



Alcohol, Tobacco & other  
Drugs Council Tas Inc.

**A SUBMISSION TO THE REVIEW OF THE LIQUOR LICENSING ACT 1990**

**PROPOSALS PAPER**

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## **The ATDC**

The Alcohol, Tobacco and Other Drugs Council Tas, Inc. (ATDC) is the peak body representing the interests of community sector organisations that provide services to people with substance misuse issues in Tasmania.

We represent a broad range of service providers and individuals working in prevention, promotion, early intervention, treatment, research and harm reduction.

The ATDC is a member of the Tasmanian Interagency Working Group on Drugs, the principle advisory body to Government responsible for implementing, monitoring and progressing the Tasmanian Drug Strategy. The ATDC is a strong supporter of initiatives to reduce the harms of substance misuse, both illicit and licit substances such as alcohol.

The ATDC welcomes the opportunity to provide a response to the *Review of the Liquor Licensing Act 1990 - Proposal Paper*. We believe this to be appropriate as the stakeholders we represent have a unique understanding of the impact of liquor licencing decisions upon the people living in our communities. It is the ATDC member organisations that are called upon to provide guidance, support and treatment when the harms of alcohol are experienced.

The ATDC supports the intention of all the proposed changes to the Liquor Licensing Act 1990. From the policy discussion associated with some of the proposals it is clear the Department of Treasury and Finance have attempted to navigate a middle ground between industry and health interests.

It is the view of the ATDC that wherever possible, any changes to the Act should in the first instance aim to minimise the harm associated with availability of alcohol and to support the longer term aims of the Tasmanian Alcohol Action Framework to reduce the volume of per capita alcohol consumption in Tasmania.

In considering each of the proposal the ATDC's response is;

### **Objectives of the Liquor Licensing Act**

1. *Amend the Act to introduce an objectives provision. These objectives would include: regulation, harm minimisation and responsible development of industry.*

The ATDC strongly supports this suggestion. The example of the objectives provision in the paper is a good one as it clearly refers to the importance of regulating access, restricting promotion and advertising and supporting positive cultural change in relation to alcohol consumption.

It is important that in recognising the need to promote cultural change, it is often too easy to focus on individual responsibility rather than tackle change within the alcohol industry. The ATDC considers it essential that the responsibility of industry to act in the best interests of community be included in the objectives of the Act.

### **Best interests of the community**

2. *Amend the liquor regulations to set out matters that the Licensing Board or Commissioner for Licensing will have regard to in determining the "best interests of the community".*

3. *Provide for a community impact statement process for liquor licence or permit applications deemed by the Commissioner to be high risk.*

Improving the definitions within the Act and providing greater clarity is a positive proposal. The role of the Commissioner or the Board in conducting consultation in relation to determining risk is also considered appropriate, particularly where issues such as the impact of socio-economic factors are taken into account to understand the risk and resilience level of a community.

### **Qualifications for a liquor licence**

4. *Update information to applicants to include an explanation of the criteria used to assess "fit and proper".*

5. *Amend the Act to:*
- a. *Introduce a provision that the Commissioner may apply a fit and proper test to permit applicants*
  - b. *Introduce an obligation that licence and permit holders must notify the Commissioner when convicted of an offence in Tasmania or any other jurisdiction, and when there is a change relating to an associate, including a conviction relating to an associate*
  - c. *Introduce fit and proper as a matter that may be considered by the Commissioner in the cancellation, variation or suspension of a permit.*

Proposals 4 and 5 are supported by the ATDC. It should be assumed that the Commissioner will expect a high standard of behaviour and reputation from licensees and it is not at all unreasonable to require licensees to demonstrate their suitability to be granted and maintain a license.

The sale and serving of alcohol inherently includes an element of social responsibility that should be accepted by the retailer. It is not reasonable to attempt to deflect all responsibility to the individual consumer of a product that is so robustly marketed with the intention of increasing use and acceptance.

6. *Amend the Act to require the completion of Responsible Service of Alcohol training every five years with licensees responsible for ensuring that employees who serve alcohol have completed the required training.*

This is a reasonable addition to the Act and will assist in maintaining a higher level of awareness of the importance of decision making in relation to serving alcohol. The current flexibility in attaining RSA accreditation is not overly burdensome for staff or licensees so this requirement, to maintain currency, is important.

#### **Variable licence fees**

7. *Further explore moving to a risk-based fee system.*

Since risk based fee systems are considered a best practice model, it seems this proposal is a little too conservative. Of course it is essential that an evidence base and good understanding of the model exists within the Department before such a change is introduced, but this proposal would be stronger if it stipulated “exploration with the intention of introducing a risk-based fee system.”

#### **Licence and permit conditions**

8. *Amend the Act to:*
- a. *Provide the Board and Commissioner with the power to apply a range of conditions to all licence and permit types.*
  - b. *Provide an appeals process against the imposition of conditions by the Commissioner.*

This proposal is consistent with the overall review of the Act and is supported by the ATDC.

### **Role of local government**

9. *Maintain separation between the planning and development and the liquor licensing processes.*

10. *Continue dialogue between the regulators and local government to ensure that all local authorities understand the licensing process and their ability to participate in that process.*

Proposal 9 will only be effective if the communication and interface between local government authorities and the Liquor and Licensing Branch are enhanced to ensure no duplication of process or unnecessary red tape is created whilst an application is being assessed. In addition it appears Local Government may not have engaged with the licensing process to the fullest extent available to them, so attention must be paid to the development of formal communications.

It is clear that local government areas have the potential to be closely connected to the communities they include, and as such can assist the Commissioner for Licencing by providing principles for activity in certain precincts. The mechanism, by which this might be achieved, is best identified by the local government authorities and the Planning Minister.

Intuitively it does make sense that planning approvals are confirmed before examining licence applications however, it is also clear the Commissioner is loath to be viewed as a rubber-stamp for applications. Ultimately it is the responsibility of the Commissioner and the Board to ensure the approval of licenses fall within the parameters of the Objectives of the Act, so with the inclusion of a harm minimisation objective, and the better definition of “community’s best interest”, maintaining separation between planning and licensing is not a proposal the ATDC consider essential.

### **Intoxication**

11. *Amend the Act to:*

a. *Replace the term drunk with intoxicated, interpreted as someone affected by alcohol or some other substance.*

b. *Provide indicators of intoxication.*

12. *Develop guidelines to clearly outline the meaning of intoxication and how it can be determined and include in the RSA training course.*

Moving to the use of more contemporary language and improving the definition to assist in determining intoxication are important amendments to the Act.

The ATDC supports this recommendation as the Commissioner for Licencing should have a responsibility to promote health, inform and educate the public, and support the best practice approaches to harm reduction when alcohol is provided. Through a collaborative

effort with educators and service providers from the alcohol and drug sector, in developing and distributing resources or guidelines, the Commissioner could ensure relevant material is included. This would be particularly helpful as with the inclusion of a broader definition of intoxication to include other substance intoxication, those providing alcohol will require broader knowledge of the effects of all substances.

It is important to understand that the inclusion of other substance intoxication should not be misinterpreted as a responsibility for the server of alcohol to somehow include responsibility for the 'other substance' being present. This is about assessing intoxication and ceasing provision of alcohol. Such responsibility does rest with the server and should not be dismissed on the basis of the uncertainty of what substance has led to intoxication. Once intoxication is assessed, provision of alcohol must cease.

### **Employing young people where alcohol is sold**

*13. Amend the Act to introduce an age restriction of 16 years to serve alcohol as part of employment. The current requirements for direct supervision and appropriate course accreditation to remain.*

Whilst it is critical that Tasmania addresses the issue of youth unemployment, the solution should not be found in acceptance of people under the age of 18 serving alcohol. If the legislation is amended to ensure minors are excluded from areas or duties that include providing alcohol then employment in a licenced venue could be acceptable.

The two main reasons for this position are that at 16 the experience of a young person to correctly assess and respond to an intoxicated person is limited. Despite retaining the direct and personal supervision clause, the reality will place minors in situations where discretion will need to be exercised and this is neither appropriate nor necessary.

Secondly, in a society where a culture of significant levels of alcohol use is one which this Act will aim to address, there is an inherent tension between the intent of changing this culture whilst bringing minors into the very arena where this is normalised.

Recently a study undertaken by the National Drug and Alcohol Research Centre, confirmed that the previously held view, that introducing young people to alcohol early in life taught moderation, is in fact false. The younger a person engages with alcohol the more likely they are to consumer at more harmful levels when they reach 18 years.

### **Undesirable alcohol promotion and advertising**

*14. Amend the Act to provide the Commissioner with the power to prohibit or restrict the irresponsible advertising and promotion of alcohol.*

15. *Develop guidelines that indicate the types of activities or promotions that would be restricted or prohibited and also include advice regarding actions that licensees can take to reduce the risks associated with alcohol promotions.*

Adopting criteria such as those in NSW (presented in the Proposals Paper) would be a welcome addition to the Tasmanian legislation. A large body of evidence has been presented over many years that confirms a positive correlation between restricting promotion and advertising of alcohol with a reduction in the consumption and subsequent harms caused.

#### **Trading hours and outlet density**

16. *Make outlet density data available to the Board when undertaking licensing decisions.*

Again, there is a strong evidence base that suggests outlet density impacts upon consumption rates and as such should be available and used by the Board when making decisions. This is consistent with the intention of the Act to be in the best interests of the community and to minimise the harms associated with the availability and sale of alcohol.

#### **Power to prohibit alcohol products**

17. *Amend the Act to include a provision for the Minister, by notice in the Gazette, to prohibit alcohol products if it is in the best interests of the community and the Minister has consulted with liquor industry representatives and the manufacturer (if known). Failure to consult would not affect the validity of the notice.*

The ingenuity of the alcohol industry to continually seek ways to increase market share and profit, can on occasion bring with it risks. We have seen products developed that have targeted younger and potential new consumers, (e.g. sweet RTDs). There are also products that appear benign but contain levels of alcohol that can cause harm. It is very appropriate for Tasmania's Act to be consistent with other jurisdictions.

#### **Provision of free drinking water**

18. *Amend the Act to require the provision of free drinking water in licensed premises with the Commissioner having the power to exempt certain classes of licence or a licensee upon application.*

This is a welcome inclusion to the Act.

#### **Banning/barring orders**

19. *Amend the Act to:*

*a. Enable police and licensees to issue barring orders that are for longer than 24 hours capped at six months.*

*b. Strengthen barring orders issued by police and licensees, by extending the order to include*

*a vicinity of 50 metres from the venue within the first six hours of the barring, allowing for defences such as residing within that vicinity, needing to access transport within the vicinity or genuine safety fears.*

*c. Allow police to issue multi-venue or designated area barring orders where there is a strong public interest justification.*

20. *Develop guidelines and signage for venues to use to communicate what is expected of patrons and what it means to be barred.*

These changes to the Act are consistent with increasing our public awareness and community understanding of the responsibilities associated with the consumption of alcohol in public places. They also provide a greater level of flexibility to police and licensees to ensure their respective responsibilities are able to be met.

### **Data collection**

21. *Amend the Act to allow alcohol sales data to be collected from wholesale and producer liquor licence holders.*

22. *Tasmania to participate in the National Alcohol Sales Data Project.*

These two proposals are vital to the future efforts of the Tasmanian Government in addressing the social and economic costs associated with alcohol use. The potential value gained from being able to measure and monitor alcohol sales far outweighs the potential increase in compliance and reporting.

Tasmania should not abdicate responsibility for the collection of our own data in order to support the development of targeted policy responses linked to alcohol.

### **Enforcement model**

23. *Amend the Act to:*

*a. Ensure that there are offences for licensee obligations.*

*b. Ensure that obligations are extended to include permit holders.*

*c. Include the following obligatory provisions for licence and permit holders (and others as necessary):*

- a licensee, permit holder or employee must not serve alcohol while intoxicated;*
- a licensee or permit holder must inform the Commissioner of personal detail changes; and*
- a licensee or permit holder must notify the Commissioner of any offences for which they are charged and/or convicted.*

*d. Introduce a progressive administrative disciplinary process that enables staged disciplinary measures to be taken by the Commissioner dependant on the severity of the breach.*

e. *Expand the current fine process (i.e. infringement notices) to give authorised officers (Liquor and Gaming Branch inspectors) the power to enforce certain offences contained in the Act.*

f. *Extend offence provisions where appropriate (from licensees and permit holders to other persons) to encompass the responsible consumption of alcohol.*

Improving the efficiency of implementation of the Act should be a consideration of this review and the ATDC accepts the proposals as reasonable.

In particular it will be of value to remove the inconsistencies between permits and licenses and it is very appropriate that a focus on the responsibility of the licensee is reinforced.

### **Supporting responsible service and consumption practices**

24. *Further explore an industry based mandatory funding arrangement to support responsible service and responsible consumption of alcohol initiatives.*

The current lack of a mechanism to raise funds from the industry to support RSA or public education campaigns is an issue that should be explored and the ATDC supports this proposal.

Whilst it is outside the scope of the Tasmanian Government Liquor Licensing Act Review, the ATDC considers the importance of moving to an alternative taxation model in relation to alcohol is a matter that should continue to be raised at a Federal level. The potential of a volumetric tax which is hypothecated to fund alcohol related health and education programs remains an aspiration that should not be lost as we work toward improving our Tasmanian legislation.