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# Tasmanian Alcohol Action Framework Legislative Scoping Study

*Final Report*

*Version 1.0*

September 2012

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SIMPLIFYING GOVERNMENT

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# Foreword

This report by Stenning and Associates has been produced for the Inter Agency Working Group on Drugs (IAWGD). The IAWGD is a cross-agency working group established to provide strategic policy advice and coordination of initiatives to deal with alcohol, tobacco and other drugs-related issues in Tasmania. The IAWGD comprises senior representatives of Government agencies, the Local Government Association and the Alcohol, Tobacco and Other Drugs Council of Tasmania (ATDC)

By initiating the Report, the IAWGD was seeking to identify options for consideration in the implementation of the Tasmanian Alcohol Action Framework 2010-2015 – *Rising Above the Influence* (TAAF).

A Key Strategy under the TAAF relates to the need for an effective system for controlling the supply of alcohol in Tasmania. A priority action under this Strategy is to review the legislation to ensure there is a consistent legislative and regulatory framework to support the control and supply of alcohol. The process provided opportunity for police, public health, local councils and industry to provide input and explore opportunities to enhance the liquor licensing process and further ensure that public health and wellbeing, community safety, planning and development and economic impact are appropriately considered in licensing decisions. The work undertaken by Stennings and Associates which is detailed in this report completes this action under the TAAF.

The project was collaboratively funded by the Department of Health and Human Services' Divisions of Statewide and Mental Health Services and Population Health; the Department of Police and Emergency Management; the Liquor and Gaming Branch, Department of Treasury and Finance; and the Alcohol, Tobacco and Other Drugs Council (ATDC).

Funding for the project was managed by ATDC on behalf of the IAWGD, with project oversight and guidance provided by the Alcohol Advisory Group (AAG), which is the sub-committee of the IAWGD that focuses on alcohol-related matters.

The report has been produced after a lengthy period of literature and legislation review, as well as consultation with relevant Government stakeholders, the Local Government Association of Tasmania (LGAT), ATDC, and a number of alcohol industry peak bodies.

A range of legislation was considered under the Study, however, most of the focus was on those Acts that have (or have the potential for) the greatest influence on the control of the sale and supply of liquor, and the broadest population-wide impact on the associated harms, these being:

- *Liquor Licensing Act 1990*
- *Police Offences Act 1935*
- *Public Health Act 1997*
- *The Marine Safety (Misuse of Alcohol) Act 2006*
- *Road Safety (Alcohol and Drugs) Act 1970*

It is important to note that prior to commencement of this project, the Department of Treasury and Finance had commenced its own review of the *Liquor Licensing Act 1990*. The timing of this review has been adjusted to enable the work by Stenning and Associates to be completed as it was considered it would provide an information base and reference point for all stakeholders that have an interest in the Liquor Licensing Act review.

In relation to matters outside the scope of the Liquor Licensing Act, the IAWGD will work with the relevant agencies on other matters raised in the report.



Dr Roscoe Taylor  
Chair, Inter Agency Working Group on Drugs



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# Glossary

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<b>AAG</b>	Alcohol Advisory Group
<b>AANA</b>	Australian Association of National Advertisers
<b>ADDA</b>	Alcohol and Drug Dependency Act
<b>ADDT</b>	Alcohol and Drug Dependency Tribunal
<b>ASB</b>	Advertising Standards Bureau
<b>ATDC</b>	Alcohol, Tobacco and Other Drugs Council
<b>DHHS</b>	Department of Health and Human Services
<b>GAA</b>	<i>Guardianship and Administration Act 1995</i>
<b>IAWGD</b>	Inter-Agency Working Group on Drugs
<b>LGAT</b>	Local Government Association of Tasmania
<b>PIP Act</b>	<i>Personal Information Protection Act 2004</i>
<b>PORT</b>	Police Operational Response Teams
<b>RSA</b>	Responsible Service of Alcohol
<b>TAAF</b>	Tasmanian Alcohol Action Framework 2010-2015
<b>TDS</b>	Tasmanian Drug Strategy



# Executive Summary

*The need for a scoping study...*

This report outlines the findings of a scoping study of the legislative and regulatory framework dealing with the sale and supply of alcohol and the management of alcohol-related harm in Tasmania. The study has been undertaken to identify issues of concern and opportunities for improvement. In particular, the scoping study examines opportunities to improve the alignment of the legislative and regulatory framework to better support the Tasmanian Government's overarching policy on alcohol – the Tasmanian Alcohol Action Framework 2010-2015 (TAAF).

Stenning and Associates was contracted to undertake this scoping study by the Alcohol, Tobacco and Other Drugs Council (ATDC) on behalf of the Inter Agency Working Group on Drugs (IAWGD). The Steering Committee for the study was the Alcohol Advisory Group, which is a sub-committee of the IAWGD.

The TAAF strategies and priority areas align with a range of existing State and national policies and directions, including the National Drug Strategy 2004-2009. It was prepared by the IAWGD on behalf of the Minister for Health and involved targeted stakeholder consultation. Importantly, the TAAF is underpinned by the concept of reducing the harm related to the misuse of alcohol and provides a:

*...broad structure for Government, individual agencies, community interest groups and industry participants to cohesively develop and implement strategies that prevent and minimise alcohol related harm<sup>1</sup>.*

While minimising the harms related to alcohol misuse is an important TAAF objective, the TAAF clearly recognises that alcohol is:

- *'an accepted part of our culture, our socialising and relaxation'*; and
- *'an economically embedded commodity with its production and sale generating profits for producers, manufacturers, advertisers and investors and providing employment across a range of industries<sup>2</sup>.*

Consequently, the TAAF objectives need to be considered within the context of the Government's competing policy objectives, particularly in relation to health and industry development.

*There are a number of legislative controls on alcohol in Tasmania...*

Current Tasmanian approaches to dealing with the misuse of alcohol involve a focus on three key areas:

- Managing the supply of alcohol;
- Managing the demand for alcohol; and
- Minimising harm from alcohol misuse.

The first and third of these approaches are supported by legislation, with

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<sup>1</sup> *Rising Above the Influence: Tasmanian Alcohol Action Framework 2010-15*, Inter Agency Working Group on Drugs, p.1.

<sup>2</sup> *Ibid* p.3.



the primary Acts involved including:

- *Liquor Licensing Act 1990*
- *Police Offences Act 1935*
- *Road Safety (Alcohol and Drugs) Act 1970*
- *Marine Safety (Misuse of Alcohol) Act 2006*
- *Alcohol and Drug Dependency Act 1968*

A range of secondary legislation also impinges on the use of alcohol.

There is a high level of synergy between these pieces of legislation. Each piece of legislation serves to regulate discrete areas relating to the use of alcohol and generally there are few overlaps or inconsistencies between the Acts.

*Supporting the legislative controls is a range of administrative arrangement...*

The administrative compliance and enforcement of these primary pieces of legislation is carried out by the:

- Commissioner for Licensing and the Licensing Board, supported by the Liquor and Gaming Branch of the Department of Treasury and Finance; and
- Tasmania Police.

The exception is the Alcohol and Drug Dependency Act, which is administered by the Department of Health and Human Services (DHHS).

These administrative arrangements are assisted by Liquor Accords, which provide a framework for cooperative partnerships aimed at reducing potential harms related to the misuse of alcohol and promoting the precinct covered by the Accord as a safe and attractive locale for the public to enjoy. Liquor Accords are voluntary agreements between key stakeholders which include licensees, the Liquor and Gaming Branch of the Department of Treasury and Finance, Tasmania Police, local government authorities, the Tasmanian Hospitality Association and community and business groups located within the locality of the Accord. There are currently 6 Liquor Accords around the state.

*A number of recommendations are made to fill gaps and improve the operation of the legislative framework...*

In developing this report, the focus has been on identifying gaps in the current legislative framework and opportunities for improvements that align the legislative controls with the aims and goals of the TAAF.

Desktop research and consultation with key stakeholders identified a number of gaps and issues within the legislative framework. Some of these concern the operation of the current legislative framework, whilst others relate to the administrative and support processes underpinning the framework.

To rectify the gaps and issues the report makes a series of recommendations under four strategic themes that are based upon the reform directions that arose from the analysis. These strategic themes are:

- Improving the focus on the need to minimise the harms related to the misuse of alcohol;
- Tightening the licensing process to improve administration,

accountability and transparency;

- Strengthening compliance/enforcement arrangements, including the co-operation between the Commissioner for Licensing and Tasmania Police; and
- Building a stronger TAAF.

When formulating the recommendations care was taken to ensure that they do not impose unreasonable compliance burdens on industry or administrative costs upon government.

A key recommendation is that the Liquor Licensing Act be amended to include an objective to minimise the harm related to the misuse of alcohol, together with the inclusion of objectives to maintain a robust and viable hospitality industry and minimise the administrative burdens on business. It is considered that this recommendation will ensure that fundamental objectives of TAAF are supported directly by legislation. It will also act to strengthen a number of other recommendations.

*A range of  
recommendations are  
made....*

The recommendations of this report are:

### **Minimising harm related to the misuse of alcohol**

1. It is recommended that objectives be introduced into the Liquor Licensing Act that decisions made under the Act should be consistent with:
  - minimising the harms related to the misuse of alcohol.
  - maintaining a robust and viable hospitality industry; and
  - minimising the administrative burdens on business.
2. It is recommended that these objectives be applied in addition to the current decision criterion in that Act that licences and permits be issued when *'in the best interests of the community'*.
3. It is recommended that the Director of Public Health publish annually a stand-alone report on impact of alcohol on the public health. This report should draw on the information provided by the State of the Public Health report and its companion publication Health Indicators Tasmania, plus other relevant information sources.
4. It is recommended that the Commissioner for Licensing and the DHHS liaise to develop and distribute to existing and new licensees an information resource on how to deal with severely intoxicated persons so that they can incorporate the relevant information in their standard operating procedures for their supervisors, serving staff and crowd controllers.

### **Improving the Licensing Process**

5. It is recommended that a public consultation process be administratively introduced for new liquor permit applications.
  - This should include Commissioner for Licensing investigating the most efficient model for the public consultation process for new liquor permit applications that does not impose unreasonable administrative or industry compliance costs.
6. It is recommended local government authorities consider, for

inclusion in relevant zones in their planning schemes, standards including local area objectives and/or desired future character statements about the location and nature of licensed premises.

- This could be achieved as part of the local government planning scheme standardisation process. Further, this matter could also be progressed through the regional planning processes under the State Government’s Regional Planning Initiative to encourage consistency in the planning approaches taken by local councils in relation to licensed premises within a region.
7. It is recommended that local government authorities consider introducing a Liquor Licensing Policy that expresses the authority’s expectations for licensed premises in specific zones and which can form the basis of council submissions to the Licensing Board regarding liquor licence applications.
  8. It is recommended that the Liquor and Gaming Branch, in consultation with the Local Government Association of Tasmania (LGAT), strengthen the current guidelines for applicants and other relevant publications with clear information on how the liquor licensing approval process interacts with local government planning approval processes.
  9. It is recommended that the Licensing Board and the Commissioner for Licensing produce improved guidance material for liquor licence and permit applicants and those seeking to make representations regarding applications.
  10. It is recommended that the Commissioner for Licensing, in conjunction with Tasmania Police, improve guidance material for licence and permit applicants on the expectations for the security requirements that may need to be provided in relation to licensed premises or permitted events.
    - This should include investigating the potential for establishing an indicative grading system for security requirements to streamline the process of determining security requirements for prospective licence or permit holders.
  11. It is recommended that the Commissioner for Licensing develop and publish guidance material that objectively defines what may constitute grounds (by the applicant or their associates) for considering a licence applicant to be not ‘fit and proper’.

### **Strengthening Compliance/Enforcement**

12. It is recommended that Tasmania Police and the Commissioner for Licensing investigate ways of implementing more formal communications at a senior level regarding the enforcement processes undertaken and outcomes achieved by Tasmania Police and the Commissioner for Licensing.
13. It is recommended that Tasmania Police investigate ways to strengthen the induction process for new Licensing Police to ensure they have a sound knowledge of liquor licensing support processes and the role of, and constraints on, the Commissioner for Licensing and the Liquor and Gaming Branch.



14. It is recommended that the Commissioner for Licensing document the considerations to be used when determining whether to suspend a licence or permit or whether to apply to the Licensing Board for the cancellation of liquor licences. These criteria should be communicated to Tasmania Police and updated as required.
15. It is recommended that the Commissioner for Licensing consider whether this advice should be made public to inform industry about how the issue of licence suspensions and cancellations is approached.
16. It is recommended that Tasmania Police and the Commissioner for Licensing investigate the potential for an exemption to be obtained under the *Personal Information Protection Act 2004* (PIP Act) to allow Tasmania Police to provide information on breaches of the Liquor Licensing Act to the Commissioner and for the Commissioner to use that information in determining enforcement actions. If an exemption is not able to be granted, then the avenue of amending the PIP Act should be pursued.
17. It is recommended that the Liquor Licensing Act be amended to ensure that, where appropriate, there are offences for breaches of the licensee obligations outlined in Section 5 of the Act. It is further recommended that Tasmania Police and the Liquor and Gaming Branch jointly investigate which breaches of Division 5 obligations under the Liquor Licensing Act should be accompanied by an offence under Division 6.
18. It is recommended that the Liquor Licensing Act be amended to provide the Commissioner for Licensing with the ability to proactively impose conditions on all types of liquor licence/permits at the time of issue, provided that there is a sufficient evidence base to justify the imposition of the conditions and subject to appropriate appeal rights. This should be accompanied by:
  - the amendment of the Act to introduce liquor licence/permit subtypes; and
  - a review of Section 43 of the Act to ensure that the conditions contained outlined by that section provide sufficient scope for the Commissioner to effectively employ a risk based approach to managing the activities of licensees/permit holders.
19. It is recommended that the Liquor Licensing Act be amended to include a definition of ‘intoxicated’ that provides guidance to licensees and their staff in determining whether a person is drunk. This definition should be developed having regard to the definitions used in other State and Territory Acts. It will also require a review of the use of the word ‘drunk’ in the Liquor Licensing Act.
20. It is recommended that Tasmania Police liaise with local government through LGAT with a view to encouraging Councils to:
  - approach Tasmania Police when they have specific public areas where there are demonstrable problems with the misuse of alcohol to allow an assessment of whether alcohol restrictions should be introduced under Section 25 of the Police Offences Act; and



- liaise with Tasmania Police on enforcement requirements if they implement by-laws restricting the consumption of alcohol in public places that require enforcement by Tasmania Police.

### **Building a Stronger TAAF**

21. It is recommended that ways be examined of encouraging and formalising industry commitment to TAAF.
22. It is recommended that an overarching data strategy be established by the IAWGD that articulates what impacts need to be monitored and assessed in order to evaluate the success or otherwise of TAAF and what data is required to inform that assessment. This data strategy needs to:
  - detail the types of data that needs to be collected and the methods are the most appropriate/efficient to collect that data; and
  - includes strategies for disseminating the data to key stakeholders and the public.

# 1 Introduction

Stenning and Associates was engaged by the Alcohol, Tobacco and Other Drugs Council (ATDC) to complete a Legislative Scoping Study, which is an initiative being undertaken under the Tasmanian Alcohol Action Framework 2010-2015 (TAAF).

The ATDC is the peak body representing the interests of the community service organisations that provide services to people with substance misuse issues in Tasmania<sup>3</sup>. The ATDC commissioned this scoping study on behalf of the Inter Agency Working Group on Drugs (IAWGD). The IAWGD is the principal advisory body to Government and is responsible for implementing, monitoring and progressing the Tasmanian Drug Strategy (TDS) and related strategic policy in response to the use of alcohol, tobacco and other drugs in the Tasmanian community<sup>4</sup>. The Steering Committee for the study was the Alcohol Advisory Group (AAG)<sup>5</sup>, which is a sub-committee of the IAWGD.

The Legislative Scoping Study initiative is based on a number of Priority Actions under TAAF's Key Strategy 2. Specifically, these actions are:

- a) Reviewing legislation to ensure there is an appropriate and consistent legislative and regulatory framework within Tasmania to support the control and supply of alcohol, with an effective and systematic compliance enforcement regime, including mechanisms to deal with complaints about licensee activities and breaches in a timely manner, appropriate and transparent manner.
- b) Reviewing legislation to provide the opportunity for police, public health, local councils and industry to provide input and influence the licensing process to ensure that the public health and wellbeing, community safety, planning and development, and economic impact are appropriately considered in licensing decisions.
- c) ...
- d) Increasing the capacity of police, liquor licensing and the community to enhance enforcement of liquor laws pertaining to the serving of intoxicated people.

The purpose of this scoping study is to examine the legislative/regulatory regime dealing with alcohol in Tasmania (including liquor licensing and the legislation addressing harm related to the misuse of alcohol in Tasmania) and highlight issues of concern, perceived strengths and weaknesses and any opportunities for improvement. In particular, the scoping study examines opportunities to improve the alignment of legislation in accordance with the aims of the TAAF.

The brief for this scoping study contained a clear expectation that a comprehensive rewrite or major amendment of the *Liquor Licensing Act 1990* was not anticipated. Specifically, the brief for this scoping study indicated that:

*Any potential legislative change to this legislation emanating from the scoping study would preferably be met by amendments to specific provisions or be capable of being addressed through miscellaneous amendments. The Public Health Act, however, is subject to a review and this legislative scoping study provides an opportunity to influence the outcome of that review.*<sup>6</sup>

The broad methodology for this scoping study involved a desktop review of current relevant

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<sup>3</sup> See <http://atdc.org.au/about-us/>.

<sup>4</sup> *Terms of Reference*, Department of Health and Human Services, Inter Agency Working Group on Drugs.

<sup>5</sup> A subgroup of the IAWGD.

<sup>6</sup> Request for Quotation issued by ATDC on behalf of the IAWGD, 7 September 2011, p12.



legislation, a review of relevant literature and consultations with a range of stakeholders, including the AAG. Based on an informed assessment of the evidence provided through this process, this report makes a number of recommendations aimed at filling gaps in the current legislative framework or improving current approaches. The study methodology is outlined in more detail in Attachment A.



## 2 TAAF and Minimising Harms Related to the Misuse of Alcohol

The TAAF is the Tasmanian Government's overarching policy on alcohol. The TAAF strategies and priority areas align with a range of existing State and national policies and directions, including the National Drug Strategy 2004-2009. It was prepared by the IAWGD on behalf of the Minister for Health and involved extensive stakeholder consultation.

The AAG was set up to assist the IAWGD in:

- coordinating the production of Annual Implementation Plans; and
- monitoring and reporting on the progress of TAAF implementation.

The development and implementation of the TAAF is a considerable achievement as it involves an area of policy where there are significantly different stakeholder perspectives. It has involved cooperation between the diverse agencies involved in the current legislative and regulatory framework relating to alcohol in Tasmania.

Driving the TAAF is a goal and a number of aims, strategies and priority action areas that address the harm related to the misuse of alcohol. These are summarised in Table 1.

**Table 1: Overview of the Tasmanian Alcohol Action Framework**

<b>The Goal</b>	Improve individual and community safety and reduce human, health, economic and social costs associated with the misuse of alcohol.
<b>The Aims</b>	<p>The TAAF will achieve its primary goal by concentrating on the following aims:</p> <ul style="list-style-type: none"> <li>• Reduce the volume of per capita alcohol consumption in Tasmania.</li> <li>• Reduce the incidence of illness, accidents and deaths related to the misuse of alcohol.</li> <li>• Reduce the level of social, economic, health and legal costs related to the misuse of alcohol.</li> <li>• Reduce the prevalence of violence, including family violence, disruption, antisocial behaviour and crime related to the misuse of alcohol.</li> <li>• Reduce the incidence of harmful alcohol use in the Tasmanian community.</li> <li>• Reduce the focus on alcohol as a necessary component of social activity in Tasmania.</li> </ul>
<b>Key Strategies</b>	<p>The TAAF's aims will be addressed through the following key strategies:</p> <ul style="list-style-type: none"> <li>• Changing the drinking culture in Tasmania.</li> <li>• An effective system for controlling the supply of alcohol in Tasmania.</li> <li>• Providing effective interventions to deal with and prevent alcohol-related harm.</li> </ul>
<b>Priority Area for Action</b>	<p>The TAAF lists the following priority areas for action:</p> <ul style="list-style-type: none"> <li>• The health and wellbeing of the population.</li> <li>• Community safety and amenity.</li> <li>• Intoxication.</li> <li>• High-risk groups and high-risk behaviour.</li> </ul>

The TAAF is underpinned by the concept of reducing the harm related to the misuse of alcohol and provides a:

...broad structure for Government, individual agencies, community interest groups and industry participants to cohesively develop and implement strategies that prevent and minimise alcohol related harm<sup>7</sup>.

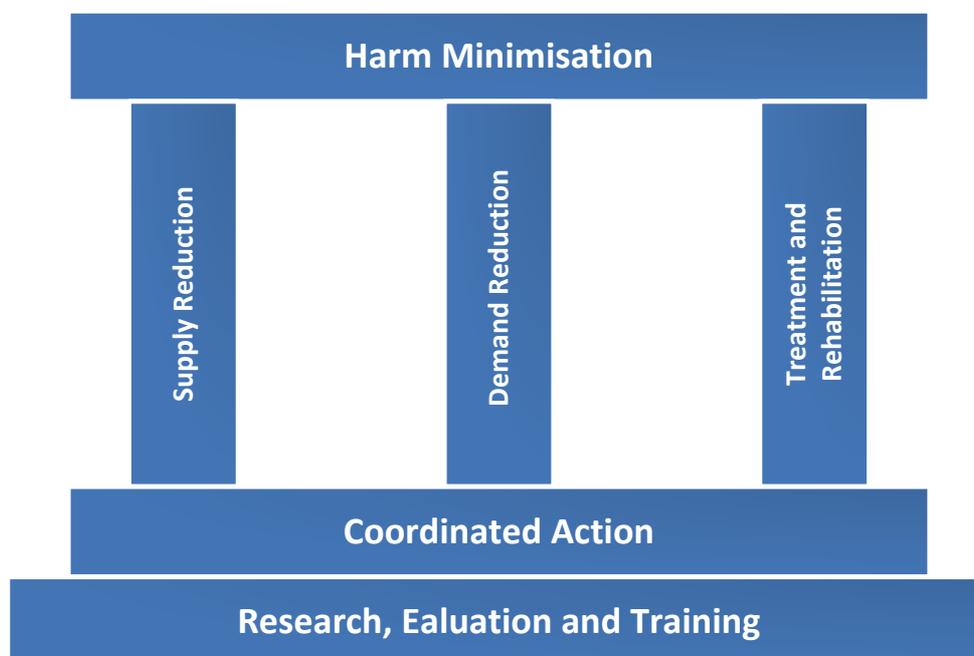
It is therefore important to understand what the concept of harm minimisation involves.

The Drugs and Crime Prevention Committee of the Parliament of Victoria produced a paper that stated that:

*Effective harm minimisation will seek to reduce harms through a comprehensive range of means, spanning all three of the harm reducing dimensions of a harm minimisation strategy – supply reduction, demand reduction, and treatment and rehabilitation. It will involve appropriate law enforcement, supply interdiction and criminal justice administration, as well as early intervention, education, prevention, and treatment and rehabilitation. All of these means will be supported by research, evaluation, appropriate training, and planned and coordinated action<sup>8</sup>.*

This framework is applicable to both legal and illegal drugs, including alcohol. This understanding of harm minimisation is illustrated in Figure 1.

**Figure 1: Harm minimisation<sup>9</sup>**



Utilising this conceptual approach to harm minimisation, Figure 2 adapts the three pronged model outlined in Figure 1 to describe the current Tasmanian situation and summarise the types of controls currently used in Tasmania to manage the three key areas involved in the management of alcohol related issues.

<sup>7</sup> *Rising Above the Influence: Tasmanian Alcohol Action Framework 2010-15*, Inter Agency Working Group on Drugs, p.1.

<sup>8</sup> *Harm Minimisation: Principles and Policy Frameworks*, Occasional Paper, Drugs and Crime Prevention Committee of the Parliament of Victoria, p.14.

<sup>9</sup> *Ibid* p.14.

Figure 2: Existing approaches to control on alcohol in Tasmania



The first two areas involved in the management of alcohol related issues directly reflect the model outlined in Figure 1. However, the third area has been broadened to reflect a range of approaches to minimising harms related to alcohol misuse, including treatment and rehabilitation.

Legislative approaches as well as guidelines and public education approaches are involved in the first and third areas of this model, whereas managing the demand for alcohol is predominately controlled through guidelines and public education. In addition, government responses to minimising harm related to alcohol misuse includes the provision of significant health support programs and services.

While minimising harms related to alcohol misuse is an important TAAF objective, the TAAF clearly recognises that alcohol is:

- ‘an accepted part of our culture, our socialising and relaxation’; and
- ‘an economically embedded commodity with its production and sale generating profits for producers, manufacturers, advertisers and investors and providing employment across a range of industries’<sup>10</sup>.

This latter observation is backed by the Government’s current Economic Development Plan, which identifies a number of industry sectors that involve the production, sale or consumption of alcohol as having economic importance for Tasmania’s future, including:

- The tourism sector, a key component of which is a strong and vibrant hospitality industry; and
- The wine industry, which is recognised as a small but high-value and high-profile industry with close linkages to the tourism sector<sup>11</sup>.

These comments reinforce the fact that the TAAF objectives need to be balanced against an understanding that the production, availability and consumption of alcohol is an accepted part of Tasmanian industry and Tasmanian life.

<sup>10</sup> *Rising Above the Influence: Tasmanian Alcohol Action Framework 2010-15*, Inter Agency Working Group on Drugs, p.3.

<sup>11</sup> *Economic Development Plan*, Tasmanian Government, 2011.

# 3 Regulatory Environment

This section provides high level descriptions of the legislative, administrative and enforcement regimes used in Tasmania to manage the supply of alcohol to the public and minimise the harm related to the misuse of alcohol. It also provides an assessment of how the current legislative framework supports TAAF. A fuller description of the legislative framework can be found in [Attachment B](#).

## 3.1 Current Legislative Framework

The primary legislation controlling alcohol in Tasmania includes the:

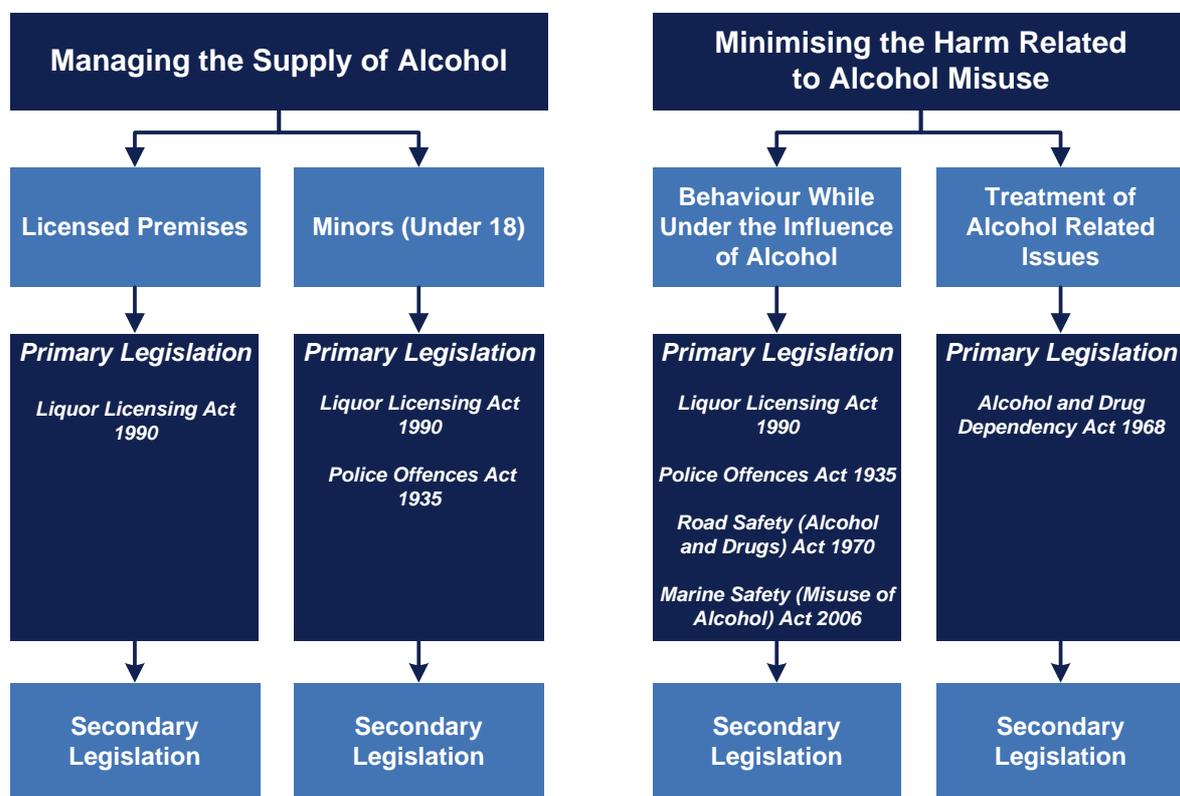
- *Liquor Licensing Act 1990*
- *Police Offences Act 1935*
- *Road Safety (Alcohol and Drugs) Act 1970*
- *Marine Safety (Misuse of Alcohol) Act 2006*
- *Alcohol and Drug Dependency Act 1968*

There is also a range of secondary legislation that impinges on the use of alcohol.

Figure 3 provides a high level view of how these legislative instruments support the following alcohol management control areas:

- Managing the Supply of Alcohol; and
- Minimising Harm from Alcohol Misuse.

**Figure 3: Tasmanian legislative framework for the control of alcohol**



There is a high level of synergy between the various pieces of legislation that control the supply of alcohol to the public and operate to minimise harm related to the misuse of alcohol. Each piece of legislation serves to regulate a discrete areas relating to the use of alcohol and there are few overlaps or inconsistencies between the Acts.

Table 2 provides high level summaries of the primary and secondary legislation that make up the Tasmanian legislative framework for the control of alcohol.

**Table 2: Tasmanian legislative framework for the control of alcohol**

Act	Summary of Controls on Alcohol
<b>Primary Legislation</b>	
<i>Liquor Licensing Act 1990</i>	<p>The Liquor Licensing Act is the predominant legislation relating to the sale and supply of alcohol in Tasmania. The implied legislative intent of the Liquor Licensing Act is to control the supply and consumption of alcohol on licensed premises.</p> <p>The Liquor Licensing Act:</p> <ul style="list-style-type: none"> <li>• Outlines the licences and permits that authorise the sale of alcohol;</li> <li>• Details the process for issuing the licences and permits;</li> <li>• Details the criteria that have to be met by an applicant to receive a licence or permit; and</li> <li>• Contains a list of obligations and offences that are used to manage how alcohol can be supplied to the public.</li> </ul>
<i>Police Offences Act 1935<sup>12</sup></i>	<p>The objective of Police Offences Act is to prescribe offences which ensure protection of the community and prevent inappropriate behaviour. In relation to alcohol, the Police Offences Act primarily focuses on regulating the:</p> <ul style="list-style-type: none"> <li>• Supply and consumption of alcohol on a public street, in motor vehicles and in certain public places; and</li> <li>• Supply and consumption of alcohol by people under the age of 18 in private residences and all public places.</li> </ul>
<i>Road Safety (Alcohol and Drugs) Act 1970 &amp; Marine Safety (Misuse of Alcohol) Act 2006</i>	<p>These Acts are specifically targeted at preventing alcohol related problems associated with operating a vehicle on land or vessel on the water respectively.</p>
<i>Alcohol and Drug Dependency Act 1968</i>	<p>The Alcohol and Drug Dependency Act (ADDA) allows for provision of treatment centres for the purposes of admitting clients with alcohol and or other drug dependencies for treatment.</p>

<sup>12</sup> In late 2011, a discussion paper was released on potential streamlining and improvements that could be made to the Police Offences Act. One of the improvements identified was the consolidation of all liquor offences within one section of the Police Offences Act, and provide consistent search, detain and seizure authorities for all of these offences. It is understood that the consultation period has finished and that the outcomes of this review are being finalised.

Act	Summary of Controls on Alcohol
<b>Secondary Legislation</b>	
<i>Family Violence Act 2004</i>	Provision of specialist assessments to determine program suitability assessments under the Department of Justice Family Violence Offender Intervention Program – this can include individuals who have been referred due to alcohol issues.
<i>Guardianship and Administration Act 1995 (GAA)</i>	Provision for the detention and/or treatment of people with a disability which can include people who are temporarily or permanently incapacitated due to alcohol or drug dependency.
<i>Local Government Act 1993</i>	Provides local governments with the authority to create bylaws. This has been used to introduce by-laws controlling alcohol such as the Alcohol Free Zones in Kingborough or blanket prohibitions on alcohol on council property in Brighton.
<i>Public Health Act 1997</i>	Contains provisions relating to overcrowding and the safety of licensed venues.
<i>Security and Investigations Agents Act</i>	Regulates security agents and crowd controllers and defines what security actions may only be undertaken by qualified agents. It includes the regulation of crowd controllers working at licensed premises.
<i>Sentencing Act 1997</i>	Provides sentencing options for Courts to divert defendants for assessment and treatment.
<i>Youth Justice Act 1997</i>	Provides Tasmania Police the ability to informally and formally caution young people (under 18 years of age) for a range of offences, including underage drinking in a public place.
<i>Workplace Health and Safety Act 1995</i>	Contains provisions that require persons to ensure that they are not, by the consumption of alcohol or a drug, in such a state as to endanger their own safety at a workplace or the safety of any other person at a workplace.

It should be noted that although the Public Health Act does not currently deal with alcohol in any direct way, the Department of Health and Human Services (DHHS) plays an integral role in the collection of data and the provision of information to both the public and other government agencies regarding the potential harm related to the misuse of alcohol.

The other alcohol management control area in Figure 2 is '*Managing the Demand for Alcohol*'. Three primary controls that can be used to manage the demand for alcohol are:

- taxation;
- restrictions on the advertising of alcohol; and
- public education.

In relation to these areas:

- In 1997 the High Court of Australia ruled that the various alcohol taxes collected by the states and territories of Australia were considered to be excise duties. The Australian Constitution states that the collection of excise duties is the province of the Commonwealth

Government. The TAAF recognises that ‘alcohol taxation is the sole purview of the Australian Government’<sup>13</sup>.

- Advertising content in Australia is self-regulated by industry through the Advertising Standards Bureau (ASB). This body was formed by the Australian Association of National Advertisers (AANA) in 1998 and is funded by a voluntary levy paid by the advertising industry. Although the Commonwealth Government has the constitutional and legislative power to regulate media content in Australia, it has rarely used this power and has never done so in relation to alcohol.
- Public education on the potential harms related to the consumption of alcohol is conducted by both the Commonwealth and the State Government and does not required underpinning legislation.

As discussed in Section 1, this scoping study is based on a number of Priority Actions under Key strategy 2 of TAAF. Aspects such as alcohol advertising and taxation are not included in the Priority Actions that are relevant for this scoping study and therefore are not examined in the Gaps, Issues and Identified Reforms section of this report.

### 3.1.1 The Role of the Legislative Framework in Supporting TAAF

The legislative analysis reveals that several TAAF aims are supported by the current legislative environment. Table 3 outlines what administration and enforcement powers are available to support TAAF and which aims are not currently supported.

**Table 3: How TAAF aims are supported by the existing legislative framework**

Aim	Legislative and Other Supports
<p>TAAF Aim 1 Reduce the volume of per capita alcohol consumption in Tasmania</p>	<p>No current legislative provision has the specific objective or consequence of reducing per capita alcohol consumption in Tasmania.</p> <p>Alcohol consumption is not regulated through legislation in Tasmania. Controls such as national taxation and advertising restrictions and state and national public education campaigns are currently used to influence per capita alcohol consumption.</p>
<p>TAAF Aim 2 Reduce the incidence of illness, accidents and deaths</p>	<p>All of the primary legislation, to varying degrees, contain provisions supporting the prevention of alcohol related incidents, specifically:</p> <ul style="list-style-type: none"> <li>• The Liquor Licensing Act enforces responsible service of alcohol in an effort to prevent short-term harm incidents.</li> <li>• The Police Offences Act creates offences relating to drink spiking and possession of a dangerous weapon whilst drunk.</li> <li>• The Road Safety (Alcohol and Drugs) Act and the Marine Safety (Misuse of Alcohol) Act are focused on reducing harms through alcohol affected driving of vehicles or vessels.</li> <li>• The Workplace Health and Safety Act seeks to ensure that a person is not in such a state from the consumption of alcohol or a drug as to be a danger to themselves or others in the workplace.</li> <li>• The Public Health Act contains provisions relating to overcrowding and the safety of licensed venues.</li> </ul>

<sup>13</sup> *Rising Above the Influence: Tasmanian Alcohol Action Framework 2010-15*, Inter Agency Working Group on Drugs, p.5.

Aim	Legislative and Other Supports
<p>TAAF Aim 3</p> <p>Reduce the level of social, economic, health and legal costs related to the misuse of alcohol</p>	<p>The administration and enforcement powers listed under Aim 2 also support Aim 3. Other powers that serve to reduce the level of social, economic, health and legal costs related to the misuse of alcohol are:</p> <ul style="list-style-type: none"> <li>• The Liquor Licensing Act contains obligations and offences that regulate the provision of alcohol to the public, behaviour in a licensed premise and prevents the supply of alcohol to young people in a licensed premise.</li> <li>• The Police Offences Act contains offences regarding the consumption of alcohol in a street or a prohibited public place, public annoyance and the supply of alcohol to young people.</li> </ul>
<p>TAAF Aim 4 - Reduce the prevalence of violence, including family violence, disruption, antisocial behaviour and crime related to the misuse of alcohol</p>	<p>The administration and enforcement powers listed under Aims 2 and 3 all serve to reduce the prevalence of violence, including family violence, disruption, antisocial behaviour and crime related to the misuse of alcohol. Other legislative controls that serve to reduce violence are:</p> <ul style="list-style-type: none"> <li>• The Liquor Licensing Act requires that licensees' maintain control over their licensed venue.</li> <li>• The Police Offences Act contains a range of offences related to the consumption of alcohol and anti-social behaviour.</li> </ul>
<p>TAAF Aim 5</p> <p>Reduce the incidence of harmful alcohol use in the Tasmania community</p>	<p>The Liquor Licensing Act requires licensees to ensure that alcohol is served in a responsible manner and prohibits the supply of alcohol to young people on licensed premises.</p> <p>The Police Offences Act contains offences regarding the supply of alcohol to young people in private premises.</p>
<p>TAAF Aim 6</p> <p>Reduce the focus on alcohol as a necessary component of social activity in Tasmania</p>	<p>No current legislative provision aims at reducing the focus on alcohol as a necessary component of social activity in Tasmania.</p> <p>Advertising restrictions and public education campaigns are more suited to changing community attitudes towards alcohol than legislation.</p>

## 3.2 Administrative/Enforcement Arrangements

The administrative compliance and enforcement of these primary pieces of legislation is carried out by the Departments outlined in Table 4:

**Table 4: Responsibility for the administration of compliance and enforcement**

Primary Act	Responsible Department
<i>Liquor Licensing Act 1990</i>	<p>Jointly administered by:</p> <ul style="list-style-type: none"> <li>• the Commissioner for Licensing and the Licensing Board, supported by the Liquor and Gaming Branch of the Department of Treasury and Finance; and</li> <li>• Tasmania Police.</li> </ul>
<i>Police Offences Act 1935</i>	Tasmania Police.
<i>Road Safety (Alcohol and Drugs) Act 1970</i>	Tasmania Police.

Primary Act	Responsible Department
<i>Marine Safety (Misuse of Alcohol) Act 2006</i>	Tasmania Police.
<i>Alcohol and Drug Dependency Act 1968</i>	DHHS.

The Commissioner for Licensing indicated that the Liquor and Gaming Branch has 14 Compliance Inspectors in Tasmania. The Compliance Inspectors work closely with the Licensing Police in relation to operational matters.

Tasmania Police has established Licensing Police in each district – with three Licensing Police officers based in Hobart (covering the Southern District), two based in Launceston (Northern District) and one based in Burnie (Western District).

A range of measures are used to manage compliance risks relating to alcohol. These include warnings, infringement notices, fines, imposing conditions on licences/permits and suspending or cancelling licences/permits.

A more detailed discussion of the administrative and enforcement arrangements can be found in [Attachment B](#).

### 3.3 Liquor Accords

Liquor Accords provide a framework for cooperative partnerships that aim to reduce potential harm related to the misuse of alcohol and to promote the precinct covered by the Accord as a safe and attractive locale for the public to enjoy. Accords are voluntary agreements between key stakeholders such as licensees, the Liquor and Gaming Branch of the Department of Treasury and Finance, Tasmania Police, local government authorities, the Tasmanian Hospitality Association and community and business groups located within the locality of the Accord.

The Liquor Accords currently operating in Tasmanian include:

- Burnie Wynyard Liquor Accord (established June 2008)
- Launceston Liquor Accord (established July 2009)
- Circular Head Liquor Accord (established November 2010)
- Devonport/Latrobe Liquor Accord (established July 2011)
- Hobart Liquor Accord (established July 2011)
- Glenorchy Liquor Accord (established August 2011)

Consultations revealed sound support for the Liquor Accords. More information on Liquor Accords can be found in [Attachment B](#).

# 4 Gaps, Issues and Identified Reforms

Research and consultations identified a number of gaps and issues within the regulatory environment controlling alcohol in Tasmania. Some of these concern the operation of the current legislative framework, whilst others relate to the administrative and support processes underpinning the framework. This section examines the identified legislative gaps and issues and, where appropriate, makes recommendations for improvements. These gaps and issues are arranged into a series of four strategic themes that express the reform directions that arose from the analysis. These strategic themes are:

- Improving the focus on the need to minimise the harms related to the misuse of alcohol;
- Tightening the licensing process to improve administration, accountability and transparency;
- Strengthening compliance/enforcement arrangements, including the co-operation between the Commissioner for Licensing and Tasmania Police; and
- Building a stronger TAAF.

When formulating the recommendations in this section, care was taken to ensure that they do not impose excessive administrative costs upon government or compliance burdens on industry.

A key recommendation of this report can be found in section 4.1.1. It involves amending the Liquor Licensing Act to include an objective to minimise the harm related to the misuse of alcohol, together with the inclusion of objectives to maintain a robust and viable hospitality industry and minimise the administrative burdens on business. It is considered that this recommendation will ensure that fundamental objectives of TAAF are supported directly by legislation. It will also act to strengthen a number of other recommendations.

A number of important issues raised during consultation were, following discussions with the AAG, considered to be outside the scope of this study. These issues are outlined in Section 5.

## 4.1 Minimising harm related to the misuse of alcohol

The issues in this section all focus directly on methods to minimise harm related to the misuse of alcohol, including:

- 4.1.1 Sharpening the focus on minimising harm related to the misuse of alcohol.
- 4.1.2 Regulation of alcohol and the Public Health Act.
- 4.1.3 Expertise in community and public health on the Licensing Board.
- 4.1.4 Dealing with intoxicated persons.

### 4.1.1 Sharpening the focus on minimising harm related to the misuse of alcohol

Despite being the main legislative instrument controlling the sale of alcohol in Tasmania, the Liquor Licensing Act does not explicitly address the need for minimising harms related to the misuse of alcohol.

## Discussion

A primary goal of the TAAF is to minimise the level of harm (violence, health, social, economic, etc.) related to the misuse of alcohol. However, there is currently no explicit statement of this objective in the Liquor Licensing Act. Rather, the Long Title of the Act simply states that it is “*An Act to regulate the sale of liquor*” and the Act does not contain any statement of purpose or objectives. This is noted by the Licensing Board, which observed that:

*Unlike legislation in some other jurisdictions, there is little guidance as to the objects and aims of the Liquor Licensing Act 1990.*<sup>14</sup>

In contrast, as outlined in Attachment C, all other Australian state and territory principal legislation controlling alcohol make reference to the need to minimise the harm related to the misuse of alcohol as a purpose or objective. Many of these other Acts have contained references to harm minimisation since the 1990s<sup>15</sup>.

Representatives from the Mental Health and the Population Health branches of DHHS, the ATDC and the Local Government Association of Tasmania (LGAT) all indicate that the Liquor Licensing Act should contain an explicit statement of the need to minimise harms related to the misuse of alcohol. Stakeholders felt that such explicit references would significantly improve the ability of the legislation to achieve harm minimisation goals, with a number of stakeholders (officers from the Mental Health and the Population Health branches of DHHS and the ATDC) indicating their perception that the current licence and permit issuing processes did not adequately take into account this TAAF objective.

### Is the minimisation of harms considered in the liquor licence/permit application process?

The fact that the minimisation of the harms related to the misuse of alcohol is intended to be a core part of the Liquor Licensing Act is evident from the multiple parliamentary references stating that one of the primary aims of the Act is to minimise the harm related to the misuse of alcohol<sup>16</sup>. For example, in the Second Reading Speech for the Act the Minister stated:

*Mr Speaker, the primary justification for the regulation of liquor sales is the minimisation of harm arising from the misuse of liquor, which can result in significant health, social and economic harm to the community. Therefore, regulation of the sale of liquor is overwhelmingly in the public interest. The existing liquor licence and permit system is an effective framework for the regulation of liquor sales and will be retained, and indeed strengthened. The bill makes several amendments that will improve the regulatory framework and remove unnecessary constraints on licence holders. At the same time, it will strengthen the harm minimisation measures in the legislation.*

The Licensing Board and the Commissioner for Licensing indicated that their decision processes already take into account the need to minimise the harms from the misuse of alcohol. This is supported by a review of the Licensing Board’s guidelines to applicants<sup>17</sup> that detail how the Licensing Board interprets whether the granting of a liquor licence “*in the best interests of the community*”<sup>18</sup>. These guidelines indicate that licence applicants should address in their application “*Will it provide liquor in a manner known to be safe and to minimise adverse impact?*”

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<sup>14</sup> Peter Morrison: Hill Street Cellars, West Hobart, 11 August 2010, Department of Treasury and Finance website.

<sup>15</sup> *Indigenous Australians and Liquor Licensing Legislation*, Deirdre Bourbon, Sherry Sagers, Dennis Gray, 1999.

<sup>16</sup> *Liquor and Accommodation Amendment Bill 2003 (No. 42)*: Second Reading, Wednesday 25 June 2005, Tasmanian Legislative Council Hansard.

<sup>17</sup> *Licensing Board - Information for Applicants for Liquor Licences*, Department of Treasury and Finance website.

<sup>18</sup> See Section 24A of the *Liquor Licensing Act 1990*.

It is also supported through a review of published Board decisions, with the Board stating in one decision<sup>19</sup> that it takes into account a range of factors when determining whether granting a licence was 'in the best interests of the community', including whether granting a licence would be:

*Contributing to minimising harm arising from the misuse and abuse of alcohol, including by:*

- *Providing adequate controls over the supply and consumption of liquor; and*
- *Ensuring as far as practicable that the supply of liquor contributes to, and does not detract from the amenity of community life; and*
- *Restricting the supply of certain other alcoholic products; and*
- *Encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and...*<sup>20</sup>

Licensing Board decisions also indicate that, while it does take into account the need to minimise harms related to the misuse of alcohol, this is only a determinative issue if there are specific harm minimisation problems raised in relation to a specific liquor licence application. For example, the Board states that:

*'...in the absence of any particular issues, the mere prospect that a licence may lead to harm by the supply of liquor which may be misused is not of itself a justification to refuse the licence'*<sup>21</sup>.

The Board goes onto note:

*The harm minimisation factor as an object to be taken into account by the Board cannot be relied upon in a general sense only to defeat any application for a liquor licence. If this were so it may well be arguable that few licences of any description, other than for the consumption of alcohol in cafes and restaurants should ever be granted in the future. (adopted from *Lula Evangeline Black v Liquor Licensing Victoria* [1999] VCAT 66874 at page 14)<sup>22</sup>.*

Despite the current approach by the Board, consultations confirmed that many key stakeholders do not consider that it is appropriate to rely on the implicit inclusion of harm minimisation in the administration of the Act.

#### Support for the inclusion of harm minimisation objectives in the Liquor Licensing Act

It was apparent from consultations that there was broad support for the inclusion in the Licensing Act of direct objectives relating to minimising the harms related to the misuse of alcohol, Such broad support is not new. For instance, the Safer Hobart Community Partnership (SHCP) in 2010 made a submission to the Legislative Council Select Committee on Violence in the Community<sup>23</sup> that contained the following recommendation:

*Examine objects and principles relating to harm minimisation and reduction in other jurisdictions, with a view to similar inclusions in Tasmanian liquor licensing legislation (Liquor Licensing Act 1990).*

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<sup>19</sup> *Peter Morrison: Hill Street Cellars, West Hobart*, 11 August 2010, Department of Treasury and Finance website.

<sup>20</sup> It should be noted that the Board sourced these considerations from the objectives of the Victorian *Liquor Control Reform Act 1998*.

<sup>21</sup> *Peter Morrison: Hill Street Cellars, West Hobart*, 11 August 2010, Department of Treasury and Finance website, p.7.

<sup>22</sup> *Ibid*, p.16.

<sup>23</sup> *Submission to the Legislative Council Select Committee on Violence in the Community*, Safer Hobart Community Partnership, July 2010.

The SHCP included Hobart City Council, Tasmania Police, the Tasmanian Hospitality Association, the State Department of Education; the Department of Treasury and Finance – Liquor and Gaming Branch; DHHS – Disability, Child, Youth and Family Services and Youth Justice, Metro Tasmania and Target Hobart.

One stakeholder was more cautious in relation to the inclusion of a harm minimisation objective in the Liquor Licensing Act. Specifically, the representative from the Tasmanian Small Business Council voiced concern that the introduction of a harm minimisation objective into the Act may increase compliance burdens on small businesses dealing with alcohol.

#### Balancing the minimisation of harms with other objectives

Importantly, a number of stakeholders, including the Licensing Board, the Commissioner for Licensing and the Tasmanian Hospitality Association, indicated that including a direct objective to minimise harms in the Act needed to be balanced with other objectives of government.

This is supported by the Government's TAAF policy, which recognises there must be a balance between the need to reduce a range of harms related to the misuse of alcohol and the legitimate provision and consumption of alcohol in Tasmanian society. This is best captured in the Minister's forward to TAAF that states<sup>24</sup>:

*Alcohol is an accepted part of life in Tasmania. The provision and consumption of alcohol are legitimate activities, but they need to occur in ways that are responsible and in keeping with community standards. The excessive consumption of alcohol and high-risk drinking behaviours contributing to preventable illnesses, death, injuries, motor vehicle crashes, assaults and social problems are extremely concerning. A whole-of-community effort to change is required to deal with this unacceptable situation, and to reduce the harms associated with the misuse of alcohol.*

It is observed that this is also consistent with the approach in other jurisdictions. In this respect, the Commissioner for Licensing observed from current policy statements that the Tasmanian Government's goals in relation to alcohol control could be summarised as:

- minimising the harms related to the misuse of alcohol;
- maintaining a robust hospitality industry; and
- reducing 'red tape'.

The fact that the Government has a range of competing policy objectives relevant to the control of alcohol is supported by a review of current Government policy documents that reveal:

- The Government's Economic Development Plan contains specialist sector development plans for the Tasmanian tourism and wine industries (It is noted that the hospitality industry is effectively a subsector of the broader tourism industry).
- The Government's Small Business Strategy contains an explicit policy commitment to reducing the compliance burden on business.

#### **Options**

The following potential responses to this issue were identified:

1. Make no change (ie, the status quo).
2. Amend the Liquor Licensing Act to provide that the sole objective of the Act is to minimise the harms related to alcohol misuse;

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<sup>24</sup> *Rising Above the Influence: Tasmanian Alcohol Action Framework 2010-15*, Inter Agency Working Group on Drugs.

3. Amend the Liquor Licensing Act to provide that an objective of the Act is to minimise the harms related to the misuse of alcohol alongside the objectives of maintaining a robust and viable hospitality industry and minimising the administrative burdens on business.

## Conclusion

Consultations suggest there is likely to be clear support for Option 3. Although there may be strong support from some stakeholders for Option 2, it is considered that this change is well ahead of current community attitudes towards the consumption of alcohol as, on its own, this recommendation risks not being tempered by other equally valid government policy objectives.

It is also clear from consultations and research that the Licensing Board and the Commissioner for Licensing consider they are already observing the need to minimise the harms from the misuse of alcohol in the way that licences/permits are issued and the manner in which they administer the Act.

Nevertheless, the explicit inclusion of a direct reference in the Act to the objective of minimising the harms related to the misuse of alcohol would ensure that a fundamental objective of TAAF is supported directly by legislation. In this respect, it can be expected Option 3 would:

- Assist in clarifying the focus of all decision makers under the Liquor Licensing Act on the need to have regard to minimising the harms related to the misuse of alcohol.
  - For instance Western Australian licensees are required to provide documentation showing that they are managing their licensed premises in a responsible manner<sup>25</sup>.
- Provide clear guidance on the Act's objectives for use in the judicial review processes.
  - A Court can only draw directly from the relevant piece of legislation when making decisions. It cannot draw upon other pieces of legislation in the same manner that the Licensing Board does when formulating its opinion of what should be considered "*in the best interests of the community*".
- Provide the ability to draw direct legal precedent from cases in other jurisdictions when making decisions.
  - Including an objective of minimising harms will strengthen the ability of authorities and others to draw on the precedents provided by case law in other jurisdiction. For example, *Director of Liquor Licensing v Kordister Pty Ltd* provides a history of harm minimisation, a definition and a decision that noted that the inclusion of harm minimisation in the Act does not preclude the issue of new liquor licences<sup>26</sup>.
- Provide clarity and support to Tasmania Police prosecutions.
- Provide a legislative basis for future Government actions made in relation to minimising the harms related to the misuse of alcohol.
  - In 2008 the Queensland Government introduced a range of initiatives based on the harm minimisation objective of the *Liquor Control Act 1998*<sup>27</sup>, for instance:
    - ♦ banning of regular glass in high risk venues;
    - ♦ legislative recognition of liquor accords; and

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<sup>25</sup> *Harm Minimisation Policy*, Department of Racing, Gaming and Liquor, accessed on 3 August 2012.

<sup>26</sup> *Director of Liquor Licensing v Kordister Pty Ltd & Anor* [2011] VSC 207.

<sup>27</sup> *Harm Minimisation*, Office of Liquor and Gaming Regulation, accessed on 3 August 2012.

- ♦ restriction of extended trading hours.

The inclusion of the objective of minimising harms related to the misuse of alcohol in the Act will also allow the Commissioner for Licensing and the Licensing Board to:

- Consider whether the issue of a licence/permit is in line with requirements to minimise the harms related to the misuse of alcohol.
- Provide the Commissioner for Licensing with the ability to place conditions on licences and permits based on the objective of minimising harms related to the misuse of alcohol<sup>28</sup>.
  - Having minimising the harms related to the misuse of alcohol as the primary objective of the *Liquor Control Act 1998* allows the WA Department of Racing, Gaming and Liquor to place conditions on licences in order to ensure ‘*that liquor is sold and consumed in a responsible manner*’<sup>29</sup>.

#### Key features of Australian State/Territory alcohol legislation objectives

In view of likely stakeholder support, the key question is how the objectives of the minimisation of harms should be included in the Act. Research and consultations indicate that the objectives of other Australian State and Territory alcohol legislation share common features, specifically:

- They all contain an objective regarding minimising the harm related to the misuse of alcohol.
- The harm minimisation objective is always balanced by other objectives that reflect reasonable community expectations for the management of the alcohol industry and related businesses.
- They all contain a description of who has to have regard to the objectives of the Act.

Table 5 provides some examples of how these key features appear in Australian State and Territory alcohol legislation.

**Table 5: Common features of jurisdictional alcohol legislation objectives<sup>30</sup>**

Act	Legislative and Other Supports
<b>Minimisation of harms related to the misuse of alcohol as an objective of the Act</b>	
Queensland’s <i>Liquor Act 1992</i>	<p>To regulate the liquor industry, and areas in the vicinity of licensed premises, in a way compatible with:</p> <ul style="list-style-type: none"> <li>• Minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence.</li> </ul> <p>Examples of harm:</p> <ul style="list-style-type: none"> <li>– Adverse effects on a person’s health.</li> <li>– Personal injury.</li> <li>– Property damage.</li> </ul>

<sup>28</sup> This issue is addressed in Section 4.3.5.

<sup>29</sup> *Harm Minimisation Policy*, Department of Racing, Gaming and Liquor, accessed on 3 August 2012.

<sup>30</sup> For a full list of the different State and Territory alcohol legislation objectives see [Attachment C](#).

Act	Legislative and Other Supports
Australian Capital Territory's <i>Liquor Act 2010</i>	<p>The liquor industry should be regulated in a way that minimises harm caused by alcohol abuse, including:</p> <ul style="list-style-type: none"> <li>• adverse effects on health;</li> <li>• personal injury;</li> <li>• property damage; and</li> <li>• violent or anti-social behaviour.</li> </ul>
<b>Other objectives of Australian State and Territory alcohol legislation</b>	
Northern Territory's <i>Liquor Act</i>	<p>The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:</p> <ul style="list-style-type: none"> <li>• so as to minimise the harm associated with the consumption of liquor; and</li> <li>• in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.</li> </ul> <p>The further objects of this Act are:</p> <ul style="list-style-type: none"> <li>• to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;</li> <li>• to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and</li> <li>• to facilitate a diversity of licensed premises and associated services for the benefit of the community.</li> </ul>
Western Australian <i>Liquor Control Act 1998</i>	<p>The primary objects of this Act are:</p> <ul style="list-style-type: none"> <li>• to regulate the sale, supply and consumption of liquor;</li> <li>• to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and</li> <li>• to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.</li> </ul> <p>In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following secondary objects:</p> <ul style="list-style-type: none"> <li>• to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;</li> <li>• to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and</li> <li>• to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.</li> </ul>
<b>Who has to have regard to the objectives of the Act</b>	
New South Wales' <i>Liquor Act 2007</i>	<p>In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:</p> <ul style="list-style-type: none"> <li>• the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour);</li> <li>• the need to encourage responsible attitudes and practices towards the</li> </ul>

Act	Legislative and Other Supports
	<p>promotion, sale, supply, service and consumption of liquor; and</p> <ul style="list-style-type: none"> <li>the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.</li> </ul>
Victoria's <i>Liquor Control Reform Act 1998</i>	It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.

Any objectives that are introduced into the Tasmanian Liquor Licensing Act will need to be tailored to the needs and expectations of the Tasmanian community. The key features highlighted in Table 5 form the foundations of all other State and Territory models and should do the same in any amendments made to the Tasmanian Act.

It is also considered that when introducing the new objectives proposed by Option 3, it is not necessary to replace the current criterion '*in the best interests of the community*' contained in the Act and used by the Licensing Board and Commissioner for Licensing when determining whether to grant licences or permits respectively. Rather, the existing criterion could be applied by the Board and the Commissioner having regard to the new objectives of the Act. This would further emphasise that the decision role of the Board and Commissioner is to balance a number of competing objectives.

It is expected that the recommendations below will strengthen a number of other recommendations of this scoping report. Where appropriate, the linkages between these recommendations and those other recommendations are noted throughout this section.

#### Recommendations:

- It is recommended that objectives be introduced into the Liquor Licensing Act that decisions made under the Act should be consistent with:
  - minimising the harms related to the misuse of alcohol.
  - maintaining a robust and viable hospitality industry; and
  - minimising the administrative burdens on business.
- It is recommended that these objectives be applied in addition to the current decision criterion in that Act that licences and permits be issued when '*in the best interests of the community*'.

### 4.1.2 Regulation of alcohol and the Public Health Act

#### Issue

The Public Health Act is currently under review and officers from DHHS raised the possibility of the need to create linkages between the Public Health Act and the current legislative and administrative framework for the control of alcohol in Tasmania.

#### Discussion

The TAAF policy and the most recent State of Public Health Report indicate that there are significant public health costs associated with alcohol misuse.

The *Public Health Act 1997* does not currently deal with the control of alcohol in any direct way. The long title of the Act indicates that it is '*An Act to protect and promote the health of communities in the State and reduce the incidence of preventable illness*'. The Act covers a wide range of issues, including:

- the establishment of administrative arrangements, including authorised officers, emergency powers, public health inquiries and investigations, the public health functions of councils and establishing a Public Health Advisory Committee;
- the prevention and control of disease, including notifiable diseases and immunisation;
- the control of smoking and tobacco products;
- controls on certain premises – eg, places of public assembly, unhealthy premises, the registration of premises where specified public health risk activities are carried out; and the registration of certain air and water systems;
- controls relating to water supplies; and
- the establishment of certain public health related registers, for example the Cervical Screening Register.

A brief review of public health legislation in other jurisdictions indicates that they similarly do not deal with the control of alcohol in any direct way.

In terms of the current controls on alcohol, there do not appear to be any major gaps in the legislative coverage that need to be covered by the Public Health Act. Rather, the suite of primary legislation<sup>31</sup> that currently deals with alcohol appears to provide sufficient mechanisms (subject to other recommendations in this report) for controlling the use of alcohol in Tasmania.

For this reason, there does not appear to be a persuasive need to extend the Public Health Act to include direct controls on the use of alcohol. Such reforms are not required to support TAAF.

However, there is potential for the Public Health Act to play a role in informing policy makers, public administrators and the public debate on the public health implications of the misuse of alcohol. Specifically, it is observed from the TAAF policy that reducing the harms related to alcohol misuse is not something that the Government envisages will be achieved solely by legislative change. Rather, it requires a combination of a sound legislative framework combined with significant public education and information that is aimed at informing individual decision making and community debate and influencing community attitudes to the use of alcohol.

In this latter respect, educative measures are recognised as essential through TAAF Key Strategy 1, which is aimed at changing the drinking culture in Tasmania. Importantly, the provision of accurate public health information on the use of alcohol and its effects is critical to achieving TAAF Key Strategy 1.

It is therefore considered that the provision of accurate information on the impacts of alcohol on the public health is a key role that can be played by the Director of Public Health under the Public Health Act.

The basic mechanisms for achieving this are already contained in the Public Health Act. The Act requires the Director of Public Health to prepare a report on the *State of the Public Health* report every five years. The *State of the Public Health* report provides a policy overview of the general health of Tasmanians. *Health Indicators Tasmania* is a report developed in conjunction with the *State of the Public Health* report and includes a specific section relating to alcohol use and effects.

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<sup>31</sup> For example - The Liquor Licensing Act, the Police Offences Act, the Road Safety (Alcohol and Drug) Act, the Marine Safety (Misuse of Alcohol Act) and the Alcohol and Drug Dependency Act.

*Health Indicators Tasmania* is based on:

- Data drawn from the National Health Survey (conducted by the Australian Bureau of Statistics);
- Australian Secondary Students Alcohol and Drug Survey (conducted every three years by the Australian Cancer Council); and
- Hospital data (collected by DHHS).

*Health Indicators Tasmania* contains specific expert advice on the public health impacts relating to alcohol. The next *State of the Public Health* report, including *Health Indicators Tasmania*, is due for release in 2013.

What is lacking, however, is a stand-alone document on the public health impacts of alcohol in Tasmania that includes an analysis of what the public health information means in the context of the Government's TAAF aims and strategies.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, the status quo).
2. The Director of Public Health publishes annually a stand-alone report on impact of alcohol on the public health of Tasmanians. This report should draw on the information provided by the State of the Public Health report and its companion publication *Health Indicators Tasmania*, plus other relevant information sources.

## Conclusion

It is considered that the most appropriate role for the Public Health Act within the legislative framework for the control of alcohol in Tasmania is to provide accurate and reliable information on the public health impacts of alcohol in Tasmania. In this respect, the provision by the Director of Public Health of a public report as outlined in Option 2 will directly assist both decision makers operating under the Liquor Licensing Act (ie the Licensing Board and the Commissioner for Licensing) and also policy makers striving to achieve the aims and strategies of the Government's TAAF policy. Such a public report would also help improve the public understanding of alcohol related health issues.

The 5 year timing gap between the publication of each *State of the Public Health* report and *Health Indicators Tasmania* is considered to be too long given the need of policy and decision makers for relevant data on which to base new policy programs designed to achieve TAAF strategies or objectives or operational decisions that need to be made by the Licensing Board or the Commissioner for Licensing. Accordingly, it is considered that the proposed public report should be published annually (incorporating new information as updated data becomes available) to inform the Licensing Board and the Commissioner for Licensing and policy makers concerned with program design or evaluating the efficacy of the implementation of the Government's TAAF.

The mechanisms for providing the base information that would be required by such a public report are already in place in the Public Health Act. Consequently, legislative amendments to the Public Health Act are not required in order to develop the public report as outlined in Option 2.

Importantly, the implementation of the recommendations from Section 4.1.1 will heighten the need for sound reliable public health information to inform decision makers as they strive to meet the new objectives of the Liquor Licensing Act. Consequently, the public report provided by Option 2 will help satisfy this need.

### **Recommendation:**

3. It is recommended that the Director of Public Health publish annually a stand-alone report on impact of alcohol on the public health. This report should draw on the information provided by the State of the Public Health report and its companion publication Health Indicators Tasmania, plus other relevant information sources.

## **4.1.3 Expertise in community and public health on the Licensing Board**

### **Issue**

The Liquor Licensing Act does not require there to be any specific community or public health expertise held by members of the Licensing Board.

### **Discussion**

Officers from Population Health and State-wide Mental Health Services at DHHS indicated that they considered that the current licensing system places greater importance on economic issues, rather than community and public health issues, when determining whether a liquor licence or permit application is *'in the best interests of the community'*. It was noted that this view was a perception of how the current system operated, as no evidence was provided to support this view.

The officers suggested that the composition of the Licensing Board could be changed to include a person or people with expertise in the community and public health fields. This included a suggestion the Director of Public Health be included on the Board to provide a focus on public health issues associated with alcohol.

The current three person Board is appointed by the Governor on the recommendation of the Executive Council. The Act does not prescribe particular knowledge and skill for the members of the Board. Consequently, the approach has been to ensure that Board members are independent and able to base their decisions on the evidence provided to them during the licence application processes.

It is observed that, although the current members of the Licensing Board may not personally have expertise in community or public health, they are experienced in the operation of the administrative decision making process which is used to evaluate liquor licence applications.

The suggestions put forward by DHHS officers are not new. When the Liquor Licensing Act was amended in 2003, the Government considered a proposal to expand the existing Board to six persons where, for five of these members, the Minister must consult with specified organisations before nominating persons for appointment. The organisations to be consulted included the Australian Hotels Association, the Restaurant and Caterers Association, Clubs Tasmania, the Australian Liquor, Hospitality and the Miscellaneous Workers Union and DHHS.

At that time, the proposal was not proceeded with as it was recognised that a Board constituted in such a manner was unlikely to be perceived as an independent body. The Government also acknowledged that an enlarged Board would be administratively more difficult and more costly to operate. These factors were seen to negate any advantage that an enlarged board may provide. Indeed, it was observed at the time that:

“...the board operates effectively and is perceived as being fully independent”<sup>32</sup>.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, status quo).
2. Legislative change to require the Licensing Board to have specific expertise in community or public health.

## Conclusion

Option 1 is recommended as no compelling case has been made for amending the way the current Licensing Board is constituted. Importantly, the factors that led the Government at the time to reject the model in 2003 still apply. To require the Board to have specialist expertise in community and public health is likely to prompt a range of other interest groups (Tasmania Police, local government, Tasmanian Hospitality Association, etc.) to call for other areas of expertise to be represented. To accede to all such requests would make the Board representative of a range of special interests, rather than a Board that can make decisions *‘in the best interests of the community’* on the basis of the facts of a particular application.

It is observed that the existing Licensing Board public consultation process can be used by DHHS and other key stakeholders (Tasmania Police, local government, etc.) to ensure that their concerns are considered by the Licensing Board when evaluating liquor licence applications. It is understood from the Licensing Board that it currently does not receive representations from DHHS in relation to licence applications.

In addition, the recommendations in Sections 4.1.2 and 4.4.2 are also like to strengthen the information available to the Board and the Commissioner on alcohol related public health issues, which again will inform the decision making processes under the Act.

As a result, no recommendation for change to the Liquor Licensing Act is made. A more effective way of ensuring that the licensing process adequately considers community and public health issues is discussed in Section 4.1.1. Specifically, it is considered that introducing harm minimisation as an objective of the Liquor Licensing Act will assist in ensuring that the Commissioner for Licensing and the Licensing Board have regard to relevant community and public health issues when considering liquor licence and permit applications.

### Recommendation:

It is recommended that no action be taken on this issue.

## 4.1.4 Dealing with intoxicated persons

### Issue

The intention of the Responsible Service of Alcohol (RSA) framework that governs the overall serving of alcohol in Tasmania is to ensure that patrons of licensed premises do not become significantly intoxicated. There are, however, occasions where significantly intoxicated persons are present in licensed premises. Consultations revealed that some stakeholders perceive that

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<sup>32</sup> *Liquor and Accommodation Amendment Bill 2003 (No 42) Second Reading Speech*, Hansard, House of Assembly, Thursday 19 June 2003.

licensees and their staff are not equipped with the requisite skills and knowledge to deal with significantly intoxicated persons in an appropriate manner.

## Discussion

During consultations representatives from the ATDC indicated that staff working in licensed premises often has to deal with significantly intoxicated people, but their perception was they are often not clear on what responses and actions are appropriate.

In this respect, despite the intention of RSA being to ensure patrons in licensed premises do not consume excessive amounts of alcohol, it is clearly the case that staff in licensed premises may have to deal with safely removing significantly intoxicated people from premises and potentially contacting appropriate authorities to ensure the safety of these people, particularly where medical or emergency assistance might be required.

While security staff working at licensed premises are required to complete first aid training, and could therefore be expected to have some understanding of where medical assistance may be required, serving staff are not required to have this training.

It is considered unrealistic to require serving staff to undertake specific training on dealing with significantly intoxicated people within the RSA program. This is because of the national nature of the RSA program (it would be difficult to achieve this change within the context of a nationally agreed RSA qualification) and the fact that it is unreasonable to expect serving staff to have first aid skills – both in the context of the expectations on hospitality staff and on the basis of the costs to the industry of the training required, particularly given the need to regularly renew first aid qualifications and the high staff turnover in the industry.

Indeed, the basic issue is not a training issue at all. Rather, it is an information issue. If licensees and their staff were provided with a condensed and accessible summary of relevant information it would assist internal training, provide a benchmark for standard operating procedures and reduce harms related to the misuse of alcohol. This summary could include information such as:

- how to recognise if a person is intoxicated<sup>33</sup>; and
- contact numbers for medical assistance or police for assistance in delivering persons to 'places of safety'.

The Commissioner for Licensing and the DHHS are potentially the most suitable agencies to prepare and distribute such information.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, the status quo).
2. The Commissioner for Licensing and the DHHS liaise to develop and distribute to existing and new licensees an information resource on how to deal with severely intoxicated persons so that they can incorporate the relevant information in their standard operating procedures for their supervisors, serving staff and crowd controllers.

## Conclusion

An approach based on improving the information available to licensees and their staff is considered the most appropriate response to the problem of dealing with significantly intoxicated persons. This will provide a low cost and low compliance burden method of addressing this issue.

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<sup>33</sup> This issue could be more easily dealt with if the recommendations contained in Section 4.3.6 are enacted.

**Recommendation:**

4. It is recommended that the Commissioner for Licensing and the DHHS liaise to develop and distribute to existing and new licensees an information resource on how to deal with severely intoxicated persons so that they can incorporate the relevant information in their standard operating procedures for their supervisors, serving staff and crowd controllers.

## 4.2 Improving the Licensing Process

The issues in this section focus on potential improvements to the legislative and administrative arrangements surrounding the issuing of liquor licences and permits. Issues include:

- 4.2.1 Liquor permits and alcohol related harm.
- 4.2.2 The interface between local government planning and liquor licensing controls.
- 4.2.3 Considerations used to assess liquor licence and permit applications.
- 4.2.4 Security requirements at licensed premises/events.
- 4.2.5 The 'fit and proper' person test for applicants for liquor licences.
- 4.2.6 A review process for liquor licences.
- 4.2.7 Public complaints against licensees and management of complaints.

### 4.2.1 Liquor permits and alcohol related harm

#### Issue

There is insufficient public transparency on the issue of liquor permits, especially considering that some types of liquor permits can contribute to significant public order issues related to alcohol misuse.

#### Discussion

Officers from Statewide Mental Health Services at the DHHS raised concerns with the different processes for liquor licence and permit applications, indicating that the provision of a liquor permit can change the operational nature of the related liquor licence. It is observed that implicit in these concerns was the perception that the current process used for new liquor permit applications can potentially have the effect of undermining the integrity of the liquor licence application public consultation process by changing the nature of the business operations that the public were asked to comment on after the public consultation process has concluded. They suggested that liquor permit applications should have to pass through a public consultation process in the same manner as liquor licence applications.

All liquor licences and permits have the potential to be connected to misuse of alcohol issues that can have a negative impact on individuals, the area immediately surrounding a licensed establishment or on the wider community as a whole. For this reason the provision of liquor licences is carefully regulated to ensure that they are issued with the '*best interests of the community*' in mind.

The Liquor Licensing Act requires a public representation process and the Licensing Board has established a transparent public representation and hearing process to provide the community with the opportunity to register their support for, or object to, proposed liquor licences. It is by this method that the Board ensures that community views are considered when determining whether

the granting of a licence is *'in the best interests of the community'*.

In contrast, applications for new liquor permits<sup>34</sup> do not currently pass through a public representation or hearing process. Instead, they are evaluated administratively by the Commissioner for Licensing. The reason for the different treatments of licences and permits could not be identified. It is observed that liquor permits (with the exception of special permits<sup>35</sup>) can only be issued to holders of existing liquor licences which have already passed through a public process.

Before granting a liquor permit the Commissioner must be satisfied that the permit will not cause undue annoyance to the local community or cause the occurrence of disorderly conduct. This decision must be made with the *'best interests of the community'* in mind.

It is observed that not all permits have the same level of impact upon the operations of a licensed premise. For example, out-of-hours permits have the greatest potential to significantly change the operational nature of a premise because they can extend the licensed closing time of a premise from midnight up to 5am. The Liquor and Gaming Branch and Tasmania Police advised that out-of-hours permits tend to experience the greatest problems related to the misuse of alcohol. In contrast, the Liquor and Gaming Branch advised that very few, if any, issues are reported in relation to on-permits, off-permits and special permits.

The Liquor and Gaming Branch indicated that they would support the establishment of a public consultation process for new liquor permit applications. They indicated that this could be achieved administratively without the need for legislative amendment.

## Options

The following potential responses to this issue were identified:

1. Make no change (eg, the status quo).
2. Administratively introduce a public consultation process to be conducted by the Commissioner for Licensing to determine whether new liquor permit applications should be approved.

## Conclusion

The issue raised by DHHS officers is concerned with the transparency of the process under which the Commissioner makes decisions on the issue of new liquor permits. While no evidence was presented that indicates that there are significant problems with the outcomes of the current permit process, it is clear that the permit issue process is less transparent than the current licence issue process.

It is considered that Option 2 would improve the transparency of the application process for new liquor permits, which in turn would increase public confidence in the outcomes of that process. The trade-off would be an increase in the administrative costs for Government and the compliance burden for industry. In order to minimise these impacts, it is recommended that the Commissioner for Licensing investigate the most efficient model for a public consultation process for new liquor permit applications. This could include a process for exempting from the public consultation process liquor permit applications (or certain applications for certain types of liquor permits) where

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<sup>34</sup> On-permits, off-permits, out-of-hours permits and special permits.

<sup>35</sup> Special permits can be issued to individuals that are not an existing licensee. The Commissioner for Licensing stated that special permits are only issued to small community, club, charity or similar events and that these permits are not connected to misuse of alcohol issues. The Commissioner also noted that requiring these events to pass through the full liquor licensing application process has the potential to end these types of events altogether.

there is only minimal risk of a significant change to the operational nature of the related licensed premise.

**Recommendation:**

5. It is recommended that a public consultation process be administratively introduced for new liquor permit applications.
  - This should include Commissioner for Licensing investigating the most efficient model for the public consultation process for new liquor permit applications that does not impose unreasonable administrative or industry compliance costs.

## 4.2.2 The interface between local government planning and liquor licensing controls

### Issue

A lack of clear differentiation between the local government (planning) approval and the licensing authority (liquor licences and permits) processes causes unnecessary confusion amongst applicants and the public.

### Discussion

Consultations with local government highlighted the lack of clarity that exists regarding what types of issues are considered by the liquor licensing process. Specifically, LGAT and Glenorchy City Council indicated that the Licensing Board should have regard to local government planning related issues when making decisions on licence applications.

A key concern of Local Government is that the Licensing Board may not always consider broader planning and community interests within a harm minimisation framework as part of their decision making process in granting a liquor licence. Specifically, the LGAT indicated that the concept of making a decision '*in the best interests of the community*' is too generic and lacks definition as to both what is '*community*' and what are '*best interests*'.

Underlying these concerns are issues associated with the respective roles of Councils and the Liquor Licensing Board as approval authorities.

Section 4.1.1 has indicated that the Licensing Board is already making decisions within an implicit harm minimisation framework, despite the current legislation not specifically specifying an objective of minimising the harms from the misuse of alcohol. This leaves the main local government concern that the Licensing Board should have regard to local government planning related issues when making decisions on licence applications.

In order for a business to sell alcohol in Tasmania it must have:

- the relevant planning approval – issued by the relevant local government planning authority under the *Land Use Planning and Approvals Act 1993*; and
- the relevant liquor licence – approved by the Licensing Board and issued by the Commissioner for Licensing under the Liquor Licensing Act.

The liquor licensing and planning approval application processes are designed for different purposes and therefore consider different aspects of a proposed business. It is also important to note that failure to secure either of these approvals results in a business proposal being unable to proceed.

## Planning Approval

Planning schemes are the means by which local government authorities establish what sort of developments, businesses or uses can happen in certain areas within their municipality.

Local government planning authorities evaluate planning applications to determine whether the proposals are appropriate for the relevant area. The process that a planning application goes through depends on the zoning of the area where a business is proposing to operate, the nature of the application and whether it is a permitted or discretionary activity in the zone. If the activity is prohibited in the zone, an amendment to the planning scheme would be required. If the activity is discretionary, there may be a range of considerations to be addressed, including the appropriateness of a licensed premise for the existing nature of the area, traffic and parking matters and hours of operation.

Planning applications are publicly advertised and representations can be made to the planning authority. Discretionary decisions by planning authorities are able to be appealed to the Resource Management and Planning Appeal Tribunal.

## Liquor Licences

The Licensing Board evaluates liquor licence applications to determine whether the business should be able to sell alcohol in Tasmania. Liquor licences pass through a public consultation process<sup>36</sup>. The Licensing Board weighs the evidence provided by the applicant and the submissions made in relation to the application and determines whether the proposed business is *'in the best interests of the community'*. The Licensing Board provides a set of guidelines and references to help the public understand how it evaluates this criterion. In this material the Licensing Board's definition of community is:

*"Community" may mean those living and working in the locality, or may mean the broader Tasmanian community. It means, we think, in the context of the present legislation, a composite of both. Neither should, when relevant to the issue, be ignored.*

*The general community has an interest in seeing the orderly development of liquor facilities, and the control of grant, suspension and cancellation of licences. The wishes of the local community ought not to be determinative, necessarily, but will most likely be relevant<sup>37</sup>.*

From this definition, it is clear that the Licensing Board's view of community extends beyond the local community where an applicant is seeking a liquor licence to operate. The types of considerations that the Licensing Board takes into account when determining what is *'in the best interests of the community'* include:

- ◆ Will it provide liquor in a manner known to be safe and to minimise adverse impact?
- ◆ Are the plans for the business well thought out and clear or are they vague, imprecise or purely expressed in terms of personal benefit, without any obvious social or economic benefit to counter the risk of adverse impact from consumption of liquor?

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<sup>36</sup> It must be noted that local government authorities, as per any other member of the public, may make submissions to the Licensing Board regarding liquor licence applications.

<sup>37</sup> *Peter Morrison: Hill Street Cellars, West Hobart 11th August 2010*, Department of Treasury and Finance website, p.14.

- ♦ Is there a sense of 'integrity', capability, track record, and reality to the applicant's intentions?<sup>38</sup>

A full list of the considerations used by the Licensing Board can be found in Attachment D.

The Licensing Board has indicated in its decisions and guidelines that it is aware of the types of issues that are considered by the local government planning approval process and that it tries not to duplicate the considerations used in the planning process. The current applicant guidelines issued by the Board indicate that:

*While the Licensing Board is not a planning authority, there may well be planning issues that are relevant to determining whether an application is 'in the best interests of the community' and relevant, therefore, to a determination whether or not to direct the grant of a liquor licence.*

*While it is not necessary to submit a planning permit when putting an application to the Board, it is unusual not to do so. In many instances if an applicant demonstrates the planning issues have been adequately and appropriately dealt with by the planning authority, then the Licensing Board will have little further interest in those issues. The Board's 2010 decisions in relation to Brian Armstrong: Seaside Turners Beach 17th June 2010 and Jason Bresnehan Main Rd Hadspen 20th May 2010 are a useful guide to the relevance of planning approvals in determining whether an application is 'in the best interests of the community'.*

*These decisions show that the Board will receive and hear an application without prior planning approval, but that if planning issues (like parking, traffic flow, zoning, noise levels, harmony and coherence within the local environment, etc.) are crucial, then the Board may determine that the evidence is insufficient to grant the licence, but may be satisfactory after the site has been approved by the planning authority.*

Discussions with the Licensing Board indicate that it clearly considers that planning issues (ie, those relating to land use and development control) are the province of local government under the state planning legislation. The Board's guidelines for applicants indicate that:

*Especially in the context of local community opposition based on planning grounds, the Board will be reluctant to decide in favour of an application when the planning issues have not first been dealt with by the planning authority.*

However the Licensing Board did acknowledge that sometimes issues normally considered to be planning considerations can be important in determining whether the approval of a liquor licence is 'in the best interests of the community'. In this respect, the Board may have regard to those issues in determining whether a licence should be granted.

It is observed that planning schemes enable Councils to implement clear local objectives for where liquor licences should or should not be able to operate within a their municipalities. In this context, there is currently a local government planning reform program that involves Councils making new planning schemes that conform to a common state-wide planning scheme template. This process is an ideal opportunity for local government authorities to review how they address licensed premises in their planning schemes. Furthermore, there is potential for consideration of this matter through the regional planning processes under the State Government's Regional Planning Initiative that has recently seen the publication of regional land use strategies for the north-west, north and southern regions. This would have the advantage of encouraging consistency in the planning approaches taken by local councils in relation to licensed premises within a region.

A good example of the level of integration that can be achieved between a local government

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<sup>38</sup> Information for People Wanting to Make a Submission on a Liquor Licence Application, Department of Treasury and Finance website.

authority and the liquor licensing authority through a local planning scheme can be seen in the Adelaide City Council's Liquor Licensing Policy<sup>39</sup>. This document details the Adelaide City Council's expectations for the operations of licensed premises in the City of Adelaide and forms the basis of all of the council's submissions to the licensing authority regarding liquor licence applications<sup>40</sup>.

It is considered that the issue raised by LGAT and Glenorchy City Council also highlights a lack of clear, easy to access information describing the requirements and interaction between the two approval processes. This lack of information can lead to confusion regarding:

- exactly what types of issues are considered by the different approval processes; and
- which criteria are used to evaluate applications made under the different approval processes.

This lack of information can potentially impose impediments on those wanting to enter the Tasmanian hospitality industry and can disadvantage members of the public that want to make submissions to either the planning approval process or the liquor licensing process. Addressing this lack of information is likely to minimise confusion regarding the interaction between local government planning approval processes and the liquor licences and permits processes

Another issue raised during consultation is the manner in which liquor licence applications are advertised. Currently the Liquor Licensing Act requires liquor licence applications to be advertised by notification at the proposed business site and in a local daily newspaper. The Liquor and Gaming Branch also post all liquor licence applications on its website.

The Liquor and Gaming Branch advised that it had attempted to set up an email service to advise local governments of liquor licence applications in their municipalities. Advice from a number of local councils indicates that this service has not been successful, as a number have tried to subscribe without success. In this respect, LGAT has advised that it will continue to work to improve communications between Councils and the Liquor and Gaming Branch.

## Options

The following potential responses to the identified issues were identified:

1. Make no change.
2. Local government authorities consider, in the development of their planning schemes, the establishment within appropriate zones of standards including local area objectives and/or desired future character statements about the location and nature of licensed premises.
  - This could be achieved as part of the current local government planning reform process. Further, this matter could also be progressed through the regional planning processes under the State Government's Regional Planning Initiative to encourage consistency in the planning approaches taken by local councils in relation to licensed premises within a region.
3. Local government authorities consider introducing a Liquor Licensing Policy that expresses the authority's expectations for licensed premises in specific zones and which can form the basis of council submissions to the Licensing Board regarding liquor licence applications.
4. The Liquor and Gaming Branch, in consultation with LGAT, strengthen the current guidelines for applicants and other relevant publications with clear information on how the liquor

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<sup>39</sup> *Liquor Licensing Policy*, Adelaide City Council, accessed on 9 August 2012.

<sup>40</sup> Although the Tasmanian legislative environment is different from South Australia's there are still a number of useful correlations between Adelaide City Council's model and what Tasmanian local government authorities could do through the planning schemes.

licensing approval process interacts with local government planning approval processes.

## Conclusion

It is clear from consultations and research that the differentiation between the local government (planning) approval and the licensing authority (liquor licences and permits) processes causes some confusion. Options 2, 3 and 4 would help to address these issues.

### Recommendations:

6. It is recommended local government authorities consider, for inclusion in relevant zones in their planning schemes, standards including local area objectives and/or desired future character statements about the location and nature of licensed premises.
  - This could be achieved as part of the local government planning scheme standardisation process. Further, this matter could also be progressed through the regional planning processes under the State Government's Regional Planning Initiative to encourage consistency in the planning approaches taken by local councils in relation to licensed premises within a region.
7. It is recommended that local government authorities consider introducing a Liquor Licensing Policy that expresses the authority's expectations for licensed premises in specific zones and which can form the basis of council submissions to the Licensing Board regarding liquor licence applications.
8. It is recommended that the Liquor and Gaming Branch, in consultation with the Local Government Association of Tasmania, strengthen the current guidelines for applicants and other relevant publications with clear information on how the liquor licensing approval process interacts with local government planning approval processes.

## 4.2.3 Considerations used to assess liquor licence and permit applications

### Issue

There is a lack of transparency of the decision criteria used by the Licensing Board and Commissioner for Licensing to assess liquor licence and permit applications.

### Discussion

Several stakeholders commented on the difficulty in determining how the Licensing Board or the Commissioner for Licensing interpreted and applied the major decision criterion for licences and permits under the Liquor Licensing Act – that is, whether granting the licence or permit is '*in the best interests of the community*'.

While the Act does not provide any guidance regarding how this criterion should be interpreted, the Licensing Board provides public guidelines explaining how it interprets this criterion and directs applicants who want to know more about the decision process to past decisions for further information. These guidelines also provide some examples of past decisions that contain useful information. Obtaining and interpreting these multiple sources of information can be both time consuming and confusing for liquor licence/permit applicants and the general public.

In relation to liquor permits, the Commissioner for Licensing provides an information sheet along with a permit application form. However, this information sheet does not explain how the criterion '*in the best interests of the community*' is interpreted in relation to liquor permit applications.

The lack of clarity about the nature of the considerations taken into account by the Board or the Commissioner when evaluating both liquor licence and permit applications is an information impediment to new businesses trying to enter the Tasmanian hospitality industry. It also impedes the ability of the public to understand what factors are addressed in considering an application, which is important if they wish to provide a representation to support or object to a liquor licence application during the public consultation phase.

In the interests of achieving a better community understanding of the nature of the licence application process, the guidance material provided to applicants by the Licensing Board and the Commissioner for Licensing could be improved and simplified. This revamped guidance material would need to stand-alone (ie, not rely on reading and understanding separate Licensing Board decisions) and elaborate on the range of considerations taken into account by the Licensing Board or the Commissioner when determining whether the grant of a licence or permit is '*in the best interests of the community*'. It would need to inform not only applicants, but also those wishing to make representations.

### Options

The following potential responses to this issue were identified:

5. Make no change (ie, status quo).
6. The Licensing Board and the Commissioner for Licensing produce improved guidance material for applicants for liquor licences and permits and those seeking to make representations regarding applications.

### Conclusion

A review of the current guidance information available to licence/permit applicants and those wanting to make a representation regarding a liquor licence application indicates that it does not provide clear information on the considerations taken into account by licensing authorities.

Improving guidance material could be expected to provide the following benefits at minimal cost:

- A reduced administrative workload for the Liquor and Gaming Branch through improved applications relating to liquor licence/permit applications and improved written representations from the general public.
- An improved ability of the licensing and permit process to minimise the harm related to the misuse of alcohol because of a clearer understanding by licensees and the public of the expectations in relation to harm minimisation.

Given that this guidance information is predominately produced and published in electronic format, the cost of improving this information is likely to be outweighed by the benefits it will provide to the licensing authority, applicants and those seeking to make representations.

For this reason, Option 2 is recommended. It is acknowledged that if the recommendations in Section 4.1.1 are implemented to introduce new objectives for the Liquor Licensing Act, this will change the nature of the guidance material required.

### Recommendation:

9. It is recommended that the Licensing Board and the Commissioner for Licensing produce improved guidance material for liquor licence and permit applicants and those seeking to make representations regarding applications.

## 4.2.4 Security requirements at licensed premises / events

### Issue

There is a lack of clarity regarding the security requirements imposed on the holders of liquor licences and permits. This potentially leads to licensed premises or events not providing security arrangements commensurate with the size/nature of the licensed venue/event.

### Discussion

This issue was raised during consultation with Tasmania Police and LGAT. Tasmania Police noted that although the licensing authority can require licensees and permit holders to provide 'adequate security', there is insufficient detail supplied to indicate what constitutes an adequate level of security. The provision of adequate security where large numbers of people were present on licensed premises or at events with liquor permits was seen to be important, given the potential for public disorder incidents to be a consequence of the misuse of alcohol at those premises/events. Tasmania Police questioned why the provision of a detailed security plan is not a requirement of the liquor licensing/permit process.

Tasmania Police indicated that specific security requirements could be very beneficial to managing misuse of alcohol issues, particularly for events for which a liquor permit had been issued. Examples of good practice were cited, such as Cricket Australia and the AFL, which provide detailed security plans for their events held in Tasmania, with these plans having a positive impact upon minimising harm related to the misuse of alcohol at these events.

As indicated in Section 4.3.5, there are various measures available to the Licensing Board and the Commissioner for Licensing to require licensees to comply with certain requirements. Liquor and Gaming Branch officers advised that liquor licence and permit applicants are required provide details regarding the security measures that will be implemented. Staff indicated that, in relation to special permits for major events, they spend significant time working with relevant Licensing Police officers to finalise the requirements imposed on such permits, including security arrangements.

In this respect, a review of Licensing Board and Commissioner for Licensing applicant material found that:

- The guidance material for applicants for liquor licences generally identified references to security measures in relation to the provision of entertainment:

*Entertainment and liquor can be an explosive combination – you need to convince the Board that the community won't be adversely affected by providing both. If you propose having entertainment, give the Board the detail of the type of entertainment, where on the premises it will be held, the times of the week and times of the day that you intend to offer the entertainment, etc. In particular, because of the need to manage liquor carefully in entertainment venues, you need to convince the Board that you have measures in place in relation to sound-proofing, security, staffing levels, etc to ensure that you can manage the sale of liquor in these circumstances<sup>41</sup>.*

- Applicants for out-of-hours permits are required to submit details of how they will deal with crowd control issues.
- The application form for a special liquor permit requires the applicant to '*detail measures that will be in place to ensure that the event is well managed in relation to the responsible sale and provision of liquor and the safety and security of patrons*'.

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<sup>41</sup> Licensing Board - Information for Applicants for Liquor Licences, Department of Treasury and Finance website.

While this indicates that there is some consideration of security requirements in relation to licences and permit applications, the approach is not consistent. In particular, no guidance is provided on the expectations that applicants for licences or permits need to meet in relation to security provisions.

It was suggested in discussions with Tasmania Police that a venue/event classification system could be devised to grade the nature of security requirements that must be met to provide increased certainty to applicants, Tasmania Police and the Commissioner for Licensing. Tasmania Police agreed such an approach had merit and indicated that a similar approach was taken to motor sport events in determining the safety requirements that must be observed by those events.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, the status quo).
2. The Commissioner for Licensing, in conjunction with Tasmania Police, improve guidance material for licence and permit applicants on the expectations for the security requirements that may need to be provided in relation to licensed premises or permitted events. This should include investigating the establishment of an indicative grading system for security requirements to streamline the process of determining security requirements.

## Conclusion

It is clearly important that measures to mitigate the risks for public disorder are implemented that are commensurate with the nature of the operations of a licensed premise or liquor permit (particularly for events subject to a special liquor permit). It is recognised that these measures will vary according to the various types of licenses or permits<sup>42</sup>.

For example, the security risks can range from relatively minor for, say, a small general licence (ie, Hotel), to significant for operations such as nightclubs, or major sporting or entertainment events. Hence, the measures required can range from simply ensuring adequate management supervision and disturbance management protocols for a small general licence, to the provision of sufficient dedicated security staff for nightclubs and major sporting and entertainment events.

Critical to ensuring that adequate security measures are put in place is the need to outline clear expectations of the nature of security requirements (ie, what constitutes 'adequate security') to applicants for licences and permits. Currently, the guidance material provided to these applicants does not adequately address this issue. For these reasons, Option 2 is recommended.

### Recommendation:

10. It is recommended that the Commissioner for Licensing, in conjunction with Tasmania Police, improve guidance material for licence and permit applicants on the expectations for the security requirements that may need to be provided in relation to licensed premises or permitted events.
  - This should include investigating the potential for establishing an indicative grading system for security requirements to streamline the process of determining security requirements for prospective licence or permit holders.

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<sup>42</sup> It is not suggested that these security measures should be addressing public disorder incidents that occur outside the vicinity of the licensed premises or permitted event.

## 4.2.5 The ‘fit and proper’ person test for applicants for liquor licences

### Issue

The current requirement in the Liquor Licensing Act for the Commissioner for Licensing to determine if licence applicants are ‘fit and proper’ is essentially a subjective test. There is no definition in the Liquor Licensing Act of what criteria need to be met in order for a person to pass the test. The lack of criteria has the potential to cause confusion amongst applicants for liquor licences, key stakeholders and the general public regarding what is expected of licensees and their associates in relation to being ‘fit and proper’.

### Discussion

As part of the liquor licence application process the Commissioner for Licensing must determine whether the applicant is considered to be a ‘fit and proper’ individual to hold a liquor licence. This process can also involve determining whether a licensee’s associates are “fit and proper”<sup>43</sup>.

To determine if a person is “fit and proper” to hold a liquor licence, the current practice is for:

- The Commissioner for Licensing to seek advice from the Commissioner for Police. The Commissioner for Police then undertakes a National Police Check.
- The applicant is then interviewed by a Liquor & Gaming Inspector.

On the basis of evidence collected from these activities, the Commissioner for Licensing then determines if the applicant qualifies as a ‘fit and proper’ person.

Consultation with Tasmania Police indicated that they were concerned that the advice they provide to the Commissioner for Licensing regarding the ‘fit and proper’ person test is not always taken into account during the licensing decision process.

Consultation with the Liquor and Gaming Branch clarified that there are instances where information supplied by Tasmania Police from ongoing cases cannot be considered as part of the ‘fit and proper’ person test. This is because, due to procedural fairness, the Commissioner for Licensing cannot take into account untested evidence. Added to this, if the rejection of an application on ‘fit and proper’ grounds was challenged in court, the Commissioner for Licensing would not be able to rely on this information to defend their decision.

A potential solution to this issue is to provide more objective guidance on what constitutes ‘fit and proper’ or replacing the current subjective test with objective tests that provide that licences will not be issued to persons who fail to meet certain criteria (ie, specifying grounds on which persons are disqualified from obtaining a licence).

The use of ‘fit and proper’ persons tests are common in liquor licensing legislation in Australia and in business and occupational licensing generally. Some of the liquor licensing legislation in other jurisdictions provides some guidance as to what constitutes ‘fit and proper’ licence applicants. Specifically, the New South Wales, Queensland, Western Australia and South Australia liquor legislation specify to varying degrees the types of considerations that need to be associated with a ‘fit and proper’ person test. For example, whilst it contains a level of subjectivity, Section 45(5) of the *NSW Liquor Act 2007* provides some guidance on what constitutes ‘fit and proper’ by specifying that:

*...a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:*

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<sup>43</sup> Sections 22(1)(b) of the *Liquor Licensing Act 1990*.

- (a) *that the person:*
- (i) *is a member of, or*
  - (ii) *is a close associate of, or*
  - (iii) *regularly associates with one or more members of,*
- a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012, and*
- (b) *that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.*

When this issue was raised during consultations, the Commissioner for Licensing agreed that amending the Act to provide objective requirements for the 'fit and proper' person test could be beneficial to the operation of the liquor licensing application process.

### Options

The following potential responses to this issue were identified:

1. Make no change.
2. Develop and publish guidance material that objectively defines what constitutes grounds for considering a licence applicant to be not 'fit and proper'.
3. Amend the Liquor Licensing Act to objectively define what constitutes grounds for considering a licence applicant to be not 'fit and proper'.

### Conclusion

It is considered that the current lack of objective guidance on what constitutes a 'fit and proper' person can lead a lack of a common understanding by Tasmania Police, the Commissioner for Licensing and applicants of the thresholds that need to be passed by licence applicants and inconsistent decision making.

Whilst this situation can be resolved by either Options 2 or 3, it is recommended that Option 2 be pursued in the first instance as it will be quicker and easier to implement.

#### Recommendation:

11. It is recommended that the Commissioner for Licensing develop and publish guidance material that objectively defines what may constitute grounds (by the applicant or their associates) for considering a licence applicant to be not 'fit and proper'.

## 4.2.6 A review process for liquor licences

### Issue

The Liquor Licensing Act does not require liquor licences/permits, once obtained, to be reviewed to ensure that they are continuing to meet the decision criteria for granting a licence.

### Discussion

This issue was raised during consultation with the ATDC and the LGAT, both of which suggested that a licence/permit review process should be considered.

The Liquor Licensing Act does not contain a regular liquor licence/permit review process. Instead the Act facilitates an enforcement process that includes a range of measures to ensure that licensed premises are managed in a manner that is consistent with the requirements of the Act. This is done through a list of offences and obligations contained in the Act that set the parameters of expected behaviour for licensees and permit holders. If these obligations or offences are breached:

- licensees or permit holders can be fined;
- the Commissioner for Licensing can place compliance conditions on the liquor licence or permit; or
- the liquor licence or permit can be suspended or cancelled.

### **Potential Improvements**

The following potential responses to this issue were identified:

1. Make no change (ie, the status quo).
2. Amend the Liquor Licensing Act so that it includes a requirement for liquor licences and permits to undergo a regular review process.

### **Conclusion**

Introducing a licence review system is considered unnecessary, particularly as no evidence was provided that the current enforcement process under the Liquor Licensing Act was not effective (except in relation to the issue raised in Section 4.3.3).

Where the operations of a licence or a permit are noncompliant with the requirements of the Act, these operations are already being managed using the range of enforcement measures provided by the Act, which include infringements, directions, conditions or licence suspension and cancellation.

Further, a regular review system would introduce business uncertainty, impose an additional compliance burden for industry and add significantly to government administrative costs.

In light of these conclusions, no recommendation is made on this issue.

#### **Recommendation:**

It is recommended that no action be taken on this issue.

## **4.2.7 Public complaints against licensees and management of complaints**

### **Issue**

The Liquor Licensing Act does not contain a complaints process for the public to report issues against licensees.

### **Discussion**

This issue was raised during consultation with the Department of Treasury and Finance, where it was pointed out that there was no formal process in the Liquor Licensing Act regarding public complaints against licensees. The implicit suggestion was that there was a need for a legislative basis for the Licensing Board and the Commissioner for Licensing to consider such complaints.



Although the Act does not contain a complaints process, the Liquor and Gaming Branch provided detail of an extensive internal complaints review process. This process involves:

- receiving complaints from key stakeholders or the public;
- logging them in a database;
- assessing the validity of the complaint;
- conducting an investigation of the complaint; and
- passing the results of the investigation to the Commissioner for Licensing who determines an appropriate course of action based on the results of the investigation and the compliance history of the licensee involved in the complaint.

### Options

The following potential responses to this issue were identified:

1. Make no change (ie, the status quo).
2. Amend the Liquor Licensing Act so that explicitly provides for a public complaints process.

### Conclusion

It is observed that it is better practice to have a formal complaints provided for in the Act, as this provides clarity to the public that their complaints will be considered. For example, Section 76ZN of the *Gaming Control Act 1993* provides a formal complaint process against licensed gaming providers.

However, given that the Liquor and Gaming Branch already operates an administrative complaints process, there would appear to be no pressing need to amend the Act. As a consequence, no recommendation is made on this issue.

#### Recommendation:

It is recommended that no action be taken on this issue.

## 4.3 Strengthening Compliance/Enforcement

The issues in this section concentrate on strengthening compliance and enforcement arrangements in relation to licensed premises and dealing with people while under the influence of alcohol. Issues include:

- 4.3.1 Tasmania Police and liquor licensing processes.
- 4.3.2 The criteria for taking action to suspend or cancel liquor licences.
- 4.3.3 Limitations imposed by the *Personal Information Protection Act 2004*.
- 4.3.4 Obligations and offences under the Liquor Licensing Act.
- 4.3.5 Placing conditions on liquor licences and permits.
- 4.3.6 Defining 'drunk' in the Liquor Licensing Act.
- 4.3.7 Regulation of the consumption of alcohol in public places.

### 4.3.1 Tasmania Police and liquor licensing processes

#### Issue

There is a lack of detailed understanding at senior police levels of some of the processes that support the operation of the current liquor licensing legislation and the role of, and constraints on, the Commissioner for Licensing and the Liquor and Gaming Branch.

#### Discussion

Discussions with officers from Tasmania Police indicated that there was not a consistent level of detailed understanding of the processes supporting the operation of the liquor licensing legislation, particularly those processes that involve the Commissioner for Licensing.

This is not surprising in light of the fact that the regional Inspectors oversight the Licensing Units as part of a broad range of responsibility for a diverse portfolio of operational areas.

There were issues associated with some of the outcomes of the Commissioner for Licensing's enforcement activities, with the perception being that the Commissioner was reluctant to use his suspension powers or to apply for licence cancellations. However, evidence provided by the Liquor and Gaming Branch shows a steady use over the past three years of licence suspensions initiated by the Commissioner for Licensing and licence cancellations approved by the Licensing Board.

However, there is limited evidence of these actions being directly communicated to police at a senior level. This is despite significant operational level communication between Licensing Police and the Liquor and Gaming Branch on a weekly basis (Hobart and Launceston) or monthly (Burnie) basis.

The situation highlights a need for improved and perhaps more formal communications between the Commissioner for Licensing and senior police regarding police enforcement processes, and the enforcement processes and outcomes of the Commissioner for Licensing. There may also be an avenue to improve operational level connections to reinforce formal communications at a senior level.

Some of the key actions that need to occur as part of these reforms are:

- A clear description of the enforcement processes undertaken by the Commissioner for Licensing and the evidence needs of those processes.
- The regular exchange of enforcement statistics to highlight areas of mutual concern and to identify where improved cooperative enforcement strategies may be required.

In addition, these improved communications should be supported by adjustments to the induction process for new officers assigned to the Licensing Police. These changes should reinforce the knowledge amongst Tasmania Police of liquor licensing support processes and the role of and constraints on the Commissioner for Licensing and the Liquor and Gaming Branch.

#### Options

There are three broad options for resolving this issue:

1. Make no change (ie, status quo).
2. Investigate ways of implementing more formal communications between senior Police and the Commissioner for Licensing regarding the enforcement processes undertaken and outcomes achieved by Tasmania Police and the Commissioner for Licensing.
3. Investigate ways to strengthen the induction process for new Licensing Police to ensure they have a sound understanding of liquor licensing support processes and the role of, and constraints on, the Commissioner for Licensing and the Liquor and Gaming Branch.

## Conclusion

Good communications between Tasmania Police and the Commissioner for Licensing are critical to the efficient and effective enforcement of the Liquor Licensing Act and associated legislation. These communications need to occur at both an operational and senior officer level, with the latter communication being essential for supporting a strong working relationship between Tasmania Police and the Commissioner for Licensing. Consultations suggest that there is avenue for some improvement in these communications at a senior officer level.

Accordingly, Options 2 and 3 are recommended. These recommendations are designed to support the development and sustainment of improved communications at a senior level, but leave determination of the nature of the improvement for negotiation between Tasmania Police and the Commissioner for Licensing.

### Recommendations:

12. It is recommended that Tasmania Police and the Commissioner for Licensing investigate ways of implementing more formal communications at a senior level regarding the enforcement processes undertaken and outcomes achieved by Tasmania Police and the Commissioner for Licensing.
13. It is recommended that Tasmania Police investigate ways to strengthen the induction process for new Licensing Police to ensure they have a sound knowledge of liquor licensing support processes and the role of, and constraints on, the Commissioner for Licensing and the Liquor and Gaming Branch.

## 4.3.2 The criteria for taking action to suspend or cancel liquor licences

### Issue

That there is a lack of clarity on the criteria used by the Commissioner for Licensing or the Licensing Board to determine whether offences under the Liquor Licensing Act should lead to the suspension or cancellation of the related liquor licence.

### Discussion

During consultations, officers from Tasmania Police indicated that it was unclear what criteria were used by the Commissioner for Licensing or the Licensing Board to determine whether offences under the Liquor Licensing Act should lead to the suspension or cancellation of the related liquor licence.

The officers considered that this lack of clarity results in the Commissioner for Licensing appearing to be reluctant to impose penalties on licensees. The concern was that this potentially results in more infringements under the Liquor Licensing Act as licensees may not see a clear correlation between infringement and the consequences arising from such infringements.

The officers indicated a preference for a more objective system where a certain number of breaches automatically results in a licence suspension for a set duration. An example of the type of system referred to during consultation with Tasmania Police is the recently introduced (January 2012) New South Wales 'three strikes' threshold-based infringement-to-suspension model<sup>44</sup>.

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<sup>44</sup> 'Three Strikes' disciplinary scheme commences on 1 January 2012, Office of Liquor, Gaming and Racing website, accessed on 29 May 2012.

Currently, the Liquor Licensing Act provides the Commissioner for Licensing and the Licensing Board with discretionary powers when it comes to suspending or cancelling a liquor licence or permit. These discretionary powers are based on the Liquor Licensing Act's use of the word 'may' when stating what the Commissioner or Board's actions should be in response to infringements under the Act.

For instance:

- Section 35 of the Act states that a liquor permit may be terminated at any time if the related liquor licence is suspended or cancelled.
- Section 37 of the Act states that the Commissioner may cancel an on-permit, off-permit or a special permit at any time if the Commissioner is satisfied that is in the interest of the community to do so.
- Section 40 of the Act states that the Commissioner may cancel or vary an out-of-hours permit.
- Section 41 of the Act states that the Commissioner for Licensing may require the licensee to comply with a set of directions if found to have breached the requirements of Section 41 of the Act. If the licensee fails to comply with these directions then the Commissioner may suspend the liquor licence (or certain activities authorised by that licence) for up to 3 months.
- Section 42 of the Act states that the Commissioner for Licensing may apply to the Licensing Board to suspend or cancel a liquor licence.

Consultations with the Liquor and Gaming Branch indicated that this type of discretionary power is considered important as it allows the industry to be managed in a balanced manner that accounts for the individual circumstances. It also requires an approach that ensures procedural fairness. Specifically, the Liquor and Gaming Branch indicated that the suspension and cancellation of liquor licences or permits should only occur in situations where there is clear evidence of a systemic problem or where there is a gross breach of the Act, rather than as a summary punishment for once-off infringements which may differ significantly in their nature.

Statistics provided by the Commissioner for Licensing indicate that the powers provided to the licensing authority by the Liquor Licensing Act are being used to impose infringements and manage licensed premises. Table 6 illustrates the number of suspended or cancelled liquor licences and permits over the past three years. This demonstrates there has been a significant increase in suspensions, whilst licence cancellations by the Licensing Board appeared to have declined.

**Table 6: Suspensions and Cancellations of liquor licences or permits<sup>45</sup>**

Action	2010	2011	2012 YTD
Liquor Licence Suspensions	27	46	29
Liquor Permit Suspensions <sup>46</sup>	0	0	3
Liquor Licence Cancellation <sup>47</sup>	19	15	11
Liquor Permit Cancellation <sup>48</sup>	1	1	3

Discussions with the Liquor and Gaming Branch indicate that a substantial portion of the suspension and cancellation activity relates to administrative matters – eg, where licence fees are not paid, the operator goes out of business and so on.

Nevertheless, the Commissioner for Licensing suggested that the current system is effective in providing a deterrent to licensees. He noted a recent case where a licensee had appealed a four day licence suspension licence to the Licensing Board. The Licensing Board then determined that the original suspension was not severe enough and extended the suspension to two weeks. He indicated that this type of outcome sent significant messages to industry and assisted in ensuring industry compliance.

The Commissioner for Licensing did not support the move to a three-strike type system as instituted by NSW. It is noted that advice from NSW<sup>49</sup> indicated that not enough time has passed since the introduction of the model to assess whether it has been effective in improving compliance and reducing the number of offences under the Liquor Act.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, status quo).
2. Commissioner for Licensing to document (and provide to Tasmania Police) the considerations used when determining whether to suspend a licence or permit or whether to apply to the Licensing Board for the cancellation of liquor licences.
3. Legislative change to introduce an objective “three-strikes” or similar infringement-to-suspension/cancellation process.

## Conclusion

Before consideration should be given to changing the current approach to suspensions and cancellations there needs to be clear evidence that:

<sup>45</sup> *Liquor licensing statistics*, Liquor and Gaming Branch at the Department of Treasury and Finance, 17 May 2012.

<sup>46</sup> These permits were suspended because the related liquor licence was suspended.

<sup>47</sup> Consultation with the Liquor and Gaming Branch indicated that these cancellations have occurred under Section 42(1)(e), (f) and (g) and for administrative purposes only.

<sup>48</sup> These permits were cancelled because the related liquor licence was cancelled.

<sup>49</sup> Pers. Comm. Acting Assistant Director of Policy and Strategy, New South Wales Office of Liquor, Gaming and Racing.

- the current system was not effectively managing the licensed premises; and
- the proposed model is more effective in managing the licensed premises.

The evidence available so far is not sufficient to suggest that legislative change is warranted. Significantly, there is currently insufficient evidence that an alternative approach, such as the NSW “three-strikes” approach, yields better compliance and enforcement outcomes.

It is observed that the perceptions of Tasmania Police on this matter may be influenced by the current enforcement difficulties experienced by the Commissioner for Licensing due to the impact of the *Personal Information Protection Act 2004*. This issue and recommendations to rectify it are discussed in Section 4.3.3. Furthermore, the communication issues outlined in Section 4.3.1 may also contribute to this perception.

Nevertheless, it is considered sensible and practical for the Commission for Licensing to document the considerations used when determining whether to suspend a licence or permit or apply to the Licensing Board for the cancellation of liquor licences. This is likely to improve the Tasmania Police understanding of the Commissioner’s approach. The Commissioner could also consider whether this advice should be made public to inform industry about how the issue of licence suspensions and cancellations is approached.

Accordingly, it is recommended that Option 2 provides that most effective response to this issue.

#### **Recommendations:**

14. It is recommended that the Commissioner for Licensing document the considerations to be used when determining whether to suspend a licence or permit or whether to apply to the Licensing Board for the cancellation of liquor licences. These criteria should be communicated to Tasmania Police and updated as required.
15. It is recommended that the Commissioner for Licensing consider whether this advice should be made public to inform industry about how the issue of licence suspensions and cancellations is approached.

### **4.3.3 Limitations imposed by the Personal Information Protection Act 2004**

#### **Issue**

The *Personal Information Protection Act 2004* (PIP Act) prevents Tasmania Police legally providing the Commissioner for Licensing with full data relating to offences in or around licensed premises for which infringement notices are issued. This legislative restraint reduces the ability of the Commissioner for Licensing to effectively enforce sections of the Liquor Licensing Act.

#### **Discussion**

During the consultations offices from the Liquor and Gaming Branch noted that it considered that it was unlawful under the PIP Act for Tasmania Police to provide the personal information of individuals to the Commissioner for Licensing in order to assist the prosecution of a licensee or licensed entity. They also indicated that it would be unlawful for the Commissioner to rely on that information when taking action against a licensee under the Act (eg, issuing a direction to a licensee or applying to the Licensing Board for the suspension or cancellation of a licence).

Schedule 1 of the PIP Act contains 10 ‘*Personal Information Protection Principles*’ which govern how a personal information custodian, such as Tasmania Police, must deal with the personal information of individuals. Principle Number 2 states that:

*A personal information custodian must not use or disclose personal information about an individual for a purpose other than the purpose for which it was collected.*

The effect of this is to prevent Tasmania Police lawfully providing the Commissioner for Licensing with information on infringement notices issued to licensees.

This constraint makes it extremely difficult for the Commissioner to effectively prosecute licensees for breaches of the Act as the majority of investigative and enforcement work is conducted by Tasmania Police. This in turn means that the Commissioner is unable to efficiently and effectively enforce the Act in terms of licensee behaviour.

Specifically, if the Commissioner is unable to receive information from Tasmania Police in relation to offences by a licensee, the Commissioner is unable to use this information in considering whether to issue a direction to a licensee. This in turn impedes the ability of the Commissioner to access the suspension powers under the Liquor Licensing Act. It was clear from consultations with Tasmania Police and Liquor and Gaming Branch officers that this constraint is significantly impacting on enforcement efficiency and frustrating cooperative efforts between the agencies.

Whilst the Liquor and Gaming Branch indicated the need to amend the PIP Act to overcome this constraint, it is observed that mechanisms for alleviating the constraint may exist within the PIP Act. Specifically, the PIP Act provides for a number of instances where Principle Number 2 does not apply:

- Principle Number 2 itself provides a series of primary exemptions where this constraint does not apply;
- A number of stand-alone exemptions are provided in Part 2 of Division 2 of the PIP Act; and
- Under Section 13 of the Act, an application could be made to the Minister for an exemption from compliance with any or all provisions of this Act.

## **Options**

The following potential responses to this issue were identified:

1. Do nothing (ie, the status quo);
2. Investigate the potential for an exemption to be obtained under the PIP Act to allow Tasmania Police to provide information on breaches of the Liquor Licensing Act to the Commissioner and for the Commissioner to use that information in determining enforcement actions.
3. Amend the PIP Act to allow Tasmania Police to provide information on breaches of the Liquor Licensing Act to the Commissioner for Licensing.

## **Conclusion**

It is imperative to the efficient and effective enforcement of the Liquor Licensing Act that the Commissioner for Licensing be able to lawfully receive information from Tasmania Police on breaches of the Liquor Licensing Act and be able to use that information for the purposes of enforcing the Act.

It may be possible to achieve this via one of the exemptions mechanisms currently available under the PIP Act. Accordingly, this avenue should be investigated before looking to amend the PIP Act.

**Recommendation:**

16. It is recommended that Tasmania Police and the Commissioner for Licensing investigate the potential for an exemption to be obtained under the *Personal Information Protection Act 2004* (PIP Act) to allow Tasmania Police to provide information on breaches of the Liquor Licensing Act to the Commissioner and for the Commissioner to use that information in determining enforcement actions. If an exemption is not able to be granted, then the avenue of amending the PIP Act should be pursued.

#### 4.3.4 Obligations and offences under the Liquor Licensing Act

**Issue**

Consultation with officers from Tasmania Police and the Liquor and Gaming Branch revealed dissatisfaction that the Liquor Licensing Act does not impose specific offences for a number of licensee obligations required by the Act.

**Discussion**

There are two Divisions in the Liquor Licensing Act that detail the enforcement areas under the Act.

Division 5 of the Liquor Licensing Act lists 15 obligations that directly relate to acts and omissions by licensees. Under the current arrangements, only the Commissioner for Licensing can take action against a licensee for breaches of these obligations (using the licence direction/suspension powers). This means that Tasmania Police cannot take any direct action in regards to breaches that they encounter; instead they have to report breaches of obligations to the Commissioner for Licensing.

Under Section 41 of the Liquor Licensing Act, if the Commissioner for Licensing determines that a licensee has failed to fulfil the obligations contained in the Act then the Commissioner may provide the licensee with a written directive requiring the licensee to comply with a direction specified in the notice. If the licensee subsequently fails to comply with such a direction, then the Commissioner may then suspend the associated liquor licence.

Division 6 contains a number of offences that are enforceable by Tasmania Police through infringement notices, court summons and even immediate arrest. These offences relate to all individuals, not only licensees.

The enforcement limitations associated with the Division 5 obligations were raised as an issue that needed to be addressed at the 2010 Liquor Licensing Forum<sup>50</sup>. Some officers from Tasmania Police at this forum felt that the obligations are a problem because they are not immediately enforceable by Tasmania Police in the same manner as the offences in Division 6.

Further consultation on this issue revealed that both Tasmania Police and the Liquor and Gaming Branch consider that:

- There is scope for amending the Liquor Licensing Act to provide offences under Division 6 for some of the Division 5 obligations.
- That the scope for change on this issue should be investigated jointly by Tasmania Police and the Liquor and Gaming Branch.

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<sup>50</sup> *Liquor Licensing Forum 2010*, Department of Police and Emergency Management.

It must be noted that changing an obligation into an offence does not necessarily mean that Tasmania Police have to take over enforcement of the new offence. Rather, the enforcement policies of Tasmania Police and the Commissioner for Licensing will determine their enforcement priorities.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, status quo).
2. Amending the Liquor Licensing Act to ensure that, where appropriate, there are offences for breaches of the licensee obligations outlined in Section 5 of the Act. Tasmania Police and the Liquor and Gaming Branch to jointly investigate which breaches of Division 5 obligations under the Liquor Licensing Act should be accompanied by an offence under Division 6.

## Conclusion

Option 2 is the most appropriate solution to the issue as both of the agencies that enforce the Liquor Licensing Act have reported that there is scope for amending the Liquor Licensing Act to provide offences under Division 6 for some of the Division 5 obligations.

### Recommendation:

17. It is recommended that the Liquor Licensing Act be amended to ensure that, where appropriate, there are offences for breaches of the licensee obligations outlined in Section 5 of the Act. It is further recommended that Tasmania Police and the Liquor and Gaming Branch jointly investigate which breaches of Division 5 obligations under the Liquor Licensing Act should be accompanied by an offence under Division 6.

## 4.3.5 Inability to place certain conditions on liquor licences and some permits

### Issue

The Liquor Licensing Act contains a range of conditions that can be used to manage the scope of activity in licensed premises, however the rules contained in the Liquor Licensing Act that detail how and when these conditions can be placed upon liquor licences or permits are inconsistent and need to be reviewed.

### Discussion

Liquor and Gaming Branch officers indicated that there is a case for amending the Act to provide the ability to manage alcohol related issues on a risk basis through the use of conditions on licences at the time the licence is issued. This would mean that harms related to the misuse of alcohol might be avoided before they happen.

Section 43 of the Liquor Licensing Act contains a number of conditions that can be placed on certain liquor licences and permits. These conditions can be:

- placed on some licence/permit types at time of issue;
- used to manage the activities conducted under a general liquor exemption at the time of issue; and
- placed upon licences/permits to address identified issues under a liquor restriction order.

The use of these conditions to manage the scope of activities in licensed premises is a significant tool for managing the hospitality industry, related businesses and minimising the harm related to the misuse of alcohol.

However, currently these conditions can only be placed on the following licences /permits at the time of issue:

- Special licences;
- Out-of-hours permits;
- On-permits;
- Off-permits; and
- Special permits.

The Liquor Licensing Act does not provide the ability to place conditions on general licences, on-licences, off-licences or special licences at time of issue. Desktop research and consultation with the Liquor and Gaming Branch could not uncover the original rationale as to why conditions cannot be placed upon these licence types at the time of issue.

Additionally the Act does not provide the ability to use these conditions to manage recognised issues with certain locales or licence types. Expanding the use of these conditions would provide the Commissioner for Licensing with the ability to better manage the alcohol industry and related businesses by using conditions that address specific recognised issues.

Specifically the Liquor Licensing Act could be amended to address the following types of issues:

- Officers from Tasmania Police, LGAT and the Tasmania Hospitality Association all noted that the entertainment precinct in and around the Hobart wharf area is perceived as experiencing a large number of issues related to the misuse of alcohol.
  - Amending the Liquor Licensing Act to allow the Commissioner for Licensing to place common conditions on all licensed premises in a particular area would provide an effective, efficient and fair (to all licensees involved) method to manage some of these issues.
- Officers from the Liquor and Gaming Branch indicated that different types of liquor licences/permits have the potential to experience different types of issues. An example is that a nightclub is likely to experience more misuse of alcohol issues than a restaurant. Consultations with officers from the Liquor and Gaming Branch and Tasmania Police identified that out-of-hours permits and general licences are connected to the greatest number of misuse of alcohol related problems.
  - Amending the Liquor Licensing Act to allow the Commissioner for Licensing to place common conditions on a particular type of licence/permit (eg, out-of-hours permit) would help to manage issues connected to certain licence/permit types and would also provide a clear message to licensees regarding expectations for the management of their businesses.
  - It must be noted that the current range of licences in the Liquor Licensing Act may not be sufficient to make this an effective management tool. For example, both nightclubs and restaurants can be registered under on-permits. Blanket conditions that may be placed upon on-permits to manage nightclubs are likely to be inappropriate for restaurants. A potential solution to this issue is to amend the Liquor Licensing Act to introduce licence/permit sub-types.

If the Act is amended in this way, it will be important to ensure that such powers to impose conditions are only used in response to clear evidence showing that the specific licence/permit, the type of licence/permit, or the area/precinct, is experiencing specific issues related to the misuse of

alcohol. Further, there would need to be appropriate appeal rights established.

Examples of the types of conditions that could be placed on licences/permits include:

- Requiring certain types of licences to use non-glass containers for serving after midnight to reduce 'glassing'<sup>51</sup> incidents. Alternatively, these conditions might be applied to all nightclubs in, for example, the Hobart waterfront area;
- Imposing lock-out requirements<sup>52</sup> on certain types of licences – eg, nightclubs, to reduce the risk of late night alcohol related violence and crime;
- Imposing prohibitions on certain in-house promotion/serving practices in instances where the competitive nature of the industry is limiting the ability for these practices to be prevented through Liquor Accords.
- Requirements that licensees display certain information warnings at point of sale (eg, information regarding safe alcohol consumption levels).

Furthermore, it is considered that a review should be undertaken of the list of conditions contained in Section 43 of the Liquor Licensing Act that can be placed upon liquor licences/permits. Specifically, these conditions need to be reviewed to ensure they provide sufficient scope for the Commissioner to effectively employ a risk based approach to ensuring that the activities of licensees minimise, to the extent practicable, the harms related to the misuse of alcohol.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, status quo).
2. Amend the Liquor Licensing Act to provide the Commissioner for Licensing with the ability to proactively impose conditions on all types of liquor licence/permits at the time of issue, provided that there is a sufficient evidence base to justify the imposition of the conditions and subject to appropriate appeal rights. This should also be accompanied by:
  - the amendment of the Act to ensure there are rights of appeal against the imposition of licence conditions;
  - the amendment of the Act to introduce liquor licence/permit subtypes; and
  - a review of Section 43 of the Act to ensure that the conditions contained outlined by that section provide sufficient scope for the Commissioner to effectively employ a risk based approach to managing the activities of licensees/permit holders.

## Conclusion

It is considered that Option 2 would provide the licensing authority with a greater ability to effectively manage the licensed premises to ensure that harms related to the misuse of alcohol are reduced.

It is noted that if the recommendations of Section 4.1.1 are implemented, this would significantly strengthen the impact of an extension of the licence conditioning powers of the Commissioner by providing a firm legislative basis for the objective of minimising the harms related to the misuse of alcohol.

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<sup>51</sup> That is, causing injury using glass serving containers commonly used in licensed premises.

<sup>52</sup> A lock-out involves a licensed premises closing its doors to new patrons from a certain time, but allowing patrons already on the premises to remain there until closing time.

**Recommendation:**

18. It is recommended that the Liquor Licensing Act be amended to provide the Commissioner for Licensing with the ability to proactively impose conditions on all types of liquor licence/permits at the time of issue, provided that there is a sufficient evidence base to justify the imposition of the conditions and subject to appropriate appeal rights. This should be accompanied by:
- the amendment of the Act to introduce liquor licence/permit subtypes; and
  - a review of Section 43 of the Act to ensure that the conditions contained outlined by that section provide sufficient scope for the Commissioner to effectively employ a risk based approach to managing the activities of licensees/permit holders.

### 4.3.6 Defining ‘drunk’ in the Liquor Licensing Act

**Issue**

The Liquor Licensing Act does not contain a definition or any guidance to be used in determining whether a person is ‘drunk’.

**Discussion**

Sections 78 and 79 of the Liquor Licensing Act provide that alcohol shall not be sold or supplied to people appearing to be ‘drunk’. Similarly, it is an offence under all Australian state and territory alcohol legislation to sell or provide alcohol to a drunk or intoxicated person. However, the Act does not define ‘drunk’ or provide any guidance on what criteria should be used to determine if a person is ‘drunk’.

The only guidance currently provided in Tasmania is from the workbook produced by the Department of Treasury and Finance that is designed to be used in conjunction with RSA training. This handbook provides a list of behavioural signs that can be used to judge whether a person is drunk<sup>53</sup>. These include:

- Clumsiness and a lack of coordination;
- Slurred, slowed deliberate speech;
- Moods and general behaviour; and
- Quantity of alcohol consumed.

The workbook identifies four signs that indicate that a person may be ‘drunk’:

- Unusual conduct;
- Impaired judgement;
- Slowed reactions; and
- Decreased coordination.

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<sup>53</sup> *Responsible Serving of alcohol*, Department of Treasury and Finance, 2012.

A review of all liquor licensing legislation in other Australian states and territories indicates that they all provide either a definition of ‘drunk’ or significantly intoxicated or provide guidance to assist in determining whether a person is drunk or significantly intoxicated. This is illustrated in Table 7.

**Table 7: Jurisdictional definitions and guidance relevant to whether a person is ‘drunk’**

Jurisdiction	Legislation
NSW	Section 5 of the <i>Liquor Act 2007</i> states that a person is intoxicated if: <ul style="list-style-type: none"> <li>the person’s speech, balance, co-ordination or behaviour is noticeably affected, and</li> <li>it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor.</li> </ul>
Queensland	Section 4 of the <i>Liquor Act 1992</i> contains the following definition of ‘unduly intoxicated’: <ul style="list-style-type: none"> <li>...unduly intoxicated means a state of being in which a person’s mental and physical faculties are impaired because of consumption of liquor so as to diminish the person’s ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances.</li> </ul>
Victoria	Section 3AB of the <i>Liquor Control Reform Act 1998</i> contains the following definition of intoxication: <ul style="list-style-type: none"> <li>... a person is in a state of intoxication if his or her speech, balance, co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.</li> </ul>
Western Australia	Section 3A of the <i>Liquor Control Act 1988</i> considers that a person is drunk for the purposes of this Act if: <ul style="list-style-type: none"> <li>the person is on licensed premises or regulated premises; and</li> <li>the person’s speech, balance, co-ordination or behaviour appears to be noticeably impaired; and</li> <li>it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor.</li> </ul>
South Australia	Section 108 of the <i>Liquor Licensing Act 1997</i> states that liquor not to be sold or supplied to intoxicated persons. If: <ul style="list-style-type: none"> <li>liquor is sold or supplied on licensed premises to an intoxicated person; or</li> <li>liquor is sold or supplied on licensed premises to a person in circumstances in which the person’s speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor.</li> </ul>
ACT	Section 104 of the <i>Liquor Act 2010</i> states that a person is intoxicated if: <ul style="list-style-type: none"> <li>the person’s speech, balance, coordination or behaviour is noticeably affected; and</li> <li>it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor.</li> </ul>
Northern Territory	Section 7 of the <i>Liquor Act</i> states that a person is drunk if: <ul style="list-style-type: none"> <li>the person’s speech, balance, coordination or behaviour appears to be noticeably impaired; and</li> <li>it is reasonable in the circumstances to believe the impairment results from the person’s consumption of liquor.</li> </ul>

It is noted that the majority of other states and territories have included their definitions in recent times.



There are some differences between the approaches of the different state and territory legislation, particularly in relation to the terminology used. For example, whilst some (WA and the Northern Territory) use the term 'drunk', the majority use terms such as 'intoxicated', 'state of intoxication', 'noticeably intoxicated' or 'unduly intoxicated'.

Nevertheless, as illustrated by Table 7, there are significant commonalities in the way that jurisdictions define these terms or provide guidance on how to determine if a person's condition meets these terms. These commonalities focus on the fact that being drunk or significantly intoxicated will be indicated by alcohol having affected or impaired a person's speech, balance, coordination or behaviour.

There are various advantages to introducing a definition of 'drunk' into the Liquor Licensing Act. For example, the Western Australian Department of Racing, Gaming and Liquor website notes that one of the motivations for including a definition of 'drunk' in the *Liquor Control Act 1988* was to remove the,

*'defence that allows offenders to create a reasonable doubt, by suggesting that the impairment of their speech, balance, co-ordination or behaviour may have been caused by other factors such as drugs, fatigue, or mental abnormality'<sup>54</sup>.*

No studies of the effectiveness of the definitions could be identified. A review of the case law related to the definitions was conducted, however the majority of decisions are heard in the lower courts and are not transcribed and hence are not available for review. Nevertheless, in the cases that were heard in higher courts, the judges analysed and interpreted the definition to determine whether an offence had been committed. That is, they made reference to the process outlined in the definition to determine if a reasonable belief had been formed that a person was drunk.

During consultation Tasmania Police and the Department of Treasury and Finance both noted that the lack of a definition of the term 'drunk' in the Liquor Licensing Act made the job of enforcing the Act more difficult.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, the status quo).
2. Amend the Liquor Licensing Act to include a definition of 'intoxicated' that provides guidance to licensees and their staff in determining whether a person is drunk.

## Conclusion

The absence of a definition of 'drunk' does make it harder to enforce the Act in terms of offences relating to serving persons who are drunk. Introducing a definition of into the Liquor Licensing Act would provide a standard process to be followed when forming a reasonable belief as to whether an individual is drunk. This definition could be used by police, licensees and licensed staff to help minimise harms related to the misuse of alcohol. Furthermore, defining the term "intoxicated" rather than "drunk" would be preferable to ensure consistency with the approaches in the majority of other jurisdictions. This would require a review of the use of the word 'drunk' in the Liquor Licensing Act.

It is recognised that definitions of the terms 'drunk' or 'intoxicated' contained in other state and territory legislation are largely subjective. Nevertheless, it is considered that Option 2 is likely to assist enforcement efforts to reduce incidences of serving persons who are drunk.

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<sup>54</sup> *Definition of Drunkenness*, Department of Racing, Gaming and Liquor website, accessed on 10 August 2012.

### Recommendation:

19. It is recommended that the Liquor Licensing Act be amended to include a definition of 'intoxicated' that provides guidance to licensees and their staff in determining whether a person is drunk. This definition should be developed having regard to the definitions used in other State and Territory Acts. It will also require a review of the use of the word 'drunk' in the Liquor Licensing Act.

## 4.3.7 Regulation of the consumption of alcohol in public places

### Issue

Currently there are two different ways in which the consumption of alcohol in public places can be restricted or prohibited – one under the Police Offences Act and the other under the *Local Government Act 1993*. This can lead to confusion amongst the administering agencies regarding when it is appropriate to use which law and who has responsibility for enforcing those laws.

### Discussion

Section 25 of the Police Offences Act provides that regulations can be made to specify public places where alcohol may not be consumed at any time or may only be consumed within specified times. Currently there are nine areas in Tasmania which are prescribed under the Police Offences Act. Tasmania Police administer which areas are to be included in the regulations.

Alternatively, Councils can, under the Local Government Act, pass and implement by-laws that restrict the use of alcohol in public places. In this respect, several Councils have enacted by-laws controlling the consumption of alcohol on council land. For example:

- Brighton Council has blanket ban on possessing, consuming or supplying alcohol on council land without consent.
- Burnie City Council has a by-law that provides for alcohol free zones and makes it an offence for '*being intoxicated on council land*'.
- Kingborough Council has a by-law which provides for alcohol free zones where the consumption of alcohol may be prohibited at all times or only permitted within certain times. This by-law also makes it an offence to sell liquor on council land or recreational facility without a permit and creates an offence for '*being intoxicated on council land or recreational facility*'.

The by-laws normally state who can enforce these by-laws, which can include Council officers and 'authorised persons', such as police. It is noted that Councils can nominate Tasmania Police officers as authorised persons without consulting Tasmania Police. However, it must be noted that by-laws, if advertised clearly through on-site signage, can help to minimise harm related to the misuse of alcohol.

It is observed that using by-laws to manage the consumption of alcohol in public places can create an enforcement problem, as it is difficult for Tasmania Police officers to have full knowledge of all the different municipal by-laws and their processes. It is also considered that blanket bans on the consumption of alcohol in public places raises the issue of whether this is an unreasonable imposition on the rights of individuals to responsibly consume alcohol at picnics, barbeques or other activities, including public events.

Tasmania Police have indicated that, if there is evidence of a significant problem with the misuse of alcohol in a particular area that warrants special enforcement efforts by Tasmania Police, then it is more appropriate to address this problem through the declaration of liquor controls under

Section 25 of the Police Offences Act. This facilitates consistent state-wide enforcement of such restricted alcohol areas by Tasmania Police.

However, Tasmania Police have indicated that they do not support the use of this power to place blanket bans on the consumption of alcohol in public places. They do not consider that Tasmania Police should be required to enforce such blanket bans as it is an inefficient use of scarce police resources.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, the status quo).
2. Tasmania Police to liaise with local government through LGAT with a view to encouraging Councils to:
  - approach Tasmania Police when they have specific public areas where there are demonstrable problems with the misuse of alcohol to allow an assessment of whether alcohol restrictions should be introduced under Section 25 of the Police Offences Act; and
  - liaise with Tasmania Police on enforcement requirements if they implement by-laws restricting the consumption of alcohol in public places that require enforcement by Tasmania Police.
3. Amend the Local Government Act to prevent either local government authorities from making by-laws that impose restrictions on the consumption of alcohol in public places.

## Conclusion

Consistency in the way in which the consumption of liquor in public places is regulated would assist in ensuring effective enforcement across the State. However, Option 3 would be an over-reaction to the nature of the identified problem and would unnecessarily restrict the ability of local government to provide for the good governance of their municipalities.

Rather, the cooperative approach outlined in Option 2 is recommended. This approach will help ensure state-wide consistency in the approach to restricting alcohol consumption in public places where there are demonstrable problems with alcohol misuse. It will also ensure that Tasmania Police is fully informed of enforcement requirements where they are expected to assist in the administration of local by-laws restricting the consumption of alcohol in public places.

### Recommendation:

20. It is recommended that Tasmania Police liaise with local government through LGAT with a view to encouraging Councils to:
  - approach Tasmania Police when they have specific public areas where there are demonstrable problems with the misuse of alcohol to allow an assessment of whether alcohol restrictions should be introduced under Section 25 of the Police Offences Act; and
  - liaise with Tasmania Police on enforcement requirements if they implement by-laws restricting the consumption of alcohol in public places that require enforcement by Tasmania Police.

## 4.4 Building a Stronger TAAF

The issues in this section concentrate on methods that could be used to further the implementation of TAAF. Issues include:

4.4.1 Industry knowledge, understanding and commitment to TAAF.

4.4.2 Data on the impact of alcohol consumption in Tasmania.

### 4.4.1 Industry knowledge, understanding and commitment to TAAF

#### Issue

Consultations found that industry awareness of, and priority given to, TAAF is low; hence there is no firm industry commitment to its aims and objectives.

#### Discussion

The TAAF is the Tasmanian Government's overarching policy on alcohol. It contains the Government's priorities, goals and aims regarding the supply and consumption of alcohol in the Tasmanian community.

Discussions with industry stakeholders (Tasmanian Hospitality Association, Small Business Council Consultation, Tourism Industry Council Consultation, Wine Tasmania and United Voice) revealed a general awareness of TAAF, with most stakeholders indicating that they had been consulted on its development and implementation. However, there was also feedback indicating that there was insufficient industry engagement with the TAAF process to ensure their involvement in implementation.

It is understood that IAWGD and AAG members have spent considerable time consulting with industry on TAAF development and implementation on a bilateral basis. However, it is observed that consultations on implementation are different from obtaining industry body support and commitment to TAAF aims and objectives.

The IAWGD is the primary governance arrangement for implementing TAAF and was also the driver for TAAF's initial development. Whilst state and local government and community organisation stakeholders are represented on the IAWGD, it does not include any industry representation.

Consultations also indicated that some industry bodies did not agree with all TAAF aims and objectives. For example, the THA indicated it had concerns with TAAF *Aim 1 – Reduce the volume of per capital alcohol consumption in Tasmania*. This is not surprising given industry's interest in selling alcohol as a legal product.

Despite this, the THA indicated that it did support the harm minimisation objectives of TAAF and, in principle, supported the strengthening of the Liquor Licensing Act in this area. The THA observed that its support in this area reflected the fact that alcohol was a product that required regulation to ensure responsible handling to ensure it was not misused.

#### Options

The following potential responses to this issue were identified:

1. Make no change (ie, status quo).
2. Examine ways of encouraging and formalising industry commitment to TAAF.

#### Conclusion

It is considered that encouraging and formalising industry commitment to TAAF can play an

important role in improving the success of TAAF and its implementation. This does not require industry to agree to every aim of TAAF. Rather, it can involve obtaining a firm industry commitment towards achieving those components of TAAF which industry supports.

To achieve this, consideration should be given to how an appropriate governance/engagement mechanism could be established that involves industry at a peak body level. It is likely that this would need to involve engagement with industry at a Ministerial or Departmental Secretary level.

This does not necessarily require the establishment of a new governance body, as it may be possible to obtain the necessary engagement through existing government/industry high level consultative arrangements.

#### **Recommendation:**

21. It is recommended that ways be examined of encouraging and formalising industry commitment to TAAF.

## **4.4.2 Data on the impact of alcohol consumption and the social impact of alcohol misuse in Tasmania**

### **Issue**

Consultation with Tasmania Police, Statewide Mental Health Services and Population Health in DHHS indicated that there is insufficient data collected in Tasmania regarding the consumption of alcohol and the social impact of alcohol misuse.

### **Discussion**

The lack of relevant data regarding the consumption of alcohol and the social impact of alcohol misuse in Tasmania was an issue raised during this study and, indeed, impacted on the ability of this report to address some of the identified issues.

Such data is vital to the implementation of TAAF and minimising harm related to the misuse of alcohol. Specifically, such data:

- Enables the formulation of appropriate evidence based policy and operational responses to alcohol issues; and
- Can help identify benchmarks that can be used as a basis for assessing the efficacy of TAAF.

The importance of good data is recognised as a key requirement for the implementation of TAAF. Guiding Principle 1 of the TAAF is a '*Commitment to an evidence-based approach to policy development and service delivery and development*'. Under this Guiding Principle, there are several identified areas for action:

- a) adopting processes to ensure policy and practice relating to Government, industry and community action on alcohol issues is based on an understanding and application of the evidence about what works to reduce alcohol-related harm;
- b) implementing systems and processes to ensure there is sufficient and robust information and analysis to inform alcohol-related policy decisions and to monitor the effectiveness of the Framework;
- c) developing appropriate infrastructure and arrangements to enable information to be collected and assessed; research to be undertaken and utilised; and initiatives and programs evaluated to inform planning, policy development and implementation; and

- d) developing systems to collect and analyse information to support interventions for drug and alcohol use in at risk groups to inform the development of initiatives and early interventions.

The TAAF goes further, recognising the need for using data to drive policy evaluation, stating that:

*Each annual implementation plan will be monitored and reviewed by the Alcohol Advisory Group on an ongoing basis. An agreed set of indicators and the data needs will be established by the IAWGD to enable baseline and regular data collection to assist with monitoring and evaluation.*<sup>55</sup>

The TAAF Annual Implementation Plan 2011 contains a number of initiatives aimed at improving the available data, particularly in relation to the use of alcohol during pregnancy, wholesales alcohol sales data and enhanced population health data.

In addition, key Tasmanian Government services recognise the need for improved data collection and its importance in shaping the provision of current and future services. For instance, during consultations Tasmania Police indicated that their current incident data did not sufficiently distinguish instances where alcohol was a contributing factor. It was also noted during the Liquor Licensing Forum that:

*It was generally acknowledged that there is a lack of available data to provide appropriate evidence to support a community interest argument when opposing liquor licensing applications. This applies to police, health and alcohol sales data. Tasmanian data in relation to alcohol-related assaults, place of last drink, Emergency Department admissions and wholesale alcohol sales data is frequently unavailable/unreliable*<sup>56</sup>.

One of the key issues that is preventing the attainment of an effective data set regarding the supply of alcohol, the consumption of alcohol and the harm related to the misuse of alcohol in Tasmania is the lack of an overarching data strategy that articulates what impacts need to be monitored and assessed to evaluate the success or otherwise of TAAF and what data is required to inform that assessment. This is reinforced by an observation arising from a Tasmania Police Liquor Licensing Forum, where it was observed that:

*There is a need for alcohol-related crime and violence issues to be captured by both law enforcement and health authorities. Currently this data is limited and often unreliable, and does not enable clear linkages to be drawn between alcohol-related public place assaults, licensed premises and emergency service responses. The collection of data needs to be standardised across sectors, to facilitate information sharing between police, health and local government.*<sup>57</sup>

Table 8 lists the broad types of data that could be covered by such a strategy to assess the effectiveness of TAAF.

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<sup>55</sup> *Rising Above the Influence: Tasmanian Alcohol Action Framework, 2010 – 2015*, Tasmanian Government, p. 20.

<sup>56</sup> *Liquor Licensing Forum 2010*, Department of Police and Emergency Management, pp.7-8.

<sup>57</sup> *Ibid*, p.9.

**Table 8: Data types**

Data Type	Data to be collected
Alcohol consumption data	The amount of alcohol consumed by population age/gender/socio-economic background, the types and strengths of alcohol sold and the postcode/location of individuals purchasing/consuming alcohol.
Community attitudes data <sup>58</sup>	The views of the Tasmanian community on the use of alcohol; stratified by age, gender, background, location and alcohol consumption patterns.
Police incident data <sup>59</sup>	The time, location and information regarding those involved in any incidents, offences or arrests that are connected to the use of alcohol.
Health authority data	The time of, nature and details (age, gender and postcode) of those involved in hospitalisations or ambulance attendances that can be connected to the use of alcohol.
Community health data	The details (age, gender, postcode and specific nature of problem) of attendance at the various State, private and community services and groups that treat, care for or support those that are affected by the misuse of alcohol.

The absence of a clear overarching data strategy clearly limits the extent that the impacts of alcohol consumption in Tasmania can be monitored and significantly hampers the ability of the Government to evaluate the success or otherwise of TAAF.

It is self-evident that improved data and a cohesive data strategy will generally lead to improved policy decision making and improved operational strategy and enforcement. However, data collection is not free of cost and hence there is a need to ensure that the most cost effective methods of data collection are identified.

In this respect, one data collection issue that was raised a number of times during consultations was the need to collect wholesale sales data in order to assess the broad level of alcohol consumption in Tasmania. This issue was raised by officers from Statewide Mental Health Services and Population Health in DHHS and during conversation with Professor Ann Roche, Director at the National Centre for Education and Training on Addiction<sup>60</sup>. It is noted that re-establishing<sup>61</sup> the collection of this data is currently an intended action under the TAAF Implementation Plan 2011; with the specific action being:

*Support the work and direction of the National Advisory Committee National Alcohol Sales Data Project through Tasmanian representation and active contribution to the outcomes of the Committee.*

Whilst alcohol sales data provides general information about how much and where alcohol is sold, the value of this data needs to be balanced against:

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<sup>58</sup> An example of this type of survey is the 'Annual Alcohol Poll: Attitudes and Behaviours', Foundations for Alcohol Research and Education.

<sup>59</sup> Tasmania Police noted during consultation that they are in the process of revising their data collection strategy.

<sup>60</sup> Pers. Comm. Professor Ann Roche.

<sup>61</sup> The majority of Australian states and territories ceased collecting this data in 1995-96 following a High Court decision that disallowed the collection of state alcohol and tobacco taxes (Queensland, Western Australia and the Northern Territory still collect this data) - *Australian Alcohol Indicators: Patterns of Alcohol Use and Related Harms for Australian States and Territories 1990-2001*, National Drug Research Institute, p. xiii.

- whether it provides the right type of information that is necessary to inform policy decision making;
- the costs of data collection placed on the government authorities administering the data collection; and
- the compliance burden the collection of this data would place on the hospitality industry.

An alternative approach is to rely upon community survey data which is aimed at providing specific information about who is consuming alcohol, how much they are consuming, where they are consuming it and in what form they are consuming it. This type of data collection potentially provides much richer information that can be used to specifically target public information and education campaigns that are targeted at specific problem areas. It is noted that this type of data gathering is carried out at a national level by the Foundation for Alcohol Research and Education (FARE). FARE commissions an annual poll aimed at developing an understanding of Australians' attitudes towards alcohol, their perspectives on various alcohol policies, and alcohol consumption trends. State breakdowns of the poll results do not appear to be available.

The type of findings arising from the FARE surveys is highlighted by the following quote:

*Australians' consumption of alcohol in 2012 remained stable when compared to 2010 and 2011, with 81% of people consuming alcohol. Drinkers are almost evenly split into people who consume one to two standard drinks on a typical occasion (51%), and those that consume three or more standard drinks (46%) per week. While the amount consumed remained stable, there was a significant increase in the number of Australians consuming six standard drinks or more on a typical occasion, with 16% of people reporting this, up from 12% in 2011.<sup>62</sup>*

In light of this, consideration should be given to investigating the most cost effective source of data relating to the consumption of alcohol and the harm related to the misuse of alcohol.

## Options

The following potential responses to this issue were identified:

1. Make no change (ie, status quo).
2. The IAWGD establish an overarching data strategy that articulates what impacts need to be monitored and assessed in order to evaluate the success or otherwise of TAAF and what data is required to inform that assessment. This data strategy needs to:
  - detail the types of data that needs to be collected and the methods are the most appropriate/efficient to collect that data; and
  - includes strategies for disseminating the data to key stakeholders and the public.

## Conclusion

Introducing an overarching data strategy is likely to significantly improve the ability of the IAWGD to advise the Government on the impact and effectiveness of TAAF and to justify relevant new policy measures aimed at supporting TAAF aims. It will also improve the ability of key Government services to manage their operations to more efficiently address harm related to the misuse of alcohol.

Accordingly, Option 2 is recommended, particularly as the development of such a strategy is foreshadowed by TAAF, but does not appear to have been developed yet.

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<sup>62</sup> *Annual Alcohol Poll: Attitudes and Behaviours*, Foundation for Alcohol Research and Education, 2012.

**Recommendation:**

22. It is recommended that an overarching data strategy be established by the IAWGD that articulates what impacts need to be monitored and assessed in order to evaluate the success or otherwise of TAAF and what data is required to inform that assessment. This data strategy needs to:
- detail the types of data that needs to be collected and the methods are the most appropriate/efficient to collect that data; and
  - includes strategies for disseminating the data to key stakeholders and the public.

## 5 Other Issues

During this scoping study a number of important issues that were raised that, following discussion with the AAG, were concluded to be out-of-scope of this project. Specifically, addressing these issues would require substantial additional work that the AAG concluded was not reasonable within the scope of this report. It is understood that the AAG will provide advice to the IAWGD on how these issues might be progressed. These other issues are outlined below.

### 5.1 Universal legislated minimum drinking age

During consultation officers from State-wide Mental Health Services at DHHS who indicated that there should be a universal legislated minimum drinking age of 18 years. Specifically, they saw it as inconsistent to allow minors<sup>63</sup> to drink in private premises when it is illegal for them to drink in public or in licensed premises.

The suggestion was also put that there was a public health case for the minimum drinking age to be lifted to 25 years, given some medical evidence that drinking alcohol can adversely affect persons up to that age from a developmental perspective. However, this option was not strongly pursued by DHHS officers.

It is likely that introducing a universal legislated minimum drinking age of 18 years would support a number of TAAF aims, however it is not clear that there is a sound body of evidence on which to base such a move.

DHHS officers indicated there is a body of clinical evidence showing that the consumption of alcohol has a detrimental impact upon the health of minors. However, information published in the National Health and Medical Research Council's (NHMRC) guidelines on alcohol is not conclusive on this matter, stating that,

*Alcohol may adversely affect brain development and be linked to alcohol related problems later in life. However, this evidence is not conclusive enough to allow definitive statements to be made about the risks of drinking for young people<sup>64</sup>.*

This suggests the further evidence is required to be presented and accepted at a national level before firm policy directions on this matter can be taken.

In this respect, the Tasmanian Government has undertaken some recent reforms in relation to the consumption of alcohol by young people, with amendments to the Police Offences Act in 2009 that introduced the 'responsible adult supervision' reforms which tightened controls on the supply of alcohol to minors in private places. These reforms are just beginning to gain traction, with the first prosecution under these new laws recently coming before the courts<sup>65</sup>.

There is the potential that a universal legislative minimum drinking age of 18 years could perversely increase the chances for young people to experience harm from the consumption of alcohol. Current laws allow responsible adults to supervise minors who consume alcohol in private premises. Removing this ability could result in minors consuming alcohol in more dangerous circumstances or locations.

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<sup>63</sup> Minor is used to describe a person under 18 years of age.

<sup>64</sup> *Australian Guidelines: To Reduce Health Risks from Drinking Alcohol*, National Health and Medical Research Council (NHMRC), p. 57.

<sup>65</sup> *Drawing the line on youth drinking*, report by ABC radio, regarding prosecution of 19 year old Launceston man, 11 April, 2012, <http://www.abc.net.au/local/stories/2012/04/11/3475168.htm>

Additionally, given the recent legislative changes cited above, it is considered that the proposal for a universal legislated minimum drinking age of 18 years is likely to be ahead of current community attitudes towards acceptable consumption of alcohol norms. Accordingly, if this proposal is to be pursued, a critical factor will be the need to shift current community attitudes and behavioural patterns regarding drinking by young people before effecting legislative change. Public information and education campaigns are the most effective method for achieving this shift.

## 5.2 Maximum limits on licensed premise densities

A number of stakeholders raised the issue of the need to examine whether maximum limits on licensed premise densities should be imposed in order to restrict public access to alcohol and hence reduce harms related to the misuse of alcohol. Other stakeholders indicated that the concept of such limits had not been proved as being a viable tool for the control of alcohol related harms.

The link between licenced premise density and harm related to the misuse of alcohol was explored by Chikritzhs et al<sup>66</sup> in their 2007 feasibility study on '*Predicting alcohol-related harms from licensed outlet density*'. This study was based on wholesale alcohol sales data in Western Australia. The study found that there is a correlation between the two factors, ie, that the level of alcohol related harm in an area can be associated with the density of licensed premises<sup>67</sup>. It is noted that the Chikritzhs et al study did not draw any conclusions on the cause of the correlation. Nor did the study propose specific controls on licenced premise density limits. Rather, the study concluded that:

*Ultimately, however, it should be left to individual communities and their representatives to determine the 'optimal' balance between the apparent benefits brought by the physical availability of alcohol and the subsequent costs to public health, safety and amenity.*

Licensed premise density is also likely to be linked to the demand for alcohol. Hence, it is likely that there is a correlation between the demand for alcohol and alcohol related harms. Consequently, it is not clear that limits on licenced premise density will directly reduce alcohol related harms as such limits do not address demand factors. Indeed, the Chikritzhs et al study was focussed primarily on developing a model to predict the level of alcohol related harms from the density of licensed premises, with the aim that such a model could:

*...help authorities determine appropriate liquor outlet densities for minimising alcohol-related harms within communities<sup>68</sup>.*

It is considered that further work is required before maximum limits on licence densities could be considered as an appropriate policy response to help achieve a reduction in harms related to alcohol misuse. This work would need to examine whether licenced premise density limits could be an effective method of reducing harms and, if so, how it could be applied. This work would need to consider the equity and competition impacts of such limits.

It would also need to determine how such limits could be applied in practice given the variety of liquor licence types and the quite different risks of these licence types in terms of their potential to contribute to alcohol related harms. For example, it would need to be determined

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<sup>66</sup> *Predicting alcohol-related harms from licensed outlet density: A feasibility study*, Tanya Chikritzhs, Paul Catalano, Richard Pascal and Naomi Henrickson, 2007.

<sup>67</sup> *Ibid*, p. xv.

<sup>68</sup> *Ibid*, p. 2.

how:

- density limits would be applied in precincts such as the Hobart Port area, where there is a wide range of licence types; and
- such limits would deal with licences issued to restaurants compared to wine-bars compared to restaurant/taverns compared to nightclubs?

Finally, the development for Tasmania of a predictive model as used by Chikritzhs et al could provide valuable input into the decision making processes of the Licensing Board and the Commissioner for Licensing under the Liquor Licensing Act. In this respect, it is noted that the current decision criterion for the issue of liquor licences under the Liquor Licensing Act (“*in the best interests of the community*”) arguably allows the Licensing Board to consider issues of licence premise density when considering the granting of new licences. This consideration is on a case by case basis, rather than with reference to defined density limits.

However, such a model would require a range of data, including alcohol sales (or alternatively consumption) data, some of which is not currently available at the Tasmanian level. Accordingly, when progressing the recommendations of Section 4.4.2 in relation to the development of an overarching data strategy relating to alcohol, it is suggested that this should consider whether the development of a predictive model is viable and, if so, the data strategy required to support the development of such a model.

### 5.3 Mandatory drink driver rehabilitation programs

In June 2012 there was a public call by the State’s Chief Magistrate for mandatory drink driver rehabilitation programs to be introduced into the sentencing provisions for drink driving offences. It was proposed that this model would be based on one used in the USA<sup>69</sup>. This call was in response to concerns over the efficacy of the current sentencing provisions regarding drink driving offences, particularly in light of the reported high rate of reoffending by drink drivers.

It is noted that the Tasmanian Government is currently taking action in relation to repeat drink driving offenders through the Mandatory Alcohol Interlock Program<sup>70</sup>, which commences later in 2012. This program involves requiring repeat drink driving offenders to have an alcohol interlock device fitted to their vehicle which prevents vehicle operation if the driver has been drinking alcohol.

Discussions with the AAG indicate that the issue of mandatory drink driver rehabilitation programs is potentially a significant change to sentencing arrangements which may have significant budgetary impacts.

Despite this, it is observed that the proposal is in line with TAAF objectives as it is aimed at reducing the harms associated with drink driving by addressing the drinking behaviour of drivers who are convicted of drink driving offences. Accordingly, further investigation of the feasibility and costs and benefits of this proposal should be considered by the IAWGD.

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<sup>69</sup> *Drink drive rehab push*, The Mercury, Thursday 14 June, 2012.

<sup>70</sup> *Tasmania’s Proposed Mandatory Alcohol Interlock Program*, Tasmanian Department of Infrastructure, Energy and Resources.

## 5.4 Alcohol taxation and alcohol advertising controls

During consultations, some stakeholders suggested that there was a need for the reform of alcohol taxation to introduce volumetric taxation and to increase the level of taxation on alcohol. In addition, there were suggestions that there was a need for tighter advertising controls on alcohol.

As noted in the TAAF there is evidence that both taxation and advertising controls can have a direct impact upon minimising harm related to the misuse of alcohol<sup>71</sup>. However, alcohol taxation and the regulation of advertising are both outside of the Tasmanian State Government's control as they are covered by Commonwealth Government regulatory powers (although advertising content in Australia is largely self-regulated by industry<sup>72</sup>). Consequently, these issues need to be pursued by the Tasmanian Government through the appropriate national intergovernmental channels, such as the Ministerial Council on Drug Strategy and COAG.

It should be noted that under Key Strategy 2 of TAAF, Tasmania is committed to supporting national initiatives aimed at reducing the levels of, and harms from intoxication, including alcohol pricing, advertising and promotion restrictions and warning label requirements. In this respect, the 2011 TAAF implementation plan notes a number of national initiatives within which the Government is involved, however none of these initiatives currently focus directly on alcohol taxation or alcohol advertising.

## 5.5 Resourcing

Representatives from the ATDC indicated that they considered that Tasmania Police and the community sector are under resourced to properly enforce/deal with issues related to the misuse of alcohol. While there is no doubt that further resources would enhance the ability of Tasmania Police and the community sector to manage misuse of alcohol related issues, it is recognised that the Tasmanian Government operates in an environment of scarce resources. Consequently, these needs have to be balanced against other priorities for the Tasmanian community. For this reason, this issue was not been considered by this scoping study.

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<sup>71</sup> *Rising Against the Influence: Tasmanian Alcohol Action Framework 2012-2015*, Inter Agency Working Group on Drugs (IAWGD), pp.5-6.

<sup>72</sup> It should be noted that although the Commonwealth Government does have the ability to place some regulations on advertising content, it has not used this power to date.

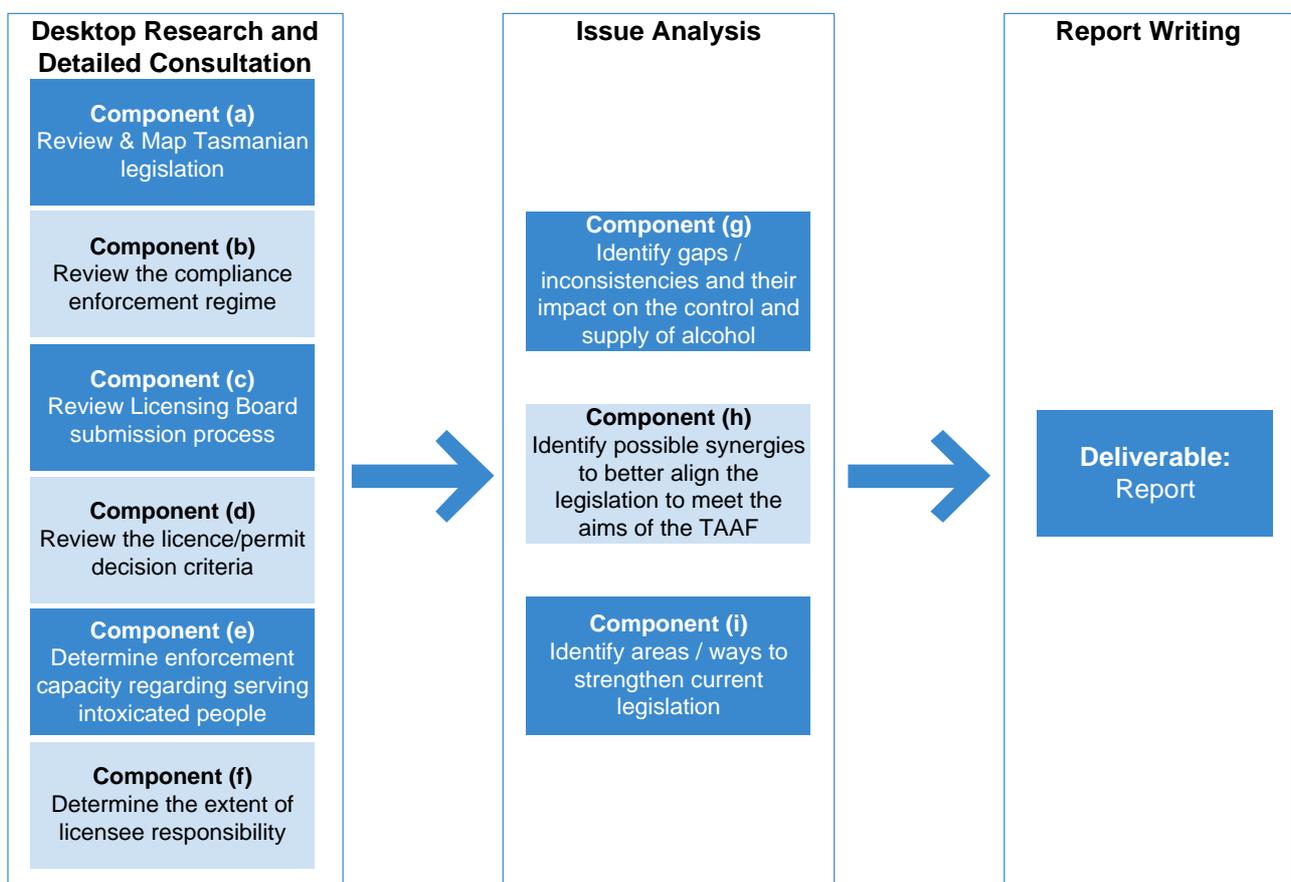
# Attachment A: Detailed Requirements and Methodology

In order to complete the Legislative Scoping Study the following high level tasks were undertaken:

- Desktop Research;
- Stakeholder Consultation;
- Presentation of findings to the AAG at regular intervals; and
- Final Report preparation.

Figure 4 provides a high level overview of the methodology applied during the scoping study:

**Figure 4: Methodology overview**



The methodology was guided by the analytical framework outlined in Figure 5, which was used to provide a holistic picture of the issues associated with the current legislative and regulatory framework dealing with the use of alcohol in Tasmania.

**Figure 5: Analytical framework**



## **Desktop Research**

A review and analysis of literature and recent studies relating to the legislative framework surrounding alcohol within Australia and internationally was undertaken. The outcomes of the research led to the development of consultation schedules to guide stakeholder consultations.

## **Consultation**

Consultation was undertaken with a range of government, community and industry representatives, as outlined below.

- Alcohol, Tobacco and Drugs Council;
- Australian Drug Foundation – Good Sports;
- Commissioner for Licensing;
- Department of Health and Human Services (Population Health);
- Department of Health and Human Services (Statewide Mental Health Services);
- Department of Police and Emergency Management;
- Department of Treasury and Finance - Inter-Government and Financial Policy Branch, Economic and Financial Policy Division;
- Department of Treasury and Finance – Liquor and Gaming Branch;
- Glenorchy City Council;
- Licensing Board;
- Local Government Association of Tasmania;
- National Centre for Education and Training on Addiction (NCETA) - Ann Roche, Allan Trifonoff, Roger Nicholas;
- Tasmanian Hospitality Association;
- Tasmanian Small Business Council;
- Tourism Industry Council Tasmania; and
- United Voice;

- Wine Tasmania.

### **Issues Analysis**

A range of issues with the legislative framework were identified based on the outcomes of the desktop research in conjunction with the stakeholder consultations. Two Progress Reports were provided to the AAG which presented the major issues identified and the reform themes arising from them.

Following feedback from the AAG and the completion of consultations, the Final Report was prepared.

# Attachment B: Current Legislative Framework

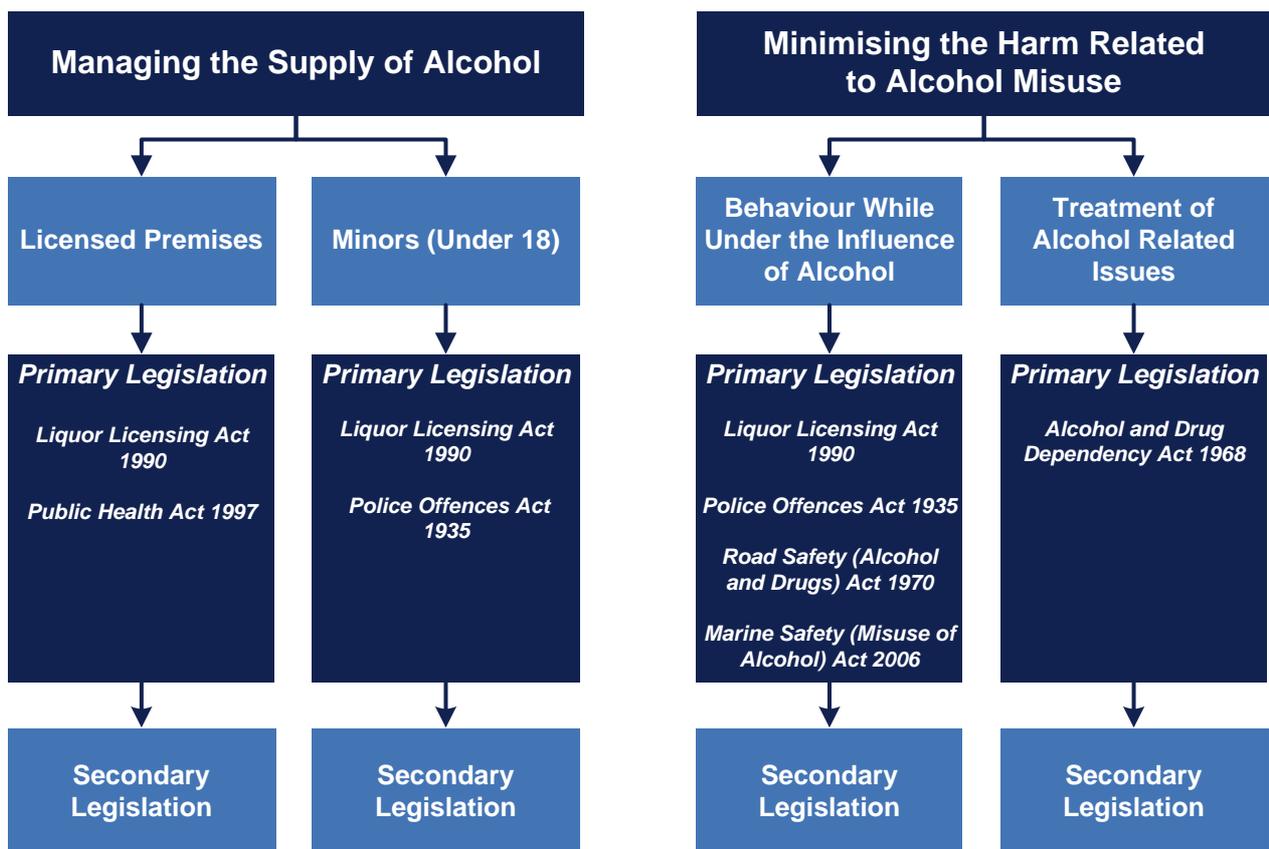
Tasmania currently has a number of Acts that deal with the supply, the consumption and the potential harms arising from the consumption of alcohol. Primary legislation includes the *Liquor Licensing Act 1990*, which controls the sale of alcohol from licensed premises and the *Police Offences Act 1935*, which contains a range of offences concerning the use of alcohol in public and private places. In addition:

- the *Road Safety (Alcohol and Drug) Act 1970* and the *Marine Safety (Misuse of Alcohol Act) 2006* contain offences relating to the behaviour of drivers of vehicles or vessels respectively while under the influence of alcohol; and
- the *Alcohol and Drug Dependency Act 1968* allows for provision of treatment centres for the purposes of admitting clients with alcohol and or other drug dependencies for treatment.

Numerous other Acts contain some secondary controls relating to alcohol.

The primary legislative instruments can be linked to the 'Managing the Supply of Alcohol' and 'Minimising Harm from Alcohol Misuse' components of the harm minimisation framework outlined in Section 2. This is illustrated in Figure 6.

**Figure 6: Tasmanian legislative framework for the control of alcohol**



The remaining component of harm minimisation is 'Managing the Demand for Alcohol'. The three primary controls that can be used to manage the demand for alcohol are:

- taxation;
- restrictions on the advertising of alcohol; and
- public education.

In 1997 the High Court of Australia ruled that the various alcohol taxes collected by the states and territories of Australia were considered to be excise duties. The Australian constitution states that the collection of excise duties is the province of the Commonwealth Government.

Advertising content in Australia is self-regulated by industry through the Advertising Standards Bureau (ASB). This body was formed by the Australian Association of National Advertisers (AANA) in 1998 and is funded by a voluntary levy paid by the advertising industry. Although the Commonwealth Government has the constitutional and legislative power to regulate media content in Australia it has not used this power to date.

Public education on the potential harms related to the consumption of alcohol is conducted by both the Commonwealth and State Governments.

The following sections outline how the current Tasmanian legislative framework relates to alcohol generally. Each piece of primary legislation has been analysed in order to produce a qualitative and quantitative summary of how alcohol-related legislation operates in Tasmania and how effectively it can support the TAAF aims.

## Primary Legislation

### Liquor Licensing Act 1990

The Liquor Licensing Act is the predominant legislation relating to the sale and supply of alcohol in Tasmania. It is administered by the Department of Treasury and Finance and enforced by Tasmania Police, the Licensing Board and the Commissioner for Licensing.

The implied legislative intent of the Liquor Licensing Act is to control the supply and consumption of alcohol on licensed premises. Tasmania is the only Australian jurisdiction that does not have explicit objectives or aims in its liquor legislation.

The Act outlines the permits and licences that authorise the sale of alcohol. It is an offence to sell alcohol in Tasmania without holding one of the authorisations shown in Table 9<sup>73</sup>.

**Table 9: Licences and permits provided for by the *Liquor Licensing Act 1990***

Licence/Permit	Description of Authority
<b>Licences</b>	
General Licence	Authorises the sale of liquor between 5am and midnight on any day on the premises specified in the licence for consumption on or off those premises.
On Licence	Authorises the sale of liquor between 5am and midnight on any day on the premises specified in the licence for consumption on those premises.
Off Licence	Authorises the sale of liquor between 5am and midnight, on any day on the premises specified in the licence, for consumption off those premises.

<sup>73</sup> Section 5 of the *Liquor Licensing Act 1990* states that ‘A person shall not sell liquor except as authorized by: a) a liquor licence; b) a liquor permit; c) a general liquor exception. Penalty not exceeding 40 penalty units’.

Licence/Permit	Description of Authority
Club Licence	Authorises the sale of liquor between 5am and midnight on any day on the premises of the club specified in the licence to prescribed persons for consumption on or off those premises.
Special Licence	Authorises the sale of liquor between prescribed times and subject to any condition specified in the licence.
<b>Permits</b>	
Out-of-hours Permit	Authorises the sale of liquor on a licensed premises after midnight and before 5am subject to any conditions.
On Permit	Authorises the sale of liquor on an off licence premises at any time and subject to any conditions.
Off Permit	Authorises the sale of liquor on a licensed premises at any time, for consumption off those premises and subject to any conditions.
Special Permit	Authorises the sale of liquor on premises between prescribed times and subject to any conditions.

The Licensing Board can also issue general liquor exemptions<sup>74</sup> by notice in the Gazette. For example, general exemptions can be granted where the Board considers that the sale of liquor in a particular manner or the sale of a particular type of liquor should not require a licence or permit.

### Liquor Licences and Liquor Permits Issued in Tasmania

Table 10 provides details of the number and type of liquor licences that have been issued in Tasmania between 2002 and 2011.

**Table 10: Liquor licences and liquor permits issued in Tasmania**

Year	General Licence	Special Licence	Off-Licence	Club Licence	Special Licence - Wine Producer	On-Licence	Total
2002	304	467	8	208	129	31	1147
2003	302	477	17	206	137	44	1183
2004	306	511	18	210	151	62	1258
2005	307	489	18	210	145	71	1240
2006	308	512	29	209	153	84	1295
2007	311	530	35	210	155	106	1347
2008	312	544	40	209	164	113	1382
2009	310	536	46	205	160	121	1378
2010	325	565	49	205	161	124	1429
2011	330	570	55	207	167	140	1469

<sup>74</sup> Section 16, *Liquor Licensing Act 1990*

Table 10 illustrates a number of marked trends in the Tasmanian hospitality industry that reveal how the composition of the industry has changed between 2002 and 2011 in response to the changing alcohol consumption habits of the Tasmanian community. Specifically:

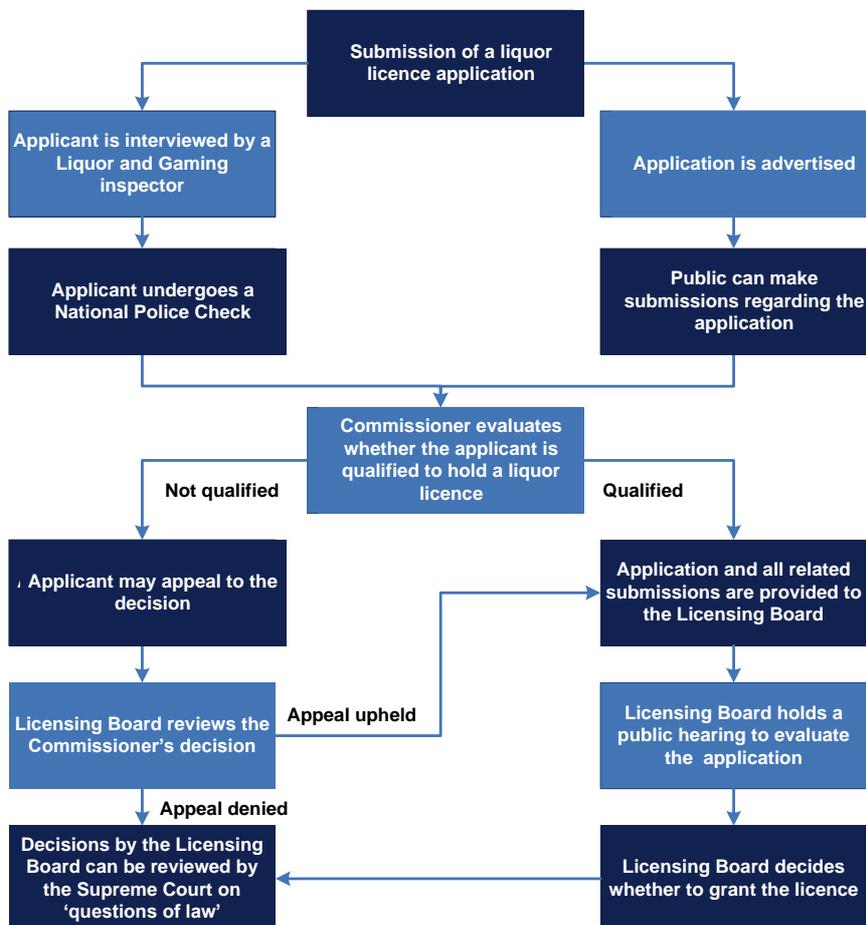
- The number of general licences (normally issued to hotels and taverns) has risen by 9 percent.
- The number of on-licences (normally issued to nightclubs, bars and bar/restaurants) has risen by 352 percent. The Liquor and Gaming Branch noted that 78 of the 109 additional licences issued over this time have been provided to restaurants.
- The number of off-licences (issued to bottle shops) issued has increased by 588 percent. The Liquor and Gaming Branch noted that this increase includes the move to the independent licensing of bottle shops that had previously been covered by licences for existing hotels.
- The number of special wine producers' licences has increased by 29 percent.

Over this time the Tasmanian population has grown by 8 percent, which indicates that the number of persons per licence has fallen from 414 persons per licence in 2002 to 348 persons per licence in 2011.

### Liquor Licensing Process

Liquor licence applications must be made to the Commissioner for Licensing in the approved form accompanied by the required information and fees. There are two primary stages to the liquor licensing process set out in the Liquor Licensing Act, as outlined in Figure 7.

Figure 7: Liquor licence application process



Firstly, the Commissioner for Licensing must determine whether or not the applicant is qualified to hold a liquor licence.

- This involves determining:
  - is the applicant 18 years or older;
  - is the applicant and the applicant’s associates ‘fit and proper’ to hold a liquor licence;
  - will the applicant be able to exercise effective control over the service and consumption of liquor on the premises; and
  - has the applicant completed training in the responsible service of alcohol<sup>75</sup>?
- In order to evaluate whether or not an applicant is qualified to hold a liquor licence the Commissioner may make any enquiries considered to be ‘*necessary or expedient*’.
  - This includes seeking advice (via a National Police Check) from the Commissioner of Police on whether:
    - ♦ the applicant is a fit and proper person to be a licensee; and
    - ♦ any associate of the applicant who is a natural person and likely to have any influence over the management of the business to be carried on under the licence is a fit and proper person to be an associate of a licensee.
- The applicant must give public notice of the application in an approved form that indicates that representations can be made in relation to the application.
  - The Commissioner is responsible for receiving representations regarding the liquor licence application. Representations must be received within 14 days of the last public notice.

If the Commissioner is satisfied that an applicant for a liquor licence is qualified to hold the licence, the Commissioner must refer the application and any representations made in relation to it to the Licensing Board for a hearing. This must happen within 30 days after the first public notice of the application has been made.

The Licensing Board must determine whether or not to direct the Commissioner to grant the applicant a liquor licence. The Board uses a public hearing process to hear the applicant and any representations before making a decision on a licence application.

Table 11 describes the criteria contained in the Liquor Licensing Act that the Licensing Board use to evaluate liquor licence applications.

**Table 11: Liquor licence application criteria**

Source	Criteria
Section 24A of the Liquor Licensing Act 1990	In considering an application for a liquor licence the Board must make a decision which is ‘ <i>in the best interests of the community</i> ’. The Act does not further define what is meant by this criterion.
Section 24A of the Liquor Licensing Act 1990	The Licensing Board must be satisfied that: <ul style="list-style-type: none"> <li>• The premises related to an off-licence application will primarily be used for the sale of liquor.</li> </ul>

<sup>75</sup> The Commissioner may grant a licence subject to a condition that the holder is to successfully complete the course or traineeship within defined period.



Source	Criteria
	<ul style="list-style-type: none"> <li>The premises related to an application for a restaurant on-licences will be primarily used as a restaurant.</li> </ul>
Section 25A of the Liquor Licensing Act 1990	The Licensing Board cannot grant a liquor licence in connection with the activities of a supermarket.
Section 3 of the Liquor Licensing Regulations 2003	<p>The Licensing Board must be satisfied that the following criteria are met before granting a club-licence:</p> <ul style="list-style-type: none"> <li>the club specified in the licence is incorporated under the Associations Incorporation Act 1964; and</li> <li>the principal activity of that club does not involve the sale or consumption of liquor.</li> </ul>
Section 4 of the Liquor Licensing Regulations 2003	<p>The Licensing Board must be satisfied that the following criteria are met before granting a special-licence:</p> <ul style="list-style-type: none"> <li>the principal activity to be carried on at the premises specified will not involve the retail sale of liquor or, if the principal activity will involve the retail sale of liquor, the premises must be part of a vineyard or winery and the sale of liquor will be restricted to Tasmanian wine; and</li> <li>in the case of premises at which meals are to be served, liquor will be sold only for consumption on or adjacent to the premises as an accompaniment to those meals.</li> </ul>
Section 4 of the Liquor Licensing Regulations 2003	<p>The Licensing Board must be satisfied that the following criteria are met before granting a special-licence to sell Tasmanian wine:</p> <ul style="list-style-type: none"> <li>the principal activity to be carried on at the premises specified in the licence is the provision of hospitality, tourist goods or services; and</li> <li>selling wine is not likely to have a detrimental effect on that activity.</li> </ul>

## Liquor Permit Process

Similar to liquor licence applications, liquor permit applications must be made to the Commissioner for Licensing in the approved form accompanied by the required information and fee. However, they do not go through a public submission phase and are not considered by the Licensing Board. The Commissioner for Licensing may grant an application for a liquor permit if the applicant:

- is a person who has attained the age of 18 years; and
- has satisfied the Commissioner that they will be able to exercise effective control over the sale and any consumption of liquor on the premises in respect of which the permit is sought.

Table 12 details the criteria contained in the Liquor Licensing Act that are used by the Commissioner for Licensing to evaluate liquor permit applications.

**Table 12: Liquor permit application criteria**

Source	Criteria
Section 31 of the Liquor Licensing Act 1990	<p>The Commissioner can only grant a liquor permit to an applicant if satisfied that:</p> <ul style="list-style-type: none"> <li>the applicant is 18 years of age or older; and</li> <li>The applicant will be able to exercise effective control over the sale and any consumption of liquor.</li> </ul>

Source	Criteria
Section 31 of the Liquor Licensing Act 1990	An out-of-hours permit, an off-permit or an on-permit can only be held by the licensee of the licensed premises to which the permit relates.
Section 34 of the Liquor Licensing Act 1990	In considering an application for a liquor permit the Commissioner must make a decision which is <i>'in the best interests of the community'</i> .
Section 34 of the Liquor Licensing Act 1990	The Commissioner must not grant an out-of-hours permit in respect of licensed premises unless satisfied the premises will not: <ul style="list-style-type: none"> <li>• cause undue annoyance or disturbance to: <ul style="list-style-type: none"> <li>– people living or working in the neighbourhood of the premises; or</li> <li>– customers or clients of any business in the neighbourhood of the premises; or</li> <li>– people conducting or attending religious services in the neighbourhood of the premises.</li> </ul> </li> <li>• cause the occurrence of disorderly conduct: <ul style="list-style-type: none"> <li>– in the premises; or</li> <li>– in the neighbourhood of the premises.</li> </ul> </li> </ul>

The Liquor and Gaming Branch advised that it requests *'details on times for the sale of liquor, the type of function, the location of the premises where liquor is to be sold, security measures to be implemented, anticipated attendance numbers and so on'* to help it determine whether to grant a liquor permit. The Commissioner then uses this information to help evaluate the following factors:

- the reasonable expectations of applicant in applying to sell liquor at their event against the possible risks to the 'external public community' not attending the event, but who may be impacted upon by the conduct of the event;
- the risk that the sale of alcohol at the event will cause undue annoyance/disturbance to the surrounding community; and
- the risk that the sale of alcohol would not take place in a responsible manner.

### Obligations and Offences

The Act places obligations on licensees and permit-holders and restrictions on how alcohol can be supplied to the public.

Contraventions of the Liquor Licensing Act can result in:

- Police issuing formal warnings, infringement notices, fines or a court summons;
- the Commissioner for Licensing suspending a licence for up to 3 months;
- the Commissioner for Licensing cancelling a permit; and/or
- the Licensing Board extending a suspension or cancelling a licence<sup>76</sup>.

Division 5 of the Act places numerous obligations on licensees. Breaching an obligation cannot result in a fine or conviction, but may result in a liquor restriction order being placed on the licensee

<sup>76</sup> Division 4 of the *Liquor Licensing Act 1990*

or the suspension of the licence. A licensee is obliged to retain control of the sale and consumption of liquor and ensure that responsible service of alcohol is practised on the licensed premises. They must clearly display their licence and produce it to an authorised officer on demand. Various other notices relating to the serving of young people and serving people appearing to be drunk must also be displayed. The licensee also has an obligation to remove people who are behaving in a disorderly manner and all people must be removed from the premises outside of authorised hours.

A licensee has further obligations specific to the national Responsible Service of Alcohol (RSA) scheme. A licensee must not allow a person to serve liquor on the licensed premises unless they have completed an approved RSA course or will complete one within 3 months of commencing employment. In order to demonstrate compliance with this requirement, the licensee must keep all relevant RSA records and produce them to an authorised agent upon demand.

Division 6 of the Liquor Licensing Act includes offences applicable to licensees, employees and patrons. Alcohol must not be sold by a server, or supplied by any person, to a person under 18 years of age on licensed premises. Furthermore, persons under the age of 18 years must not consume alcohol or enter certain parts of licensed premises. It is also an offence for a young person to produce false evidence of identification, be sent to obtain alcohol, or be given charge of alcohol.

Several offences reinforce responsible service of alcohol principles. Any server who sells alcohol to a person who appears to be drunk is guilty of an offence, as is the licensee who authorised that server to sell alcohol on the licensed premises. This is a strict liability offence against the licensee that applies regardless of the physical location of the licensee when the offence occurs. The licensee must also take reasonable action to prevent an offence, from any Act, from occurring on the licensed premises.

Division 7 of the Liquor Licensing Act gives police and authorised officers various powers relating to the administration of licensed premises. Police may enter licensed premises at any time, by force if necessary. Their powers include the ability to seize any document, alcohol or false identification and to require some or all patrons to leave the premises.

A patron must leave a licensed premise and not return for 24 hours if requested to do so by the licensee, a licensee's agent or a police officer. Failure to do so can result in a significant fine or immediate arrest.

Any person must give their name, address and date of birth if required to do so by a police officer if the officer suspects that person has committed, or is committing an offence under the Act.

## **Police Offences Act 1935**

The objective of the Police Offences Act is to prescribe offences which ensure protection of the community and prevent inappropriate behaviour. The offences under the Act are not as serious as those under the *Tasmanian Criminal Code*, but can still result in imprisonment. In relation to alcohol, the Police Offences Act primarily focuses on regulating the:

- supply and consumption of alcohol on a public street, in motor vehicles and in certain public places; and
- supply and consumption of alcohol by people under the age of 18 in private residences and all public places.

### **Consumption**

Section 25 of the Act states a person must not consume alcohol, or have an open container in

possession, in a public street or in any public place that is prescribed by the regulations. A public street has a wide definition under the Act and can include anywhere reasonably accessible by vehicle<sup>77</sup>.

The public places currently prescribed by the Police Offences Regulations as prohibited alcohol areas are Franklin Square in Hobart and the Glenorchy Council Memorial Gardens. The regulations also impose time restrictions for the consumption of alcohol on Salamanca Lawns, Princes Park, St David's Park, Parliament House Grounds and the Tasman Monument.

There is no regulation of alcohol supply or consumption in public places not specifically mentioned in the regulations. The exception is offences under Section 13 which provide that a person under the age of 18 years shall not:

- consume liquor in a public place; and
- have possession or control of liquor in a public place.

## Supply

The Police Offences Act prohibits (Section 13) the supply of alcohol to young people in a public place. However, in relation to private places, Division V prohibits the supply of alcohol to a youth at a private place unless the supplier is a responsible adult in relation to the youth. A responsible adult is a person with parental rights or responsibilities for the youth or an adult authorised to supply alcohol to the youth by a person with parental rights or responsibilities.

If the person supplying the alcohol to the youth meets the test of a responsible adult, that person can only supply the youth with alcohol consistent with their responsible supervision. The following factors are relevant in considering whether supply is consistent with the responsible supervision of the youth:

- a) whether the responsible adult is directly supervising the youth's consumption of the liquor;
- b) whether the responsible adult is intoxicated;
- c) whether the responsible adult provides food for the youth to consume with the liquor;
- d) whether the youth is intoxicated;
- e) the age of the youth; and
- f) the quantity and type of liquor supplied and the period over which it is supplied<sup>78</sup>.

## Drunkenness

There is no offence relating to being drunk in public. However, Section 4 of the Police Offences Act prohibits a person from being drunk in possession of any vehicle or dangerous weapon. It allows police to take into custody any person likely to harm either themselves, others or property. Police may also take into custody any person who is not capable of protecting themselves from harm.

## Review of Police Offences Act

In late 2011, a discussion paper was released on potential streamlining and improvements that could be made to the Police Offences Act. One of the improvements identified was the

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<sup>77</sup> The *Police Offences Act* interprets the term 'street' as per the *Traffic Act 1925*. Section 3 of the *Traffic Act 1925* defines public street as "any street, road, lane, thoroughfare, footpath, bridge, or place open to or used by the public, or to which the public have or are permitted to have access, whether on payment of a fee or otherwise."

<sup>78</sup> Sale or supply of liquor to youths, *Police Offences Act*, Section 26

consolidation of all liquor offences within one section of the Police Offences Act, including providing consistent search, detain and seizure authorities for all of these offences. It is understood that the consultation period has finished and that the outcomes of this review are being finalised.

## **Road Safety (Alcohol and Drugs) Act 1970 & Marine Safety (Misuse of Alcohol) Act 2006**

Both these Acts are specifically targeted at preventing alcohol related problems associated with operating a vehicle on land or vessel on the water. The Marine Safety (Misuse of Alcohol) Act refers to the Road Safety (Alcohol and Drugs) Act as its 'corresponding Act' in the Act's interpretation.

Section 4 of the Road Safety (Alcohol and Drugs) Act prohibits driving under the influence of alcohol to the extent that the driver is incapable of having proper control of the vehicle, regardless of their blood-alcohol level. Section 6 provides a strict liability offence of recording a blood-alcohol level above the prescribed amount. A person without a driver's licence may also be convicted under this offence.

The Marine Safety (Misuse of Alcohol) Act contains similar, yet more complex, offences relating to alcohol. Part 2 of the Act stipulates restrictions on consuming alcohol depending on the vessel type of which the person is in control:

- Commercial operators must have zero blood alcohol content at all times and it is an offence for the owner of a commercial vessel to allow a person with alcohol in their system to operate that vessel.
- Non-commercial vessels up to a certain size can be operated by a person who has consumed alcohol so long as the person in charge of the vessel remains below .05 blood alcohol content.

Part 3, which contains provisions similar to those in the corresponding road safety legislation, allows police to breath test persons in charge of vessels and charge them if necessary.

It is an offence under both Acts to refuse to submit to a breath analysis.

## **Alcohol and Drug Dependency Act, 1968**

The Alcohol and Drug Dependency Act (ADDA) allows for provision of treatment centres for the purposes of admitting clients with alcohol and or other drug dependencies for treatment. The legislation allows for involuntary detention for a period of up to 6 months.

Designated 'Treatment Centres' are the Royal Hobart Hospital, Launceston General Hospital, North-Western Regional Hospital and the part of the Carruthers Building, St Johns Park, New Town that is used by the Alcohol and Drug Service<sup>79</sup>.

The Act establishes the Alcohol and Drug Dependency Tribunal (ADDT), which has authority to determine applications by patients.

Part III of the ADDA deals with the notification of drug dependency and the regulation of the supply of drugs to patients. It provides for the:

- notification of drug dependence;
- restriction on supply of drugs for drug dependency for continuous use; and

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<sup>79</sup> *Alcohol and Drug Dependency (Treatment Centres) Order 2007*, Section 3

- authority for making drugs available to certain patients.

A review of ADDA commenced early 2010, but has not yet concluded.

## Secondary Legislation

There is a range of legislation containing various secondary controls relating to alcohol, including legislation with powers to take action as a consequence of behaviour whilst affected by alcohol. This legislation and the nature of the controls are outlined in Table 13.

**Table 13: Summary of legislation containing secondary controls on alcohol**

Act	Description of Controls on Alcohol
<i>Family Violence Act 2004</i>	Provision of specialist assessments to determine program suitability assessments under the Department of Justice Family Violence Offender Intervention Program. The principal target group is individuals who have been charged under the Family Violence Act, who are medium to high risk offenders and who have been referred by the Family Violence Offender Intervention Program as a result of mental health, disabilities and/or drug and alcohol issues.
<i>Guardianship and Administration Act 1995 (GAA)</i>	The Guardianship and Administration Board deals with the detention and/or treatment of people with a disability, which can include people who are temporarily or permanently incapacitated due to alcohol or drug dependency. It is difficult to seek or obtain a treatment order under the GAA due to the complexity of assessment of alcohol and other drug dependency.
<i>Local Government Act 1993</i>	The Act provides local governments with the authority to create bylaws. This has been used to introduce by-laws controlling alcohol such as the Alcohol Free Zones in Kingborough or blanket prohibitions on alcohol on council property in Brighton.
<i>Public Health Act 1997</i>	The Public Health Act contains provisions relating to overcrowding and the safety of licensed premises.
<i>Security and Investigations Agents Act 2002</i>	The Act regulates security agents and crowd controllers and defines what security actions may only be undertaken by qualified agents. The Act includes the regulation of crowd controllers working at licensed premises.
<i>Sentencing Act, 1997</i>	The Act provides sentencing options for Courts to divert defendants for assessment and treatment. Courts can and do request Court Reports to consider sentencing options. The Act provides the capacity for courts to remand a person to the Secure Mental Health Unit operated by DHHS. It also provides for assessment orders to obtain a report on sentencing options for the individual.
<i>Youth Justice Act 1997</i>	Tasmania Police currently have the ability to informally and formally caution young people (under 18 years of age) for a range of offences, including underage drinking in a public place, and diverting them away from the criminal justice system.- The Act determines the admission process for youths to the Secure Mental Health Unit operated by DHHS. It also provides the capacity for courts to remand a person to the Secure Mental Health Unit.
<i>Workplace Health and Safety Act 1995</i>	The Act contains provisions that require persons to ensure that they are not, by the consumption of alcohol or a drug, in such a state as to endanger their own safety at a workplace or the safety of any other person at a workplace.



## Administrative/Enforcement Arrangements

The administrative compliance and enforcement of the Liquor Licensing Act is carried out by:

- the Commissioner for Licensing and the Licensing Board, supported by the Liquor and Gaming Branch of the Department of Treasury and Finance; and
- Tasmania Police.

### The Licensing Board, the Commissioner for Licensing and the Liquor and Gaming Branch

Issues under the Liquor Licensing Act are brought to the attention of the Liquor and Gaming Branch via one of three methods:

- reports from the Liquor and Gaming Branch Compliance Inspectors (officers authorised under the Act);
- reports from Tasmania Police; and
- complaints from the general public.

The Liquor and Gaming Branch indicated that it has 14 Compliance Inspectors in Tasmania and that these inspectors conducted 844 inspections of licensed premises in 2011. Much of the compliance inspection work focuses on the obligations contained in Division 5 of the Liquor Licensing Act. The Compliance Inspectors work closely with the Licensing Police in relation to operational matters.

The Liquor Licensing Act contains a range of measures that enable the Licensing Board and the Commissioner for Licensing to manage compliance risks relating to liquor licences/permits. These measures include:

- Infringement notices can be issued to licensees and other persons for a range of offences.
- The Commissioner for Licensing can impose conditions at the time of granting (and thereafter) on special licences, out-of-hours permits, on permits, off permits and special permits<sup>80</sup>.
- The Licensing Board can impose conditions on licensees through Liquor Restriction Orders. These can only be imposed following a hearing that finds the licence operations are causing '*undue annoyance or disturbance*' or where the imposition of an order is necessary to '*reduce or avoid the occurrence of disorderly conduct*'<sup>81</sup>.
- The Commissioner can, subject to certain circumstances, provide licensees with a written notice requiring them to comply with a direction.
- The Commissioner can suspend a licence if:
  - the licensee fails to comply with a direction issued by the Commissioner; or
  - the Commissioner is satisfied that the licensee is no longer a fit and proper person to hold a licence; or

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<sup>80</sup> Conditions can also be placed on general liquor exemptions at the time of issue by the Licensing board.

<sup>81</sup> *Liquor Licensing Act*, Section 39, Liquor Restriction Orders

- if an associate of the licensee with any influence in the management of the licensee’s business is not, or is no longer, a fit and proper person to be an associate of a licensee; or
- the licensee fails to pay the required fees.
- The Commissioner can cancel an off-permit, on-permit, special permit or out-of-hours permit if satisfied that it is in the interests of the community to do so.
- The Commissioner for Licensing can apply to the Licensing Board to suspend or cancel a licence in a range of circumstances.

Mostly liquor permits are suspended or cancelled concurrently with the related liquor licence, but they can be suspended or cancelled separately by the Commissioner for Licensing.

Licensees may appeal decisions of the Commissioner to the Licensing Board. Decisions made by the Licensing Board can only be appealed on ‘questions of law’ through the Supreme Court.

## **Liquor and Gaming and Tasmania Police**

Tasmania Police undertake much of the day to day compliance action in relation to the offences listed in Division 6 of the Liquor Licensing Act.

Tasmania Police has established Licensing Police in each district – with three Licensing Police officers based in Hobart (covering the Southern District), two based in Launceston (Northern District) and one based in Burnie (Western District). Licensing Police have the responsibility for dealing with liquor licensing enforcement issues, training colleagues in liquor licensing enforcement and monitoring licensed premises. The Licensing Police work closely with Police Operational Response Teams (PORT) on operational matters relating to liquor licensing compliance.

There is regular interaction between the Liquor and Gaming Branch and Licensing Police, with consultative meetings held with the Launceston and Hobart Licensing Police once a week and the Burnie Licensing Police once a month. Meetings are also held in relation to major events such as the Horse Racing Cup meetings, Falls Festival, Taste of Tasmania, Breath of Life, Launceston Festivals and others.

An annual meeting is also held between the Operations and Compliance units of the Liquor and Gaming Branch and Tasmania Police. Police attendees are usually Licensing Police and the Police Inspectors responsible for Licensing Police and the Public Order Response Teams.

Tasmania Police have no statutory authority to suspend or cancel liquor licences; they may only issue fines for offences under various Acts.

Police can enter and remain on the licensed venue at any time and have a wide range of powers relating to search and seizure. It is also an offence for any person to hinder the police or licensing officers in the performance of their duties.

Police may issue infringement notices upon licensees who do not prevent offences on licensed premises. In addition, if a person appearing to be drunk is served by an employee the licensee faces a fine not exceeding 100 penalty units and the employee faces a fine not exceeding 50 penalty units. Any breaches of the Liquor Licensing Act can be used by the Commissioner in a Licensing Board hearing as evidence to support a suspension or cancellation of licence.

Aside from enforcing licensee compliance, Tasmania Police have the power to issue infringement notices to patrons who do not leave a licensed premise upon request of the licensee or a police officer. Furthermore, individuals may not return to that licensed premises for at least 24 hours after the request to leave was made or they face a fine or immediate arrest. All employees must practice responsible service of alcohol and not sell alcohol to anyone who appears to be drunk. It is also an offence for other patrons to supply alcohol to someone appearing to be drunk.



## Liquor Accords

Liquor Accords provide a framework for cooperative partnerships that aim to reduce potential harm related to the misuse of alcohol and to promote the precinct covered by the Accord as a safe and attractive locale for the public to enjoy. Accords are voluntary agreements between key stakeholders such as licensees, the Liquor and Gaming Branch, Tasmania Police, local government authorities, the Tasmanian Hospitality Association and community and business groups located within the locality of the Accord.

Accords are generally used to manage issues such as:

- Entertainment precinct safety (e.g. managing alcohol related violence, offences and anti-social behaviour);
- Improved local amenities (e.g. appropriate lighting, sufficient public transport during peak business times, etc.); and
- Management of specific issues (e.g. seeks to solve specific issues relating to harms arising from the misuse of alcohol).

The Liquor Accords currently operating in Tasmanian include:

- Burnie Wynyard Liquor Accord (established June 2008)
- Launceston Liquor Accord (established July 2009)
- Circular Head Liquor Accord (established November 2010)
- Devonport/Latrobe Liquor Accord (established July 2011)
- Hobart Liquor Accord (established July 2011)
- Glenorchy Liquor Accord (established August 2011)

Some of the key benefits of Liquor Accords include:

- Collaborating and networking as an industry group with government stakeholders such as Tasmania Police, Liquor and Gaming Branch, the Department of Infrastructure, Energy and Resources - Road Safety Operations Branch and local government;
- Keeping up to date with licensing and compliance issues;
- Problem solving issues with other licensees and government stakeholders;
- Establishing rules and standards re intoxication, patron behaviour and underage issues;
- Creating safer neighbourhoods and improved working environment
- Improved compliance with laws and RSA;
- Establishing standards around discounting drinks and other irresponsible practices; and
- Improved industry reputation<sup>82</sup>.

A primary benefit of the Accords meetings is that they provide key stakeholders with a chance to cooperatively resolve issues without the need for regulatory action by the relevant authorities. This reduces both the administrative and operational costs for government and the compliance burden on industry.

Consultations revealed sound support for the Liquor Accords. Tasmania Police, the Commissioner

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<sup>82</sup> *Responsible Serving of alcohol*, Department of Treasury and Finance.

for Licensing, the Tasmanian Hospitality Association and the Statewide Mental Health Services branch of DHHS indicated that they considered that Liquor Accords are generally working well.

The Launceston and Burnie-Wynyard Liquor Accords were seen to be particularly effective, with the Launceston Liquor Accord implementing a number of innovative approaches to dealing with issues relating to the misuse of alcohol. For example, the Launceston Accord has implemented a “Yellow Drink Card” strategy as a measure to monitor and control alcohol consumption in licensed premises. This initiative is designed as a warning to patrons that it may be time to slow down alcohol consumption and involves issuing patrons who appear unduly intoxicated with a Yellow Card that entitles them to a free soft drink.

A number of stakeholders, particularly the Tasmanian Hospitality Association, indicated that the support of the Commissioner for Licensing has been instrumental in assisting with the establishment and operation of the Accords.

# Attachment C: Objects and Purposes of Australian State/Territory Liquor Acts

## New South Wales

Section 3 of the *Liquor Act 2007*:

- The objects of this Act are as follows:
  - to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
  - to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
  - to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
  - the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
  - the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
  - the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

## Queensland

Section 3 of the *Liquor Act 1992*:

- The main purposes of this Act are:
  - to regulate the liquor industry, and areas in the vicinity of licensed premises, in a way compatible with:
    - ♦ minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence; and  
Examples of harm:
      - adverse effects on a person's health;
      - personal injury;
      - property damage;
    - ♦ minimising adverse effects on the health or safety of members of the public; and
    - ♦ minimising adverse effects on the amenity of the community; and
  - to facilitate and regulate the optimum development of the tourist, liquor and hospitality industries of the State having regard to the welfare, needs and interests of the community and the economic implications of change; and

- to provide for the jurisdiction of the tribunal to hear and decide reviews of certain decisions under this Act; and
- to provide for a flexible, practical system for regulation of the liquor industry of the State with minimal formality, technicality or intervention consistent with the proper and efficient administration of this Act; and
- to regulate the sale and supply of liquor in particular areas to minimise harm caused by alcohol abuse and misuse and associated violence; and to regulate the provision of adult entertainment; and
- to provide revenue for the State to enable the attainment of this Act's main purposes and for other purposes of government.

## Victoria

Section 4 of the *Liquor Control Reform Act 1998*:

- The objects of this Act are:
  - to contribute to minimising harm arising from the misuse and abuse of alcohol, including by:
    - ♦ providing adequate controls over the supply and consumption of liquor; and
    - ♦ ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and
    - ♦ restricting the supply of certain other alcoholic products; and
    - ♦ encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community; and
  - to facilitate the development of a diversity of licensed facilities reflecting community expectations; and
  - to contribute to the responsible development of the liquor, licensed hospitality and live music industries; and
  - to regulate licensed premises that provide sexually explicit entertainment.
- It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.

## Western Australia

Section 5 of the *Liquor Control Act 1988*:

- The primary objects of this Act are:
  - to regulate the sale, supply and consumption of liquor; and
  - to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
  - to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following secondary objects:

- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and
  - to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
  - to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- If, in carrying out any of its functions under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence.

## South Australia

Section 3 of the *Liquor Licensing Act 1997*:

- The object of this Act is to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole and, in particular:
  - to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end (the responsible service and consumption principles) and minimise the harm associated with the consumption of liquor; and
  - to further the interests of the liquor industry and industries with which it is closely associated—such as the live music industry, tourism and the hospitality industry—within the context of appropriate regulation and controls; and
  - to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community; and
  - to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life; and
  - to encourage a competitive market for the supply of liquor.
- In deciding any matter before it under this Act, the licensing authority must have regard to the objects set out in subsection (1).

## ACT

Section 9 of the *Liquor Act 2010*:

- The object of this Act is to regulate the sale, supply, promotion and consumption of liquor:
  - to minimise the harm associated with the consumption of liquor; and
  - to facilitate the responsible development of the liquor and hospitality industries in a way that takes into account community safety; and
  - in a way that encourages and supports liquor consumers to take responsibility for:
    - ♦ their consumption of liquor; and
    - ♦ their behaviour if it is affected by the consumption of liquor.

Section 10 of the *Liquor Act*:

- In making a decision under this Act, a decision-maker must have regard to the following principles (the harm minimisation and community safety principles):

- responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor should be encouraged;
- community safety should not be jeopardised, particularly in relation to events involving large numbers of people;
- the liquor industry should be regulated in a way that minimises harm caused by alcohol abuse, including:
  - ♦ adverse effects on health; and
  - ♦ personal injury; and
  - ♦ property damage; and
  - ♦ violent or anti-social behaviour;
- the sale of liquor should be regulated in a way that contributes to the responsible development of the liquor, tourism and hospitality industries;
- community amenity, social harmony and wellbeing should be protected and enhanced through the responsible sale, supply, promotion and consumption of liquor;
- the safety, health and welfare of people using licensed premises and permitted premises should not be put at risk;
- noise from licensed premises and permitted premises should not be excessive;
- licensed premises and permitted premises should not be located where they would be likely to cause undue disturbance, inconvenience or offence to people:
  - ♦ lawfully at adjacent or nearby premises; or
  - ♦ because of the premises' proximity to a place of public worship, a hospital or a school;
- licences and permits should only be issued to people who comply with ACT law, and are likely to continue to comply with ACT law;
- licences and permits should only be issued for premises that comply with ACT law, and are likely to continue to comply with ACT law.

## Northern Territory

### Section 3 of the *Liquor Act*:

- The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:
  - so as to minimise the harm associated with the consumption of liquor; and
  - in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.
- The further objects of this Act are:
  - to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;
  - to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and
  - to facilitate a diversity of licensed premises and associated services for the benefit of the community.



- When the Commission exercises a power or performs a function under this Act, the Commission must have regard to the objects of this Act and must exercise the power and perform the function in a way that is consistent with those objects.

# Attachment D: Licensing Board Decision Considerations

This Attachment provides an analysis of the extent that the Licensing Board considers issues related to public health and wellbeing, community safety, planning and development and economic impact when making decisions on licence applications.

The primary criterion contained in the *Liquor Licensing Act 1990* for evaluating liquor licence applications is whether the licence is 'in the best interests of the community'. Table 14 outlines the considerations that the Licensing Board takes into account when applying this criterion and the types of information it requires when evaluating applications.

**Table 14: Licensing Board considerations regarding its application of the criterion 'in the best interests of the community'**

Category	Source	Considerations
General	Licensing Board: Information for applicants for liquor licences.	<p>Is there evidence that the local community supports or objects to the proposed liquor licence?</p> <p>Are there specific objections from key stakeholders such as local government authorities or Tasmania Police?</p> <p>Has the applicant addressed the objections made against the liquor licence application?</p>
		<p>Is there a sense of integrity, capability, track record, and reality to the applicant's intentions?</p> <p>Does the applicant have relevant business experience in the liquor and/or hospitality industry?</p> <p>Will the proposed liquor licence provide something other than the sale of liquor?</p> <ul style="list-style-type: none"> <li>E.g. Hospitality generally, accommodation, dining and/or other retail items of benefit to a diverse community?</li> </ul> <p>If applying for a liquor licence that has specific requirements the Licensing Board advises applicants to provide evidence that addresses those requirements.</p> <ul style="list-style-type: none"> <li>E.g. Liquor licence applications for a restaurant should include a proposed menu and any other relevant detail.</li> </ul>
	Licensing Board decision - 'Peter Morrison: Hill Street Cellars, West Hobart 11th August 2010'.	<p>The Licensing Board notes that the Liquor Licensing Act does not contain any objects or aims, but '<i>that it is not necessary to be prescriptive for the Board to know what is to be taken into account</i>'. The Licensing Board then lists the objects of the Victorian <i>Liquor Control Reform Act 1998</i> as a reference point to be considered in liquor licensing decisions. The objects in the Victorian Act are:</p> <ul style="list-style-type: none"> <li>Contributing to minimising harm arising from the misuse and abuse of alcohol, including by: <ul style="list-style-type: none"> <li>Providing adequate controls over the supply and consumption of liquor;</li> <li>Ensuring as far as practicable that the supply of liquor contributes to, and does not detract from the amenity of community life;</li> </ul> </li> </ul>

Category	Source	Considerations
		<ul style="list-style-type: none"> <li>- Restricting the supply of certain other alcoholic products; and</li> <li>- Encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community.</li> </ul> <ul style="list-style-type: none"> <li>• To facilitate the development of a diversity of licensed facilities reflecting community expectations; and</li> <li>• To contribute to the responsible development of the liquor and licensed hospitality industries.</li> </ul> <p>When considering the '<i>amenity of community life</i>' the Licensing Board considers the following criteria to be relevant:</p> <ul style="list-style-type: none"> <li>• the presence or absence of parking facilities;</li> <li>• traffic movement and density;</li> <li>• noise levels;</li> <li>• The possibility of nuisance or vandalism; and</li> <li>• The harmony and coherence of the environment.</li> </ul>
<b>Community Safety, Public Health and Wellbeing</b>	Licensing Board: Information for applicants for liquor licences.	Will the licensee provide liquor in a manner known to be safe and to minimise adverse impact?
		Is the proposed liquor licence located in an area which could be of particular concern to the local community? <ul style="list-style-type: none"> <li>• E.g. In an area which is inappropriate for dispensing liquor in the proposed manner?</li> </ul>
		Are the plans for the business well thought out and clear or are they vague, imprecise or purely expressed in terms of personal benefit, without any obvious social or economic benefit to counter the risk of adverse impact from consumption of liquor?
		Will the business provide something positive to the social fabric? Or is it solely for the sale of liquor?
		Applicants should provide a detailed description of how the licensee aims to ' <i>eliminate or minimise the potential for any undue annoyance, disturbance or disorderly conduct that might arise from the grant of the licence</i> '.
	Licensing Board decision - 'Peter Morrison: Hill Street Cellars, West Hobart 11th August 2010'.	<p>The density of existing liquor licences in the locality of the proposed licensed premises is considered by the Licensing Board.</p> <p>On the issue of the potential social harm caused by a licensed establishment the Licensing Board notes that:</p> <ul style="list-style-type: none"> <li>• in the absence of any particular issues, the mere prospect that a licence may lead to harm by the supply of liquor which may be misused is not of itself a justification to refuse the licence; and</li> <li>• potential social harm '<i>is relevant in a sense, but without objective evidence of particular vulnerability, it is difficult to take the generalised opposition to a liquor outlet as meaning that the end result of refusing the licence will in fact or even be likely to minimise, reduce, or hold back the harm associated with excessive consumption of alcohol</i>'.</li> </ul>

Category	Source	Considerations
<b>Planning and Development</b>	Licensing Board: Information for applicants for liquor licences.	Is the proposed liquor licence appropriate for the area it has been applied for?
		Will the business provide something positive to the social fabric? Or is it solely for the sale of liquor?
		<p>Applicants should provide a detailed description of:</p> <ul style="list-style-type: none"> <li>• The exterior and interior of the premises, including materials to be used, finishes and approximate cost of the proposed construction.</li> <li>• Any accommodation that may be offered on the premises, including a description of the target clientele.</li> <li>• Any facilities and services that will be offered at the premises.</li> <li>• Any entertainment that may be offered on the premises, including: <ul style="list-style-type: none"> <li>– nature of entertainment;</li> <li>– where on the premises it will be held;</li> <li>– proposed times for entertainment;</li> <li>– sound proofing measures;</li> <li>– security arrangements;</li> <li>– staffing levels; and</li> <li>– any other information that could assist the Licensing Board in its decision.</li> </ul> </li> </ul>
	Licensing Board decision - 'Peter Morrison: Hill Street Cellars, West Hobart 11th August 2010'.	<p>In relation to planning issues the Licensing board notes that:</p> <ul style="list-style-type: none"> <li>• Submitting proof of planning approval for the proposed licensed premises could benefit a liquor licence application. An application that has not received planning approval will not be rejected summarily, but if any objections or issues are raised then the Licensing Board may decide to delay a decision until planning approval has been attained.</li> <li>• While the Licensing Board is not a planning authority, there may well be planning issues that are relevant to determining whether an application is <i>'in the best interests of the community'</i> and relevant, therefore, to a determination whether or not to direct the grant of a liquor licence.</li> </ul>
<b>Economic Impact</b>	Licensing Board: Information for applicants for liquor licences.	Will the business provide economic benefit? Will it provide new employment (how much)? Will it use existing premises, improve or add to existing premises or is it new premises?
		<p>Will the proposed liquor licence:</p> <ul style="list-style-type: none"> <li>• Place other facilities in the locality under economic pressure, but nevertheless provide increased facilities overall?</li> <li>• Result in a reduction of facilities in the locality?</li> </ul>
		Is the liquor licence in an area that is likely to benefit or benefit from the tourism industry?

The Licensing Board also provides the following advice to applicants seeking a liquor licence:

- The Liquor Licensing Act does not define the term community in its primary liquor licensing criterion '*in the best interests of the community*'.
  - The Licensing Board notes that the 'community' refers to:
    - ♦ the whole of the Tasmanian community; and
    - ♦ those '*living and working in the locality*' of the proposed liquor licence.
  - It is primarily the broader Tasmanian community's interests that are being evaluated, but that this needs to be balanced by the legitimate concerns and interests of particular sections of the community.
- In reference to the '*onus of proof*' in the hearings that the Licensing Board holds to evaluate liquor licence applications the Board notes that:
  - When applying for a liquor licence the applicant must demonstrate that granting the licence would be '*in the best interests of the community*'.
  - When objecting to a liquor licence application the objector must demonstrate that not granting the licence would be '*in the best interests of the community*'.

## Attachment E: References

Reference	URL
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