

EROS ASSOCIATION

*Submission to the Victorian Law Reform
Commission on:*

Regulatory regimes and organised crime

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For publish with name on VLRC website.

1. **What changes or additions would you make to the information presented in Table 1 (pages 23 - 26 of the consultation paper) and Table 2 (pages 31 - 32 of the consultation paper) regarding the purposes of infiltration? You may wish to comment on occupations or industries that are not listed in Tables 1 or 2.**

Our submission will focus on the adult industry with specific reference to the grey market industry for psychoactive substances. This industry is currently unregulated and many other states have chosen to pursue prohibiting it, without seeking alternatives that will create more positive outcomes for community, industry and health.

Through regulation, proven harm reduction methods in the Alcohol and Other Drugs (AOD) treatment services can be implemented straight into the market, ensuring that all consumers are made aware of dosage, safety and services available for those who develop a substance abuse problem.

Taxation collected off the products can be put toward the AOD sector and education to keep children away from adult products, audit the industry regularly for manufacturing quality and regulatory compliance and fund other state ventures.

Without effective regulation of this industry, including quality standards, safety and adequate advice given at Point of Sale (PoS), such as occurs to some extent in the alcohol industry, it is very easy for agents to enter the market to shift supply from a criminal market to an unregulated or complement other criminal activities.

The Eros Association currently provides a minimal level of measures for self-regulation of the industry. Many of these measures could be significantly improved upon and resourced under a properly regulated and funded market model with an appropriate regulatory body.

Our experience in the market has highlighted many issues, including wholesalers and retailers who sell to underage markets, manufacture to a poor quality standard or who aim to use the grey nature of the market in order to operate sometimes sophisticated and ever-changing scam operations, stealing sometimes tens of thousands of dollars.

2. **Is the draft model for assessing the risk of infiltration (pages 32 - 37) a helpful way to assess the risk of organised crime group infiltration of lawful occupations and industries?**

This is difficult to apply to the current market. Due to the total lack of regulation of the market, there are no standards and the barriers to entry range depending on ones own ethics, which may be influenced by activity in other criminal areas. Regulation could create appropriate barriers to entry, especially around appropriate quality standards, testing and packaging information as well as other business standards.

3. **What changes or additions would you make to the draft model for assessing the risk of infiltration (pages 32 - 37 of the consultation paper)?**

The draft model is difficult to apply to emergent and novel markets, such as the one discussed in this submission. Initial regulation is needed in order to make an assessment.

4. **Having regard to the regulatory tools described in Chapter 4, which regulatory tools are, or might be, useful in addressing each of the risks identified in the draft model for assessing the risk of infiltration (pages 32 - 37 of the consultation paper)?**

With reference to point 3.70, the adult industry is already uniquely situated in that it is already an adult-only model with years of experience in retailing adult-only products. There are already established networks of people who operate within the law and are calling for better regulation for a sustainable future of the industry.

5. **For the purpose of preventing organised crime group infiltration of lawful occupations and industries, what are the advantages and disadvantages of regulation by:**
 - (a) **a traditional occupation or industry regulator such as the Business Licensing Authority**
 - (b) **Victoria Police**
 - (c) **both a traditional regulator and Victoria Police?**

Appropriate regulation of the industry should include an industry regulatory body which provides licensing to cover quality and safety controls.

Effective monitoring of the industry is essential to ensuring that those engaging in organised crime are kept out or quickly dealt with. Due to the unstable legislative situation surrounding this market, the industry has been a target for “cowboy” wholesalers, aiming to capitalise on uncertainty and misinformation in the market. These wholesalers may be engaged in other, criminal activities or business and are unlikely to be concerned about the legality of a substance, nor have any particular care for quality or manufacturing standards.

6. **If a regulator is required to prevent the infiltration of organised crime groups into an occupation or industry, how does this affect, or how might this affect, the pursuit of its other regulatory purposes and objects (whether positively or negatively)?**

The mere presence of a regulator will act as a prophelactic against organised crime entering the industry. There are many other benefits that a regulator of the industry would have which would positively affect the entire market from manufacturer to consumer. Considering the unique, grey market situation that currently exists, a regulator would provide a clear signal to the market that those operating in it need to be lawful, ethical business people.

7. **In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate entry into an occupation or industry (for example, by requiring would-be entrants to obtain a licence)?**

A regulator would require anyone entering the industry at any level to get an appropriate licence. New Zealand passed the Psychoactive Substances Act in 2013, which provides the framework for regulating the industry. Their model includes different levels of licencing depending on the nature of the business. There are also appropriate

fees to help fund the authority and provide a barrier to entry which would help to dissuade those with ill intentions. The following is an excerpt from the Psychoactive Substances Regulatory Authority (<http://psychoactives.health.govt.nz/industry/how-get-licence>):

“All people and businesses who want to import, research, manufacture, or sell unapproved psychoactive substances must hold a licence granted by the Authority under section 16 of the Psychoactive Substances Act 2013. Licences are required to ensure that there is a level of regulatory control and traceability over these functions.

Part of the licensing requirements is that all applicants will have Police vetting as part of the “fit and proper person” test in section 16(2) of the Act. Checks will also be made to confirm that any body corporate that applies for a licence is of “good repute” .

Applications for licences must be made to the Authority on the requisite forms. Please read the forms carefully and be aware that there will be no refund of fees if your application is rejected due to incompleteness or incorrect information.”

8. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of any of the following:

- (a) positive licensing regimes
- (b) negative licensing regimes
- (c) registration schemes
- (d) rules relating to the effective control of a business
- (e) rules relating to who may be employed in a business
- (f) rules relating to re-entry
- (g) other entry-regulation tools that you would like to comment on?

Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.

We estimate that the Australia-wide industry was worth close to \$700 million in 2013-2014. Effective regulation of this industry would likely be coupled with a special tax levied on the products, which could be used to fund the regulatory body among other things.

A regulator would need to be able to audit businesses to ensure compliancy with licencing rules and regulations.

The size of the regulator would depend on the size of the market, including how many retailers, wholesalers, distributors etc. operate in the market.

As the industry currently sits in a grey area, it is difficult to estimate the costs of regulation. This would need to be investigated specifically.

9. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of group-based licence exclusions?

I believe this is addressed in question 8.

10. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to monitor an occupation or industry?

Monitoring and auditing of the industry is essential. This ensures that regulation is being properly adhered to as well as providing a significant barrier against criminal elements and/or “cowboy” wholesalers entering the industry.

11. When monitoring an occupation or industry in order to prevent or detect the infiltration of organised crime groups, what are the costs and benefits of any of the following:

- (a) short licence periods/regular licence renewals
- (b) a complaints-based model versus an inspection-based model
- (c) investigative powers (or particular investigative powers)
- (d) prohibited practices
- (e) record-keeping obligations
- (f) continuous disclosure obligations
- (g) other monitoring tools that you would like to comment on?

Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.

Regular licence renewal, alongside regular auditing of the industry would show that the regulator is watchful of who is operating in the industry. The mere act of regulation of this industry will ensure that those involved with criminal activities are far less likely to get involved.

Again, the cost is difficult to estimate and depends on various factors which would need to be discussed further before moving ahead with regulation. But, considering the likelihood that products would be taxed at a higher rate than GST and there would be fees associated with licencing, the regulator should pay for itself rather easily.

12. What are the most useful ways of detecting people (particularly organised crime groups) who are operating in a lawful occupation or industry without the required authorisation (such as a licence)?

Publishing the list of who is licenced, what products are licenced and for what they are licenced for and maintaining that online, while also promoting it to consumers would help ensure that criminal elements are kept out. The easiest way to monitor the industry

is to inform consumers on how regulation works, give consumers points of contact to report products or a place to go to check if a product is licenced.

The regulator would be ideally suited to develop resources which can be used by all levels of the industry, from manufacturer to consumer to ensure that all levels are appropriately informed on how the regulation works.

13. Which enforcement measures are useful, or might be useful, in preventing organised crime group infiltration of lawful occupations and industries?

Clear regulation is key to ensuring that this industry is separated from any organised crime elements. Without clear regulation, the market remains in a grey area and can be easily targeted and entered by anyone with any motivation.

14. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate the exit of people from an occupation or industry? Which tools are, or might be, useful for this purpose?

It would be ideal for a regulator of this industry to keep details of people who currently hold a licence or have obtained licences in the past. These details could be shared with police regarding criminal investigations and to other regulators of similar industries (ie. Pharmaceutical) to ensure that someone doesn't jump from one industry to another if they have broken certain licence conditions.

15. Are there any problems with current information-sharing arrangements? If so, how might these problems be overcome? Information-sharing arrangements can refer to information sharing between regulators and Victoria Police, between different Victorian regulators, between Victorian and interstate regulators, and between any other agencies that hold relevant information.

This would need to be discussed further in forming a regulator for the industry in the first place. An analysis of the New Zealand Psychoactive Substances Act (PSA) and its strengths and weakness in enactment would be able to provide a good, semi-working model of what sort of information sharing arrangements should be put in place.

16. Please comment on the extent to which regulatory tools that may be used to prevent the infiltration of organised crime groups into lawful occupations and industries may:

- (a) insufficiently protect the rights of people affected by decisions of the regulator
- (b) insufficiently protect the rights of any other stakeholder
- (c) impose additional burdens on regulators, courts and/or tribunals in relation to the provision of reasons for decisions and opportunities for review.

Due to the nature of the industry, a higher level of regulation is entirely appropriate to ensure that only serious, professional people are involved who can adhere to the set regulatory requirements.

17. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries:

- (a) What issues are, or might be, better dealt with through legal responses other than occupation/industry-based regulatory regimes (including but not limited to the 'other legal responses' described at pages 66 to 68 of the consultation paper)?**
- (b) What issues are, or might be, better dealt with through occupation/industry-based regulatory regimes rather than other legal responses?**

Due to the nature of the industry, it would be important for police to be able to ensure that those who are licenced are not engaged in illicit drug dealing. If an agent engaged in organised criminal activity in that area, it suggests other significant problems with the agent. Clear, hard controls in this area would send a clear message about adherence to the law and regulations.