



Foundation for Alcohol
Research & Education



**FARE submission to the
Review of the Tasmanian *Liquor
Licensing Act 1990***

December 2013



About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent charitable organisation working to prevent the harmful use of alcohol in Australia. Our mission is to help Australia change the way it drinks by:

- helping communities to prevent and reduce alcohol-related harms;
- building the case for alcohol policy reform; and
- engaging Australians in conversations about our drinking culture.

Over the last ten years FARE has have invested more than \$115 million, helped 800 organisations and funded over 1,500 projects addressing the harms caused by alcohol misuse.

FARE is guided by the [World Health Organization's Global Strategy to Reduce the Harmful Use of Alcohol](#)^[1] for addressing alcohol-related harms through population-based strategies, problem-directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email fare@fare.org.au. All donations to FARE over \$2 are tax deductible.

^[1] World Health Organization (2010). *Global strategy to reduce the harmful use of alcohol*. Geneva: World Health Organization.



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Introduction

The Foundation for Alcohol Research and Education (FARE) welcomes the opportunity to provide a submission to the Review of the Tasmanian *Liquor Licensing Act 1990* (the Act). This Review provides the Tasmanian Government with the opportunity to prioritise evidence-based policies to reduce alcohol-related harms.

Alcohol is not an ordinary commodity. It has been the subject of special regulations for centuries because its use and misuse contributing to an array of short and long term harms to the individual and community at large.¹ Therefore, controlling aspects of the physical and social environment that are empirically demonstrated to contribute to alcohol-related harms should be subject to Government regulation.²

The Tasmanian Government's conscious effort to evaluate the functionality of the current Act in commissioning the *Tasmanian Alcohol Action Framework Legislative Scoping Study* (2012 Stenning Report), and the introduction of progressive irresponsible secondary supply laws under the *Police Offences Act 1935 (Tas)* demonstrate the Government's willingness to undertake a comprehensive review that acknowledges the best available evidence on ways to reduce alcohol-related harms. This Review provides an opportunity to build on this.


Across Australia today alcohol is more affordable than it has been in over three decades; it is more available than it ever has been and it is more heavily promoted. The ways that alcohol is sold, promoted and made available contribute to the way that alcohol is consumed and the associated harms. In Tasmania alcohol can be purchased for as little as 24 cents for a standard drink. Alcohol has also become more readily available in Tasmania, with the number of liquor outlets increasing by 25 per cent over nine years.³ Given the importance of these factors in contributing to alcohol-related harms, it is important that this Review considers the price, availability and promotion of alcohol.


This submission proposes recommendations for the future direction of the Act in by addressing the issues raised in the *Discussion Paper for the Review of the Liquor Licensing Act 1990* (Discussion Paper). The submission first presents information on alcohol-related harms in Tasmania, with recommendations for collecting data relating to these harms. Thereafter the submission addresses each of the sections and questions raised in the Discussion Paper. The headings and numbering adopted within the submission reflects the titles and numbering used in the Discussion Paper. The structure and content of this submission should be read in conjunction with the Discussion Paper.




Recommendations

1. Amend the *Liquor Licensing Act 1990* to include mandatory collection and public reporting of alcohol sales data and data on liquor licensees' occupancy, trading hours and compliance with the liquor legislation. Alcohol sales data reports should be submitted by all licensees to the Commissioner of Licensing. These reports should include the volume in litres of the following beer; wine; cask wine; fortified wine; spirits; pre-mixed spirit-based drinks; and cider sold in the previous financial year.
2. The Tasmanian Government should conduct an audit of alcohol-related data presently collected, and should establish a policy for the routine collection and public reporting on the following types of data:
 - alcohol-related offences, including alcohol-related assaults by type (domestic, non-domestic, against police officers), location (on licensed premises, in public spaces, domestic setting, other private property) and time.
 - alcohol-related criminal justice data, including court appearances and convictions for alcohol-related offences;
 - alcohol-related hospital emergency department presentations, hospitalisations and ambulance attendances;
 - alcohol-related community services;
 - alcohol sales data from licensed premises;
 - place of last drink for acute alcohol-related hospitalisations and alcohol-related offences.
3. The *Liquor Licensing Act 1990* should be amended to include a single primary Object to minimise alcohol-related harms and secondary Objects which specify that:
 - communities have a right to provide input and be consulted in relation to licence applications and licensing decisions; and
 - the sale, supply and promotion of alcohol must be conducted in a safe and responsible manner with due consideration of the primary Object of the Act.
4. The *Liquor Licensing Act 1990* should be amended to treat the Objects of the Act (as proposed in recommendation one in this submission) as the criteria for the 'best interests of the community' test.
5. Thorough consultation processes should be developed that require all licence and permit applicants to directly notify in writing and consult with the following 'consent authorities' about their application. These authorities include local police, local government, local hospitals, places of worship, education institutions, facilities used by children and young people, facilities for vulnerable persons and managers of alcohol-free zones, public parks and sporting grounds. These notices should state the public's right to make representations to the Commissioner in relation to the application. Copies of the notification letters sent to stakeholders should be submitted as part of the licence or permit application.
6. Thorough public interest assessment processes should be developed that require all licence and permit applicants to meet the following requirements:

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- the applicant must assure the Commissioner that granting their application for a licence or permit is in the best interests of the community;
 - applicants must substantiate and verify their public interest assurances with evidence;
 - applicants must include information on local alcohol-related hospitalisation, crime and assaults data; and
 - applicants must list other licensed premises in the local area and their proximity to the location of the applicant's proposed premises.
7. The roles and responsibilities of the Commissioner and the Licensing Board under the Act should be improved, strengthened and clarified to ensure they:
 - take into consideration and investigate claims made in an application and in related representations from the public and feedback from consent authorities;
 - critically assess the suitability of the applicant for the licence or permit and the proposed premises for the licence or permit and the local area;
 - follow-up up with consent authorities (local police, local government authority, and local hospital) if they have not engaged in the application process; and
 - extend the time period from 14 to 30 days for the Commissioner to receive representations from the public and consent authorities in relation to a licence or permit application.
 8. The *Liquor Licensing Act 1990* should be amended to adopt clear criteria for determining if an applicant is fit and proper to hold a licence or permit. This should include requiring applicants for all licenses and permits to successfully complete, and hold current certificates of training and assessment in management of licensed premises and in the safe and responsible service of alcohol.
 9. The *Liquor Licensing Act 1990* should adopt clear criteria for determining if a licence or permit is suitable for the proposed premises and local area of the proposed premises. The Act should direct the Commissioner not to grant a liquor licence unless satisfied that the premises for the licence or permit application meets the 'suitability' criteria.
 10. The *Liquor Licensing Act 1990* should be amended to include a risk-based licensing fee system that, as a minimum, offsets the cost of alcohol-related harm borne by Government and the community. Criteria established for the development of the scheme should be based on, as a minimum, trading hours and occupancy.
 11. The *Liquor Licensing Act 1990* should be amended to include a process for the annual renewal of liquor licenses, with licensees who fail to submit their renewal having their licence revoked. This process should be tied to the annual risk-based licensing fee.
 12. The *Liquor Licensing Act 1990* should be amended to reduce standard trading hours to 10am-12am for all new and existing licenses and permits (except for out-of-hours permits) and reduce extended trading hours for all new and existing premises with out-of-hours permits to 12am-3am, with lock-outs no later than 1am.
 13. The *Liquor Licensing Act 1990* should be amended to introduce mandatory responsible service of alcohol licence conditions for all new and existing on-licence venues including the:
 - sales of shots, mixed drinks with more than 30mL of alcohol and ready mixed drinks stronger than five per cent alcohol by volume are prohibited after 10.00pm;

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- sales of more than four drinks to any patron at one time are prohibited; and
 - sales of alcohol mixed with energy drinks are prohibited after midnight.
 - a supervisor must be on the premises from 11pm until closing with the sole purpose of monitoring responsible service of alcohol practices;
 - patrons are not to be allowed to stockpile drinks; and
 - the sale of alcohol must cease 30 minutes prior to closing time.
14. The Liquor Licensing Act 1990 should be amended to require licensees, permit holders, and their staff who serve alcohol to others to have up-to-date responsible service of alcohol qualifications.
 15. The Commissioner should publicly name and shame on the website of the Gaming Liquor branch of the Department of Treasury and Finance those premises that are found to have contravened responsible service of alcohol offences under the Act.
 16. The *Liquor Licensing Act 1990* should be amended to require planning and development consent prior to a licence or permit application being submitted to the Liquor Board.
 17. The *Liquor Licensing Act 1990* should be amended to grant the Commissioner of Police, local government authorities and the Commissioner for Licensing the power to declare liquor outlet saturation zones in areas of Tasmania that are identified as having too many licensed premises and/or too many associated alcohol-related problems. Within these zones a moratorium should be placed on all new licences.
 18. The *Liquor Licensing Act 1990* should be amended to include a definition of “intoxication” in a clear and measurable way.
 19. The *Liquor Licensing Act 1990* should be amended to remove the exemption under section 77(2) of the Act for a minor to control or possess alcohol under supervision by an adult in a workplace or training environment.
 20. The *Liquor Licensing Act 1990* should be amended to prohibit and restrict the harmful and irresponsible promotion of liquor, and introduce criteria to determine whether promotions are ‘harmful’ or ‘irresponsible’. The criteria should cover the nature of the promotion and how it may encourage liquor consumption, promotional price of the alcohol product, duration of the promotion, implications of the promotion for public safety and amenity and the exposure of children to the promotion.
 21. The Minister responsible for alcohol control should be granted the power to have active promotions deemed to be harmful or irresponsible discontinued or removed at their discretion.
 22. Liquor Promotion Regulations should be introduced under the Act which contain detailed provisions on prohibited and restricted alcohol promotions that:
 - address promotions conducted at on and off-licence premises with equal weight;
 - set a minimum price for alcohol at one dollar per standard drink;
 - declare ‘Shopper dockets’ (liquor promotion vouchers on the receipts for purchases) a prohibited promotional activity;
 - prohibit point of sale promotional materials for liquor (e.g. ‘happy hours’, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale

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- prices) from being displayed on and around licensed premises where minors are likely to be present; and
- prohibit alcohol promotions from being placed on State and Local Government property.
23. The *Liquor Licensing Act 1990* should be amended to grant the Minister responsible for alcohol control special powers to direct the relevant authority to prohibit a liquor product on the basis that:
- the product is likely to have a special appeal to children or young people;
 - the product is likely to be confused with confectionery;
 - the product is likely to be confused with a non-alcoholic drink;
 - the name of the liquor product, or its design or packaging, is indecent or offensive;
 - the name of the liquor product, or its design or packaging encourages irresponsible, rapid or excessive consumption of the product; and
 - it is deemed by the Minister to be in the public interest to prohibit the liquor product.
24. Members of the public should be allowed to make representations requesting the Minister responsible for alcohol control to prohibit a liquor product.
25. The *Liquor Licensing Act 1990* should be amended to include as a mandatory licence condition for all licenses and permits (where alcohol is consumed on premises) to ensure that free drinking water is readily available for patrons on premises.
26. The *Liquor Licensing Act 1990* should be amended to provide the public with more opportunities for members of the public to participate and provide input in licensing matters, such as the submission of complaints that may initiate disciplinary action.
27. The *Liquor Licensing Act 1990* should be amended to grant powers to authorities to swiftly and consistently impose meaningful sanctions for premises who contravene the Act. These powers should include on the spot 24 hour closures.
28. The *Liquor Licensing Act 1990* should be amended to introduce Controlled Purchase Operations to identify and prosecute licensees found to be selling alcohol to people under the age of 18 years.
29. The *Liquor Licensing Act 1990* should be amended to include under section 71 of the Act the offence provision in relation to the supply of alcohol to minors in private settings and the responsible supply of alcohol to minors in private settings currently under section 26 of the *Police Offences Act 1935*.
30. The *Liquor Licensing Act 1990* should be amended to require the Commissioner and the Police to publicly report on compliance activities relating to the Act. This includes the number of venues inspected and their location, the times of day that these venues are inspected and the number of identified breaches of compliance.

Alcohol-related data

Data on alcohol consumption and harms in Tasmania enable researchers and policy makers to develop, implement and track the progress of evidence-based alcohol policies. This section presents the available information on alcohol consumption and harms and then makes recommendations about the collection of further data in areas where there is currently little or no available data.

Alcohol consumption

The *2010 National Drug Strategy Household Survey (NDSHS)* reported that in the 12 months prior to the survey, 85.6 per cent of Tasmanians aged 14 years and over consumed alcohol.⁴ During that time, 40.4 per cent of Tasmanians surveyed consumed alcohol at levels that placed them at risk of an alcohol-related injury from a single occasion of drinking (more than four drinks per occasion) at least once,⁵ and 60 percent of these (24.6 percent of all drinkers) did so at least monthly. Just under one in five (19.4 per cent) Tasmanians in this age group consumed more than two standard drinks daily, increasing their lifetime risk of alcohol-related harm.

Alcohol-related emergency department presentations

Alcohol-related emergency department presentations increased by 27 per cent from 606 presentations in 2005-2006 to 771 presentations in 2009-2010.⁶ When adjusting for population size, there was a 22 per cent increase from 123.8 presentations per 100,000 persons in 2005-2006 to 151.5 presentations per 100,000 persons in 2009-2010. These data only include presentations where alcohol was the primary diagnosis, such as cases of acute intoxication from alcohol, alcohol poisoning and alcohol withdrawal. Presentations where alcohol was involved but not the primary diagnosis (for example injuries from an assault or a fall) are not included. Data on alcohol-related hospitalisations outside emergency departments were not available beyond 2004-05.⁷

Table 1. Alcohol-related emergency department presentations in Tasmania from 2005-06 to 2009-10⁸

Year	Alcohol-related emergency department presentations	Per 100,000
2005-2006	606	123.8
2006-2007	665	134.8
2007-2008	637	127.8
2008-2009	733	145.3
2009-2010	771	151.5

Treatment episodes where alcohol was the principal drug of concern

There has been a 15.7 per cent reduction in the number of treatment episodes where alcohol was the principal drug of concern during that period. However the proportion of treatment episodes in which alcohol was the primary drug of concern has remained relatively stable ranging between 31 to 41 percent, except in 2003-04 and 2009-10 when alcohol was the primary drug of concern in 28.9 per cent and 19.2 per cent of treatment episodes respectively. When examining trends in alcohol treatment episodes per 100,000 population, a 21.8 per cent decline was observed from 160.7 treatment episodes per 100,000 population to 125.6 treatment episodes per 100,000 population

between 2001-02 and 2010-11. However there was a 27.4 per cent increase per 100,000 population between 2009-10 and 2010-11 (from 98.6 to 125.6 per 100,000).

Table 2. Number and percentage of treatment episodes where alcohol was the principal drug of concern from 2001-02 to 2010-11

Year	Alcohol treatment episodes total (no.)	Total (% of all treatment episodes)	Per 100,000 population ⁹
2001-02	762	38.6	160.7
2002-03	933	40.7	195.5
2003-04	461	28.9	95.7
2004-05	425	31.0	87.6
2005-06	515	38.0	105.5
2006-07	532	36.0	107.9
2007-08	681	32.1	136.9
2008-09	748	37.7	148.7
2009-10	500	19.2	98.6
2010-11	642	38.8	125.6

Drink Driving

In 2012-13, 2,872 people were charged with drink driving.¹⁰ This represents a 26.4 per cent decrease from 3,903 offenders in 2010-2011 and is a larger decline than the number who were random breath tested (which declined by 9 percent over that period). After adjusting for population, a 26.6 per cent decline was observed from 763.1 drink driving offenders per 100,000 in 2010-2011, to 691.1 drink driving offenders per 100,000 in 2012-2013.

Table 3. Drinking driving offenders and rates of random breath testing from 2010-11 to 2012-13¹¹

Year	Random Breath Testing	Drink driving offenders	Drink driving offenders per 100,000 population
2010-2011	606,991	3,903	763.1
2011-2012	554,886	3,540	691.1
2012-2013*	550,354	2,872	560.0

*Estimated Resident Population as at March 2013.

Public opinion on alcohol control policies

In addition to trends on alcohol consumption and harms, it is also important to ascertain community support for alcohol control policies. The 2010 NDSHS asked Australians whether or not they supported various alcohol policy measures. There was majority support in Tasmania for a range of policy measures, with the greatest support for more severe penalties for drink drivers (85.4 per cent), stricter enforcement of laws against serving drunk customers (84.9 per cent) and strict monitoring of late night licensed premises (78.4 per cent).

Table 5. Public support for alcohol control policies where there is majority support

Policy measure	Support in Tasmania (%)
More severe penalties for drink driving	85.4
Stricter enforcement of laws against serving drunk customers	84.9
Strict monitoring of late night licensed premises	78.4
Limiting TV advertising until after 9.30pm	72.2
Adding national drinking guidelines to alcohol containers	67.1
Increasing the number of alcohol-free dry zones	65.1
Increasing the size of standard drink labels on alcohol containers	63.6
Restricting late night trading of alcohol	62.3
Serving only low-alcohol beverages at sporting events	60.8
Increasing the number of alcohol-free public events	60.1
Raising the legal drinking age	50.1

Future directions


There are many gaps in the collection and reporting of data about alcohol consumption and alcohol-related harms in Tasmania that need to be addressed to gain a more reliable indication of the true extent of alcohol harms. These include a lack of information of alcohol-related assaults and crime and no alcohol sales data.

There is no publically available information on alcohol-related assaults and crime in Tasmania. This presents a significant barrier to policy makers in understanding the types of crime that result from alcohol and the time when these crimes occur.

Tasmania is one of four Australian jurisdictions that do not collect alcohol sales data. This is despite the World Health Organization (WHO) recommendation that alcohol sales data is essential in providing a comprehensive picture of alcohol consumption.¹² Alcohol sales data would provide more reliable estimates of alcohol consumption than the self-report consumption data currently used which is well known to underestimate alcohol consumption.

Recommendations

1. Amend the *Liquor Licensing Act 1990* to include mandatory collection and public reporting of alcohol sales data and data on liquor licensees' occupancy, trading hours and compliance with the liquor legislation. Alcohol sales data reports should be submitted by all licensees to the Commissioner of Licensing. These reports should include the volume in litres of the following beer; wine; cask wine; fortified wine; spirits; pre-mixed spirit-based drinks; and cider sold in the previous financial year.
2. The Tasmanian Government should conduct an audit of alcohol-related data presently collected, and should establish a policy for the routine collection and public reporting on the following types of data:
 - alcohol-related offences, including alcohol-related assaults by type (domestic, non-domestic, against police officers), location (on licensed premises, in public spaces, domestic setting, other private property) and time.
 - alcohol-related criminal justice data, including court appearances and convictions for alcohol-related offences;

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- alcohol-related hospital emergency department presentations, hospitalisations and ambulance attendances;
 - alcohol-related community services;
 - alcohol sales data from licensed premises;
 - place of last drink for acute alcohol-related hospitalisations and alcohol-related offences.

Objectives of the *Liquor Licensing Act* (section 4.1)

Discussion Paper questions:

1. Do you consider that the inclusion of an objectives/purpose provision in the Act would strengthen the legislation's intent and assist shaping decision making?
2. What should any such objectives be; harm minimisation, responsible development of industry, consumer responsibility, others?
3. Should secondary objectives providing further guidance to regulatory bodies and licence/permit holders be included?

In order to protect the public from alcohol-related harms, governments at all levels must implement prevention and intervention measures. Australian Governments have adopted a harm minimisation approach to addressing alcohol policy and regulation. The Commonwealth Government has defined harm minimisation as: 'reducing the harmful effects of alcohol and other drugs on individuals and society'.¹³ Tasmania is the only jurisdiction in Australia whose liquor laws do not include Objects that guide the interpretation and purpose of the legislation. Section 4.1 of the Discussion Paper also suggests that:

[Objectives provisions] may improve clarity around the legislation's purpose, aid interpretation of key sections of the Act and provide a clearer direction for decision making under it.¹⁴

In the past, the Licensing Board has used the objectives of other jurisdictions' liquor laws to inform their decision-making, as was the case in the *Peter Morrison: Hill Street Cellars, West Hobart 11th August 2010* decision. This highlights the need for the Act to include Objects which strengthen and clarify the legislation's purpose to assist decision-making by the authorities.

Future directions

The Act should include a single primary objective declaring the overarching intention of the Act and specifying who can exercise functions under the Act. The primary Object of the Act should be the minimisation of alcohol-related harms. The secondary Objects of the Act should ensure that:

- Communities have a right to provide input and be consulted in relation to licence applications and licensing decisions; and
- The sale, supply and promotion of alcohol is conducted in a safe and responsible manner with due consideration of the primary object of the Act.



Recommendation

3. The *Liquor Licensing Act 1990* should be amended to include a single primary Object to minimise alcohol-related harms and secondary Objects which specify that:
 - communities have a right to provide input and be consulted in relation to licence applications and licensing decisions; and
 - the sale, supply and promotion of alcohol must be conducted in a safe and responsible manner with due consideration of the primary Object of the Act.

The Licensing Process: Best interests of the community (section 4.2.1)

Discussion Paper questions:


4. Would the community's best interest criterion still be necessary if an objectives clause, providing guidance to the Licensing Authorities when considering licence and permit applications, was incorporated into the Liquor Licensing Act?
5. Would new simplified guidelines on determining community interest benefit applicants for liquor licences and permits, and other interested parties? What changes should be made to the existing documents?
6. Should the Liquor Licensing Act be more specific about the community interest matter to be taken into account when considering an application for a licence or permit? How would a more prescriptive approach deal with the wide variety of application-specific issues that arise through the licensing process?
7. What are the pros and cons of a mandatory community Impact Statement requirements as part of the licence application process? Should this apply to only certain types of licences and permits; if so, which ones?

Public policy should be responsive to the interests of the public. Further, enhancing community awareness, engagement and input in licensing matters serves to make policy decision-making more responsive to local community interests in harm minimisation and community amenity and safety. For new liquor licence applicants, the Licensing Board has the power to determine whether the license is in the community's best interests in accordance with sections 24A and 34 of the Act. However the criteria used to determine what is in the public interests is not specified in the Act but defined elsewhere as:

[A] balancing between the prospect of adverse consequence and the possibility of net economic (employment, use of premises, provision of goods and services) benefit.¹⁵

Consequently, there is ambiguity around what is defined as in the public interest. This makes it difficult for licence applicants to know how to meet the criterion, for community members to know how to argue that applicants are not meeting the criterion and for licensing authorities to assess licence applicants performance against the criterion.

There is no formal process by which licence and permit applicants are required to directly notify and consult key stakeholders about their application. Sections 23(4)(c)-(d) of the Act require licence applicants to publish a notice in a newspaper and display a printed notice in the window of the proposed premises inviting the public to make written representations objecting to the licence to the Commissioner within 14 days of the notice being published or displayed.¹⁶ There are no



prescribed timeframes under the Act for the Commissioner to acknowledge in writing the receipt, investigation or action on representations from the public. Licence applicants are also not required to notify licensing authorities of the proposed premises' proximity to existing licensed premises in the area or to identify stakeholders and facilities that would be sensitive to the proposed premises.

Other jurisdictions in Australia require licence applicants to submit risk or impact assessments to the relevant licensing authority to inform their decisions about whether the application is in the public interest. For example, Queensland's Community Impact Statement must outline the proposed premises' impact or risks to the local area.¹⁷ Western Australia's Public Interest Assessment and the ACT's Risk-Assessment Management Plan must also include strategies to manage the proposed premises' impact or risks (as assessed by the applicant).^{18 19}

In making considered decisions about licence applications, the Commissioner presently has responsibilities to:

- consider information provided with the application relating to the applicant's qualification for the liquor licence under section 22 of the Act;
- consider representations from the public in relation to a licence application under section 23A of the Act; and
- make decisions on licence applications with due consideration of the 'best interests of the community' under section 34 of the Act.

In providing information and guidance to licence applicants and the general public, the Commissioner should also bear responsibility for:

- supporting applicants to meet their stakeholder consultation and public interest obligations;
- facilitating and supporting the general public to make informed submissions in relation to licence applications and other licensing matters; and
- following-up with consent authorities in relation to their feedback, input and opinion of licence applications and other licensing matters.


Future directions

Community interest criteria

Recommendation three in this submission proposes primary and secondary 'Objects' which are also appropriate criteria for a public interest test. The proposed Objects direct persons who exercise functions under the Act (including licensees and permit holders) to give due consideration to harm minimisation, the safety and amenity of local communities, community input and consultation in licensing processes, and the responsible sale, supply and promotion of liquor. The Tasmanian *Liquor Licensing Act 1990* should follow also the example set in the Australian Capital Territory (ACT), whose *Liquor Act 2010* includes notes stating that:

In making this decision [on the suitability of the applicant] the commissioner must have regard to the harm minimisation and community safety principles (see s 10 [of the Act]).

These notes are reiterated in sections of the ACT *Liquor Act 2010* (the ACT Liquor Act) relating to the licensing authority's decision-making on applications for licences, permit, amendments, renewals



and cancellations.²⁰ These notes are also reiterated in sections relating to the suitability of the licence or permit applicant, and the suitability of the premises for the licence or permit.^{21 22}

Public Interest Assessments

Consultation processes must ensure that the public and important stakeholders are adequately notified of application processes. Licence and permit applicants should directly notify in writing and consult with 'consent authorities' (e.g. local police, local government, local hospitals) and other local stakeholders (e.g. places of worship, educational institutions). These notices should state the public's right to make representations to the Commissioner about the application and copies should be submitted with application.

There is the need to clarify under the Act what the licence or permit applicant must do to satisfy the licensing authority that the proposed premise is in the public interest. In WA the onus of proof rests on the applicant to satisfy the licensing authority that it is in the public interest for the application to be granted, with regard given to the likely health and social impacts on the community.²³ Tasmania should adopt a similar system of public interest assessment that requires the applicant to:

- substantiate and verify their public interest assurances with evidence;
- include information on local alcohol-related data (hospitalisations, crime, assaults); and
- list other licensed premises in the local area and their proximity to the location of the applicant's proposed premises.

This would support the licensing authorities' decision-making in line with the 'best interests of the community' test under section 34(1) of the Act.

Considered decision-making by licensing authorities

Licensing authorities must give due consideration to feedback from consent authorities (i.e. local police, local government, and local hospitals or local medical services) and must not grant a licensing application without their consent. The Commissioner should be required to follow-up consent authorities who do not provide feedback before referring the application to the Licensing Board. A lack of a response from consent authorities should not be treated as tacit approval of an application.

Licensing authorities should critically consider information supporting submissions from the applicant in relation to the public interest test. The Act should require the Commissioner to investigate applicants' assurances in their applications. The licensing authorities should also give due consideration to the suitability of proposed premises for the local area. This is discussed in further detail in the next section.


Provision of information and guidance

Information and guidance provided by the Commissioner to licence applicants must specify the consent authorities that must be notified, their contact details and the form in which they must be notified. Information and guidance provided by the Commissioner for the benefit of the general public on the Liquor and Gaming branch of the Department of Treasury and Finance website should include:

- how the general public may make submissions in relation to a licence application or other licensing matters;
- what the Commissioner takes into consideration when receiving submissions in relation to licence applications and other licensing matters;
- a list on the Commissioner’s website of licence applications pending decision by authority, and closing date for submissions in relation to the licence application;
- a list of decisions on licence applications and other licensing matters made by the Commissioner; and
- an opt-in mailing alert system which informs stakeholders of licence applications in their local area and decisions on licence applications and other licensing matters.

Recommendations

4. The *Liquor Licensing Act 1990* should be amended to treat the Objects of the Act (as proposed in recommendation one in this submission) as the criteria for the ‘best interests of the community’ test.
5. Thorough consultation processes should be developed that require all licence and permit applicants to directly notify in writing and consult with the following ‘consent authorities’ about their application. These authorities include local police, local government, local hospitals, places of worship, education institutions, facilities used by children and young people, facilities for vulnerable persons and managers of alcohol-free zones, public parks and sporting grounds. These notices should state the public’s right to make representations to the Commissioner in relation to the application. Copies of the notification letters sent to stakeholders should be submitted as part of the licence or permit application.
6. Thorough public interest assessment processes should be developed that require all licence and permit applicants to meet the following requirements:
 - the applicant must assure the Commissioner that granting their application for a licence or permit is in the best interests of the community;
 - applicants must substantiate and verify their public interest assurances with evidence;
 - applicants must include information on local alcohol-related hospitalisation, crime and assaults data; and
 - applicants must list other licensed premises in the local area and their proximity to the location of the applicant’s proposed premises.
7. The roles and responsibilities of the Commissioner and the Licensing Board under the Act should be improved, strengthened and clarified to ensure they:
 - take into consideration and investigate claims made in an application and in related representations from the public and feedback from consent authorities;
 - critically assess the suitability of the applicant for the licence or permit and the proposed premises for the licence or permit and the local area;
 - follow-up up with consent authorities (local police, local government authority, and local hospital) if they have not engaged in the application process; and

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- extend the time period from 14 to 30 days for the Commissioner to receive representations from the public and consent authorities in relation to a licence or permit application.

The Licensing Process: Qualification for a liquor licence (section 4.2.2)

Discussion Paper questions:

8. What are the perceived pros and cons of clearly defining criteria for assessing whether a person is a fit and proper person within the Liquor Licensing Act?
9. Are the current course requirements adequate to ensure that applicants are qualified or should a mandatory training course for new licensees or refresher courses be introduced similar to those required in other jurisdictions?
10. Should there be an additional requirement for training for licensees in relation to owning/operating a venue by comparison with that for staff serving liquor, and what should those requirements encompass?
11. Are there types of liquor permits or circumstances in which permit applicants should undergo a fit and proper test as a part of a qualification assessment?

Under section 22 of the Act, to be granted a liquor licence, a license applicant must be:

- 18 years of age or older;
- a fit and proper person;
- able to exercise effective control over the sale of liquor; and
- has successfully completed a course or traineeship in responsible service of alcohol, as approved by the Commissioner, or has the necessary knowledge, experience and competency.

With the exception of the criterion of the applicant's age, these criteria are subjective. In addition, the criteria are restricted to licence applicants and not applied to liquor permit applicants. It is at the discretion of Commissioner to conduct a 'fit and proper' an assessment for a permit applicant.

Given that alcohol is not an 'ordinary' commodity, licence and permit applicants should be judged – and routinely assessed – on whether they are qualified and suitable to hold the licence or permit they apply for. Such an assessment should be mandatory for all licence and permit applicants, regardless of whether the application is for a one-off event or for an authorisation to sell and supply alcohol on a routine and ongoing basis.

Licensees and permit holders should be held responsible for the safety of their staff and patrons, and for ensuring that their premises do not detract from the safety and amenity of the local community. In order to meet these responsibilities and obligations, licensees and permit holders should be appropriately skilled, knowledgeable and experienced in:

- understanding their legal responsibilities and obligations to their staff and patrons, and to the broader community and licensing authorities;
- managing licensed premises (management of licensed premises training); and
- encouraging the responsible sale, supply and promotion of alcohol (RSA) on their licensed or permitted premises.



Future directions

Criteria for determining if an applicant is ‘fit and proper’

Division 4.1, section 69 of the ACT Liquor Act outlines suitability criteria to assess license applicants which Tasmania could adopt. These criteria include whether the applicant:

- has been convicted of, or found guilty for an offence under liquor-related legislation, commercial law, criminal law and criminal codes;
- has failed to comply with a legal obligation in relation to the supply of liquor;
- has applied for a licence or permit in the past and their application was refused;
- complies with the requirements of the liquor laws;
- is or has been bankrupt or personally insolvent; and
- has adequate knowledge and understanding of their obligations under the liquor laws in relation to the licence or permit.

Queensland, South Australia (SA), WA and Northern Territory (NT) also require applicants to have successfully completed training and assessment in RSA and management of licenced premises in order to qualify as a ‘fit and proper’ to hold a licence. The Discussion Paper has noted that under the Tasmanian Liquor Act, ‘The qualification assessment is made at a point in time, and there are no requirements for assessing on-going qualification’. In the ACT, licensees and permit holders have to update their suitability information under section 69 of the ACT Liquor Act.²⁴ Similarly, licensees and permit holders in Tasmania should be required to up-date information relevant to the ‘fit and proper’ criterion.

Suitability of premises for licence or permit

The Commissioner should also consider the suitability of proposed premises for the local area. This should be in terms of the suitability of the proposed premises being a licensed or permitted venue in the proposed location, the purpose of the premises and the licence or permit type for the premises. Division 4.2 of the ACT Liquor Act provides a test of the ‘suitability’ of premises for a licence which could be adopted in Tasmania. It includes consideration of:

- past refusals of applications for a licence or permit for the premises;
- noise levels likely to emanate from the premises of used in accordance with the licence or permit;
- whether the grant of the licence or permit would cause a large number of people to be attracted to the premises and thereby pose a greater risk to community safety; and
- whether the grant of a licence or permit would be likely to cause undue disturbance, inconvenience or offence to local residents, other persons, places of public worship, a hospital, residential premises or a school which are in close proximity to the premises.

A ‘suitability’ test for the premises should include consideration of the risk the premises may pose to the local and broader community. This enables the Commissioner to give due consideration to local and broader data and harm minimisation objectives.



Recommendations

8. The *Liquor Licensing Act 1990* should be amended to adopt clear criteria for determining if an applicant is fit and proper to hold a licence or permit. This should include requiring applicants for all licences and permits to successfully complete, and hold current certificates of training and assessment in management of licensed premises and in the safe and responsible service of alcohol.
9. The *Liquor Licensing Act 1990* should adopt clear criteria for determining if a licence or permit is suitable for the proposed premises and local area of the proposed premises. The Act should direct the Commissioner not to grant a liquor licence unless satisfied that the premises for the licence or permit application meets the 'suitability' criteria.

The Licensing Process: Variable licence fees (section 4.2.3)

Discussion Paper questions:

12. Is a risk-based fee structure a better model for aligning the costs of regulation to those licences and permits that generate the most regulatory risk?
13. Is the absolute size of the annual fee sufficiently large (relative to other costs venues face) that it would encourage venues to vary trading arrangements to adopt lower risk practices? Are there alternative mechanisms to achieve this outcome, such as conditioning licences where poor practices have led to alcohol related harm?
14. If a risk-based fee structure was to be introduced, what types of variable risk factors should be included?

The Discussion Paper suggested that:

The current licensing fees structure broadly aligns fees to regulatory risk. Closer alignment could provide incentives for licensees to better manage risk, but could also introduce complexity and give rise to transitional issues.

The current licence application fee system targets regulatory costs of venue types, but does not adequately reflect licence risk or the external costs incurred by government and communities from the operation of licensed premises. Licence application fees range from \$146 to \$1,168. Licensees must pay annual licence fees which range from \$379.60 (for on-licence, restaurant, club, and special) to \$817.60 for a general licence.²⁵

Future directions

Risk-based licensing fee structure

A risk-based licensing fee (RBL) system should be adopted to recover some of the policing and regulatory costs of alcohol-related harms borne by State and Local Governments and the community. RBL calculates and sets fees for licensed venues according to the level of harm associated with the venue depending on factors such as trading hours, occupancy, licence type and in some cases, compliance with liquor licensing legislation and whether they provide food. Higher risk venues contribute proportionally more to policing and regulatory costs than lower risk ones, and so, under RBL, licensees pay fees commensurate with their likely risk of alcohol-related harms.

Queensland, Victoria and the ACT have implemented RBL. The factors used to calculate and set fees in each of these jurisdictions are outlined in Table 6 below.

Table 6. Factors used to calculate and set fees in Victoria, Queensland and ACT

	Victoria (Introduced August 2009)	Queensland (Introduced January 2009)	ACT (Introduced December 2010)
Trading hours	✓	✓	✓
Occupancy	✓	✓	✓
Past conduct/ compliance	✓	✓	
Licence type			✓
Volume sold (off-trade)		✓	✓
Provision of meals		✓	

As illustrated in the table, in Victoria and the ACT, RBL fees are highest for on-trade licensed nightclubs trading until 5.00am with maximum occupancy. In Victoria, additional fees are not levied for extended trading hours for restaurants, so the licensing fees for a restaurant trading until 5.00am in Victoria are much lower than in the ACT. Victoria also has lower fees for “club” licenses than for bar licenses, while in the ACT the licensing fees for on-trade bars and clubs are the same.

In the ACT, the money recovered from RBL has been used to fund more alcohol prevention police. A recent study into the impact of RBL in the ACT on alcohol-related assaults found that from May 2010 until December 2012, all offences declined in the ACT by 21 per cent in absolute terms and alcohol-related offences specifically relevant to RBL declined by 25 per cent.²⁶ This intervention has also been reported to have contributed to a 17 per cent reduction in alcohol-related arrests, a six per cent reduction in alcohol-fuelled assaults and a 9.67 per cent decrease in the number of people taken into custody for being intoxicated from 2010 to 2011.²⁷

Table 7. Indicative annual fees for different license types, occupancies and trading hours for the ACT and Victoria

Licence type	Victoria	ACT
On-trade licensed night club trading until 5.00am, with maximum occupancy.	\$31,435.20 per annum	\$23,365 per annum
On-trade licensed night club trading until 3.00am at lowest occupancy.	\$4366.10 per annum	\$5,625 per annum
On-trade licensed night club trading until midnight with lowest occupancy.	\$2619.60 per annum	\$3,375 per annum
On-trade licensed club (without gaming): trading until 5.00am with maximum occupancy	\$429.80 per annum	\$15,750 per annum
On-trade licensed club (without gaming): trading until 3.00am with lowest occupancy	\$429.80 per annum	\$3,750 per annum
On-trade restaurant: trading until 5.00am with maximum occupancy.	\$214.90 per annum	\$7,875 per annum

Note: in Victoria occupancy is only used to determine fees for restaurant and club licensees if a ‘compliance history’ risk fee applies. However for licensed night clubs, an occupancy multiplier is used in all cases.



Licence and permit renewal

There is no licence term limit specified under the Act, instead they are granted in perpetuity. Permit terms vary on a case-by-case basis. Annual licence renewal requirements facilitate regular reviews of licence conditions and further incentivise licensee compliance with the legislation. Without a licensing renewal process, licences are granted into perpetuity. This is problematic because it makes it difficult for liquor licences to be removed from the system, contributing to a greater number of licences and increased outlet density which contribute to harms. A licence or permit of any type should not be valid for more than 12 months from the date of issue. The renewal processes for licences and permits should be tied to the payment of annual risk-based licence fees and permit renewal fees.

Recommendations

10. The *Liquor Licensing Act 1990* should be amended to include a risk-based licensing fee system that, as a minimum, offsets the cost of alcohol-related harm borne by Government and the community. Criteria established for the development of the scheme should be based on, as a minimum, trading hours and occupancy.
11. The *Liquor Licensing Act 1990* should be amended to include a process for the annual renewal of liquor licenses, with licensees who fail to submit their renewal having their licence revoked. This process should be tied to the annual risk-based licensing fee.


The Licensing Process: Licence and permit conditions (section 4.2.4)

Discussion Paper questions:

15. Should conditions be able to be applied to all licence and permits types?
16. When should conditions be able to be applied to a licence—e.g. at the time of granting, arising from disciplinary proceedings or at any time?
17. Should common conditions be adopted based on risk for particular licences or permits?
18. How closely should a licensee be bound to retain the business model that underpinned the grant of a licence? Should the Act provide a framework for review before a licensee implements material changes to the nature of business conducted under a liquor licence? How could this be balanced with providing the ability for a licensee to respond to changing market circumstances?

There are five licence types under the Act. They are general, club, on-licence, off-licence and special (which applies to restaurants and theatres intending to sell liquor, wineries, specialist retailers, or wholesalers). Standard trading hours for general, clubs, on-licences and off-licences are 5.00am to 12am. Trading hours for special licences are specified in the individual licensee's conditions. Out-of-hours permits authorise the sale of liquor between 12.00am and 5am. On-permit, off-permit, and special permits authorise liquor trading between times specified in the individual permit. As noted in the Discussion Paper,

The Act allows a range of conditions to be applied to manage the sale of liquor under a licence or permit, but it is inconsistent and limited in how and when conditions may be applied.



Licence conditions that relate to trading hours and the responsible service of alcohol should be standardised across all licence and permit types.

Australian and international research has consistently demonstrated that extended trading hours for licensed premises are associated with increased alcohol-related harms:²⁸

- Liberalisation of trading hours in Australia has been associated with increases in road traffic crashes and assaults;²⁹
- Limitations on the earliest time alcohol can be sold on and off premise is associated with decreases in alcohol-related assaults, ambulance call-outs and emergency department presentations;³⁰
- Relaxing licensing laws to allow 24 hours trading in the United Kingdom in 2005 was associated with a 25 per cent increase in violent offences committed in the early hours of the morning;³¹ and
- For each one hour extension in on premise alcohol sales in Norway, there was an additional 4.8 assaults per 100,000 inhabitants per quarter.³²

Future directions

Trading hours


Rates of alcohol-related assaults increase significantly between 6.00pm and 3.00am with the highest rates occurring between midnight and 3.00am.^{33 34 35 36} Modest reductions in the trading hours of licensed venues can substantially reduce alcohol-related harms. This was recently demonstrated in Newcastle (NSW), where in 2008 the NSW Liquor Administration Board introduced restrictions to 14 hotels, including a 3.00am close time and 1.00am lockout (which were later amended to 3.30am and 1.30am following a legal challenge by the licensed premises). One year following the introduction of these restrictions there was a 37 per cent reduction in alcohol-related assaults when compared to a control site, with no geographic displacement to the nearest late-night district.^{37 38}

Restrictions on the opening times of licensed premises are also associated with reductions in alcohol-related assaults, ambulance call-outs and emergency department presentations.³⁹ The earliest time of trade should be pushed back to later in the morning to reduce the availability of alcohol which contributes to the incidence of alcohol-related harms. Out-of-hours permits (which authorise trade between 12.00am and 5.00am) in combination with standard trading hours (5.00am to 12.00am) allow for premises with general, club or on-licences to trade for 24 hours. This loophole should be addressed.

Mandatory and consistent Responsible Service of Alcohol (RSA) licence conditions

Without appropriate enforcement, Responsible Service of Alcohol (RSA) measures have limited impact on the behaviour of people working in licensed venues and do not reduce alcohol-related harms.⁴⁰ The Discussion Paper noted that:

[There] is a decreasing willingness from industry to participate in any voluntary responsible service/responsible consumption program.⁴¹




The 2012 *Dealing with Alcohol-Related Harm in the Night Time Economy* (DANTE) study by Miller et al. noted that late-night venues are more likely to adopt mandatory, rather than voluntary, RSA practices.⁴² The study also noted that the imposition of licence conditions on beverage types, quantities and time limitations on beverage sales allowed servers to more easily enforce RSA guidelines.⁴³ In Newcastle, in addition to the trading hours restrictions, licensing authorities also introduced the following additional restrictions on premises:

- Prohibiting from 10.00pm the sale of shots, mixed drinks with more than 30mL of alcohol, ready mixed drinks stronger than five per cent alcohol by volume and more than four drinks to any patron at one time.
- Requiring licensees to ensure that a supervisor is on the premises from 11pm until closing with the sole purpose of monitoring responsible service of alcohol.
- Ceasing the sale of alcohol 30 minutes prior to closing time.

Licensees, permit holders, and staff who serve alcohol to others should be required to have up-to-date RSA qualifications. All staff who work in licensed premises in Tasmania are required to hold a RSA certificate. However, there is no requirement for these competencies to remain current. In other jurisdictions, RSA training or equivalent are required to be completed by servers of liquor every three to five years.⁴⁴

Recommendations

12. The *Liquor Licensing Act 1990* should be amended to reduce standard trading hours to 10.00am-12.00am for all new and existing licenses and permits (except for out-of-hours permits) and reduce extended trading hours for all new and existing premises with out-of-hours permits to 12.00am-3.00am, with lock-outs no later than 1.00am.
13. The *Liquor Licensing Act 1990* should be amended to introduce mandatory responsible service of alcohol licence conditions for all new and existing on-licence venues including the:
 - sales of shots, mixed drinks with more than 30mL of alcohol and ready mixed drinks stronger than five per cent alcohol by volume are prohibited after 10.00pm;
 - sales of more than four drinks to any patron at one time are prohibited; and
 - sales of alcohol mixed with energy drinks are prohibited after midnight.
 - a supervisor must be on the premises from 11.00pm until closing with the sole purpose of monitoring RSA practices;
 - patrons are not to be allowed to stockpile drinks; and
 - the sale of alcohol must cease 30 minutes prior to closing time.
14. The *Liquor Licensing Act 1990* should be amended to require licensees, permit holders, and their staff who serve alcohol to others to have up-to-date responsible service of alcohol qualifications.
15. The Commissioner should publicly name and shame on the website of the Gaming Liquor branch of the Department of Treasury and Finance those premises that are found to have contravened responsible service of alcohol offences under the Act.



The Licensing Process: Role of local government in the licensing process (section 4.2.5)

Discussion Paper questions:

19. Should Local Government planning approval be required as a prerequisite to the liquor licence approval process?
20. If so, should this be for all licence classes or just some?
21. What issues might arise for applicants from requiring council related matters to be resolved ahead of the licensing decision?
22. Would an administrative, rather than a legislative, approach satisfactorily address this issue?

The Discussion Paper noted that:

The liquor licence and permit approval process is separate to the planning and development approval process undertaken by Local Government. The Liquor Licensing Act is silent on the sequencing of these two processes, and there are varying views on which approval should be considered first.

Aspects of the physical environment in which alcohol is sold, supplied and promoted affect the propensity for alcohol-related harms. In making planning decisions, local governments have an important role to play in considering the impact of building and development proposals that relate to a liquor licence application. However, they are not experts in the fields of licence decision-making and licence impact assessments.

Future directions

Assisting Local Government with outlet density policies

Local governments need support in making considered planning decisions and formulating their representations concerning a licence or permit application. To that end, the Licensing Board and Commissioner should provide planning consent authorities with information and guidance in relation to:

- criteria for determining foreseeable adverse alcohol-related impacts;
- estimating the potential impact of planning and development strategies (e.g. patron capacity, floor plans and water stations) to mitigate foreseeable risks; and
- declaration of saturation zones and outlet density thresholds.

Research has consistently found an association between alcohol outlet density (i.e. the number of active liquor licences in an area) and assaults, adolescent drinking, domestic violence, drink driving, homicide, suicide, and child maltreatment.^{45 46 47} Internationally, regulatory bodies have addressed the density of liquor outlets by introducing policies such as saturation zones (these exist in England and Wales) where limitations are imposed on the introduction of new licences in areas that already have a high density of existing licences. Operational saturation zones in the United Kingdom have been determined based on outlet density, crime data and domestic violence statistics.^{48 49} This approach should be adopted in Tasmania as a harm minimisation policy and to inform local governments' decision-making on development and planning applications for licensed venues.



Sequencing the licensing and development consent processes

Planning and development consent should be obtained from local government authorities prior to the liquor licence approval process by the Licensing Board. In granting planning and development consent, local government authorities should give due consideration to the alcohol-related impact of the proposed premises and note this in their planning decision submitted to the Licensing Board. Local governments may give consent to a licence application subject to particular trading conditions which must be attached to the liquor license or permit by the authorities. Planning consent should not be treated by licensing authorities as an endorsement that alcohol-related risks have been thoroughly and critically assessed and pose a negligible or ameliorable risk to the community.

Recommendations

16. The *Liquor Licensing Act 1990* should be amended to require planning and development consent prior to a licence or permit application being submitted to the Liquor Board.
17. The *Liquor Licensing Act 1990* should be amended to grant the Commissioner of Police, local government authorities and the Commissioner for Licensing the power to declare liquor outlet saturation zones in areas of Tasmania that are identified as having too many licensed premises and/or too many associated alcohol-related problems. Within these zones a moratorium should be placed on all new licences.

Managing access to alcohol: Prohibitions on serving intoxicated persons (section 4.3.1)


Discussion Paper questions:

23. What is the most appropriate term to use in the Liquor Licensing Act to describe a person impaired by alcohol—drunk/intoxicated/other?
24. What is the best definition of the chosen term?
25. Are guidelines necessary and if so, should the requirement to provide them be legislated?
26. Do the current offence sections of the Act impose a sufficiently high standard for staff to determine signs of intoxication before serving customers?
27. What additional obligations could be considered and what are the practical considerations of such obligations?

One of the key elements of RSA is not selling liquor to people who are intoxicated. According to sections 78 and 79 of the Act, it is an offence to sell or supply alcohol to a person who appears to be drunk. The definition of 'drunk' is not explained with greater detail in the Act; nor is the phrase 'intoxication' or 'intoxicated'.

Future directions

Most other jurisdictions include a definition of intoxication in their Liquor Acts and they are relatively consistent with each other. The Victorian, *Liquor Control Reform Act 1998* defines the state of intoxication as being when:



... [an individual's] speech, balance, coordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.⁵⁰

In order to assist the authorities to enforce the responsible service of alcohol a definition of intoxicated should be included in the Act. The definition needs to ensure that it is clear and measurable to ensure that authorities have the ability to enforce the provisions under the Act.

This policy is not, however, the stand-alone solution to preventing patron intoxication on licensed premises. The greater issue is enforcement of service of alcohol practices by the Licensing Commissioner and Tasmanian Police.

Recommendation

18. The *Liquor Licensing Act 1990* should be amended to include a definition of “intoxication” in a clear and measurable way.

Managing access to alcohol: Employing young people where liquor is sold (section 4.3.2)

Discussion Paper questions:

28. Should persons under the age of 18 be allowed to serve alcohol?
29. If a person under the age of 18 is allowed to serve alcohol should this be subject to conditions? If so, what conditions?


Under section 77(1) of the Act, it is an offence for a minor to have ‘possession or control of liquor on – licensed premises; or premises specified in a special permit’. Section 77(2) of the Act provides an exemption under section 77(1) if the minor in question ‘... has possession or charge of liquor in the course of work; and is working under the direct and personal supervision of a person who has attained the age of 18 years’.

Future directions

It is contradictory that the Act contains a raft of provisions to protect the interests of minors, yet has an exemption that allows minors to have possession or to be in charge of liquor in their work. Studies have found that minors observing others’ alcohol use (e.g. parents) increases their likelihood of early alcohol use and alcohol-related problems.⁵¹ Consequently children should not be exposed to alcohol and alcohol use as a server of alcohol. There are no reasonable circumstances where a minor can be expected to serve an addictive, intoxicating substance such as alcohol to others with the same capacity to make mature judgements and bear responsibility for their actions as an adult in the same position.

Recommendation

19. The *Liquor Licensing Act 1990* should be amended to remove the exemption under section 77(2) of the Act for a minor to control or possess alcohol under supervision by an adult in a workplace or training environment.



Managing access to alcohol: Undesirable liquor promotion and advertising (section 4.3.3)

Discussion Paper questions:

30. Should there be a legislative power to prohibit or restrict the irresponsible advertising and promotion of alcohol?

The promotion of alcohol influences the age at which young people begin drinking alcohol as well as their levels of consumption.^{52 53 54 55} Of particular concern are price-based promotions, as there is an inverse relationship between the price of alcoholic beverages and levels of consumption and harms.⁵⁶

Point of Sale (POS) promotions are promotions found within or on the exterior of licensed premises at the point where an alcohol purchase is made (e.g. 'happy hours', free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices). POS promotions involve price or volume discounts and have been found to encourage the purchase of increased volumes of alcohol.^{57 58} POS promotions are likely to affect overall consumption patterns of underage, harmful, and regular drinkers.⁵⁹

The Act is silent on promotion and advertising practices. Thus, the Act fails to appropriately regulate promotions within the contemporary market dynamics for liquor (i.e. most Australian consumers drink alcoholic beverages in a domestic setting) and promotional methods of liquor promotion on premises (i.e. POS liquor marketing).⁶⁰ As a result, the Act does not adequately address harm minimisation in the promotion of liquor at on and off-licence venues.


Future directions

Criteria for prohibited and irresponsible promotions

The Act needs to address contemporary alcohol promotions which take place on, or are distributed from, licensed premises. The propensity for a promotion to facilitate risky drinking should be considered by the licensing authority when dealing with a promotion complaint or a request for a liquor promotion to be prohibited or restricted. The criteria for this should cover the:

- nature of the liquor promotion and how it may encourage the consumption of liquor;
- promotional price of the alcohol product;
- duration of the promotion;
- implications of the promotion for public safety and amenity; and
- exposure of minors to liquor promotions and promotional materials in public-access areas, such as restaurants with bar sections, and shopping malls that host packaged liquor outlets.⁶¹

The Act should be amended to provide the authorities with the power to prohibit or restrict irresponsible advertising and promotion of alcohol. Further, the Commissioner should introduce Liquor Promotion Regulations as a subset of the Act. These Regulations should outline criteria for promotions deemed to be 'irresponsible', prohibited or restricted and address promotions conducted at on and off-licence premises. They should also prohibit POS promotional materials from



being displayed on and around licensed premises where minors are likely to be present and all alcohol promotions from being placed on State and Local Government property.

The Regulations should also set a minimum price for alcohol to minimise price-based discounting and reduce alcohol consumption and related harms. In Canada, 10 percent increases in the minimum alcohol price in the Provinces of British Columbia and Saskatchewan resulted in reductions in overall alcohol consumption of 3.4 per cent and 8.4 per cent, respectively.⁶² A study that looked at the relationship between increases in minimum alcohol prices and alcohol-attributable deaths in British Columbia found that a minimum price of \$1.25 per standard drink would prevent 23.03 per cent of alcohol-attributable deaths after the first year of implementation.⁶³

Recommendations

20. The *Liquor Licensing Act 1990* should be amended to prohibit and restrict the harmful and irresponsible promotion of liquor, and introduce criteria to determine whether promotions are ‘harmful’ or ‘irresponsible’. The criteria should cover the nature of the promotion and how it may encourage liquor consumption, promotional price of the alcohol product, duration of the promotion, implications of the promotion for public safety and amenity and the exposure of children to the promotion.
21. The Minister responsible for alcohol control should be granted the power to have active promotions deemed to be harmful or irresponsible discontinued or removed at their discretion.
22. Liquor Promotion Regulations should be introduced under the Act which contain detailed provisions on prohibited and restricted alcohol promotions that:
 - address promotions conducted at on and off-licence premises with equal weight;
 - set a minimum price for alcohol at one dollar per standard drink;
 - declare ‘Shopper docketts’ (liquor promotion vouchers on the receipts for purchases) a prohibited promotional activity;
 - prohibit point of sale promotional materials for liquor (e.g. ‘happy hours’, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices) from being displayed on and around licensed premises where minors are likely to be present; and
 - prohibit alcohol promotions from being placed on State and Local Government property.



Miscellaneous Practices: Power to prohibit liquor products (section 4.4.1)

Discussion Paper questions:

31. Should there be a legislative power to prohibit certain liquor products? Should such a power reside with the Minister or the Commissioner for Licensing?

As noted in the Discussion Paper, the Act ‘does not currently provide the power to prohibit liquor products’. Tasmania is one of the few jurisdictions in Australia that does not have legislated provisions that empower the Minister responsible for liquor licensing to prohibit certain types of liquor products.

Future directions

Responsible Ministers in Victoria, ACT, NSW, WA and Queensland have powers to prohibit liquor products, and it is an offence under the liquor laws in these jurisdictions for a licensee or permit holder to sell a prohibited liquor product.^{64 65 66 67 68} In these jurisdictions, alcohol products are prohibited on the basis that:


- the product is likely to have a special appeal to children or young people (ACT, NSW, WA and Queensland);
- the product is likely to be confused with confectionery (ACT, NSW, WA and Queensland);
- the product is likely to be confused with a non-alcoholic drink (ACT, WA and Queensland);
- the name of the liquor product, or its design or packaging, is indecent or offensive (NSW);
- the name of the liquor product, or its design or packaging encourages irresponsible, rapid or excessive consumption of the product (NSW); and
- it is deemed by the Minister to be in the public interest to prohibit the liquor product (NSW, WA and Queensland).

The responsible Minister responsible for alcohol control in Tasmania should have similar powers to prohibit inappropriate or risky alcohol products.

Recommendations

23. The *Liquor Licensing Act 1990* should be amended to grant the Minister responsible for alcohol control special powers to direct the relevant authority to prohibit a liquor product on the basis that:

- the product is likely to have a special appeal to children or young people;
- the product is likely to be confused with confectionery;
- the product is likely to be confused with a non-alcoholic drink;
- the name of the liquor product, or its design or packaging, is indecent or offensive;
- the name of the liquor product, or its design or packaging encourages irresponsible, rapid or excessive consumption of the product; and
- it is deemed by the Minister to be in the public interest to prohibit the liquor product.

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24. Members of the public should be allowed to make representations requesting the Minister responsible for alcohol control to prohibit a liquor product.

Miscellaneous Practices: Provision of free drinking water (section 4.4.2)

Discussion Paper questions:

32. Should there be a legislative requirement for venues selling alcohol to have free drinking water available to patrons?

Provision of free water and encouraging the consumption of non-alcoholic beverages by patrons is a means of mitigating the potential for patrons to become intoxicated. This policy is not, however, the primary solution to the issue of patron intoxication on licensed premises. The greater issue is the responsible service of alcohol to patrons, and refusal of alcohol service to patrons who are intoxicated. The DANTE study noted that licensed premises are more likely to adopt mandatory rather than voluntary RSA practices.⁶⁹ These RSA licence conditions should include the requirement of all licensees and permit holders to provide free drinking water on licensed and permitted premises.

Recommendation


25. The *Liquor Licensing Act 1990* should be amended to include as a mandatory licence condition for all licenses and permits (where alcohol is consumed on premises) to ensure that free drinking water is readily available for patrons on premises.

Compliance and enforcement (section 4.5)

Discussion Paper questions:

34. What are the strengths and weaknesses of the current compliance and enforcement model?
35. What measures currently in operation in other jurisdictions should be incorporated into the Tasmanian regulatory framework?
36. Is a disciplinary model that provides greater flexibility to the Commissioner to deal with issues as they emerge an appropriate balance between regulatory certainty and harm management?
37. What are the pros and cons of a “three strikes” approach and does such a model warrant further consideration in Tasmania?
38. Should the Liquor Licensing Act have a greater focus on consumer responsibility?
39. Should offences that relate to parties other than licence and permit holders be contained within the Liquor Licensing Act, or contained in other legislation such as the Police Offences Act?

The Gaming and Liquor Branch of the Department of Treasury and Finance provides information on their website as to how the public may submit a written complaint to the Commissioner for Licensing. However, there are no provisions under the Act establishing the public’s right to make representations to the authorities in relation to the impact or conduct of a licensed or permitted



venue. The Act also lacks provisions outlining what sort of complaints the Commissioner will investigate. The Discussion Paper noted that:

The Liquor Licensing Act compliance and enforcement model has relatively few ‘tools’ to deal with issues as they emerge, with the principal sanction being licence suspension—a very heavy penalty.

The Authority has the power under section 39 of the Act to impose alcohol restriction orders on licensed premises. Alcohol restriction orders ‘prohibit or restrict all or any of the activities authorised to be carried out on the premises’ and can be in effect for up to one year. The grounds for liquor restriction orders include that the use of the premises was unduly causing annoyance or disturbance to the local area; and that a liquor restriction order will reduce or avoid disorderly conduct.⁷⁰ These are the same grounds for the cancellation or variation of an out-of-hours permit under section 40 of the Act. Under section 41 of the Act, the Commissioner may suspend a licence for a period of up to three months if they are satisfied that the licensee has either:

- failed to comply with the Obligations of Licensees under Division 5 of the Act;
- been found guilty of an offence under Division 6 of the Act; or
- allowed the use of the licensed premises to cause undue disturbance or annoyance to residents, businesses, educational and religious institutions in the local area.

Under section 42 of the Act, the Commissioner may apply to the Board for a hearing to cancel or suspend a liquor licence. Offences under Division 6 of the Liquor Act also carry financial penalties.

Future directions

Complaints and disciplinary actions

The website of the Gambling and Liquor Branch of the Tasmanian Department of Treasury and Finance offers avenues for the public to submit complaints to the Commissioner for Licensing. However, the Act itself does not contain provisions for members of the public to make representations to the Commissioner in relation to the conduct or impact of licensed or permitted venues.

Tasmania should adopt the model used in the ACT, whereby under section 176 of the ACT Liquor Act, members of the public may complain to the Commissioner for Fair Trading if they believe ‘on reasonable grounds that a ground for occupational discipline exists in relation to a licensee or commercial permit-holder’. Division 11.2 of the ACT Liquor Act contains provisions concerning who may submit complaints, the form in which a complaint is to be submitted to the authority, withdrawal of complaints and the Commissioner’s authority to request further information from the complainant. Division 11.2 also establishing the protocols for the Commissioner to investigate complaints, grounds for the Commissioner to take no further action on a complaint and actions by the Commissioner after investigating complaints. Division 11.3 of the ACT Liquor Act contains the provisions for ‘Occupational Discipline’ actions against a licensee (section 183) or a commercial permit-holder (section 184). Grounds for occupational discipline include:

- the licensed or permitted premises do not comply with requirements of the Act or are not suitable premises for the licence or permit;
- the premises are causing undue disturbance or inconvenience to persons on the premises or in the neighbourhood; and

- 
- the conduct of the premises has caused a loss of amenity for the local area.

Under sections 183(2) and 184(2) of the ACT Liquor Act, a licence may be suspended by the Commissioner if the licensee or permit holder has contravened a Commissioner's direction or breached a licence condition, and if it is in the public interest to suspend the licence.

Swift and certain sanctions as a model for enforcement

Swift and certain sanctions are an effective approach to deterring contravention of the liquor laws and regulations. Dr Mark Kleimann, Professor of Public Policy at the University of California contends that this approach is applicable to most contexts of law enforcement.⁷¹ This approach of swift and certain sanctions should be applied to breaches of the Liquor Act, Liquor Regulations and Liquor Promotion Guidelines. Swift and certain sanctions create strong and predictable deterrents and penalties for offensive and dangerous conduct by licensees, permit holders and their staff. All recommendations in this submission, as well as existing provisions within the legislation, would be supported by swift enforcement of offences and powers for authorities to act quickly where it is in the public interest to do so, specifically in relation to enhancing the transparency of RSA compliance and enforcement, temporary closure of licensed or permitted premises and dealing with re-offenders.

Temporary closures

In the ACT, under section 146(1) of the ACT Liquor Act, a senior police officer may order a licensee, or permit-holder to close premises for 24 hours. These emergency closure orders are allowable if the Liquor Act has been or is likely to be breached and the closure of the premises is necessary to prevent or reduce a significant threat or risk to the safety of the community.


Temporary closure of licensed premises may also be required in the event that a patron is seriously injured from an alcohol-related assault. Temporary closures are meaningful sanctions which serve as a practical aid for ambulance services and police to respond to, and preserve the crime scene in these situations.

Controlled Purchase Operations

Sections 70-71 of the Act are offence provisions for the sale or supply of liquor to a minor on licensed premises. Tasmania does not currently have laws in place that enable police to assess a licensee's compliance with these laws. Controlled Purchase Operations (CPOs) involve supervised minors attempting to buy liquor from licensed premises to test licensees' compliance with supply laws. New Zealand currently utilises CPOs which support New Zealand Police in their applications to licensing authorities to suspend or cancel offenders' liquor licences.^{72 73} Legalising CPOs will make licensees more attentive in their observation of 'supply to minors' legislation.

Offences that relate to parties other than licence and permit holders

Offences for alcohol to be sold or supplied to minors are split across two different articles of legislation: the *Liquor Licensing Act 1990 (Tas)* and the *Police Offences Act 1935 (Tas)*. Under section 70 of the Liquor Licensing Act, it is an offence to sell alcohol to a minor; under section 71 of the Act, it is an offence to supply alcohol to a minor on licensed premises. The Police Offences Act contains



offence provisions where alcohol is supplied to minors in private settings and includes 'responsible supply' laws. Section 26 of the Police Offences Act states:

A person must not supply liquor to a youth at a private place unless the person is a responsible adult for the youth.... [and] A responsible adult for a youth must not supply liquor to the youth at a private place unless the supply is consistent with the responsible supervision of the youth.

Section 26(3) of the *Police Offences Act 1935* details the factors deemed to be relevant in considering whether alcohol supplied by a 'responsible adult for the youth' is consistent with the 'responsible supervision of the youth'.

It is commendable that Tasmania has these secondary supply laws that apply to on licensed premises and private settings. However, neither the Act nor the *Police Offences 1935 Act* make reference to relevant secondary supply offences which are contained in other Acts. These secondary supply laws should be collated under one Act. Alternatively, the secondary supply offence provisions under the Act should note the relevant secondary supply offence provisions under section 26 of the *Police Offences Act 1935*.

Recommendations

26. The *Liquor Licensing Act 1990* should be amended to provide the public with more opportunities for members of the public to participate and provide input in licensing matters, such as the submission of complaints that may initiate disciplinary action.
27. The *Liquor Licensing Act 1990* should be amended to grant powers to authorities to swiftly and consistently impose meaningful sanctions for premises who contravene the Act. These powers should include on the spot 24 hour closures.
28. The *Liquor Licensing Act 1990* should be amended to introduce Controlled Purchase Operations to identify and prosecute licensees found to be selling alcohol to people under the age of 18 years.
29. The *Liquor Licensing Act 1990* should be amended to include under section 71 of the Act the offence provision in relation to the supply of alcohol to minors in private settings and the responsible supply of alcohol to minors in private settings currently under section 26 of the *Police Offences Act 1935*.
30. The *Liquor Licensing Act 1990* should be amended to require the Commissioner and the Police to publicly report on compliance activities relating to the Act. This includes the number of venues inspected and their location, the times of day that these venues are inspected and the number of identified breaches of compliance.

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