and following designation of the areas, revealed these areas varied from the Victorian trend for some offences, particularly assault and related offences. This is discussed at para. 4.2 of this paper.

A consistent and predictable long-term strategy to target alcohol-related violence and disorder has social and commercial benefits, as discussed at para. 6.3.1 of this paper. A sense of community safety promotes the night-time economy in these areas which provides social benefits to the community and commercial benefits to local businesses. It also provides certainty to licensees and police that the powers will remain in place for a set period.

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<sup>8</sup> Policing Alcohol Harm in Victoria 2014-2024, Victoria Police, viewed 26 November 2019, [www.police.vic.gov.au/official-publications](http://www.police.vic.gov.au/official-publications).

## 6 Objectives of remaking the Designated Area Orders

### 6.1 The Commission's responsibilities

The Commission's vision is that Victorians and visitors can enjoy safe and responsible gambling and liquor environments.

The Commission has many legislative functions. Of most relevance to the Orders are:

- *“to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—*
  - *ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and*
  - *encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community”.*

### 6.2 Objectives of Designated Area Orders

Generally, the objects of the Orders are to:

- Minimise harm by deterring alcohol-related violence in and around licensed venues.
- Avoid infringing unnecessarily on human rights by providing discretion to the relevant police officer or court to ensure the banning notice or exclusion order cannot affect the person's ability to work or live where they choose.
- Minimising administrative burden and ensuring consistency and transparency.

The preferred option outlined in this RIS aims to achieve those objects.

### 6.3 How Designated Area Orders achieve their objectives

The main object of the Orders is to reduce or prevent the occurrence of alcohol-related violence or disorder in the area. This object is met by focusing on harm minimisation and the use of banning notices and exclusion orders as diversions from the criminal justice system. Removing an individual at risk of committing alcohol-related violence aims to de-escalate a situation and support harm minimisation. The Commission also recognises that, in practice, police may use verbal warnings relating to their powers to ban and/or exclude persons in designated areas which may prompt people to leave voluntarily.

Verbal warnings are not required to be recorded and reported by Victoria Police so the number of verbal warnings cannot be assessed as part of this RIS.

#### 6.3.1 Harm minimisation

Orders enable a proactive policing strategy by allowing those at risk of committing alcohol-related violence and disorder to be immediately removed from the area. This is a simple approach to de-escalate a situation without making an arrest. Proactive strategies have been shown to pre-empt problems and promote public safety (Berkley et al., 2000).

Active police presence and reasonable police enforcement promotes a perception of safety by the community and assists crowd control (Berkley et al., 2000). Simply removing people at risk of committing or contributing to alcohol-related violence also offers a diversion from the criminal justice system and immediately reduces risk to others in the area. There is evidence that suggests diversion offers many benefits to the community and individuals. This includes freeing up police and court time and reducing the risk of long-term criminality. Research also suggests that the threat of punishment is more effective in deterring offenders than actual punishment by a court. This is because, in many cases, the actual punishment delivered by the court is far less than anticipated by the offender, due to criminal justice capacity overload (Braithwaite 2018).

Community engagement can be affected by fear of crime and influence community involvement in the night-time economy (Jones et al., 2003). This can have a flow-on effect, as fewer people out and about enjoying night-time activities decreases natural surveillance which would otherwise deter offenders because of a greater risk of detection (City of Paramatta August 2017).

### **6.3.2 Avoid infringing unnecessarily on human rights**

The Act allows for additional discretionary powers for police to issue banning notices and exclusion orders. These additional powers have the capacity to place a limitation on a person's freedom of movement and their right to liberty under the Charter. The potential effect on human rights and the assessment of these provisions against the Charter are discussed above at para. 2.5 of this paper.

The Act also contains various protections, such as:

- The variation or revocation of a banning notice by police officers of or above the rank of sergeant. This allows for a reduction in the duration of the notice or variation to allow persons working or living within the area to continue to do so.
- If the police officer believes on reasonable grounds that the person works or resides in that area, the notice can specify individual premises. If a person lives or works in a licensed premise within the area, the notice can permit them to enter this premise but excludes others within the area.
- Allows for the court to vary an exclusion order in consideration of the individual circumstances of the person.

Banning notices and exclusion orders are not reviewable decisions. This means people affected are unable to lodge a request for an internal review by the Commission or an external review by the Victorian Civil and Administrative Tribunal.

People affected by banning notices therefore can only apply to have a banning notice varied or revoked. The restriction on this process considers that banning notices can only be issued for up to 72 hours. In the case of an exclusion order, a person can make an application to the court to vary the order.

### **6.4 Minimising administrative burden and ensuring consistency and transparency**

The five Orders made after 1 July 2011 are subject to the requirement to undertake a RIS if an Order of more than 12 months' duration is proposed. As discussed above, the Commission's practice for these Orders to date has been to make the Orders of 12 months duration, each year. This process is unnecessarily administratively burdensome for Victoria Police and the Commission.

Remaking the Orders for a term greater than 12 months can facilitate a consistent, proactive police strategy to address alcohol-related violence and disorder in these communities. Consistent police presence and action against crime provide both a deterrent to potential offenders and reduces the fear of crime for others in the community (see Berkley et al., 2000 for the benefits of proactive police strategies).

The current process requires annual review of each Order and information from Victoria Police.

The Drug and Alcohol Strategy Unit of Victoria Police support remaking each of the five Orders for a ten-year term to reduce administrative burden and provide consistency for the local community, licensed premises and local government authorities.

## 7 Options, costs and benefits

### 7.1 The options for Designated Area Orders

As the legislative provisions enabling the Commission to declare an area to be a designated area already exist, only the geographical design of each designated area and the duration of each Order are the matters the Commission is required to determine when making an Order under the Act. The geographical design is discussed at para. 3.2.1 of this paper.

The scope of the Orders and this RIS is consequently limited to four key options:

- 1) **No Orders (base case)**: that the Commission not remake any of the five Orders, the subject of this RIS, and they expire after their 12-month term. This is what would occur if the Commission took no action to remake the DAOs.
- 2) **To Remake the Orders for 12 months duration (status quo)**: that the Commission seek to remake each of the five Orders for 12 months or less.
- 3) **To remake the Orders for five years**: that the Commission remake each of the five Orders for a period of five years.
- 4) **To remake the Orders for ten years (preferred option)**: that the Commission remake each of the five Orders for a period of ten years.

#### 7.1.1 No Designated Area Orders

It is open to the Commission to not remake any of the five Orders the subject of this RIS. This will mean they expire when their 12-month term ends. Not remaking the Orders would not allow Victoria Police to exercise their powers under s 147 of the Act, and not doing so, where the Commission believed these powers were effective under s 147 would be contrary to the object of the Act, and 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”. Relevant objects of the Act are discussed in detail at para. 2.1 of this paper.

A benefit of no designated area orders would be a reduction in administrative burden to the Commission and Victoria Police.

This is not the preferred option.

Banning notices and exclusion notices divert individuals from or, at least, minimise their exposure to, the criminal justice system reducing the fiscal and administrative burden on the criminal justice system. Individuals also benefit as they avoid a criminal conviction or a fine and pro-longed exposure to the criminal justice system. The immediate removal of trouble makers from the area also benefits local businesses and the local community. If people feel safe they are more likely to participate in the night-time economy, supporting the local economy and social connectedness.

The Orders are one of a number strategies Victoria Police employ for the reduction of alcohol-related violence and disorder in Victorian communities. The Commission considers Victoria Police to be the experts in identifying and preventing alcohol-related violence and disorder in Victoria.

On 1 July 2015, Victoria Police began to identify alcohol affected persons in their crime data recording. The Commission anticipates that this change in process is more likely to identify whether patterns of alcohol-related violence in these five areas have been impacted by remaking the Orders for ten years as those persons suspected of being affected by alcohol are easily recorded.

Under the Act, the Commission must revoke Orders if the grounds for making them no longer exist. The grounds are that alcohol-related violence or disorder has occurred in the area, and that the exercise of powers (by police and the courts) are reasonably likely to be an effective

means of reducing or preventing the occurrence of alcohol-related violence or disorder in the area. The grounds for making an Order continue to exist in all five areas.

### **7.1.2 To remake the Designated Area Orders for 12 months (status quo)**

This is not the preferred option. Remaking the Orders for 12 months does not support a long-term strategy to address alcohol-related violence and disorder, or the objects of the Act, as discussed at para. 2.1 of this paper.

Maintaining the status quo, whereby the Commission remakes each Order for 12 months, imposes unnecessary resourcing and administrative costs to Victoria Police and the Commission, as discussed at para. 5.1 of this paper.

A consistent and predictable long-term strategy to target alcohol-related violence and disorder has social and commercial benefits, as discussed at para. 6.3.1 of this paper. The Commission considers the benefits to remaking the Orders for 12 months is less than for longer periods as the Commission can vary or revoke an Order if believes that the grounds for making the Order no longer exist.

### **7.1.3 To remake the Designated Area Orders for five years**

The Act does not provide a time limit for the duration of an Order. Consequently, an option available to the Commission is to remake the Orders for a longer term such as five years. A benefit to remaking the Orders for five years is that it would reduce administrative burden to the Commission and Victoria Police; provide more consistency for the community and contribute to a long-term strategy to address alcohol-related violence and disorder.

However, the Commission does not consider a five-year term to be the preferred option as this period does not support a longer-term strategy to address alcohol-related violence and disorder, which provides more consistency to the local community and businesses and offers better support for the night-time economy in these areas. Although the administrative burden on the Commission and Victoria Police is five times less than remaking the Orders every 12 months, it is still twice as much administrative burden as remaking the Orders every 10 years.

Each of the five Orders have been remade every year for at least four years, with Mildura having been remade each year for the last seven and an assessment of alcohol-related crime data revealed a reduction in assault and related offences in the three years after designation compared to the three years prior to designation, as discussed at para. 4.2 of this paper.

### **7.1.4 To remake the Designated Area Orders for ten years (preferred option)**

The option preferred by the Commission is to remake the Orders for ten years.

Each of the five Orders have been remade every year for at least four years with Mildura having been remade each year for the last seven. An assessment of alcohol-related crime data in the designated areas identified a decrease or lower rate of increase in assault and related offence rates in designated areas when compared to Victoria generally. The data suggests designation may have contributed to a reduction in assaults and related offences in these areas, as discussed at para. 4.2 of this paper. Making Orders for a ten-year period promotes a consistent and predictable long-term strategy to target alcohol-related violence and disorder, and raises social and commercial benefits, as discussed at para. 6.3.1 of this paper. A sense of community safety promotes the night-time economy in these areas which provides social benefits to the community and commercial benefits to local businesses.

Victoria Police is also supportive of a ten-year term as it promotes a long-term, consistent policing strategy and reduces administrative costs. Ten years is also the term of Victoria Police's current Alcohol Strategy<sup>9</sup> and the sunset period for statutory rules in Victoria. The length of this strategy suggests there is a need for and benefit to a long-term plan in responding

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<sup>9</sup> Policing Alcohol Harm in Victoria 2014-2024, Victoria Police, viewed 26 November 2019, [www.police.vic.gov.au/official-publications](http://www.police.vic.gov.au/official-publications).

to the complexity of alcohol-related harm which provides a consolidated whole of government action to promote safe alcohol consumption, using new and flexible approaches. Orders are one of several policing strategies used to address alcohol-related violence and disorder. However, crime data analysis suggests designation may have had an effect on assault and related offences in these areas. Long-term analysis of this data, particularly assault and related offences, may provide confirmation of this effect. The Commission recognises the reduction in administrative burden and costs to the Commission and Victoria Police by remaking the Orders for a ten-year term.

Extending the length of the Orders to ten years does not remove the Commission's option to vary or revoke an Order, including a mandatory requirement that the Commission must revoke an Order if the Commission believes that the grounds for making the Order no longer exist. The grounds are that alcohol-related violence or disorder has occurred in the area, and that the exercise of powers (by police and the courts) are reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the area.



## 8 Implementation and evaluation

Following the consideration of submissions received on this RIS, a Notice of Decision will be published in the Victorian Government Gazette and the Statement of Reasons (explaining how comments were addressed) will be published on the VCGLR website. If the Commission determines to remake each of the five Orders for more than 12 months, then each Order will also be published in the Victorian Government Gazette.

The Commission defers to Victoria Police to advise if the Orders are no longer effective and should be revoked as they carry out the functions of the Orders day to day. The VCGLR and Victoria Police have a joint enforcement strategy. The VCGLR and Victoria Police work together to conduct joint inspections and to share information relevant to the operation of licensed premises. The strategy ensures that the VCGLR and Victoria Police work together in an effective and consistent manner to achieve the regulatory objectives of the Act, including the primary object of harm minimisation. This includes quarterly discussions about issues, including those related to measures used to minimise alcohol-related violence and disorder such as designated areas.

The Commission intends to review alcohol-related crime data for each area upon the expiry of the remade Orders in order to assess their effectiveness and whether the continuation of the Orders minimise harm by deterring alcohol-related violence in and around licensed venues.



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## 10 Appendix 1: Specified offences table

*Specified offences for the purposes of banning notices and exclusion orders (sch. 2 of the Act)*

Description of offence	Legislative reference	Penalty
Offences against the person		
Causing serious injury intentionally	s 16 of the <i>Crimes Act 1958</i>	Level 3 imprisonment (20 years maximum).
Causing serious injury recklessly	s 17 of the <i>Crimes Act 1958</i>	Level 4 imprisonment (15 years maximum).
Causing injury intentionally or recklessly	s 18 of the <i>Crimes Act 1958</i>	If the injury was caused intentionally-level 5 imprisonment (10 years maximum); If the injury was caused recklessly-level 6 imprisonment (5 years maximum).
Offence to administer certain substances	s 19 of the <i>Crimes Act 1958</i>	Level 6 imprisonment (5 years maximum).
Threats to kill	s 20 of the <i>Crimes Act 1958</i>	Level 5 imprisonment (10 years maximum).
Threats to inflict serious injury	s 21 of the <i>Crimes Act 1958</i>	Level 6 imprisonment (5 years maximum).
Conduct endangering life	s 22 of the <i>Crimes Act 1958</i>	Level 5 imprisonment (10 years maximum).
Conduct endangering persons	s 23 of the <i>Crimes Act 1958</i>	Level 6 imprisonment (5 years maximum).
Negligently causing serious injury	s 24 of the <i>Crimes Act 1958</i>	Level 5 imprisonment (10 years maximum).
Threatening injury to prevent arrest	s 30 of the <i>Crimes Act 1958</i>	Level 6 imprisonment (5 years maximum).
Assaults	s 31 of the <i>Crimes Act 1958</i>	Level 6 imprisonment (5 years maximum).
Being armed with criminal intent	s 31B of the <i>Crimes Act 1958</i>	Level 6 imprisonment (5 years maximum).
Sexual offences		
Rape	s 38(1) of the <i>Crimes Act 1958</i>	Level 2 imprisonment (25 years maximum). The standard sentence for an offence against subsection (1) is 10 years.
Rape by compelling sexual penetration	s 39(1) of the <i>Crimes Act 1958</i>	Level 2 imprisonment (25 years maximum).

Description of offence	Legislative reference	Penalty
Sexual assault	s 40(1) of the <i>Crimes Act 1958</i>	Level 5 imprisonment (10 years maximum).
Sexual assault by compelling sexual touching	s 41(1) of the <i>Crimes Act 1958</i>	Level 5 imprisonment (10 years maximum).
Assault with intent to commit a sexual offence	s 42(1) of the <i>Crimes Act 1958</i>	Level 4 imprisonment (15 years maximum).
Threat to commit a sexual offence	s 43(1) of the <i>Crimes Act 1958</i>	Level 6 imprisonment (5 years maximum).
Destroying or damaging property and trespass		
Destroying or damaging property	s 197 of the <i>Crimes Act 1958</i>	Various penalties for specific offences. Penalties range from Level 4 imprisonment (15 years maximum) to Level 5 imprisonment (10 years maximum).
Rioters demolishing buildings	s 206 of the <i>Crimes Act 1958</i>	Various penalties for specific offences. Penalties are Level 4 imprisonment (15 years maximum) or Level 6 imprisonment (5 years maximum).
Wilful destruction, damage etc. of property	s 9 of the <i>Summary Offences Act 1966</i>	Penalty: 25 penalty units or imprisonment for six months.
Offences relating to drunkenness		
Persons found drunk and disorderly	s 14 of the <i>Summary Offences Act 1966</i>	For a first offence—20 penalty units or imprisonment for three days; For a second or subsequent offence—20 penalty units or imprisonment for one month.
Drunkards behaving in riotous or disorderly manner	s 16 of the <i>Summary Offences Act 1966</i>	Penalty: 10 penalty units or imprisonment for two months.
Offensive and obscene behaviour		
Obscene, indecent, threatening language and behaviour etc. in public	s 17 of the <i>Summary Offences Act 1966</i>	Penalty: 10 penalty units or imprisonment for two months; For a second offence—15 penalty units or imprisonment for three months; For a third or subsequent offence—25 penalty units or imprisonment for six months.

Description of offence	Legislative reference	Penalty
Sexual exposure	s 19 of the <i>Summary Offences Act</i> 1966	Level 7 imprisonment (2 years maximum).
Disorderly conduct		
Common assault	s 23 of the <i>Summary Offences Act</i> 1966	Penalty: 15 penalty units or imprisonment for three months.
Aggravated assault	s 24 of the <i>Summary Offences Act</i> 1966	<p>A penalty of 25 penalty units or to imprisonment for six months and the court may (if it thinks fit in any of the said cases) without any further or other charge adjudge any person convicted to enter into a recognizance and find sureties to keep the peace and be of good behaviour for a term of not more than six months from the expiration of such sentence. In default of compliance with any such order to enter into a recognizance and find sureties the court may order an accused to be imprisoned until he complies with the order:</p> <p>Provided that no person shall be imprisoned for non-compliance with any such order for a longer period than twelve months.</p> <p>Any person who in company with any other person or persons assaults another person shall be liable to imprisonment for twelve months and any person who by kicking or with any weapon or instrument whatsoever assaults another person shall be liable to imprisonment for two years.</p>
Disorderly conduct	s 17A of the <i>Summary Offences Act</i> 1966	A penalty not exceeding 10 penalty units.
Assaults – summary offences		
Common assault	s 23 of the <i>Summary Offences Act</i> 1966	Penalty: 15 penalty units or imprisonment for three months.
Aggravated assault	s 24 of the <i>Summary Offences Act</i> 1966	A penalty of 25 penalty units or to imprisonment for six months and the court may (if it thinks fit in any of the said cases) without any further or other charge adjudge any person convicted to enter into a recognizance and find sureties to keep the peace and be of good behaviour for a term of not more than six months from the expiration of

Description of offence	Legislative reference	Penalty
		<p>such sentence. In default of compliance with any such order to enter into a recognizance and find sureties the court may order an accused to be imprisoned until he complies with the order:</p> <p>Provided that no person shall be imprisoned for non-compliance with any such order for a longer period than twelve months.</p> <p>Any person who in company with any other person or persons assaults another person shall be liable to imprisonment for twelve months and any person who by kicking or with any weapon or instrument whatsoever assaults another person shall be liable to imprisonment for two years.</p>
<p>Prohibited weapons offences</p> <p>A person who is in licensed premises or in a public place that is in the immediate vicinity of licensed premises must not possess, carry or use a prohibited weapon without—</p> <p>(a) an exemption under s 8B; or</p> <p>(b) an approval under s 8C.</p>	<p>s 5(1A) of the <i>Control of Weapons Act 1990</i></p>	<p>Penalty: 480 penalty units or 4 years imprisonment.</p>
<p>Failure to leave licensed premises</p> <p>A person who is drunk, violent or quarrelsome must not refuse or fail to leave licensed premises if requested to do so by—</p> <p>(a) the licensee or permittee; or</p> <p>(b) an employee or agent of the licensee or permittee; or a police officer.</p>	<p>s 114(2) of the <i>Liquor Control Reform Act 1998</i></p>	<p>Penalty: 50 penalty units.</p>

## 11 Appendix 2: Specified offences table under *Liquor Control Reform Act 1998*

*Specified offences for the purposes of banning notices and exclusion orders*

Description of offence	Legislative reference	Penalty
<p>A person must not, in response to a request made by a police officer in accordance with this section —</p> <p>(a) refuse or fail to comply with the request without a reasonable excuse for not doing so; or</p> <p>(b) state a name that is false in a material particular; or</p> <p>(c) state an address other than the full and correct address of his or her ordinary place of residence or business.</p>	<p>s 148D(3) of the <i>Liquor Control Reform Act 1998</i></p>	<p>Penalty: 5 penalty units</p>
<p>A police officer must not, in response to a request under subsection (4) —</p> <p>(a) refuse or fail to comply with the request; or</p> <p>(b) state a name or rank that is false in a material particular; or</p> <p>(c) state as his or her place of duty an address other than the name of the police station which is the police officer's ordinary place of duty; or</p> <p>(d) refuse to comply with the request in writing if requested to do so.</p>	<p>s 148D(5) of the <i>Liquor Control Reform Act 1998</i></p>	<p>Penalty: 5 penalty units</p>
<p>The person must comply with the request, unless he or she has a reasonable excuse for not doing so.</p>	<p>s 148D(7) of the <i>Liquor Control Reform Act 1998</i></p>	<p>Penalty: 5 penalty units</p>
<p>A person to whom a banning notice applies must not enter or re-enter, or attempt to enter or re-enter, the designated area or licensed premises in contravention of the notice.</p>	<p>s 148F(1) of the <i>Liquor Control Reform Act 1998</i></p>	<p>Penalty: 20 penalty units</p>
<p>If the person is in the designated area or licensed premises in contravention of the notice, he or she must comply with any direction given by a police officer under s 148G.</p>	<p>s 148F(2) of the <i>Liquor Control Reform Act 1998</i></p>	<p>Penalty: 20 penalty units</p>
<p>A person to whom an exclusion order applies must not enter or re-enter, or attempt to enter or re-enter, the designated area or licensed premises in contravention of the order.</p>	<p>s 148J(1) of the <i>Liquor Control Reform Act 1998</i></p>	<p>Penalty: 60 penalty units</p>

Description of offence	Legislative reference	Penalty
If the person is in the designated area, or licensed premises in contravention of the order, he or she must comply with any direction given by a police officer under s 148K.	s 148I(2) of the <i>Liquor Control Reform Act 1998</i>	Penalty: 60 penalty units
A licensee or permittee must not knowingly permit a person to whom a banning notice or an exclusion order applies to enter or re-enter the licensed premises in contravention of the notice or order.	s 148Q(1) of the <i>Liquor Control Reform Act 1998</i>	Penalty: 60 penalty units
An employee or agent of a licensee or permittee must not knowingly permit a person to whom a banning notice or an exclusion order applies to enter or re-enter the licensed premises in contravention of the notice or order.	s 148Q(2) of the <i>Liquor Control Reform Act 1998</i>	Penalty: 60 penalty units

## 12 Appendix 3: Designated Areas