**Tasmanian Alcohol Action Framework Legislative Scoping Study Recommendation Implementation - October 2013 Status Report**

****

Interagency Working Group on Drugs

# Section Reference in the Tasmanian Alcohol Action Framework Legislative Scoping Study Final Report

| **#** | **Issues Identified** | **Options identified by Stenning and Associates** | **Recommendation/s** | **Status/ Progress** |
| --- | --- | --- | --- | --- |
| 4.1.1 | There is currently no explicit statement of objective in the *Liquor Licensing Act 1990* (LLA). | 1. Make no change (ie, the status quo).2. Amend the LLA to provide that the sole objective of the LLA is to minimise the harms related to alcohol misuse;3. Amend the LLA to provide that an objective of the LLA is to minimise the harms related to the misuse of alcohol alongside the objectives of maintaining a robust and viable hospitality industry and minimising the administrative burdens on business. | 1. That objectives be introduced into the LLA that decisions made under the LLA should be consistent with:
* minimising the harms related to the misuse of alcohol.
* maintaining a robust and viable hospitality industry; and
* minimising the administrative burdens on business.
1. That these objectives be applied in addition to the current decision criterion in the LLA that licences and permits be issued when ‘in the best interests of the community’.
 | This is currently under consideration by the Liquor and Gaming Branch (the Branch). The *Review of the Liquor Licensing Act 1990 Discussion Paper* (Discussion Paper), released by the Branch in September 2013, asks the questions about the inclusion of objectives in the Act in section 4.1. Submissions to the Discussion Paper close on 29 November 2013. |
| 4.1.2 | There are significant public health costs associated with alcohol misuse, yet the PHA does not currently deal with alcohol in any way and there is no public health expert involved in Licensing deliberations.  | 1. Make no change (ie, the status quo).2. The Director of Public Health publishes annually a stand-alone report on impact of alcohol on the public health of Tasmanians. This report should draw on the information provided by the State of the Public Health report and its companion publication Health Indicators Tasmania, plus other relevant information sources. | 1. That the Director of Public Health publishes annually a stand-alone report on impact of alcohol on the public health. This report should draw on the information provided by the State of the Public Health report and its companion publication Health Indicators Tasmania, plus other relevant information sources.
 | A comprehensive *Tasmanian Alcohol Report 2013* has been published by Public Health following on from the *State of Public Health Report 2013*. Electronic copies have been circulated to all Inter Agency Working Group on Drugs and Alcohol Advisory Group members including Liquor Licensing senior staff. The Report is also available on the Population Health Epidemiology web page. Future iterations of the Report will be developed when new and significant data becomes available. In the meantime the Tasmanian Alcohol Trends publication will be released on a regular basis. Strengthening of the *Public Health Act* with regards to the prevention of risk and harms from alcohol remains a consideration within the Public Health legislative agenda.  |
| 4.1.3 | The LLA does not require there to be any specific community or public health expertise held by Members of the Licensing Board. | 1. Make no change (ie, status quo).2. Legislative change to require the Licensing Board to have specific expertise in community or public health. | No action to be taken. | No action required.  |
| 4.1.4 | The Responsible Service of Alcohol framework ensures that patrons on licensed premises do not become significantly intoxicated. However, there are occasions where there are heavily intoxicated patrons on premises. Licensees and staff may not be equipped to deal with significantly intoxicated patrons. | 1. Make no change (ie, the status quo).2. The Commissioner for Licensing and the DHHS liaise to develop and distribute to existing and new licensees an information resource on how to deal with severely intoxicated persons so that they can incorporate the relevant information in their standard operating procedures for their supervisors, serving staff and crowd controllers. | 1. That the Commissioner for Licensing and the DHHS liaise to develop and distribute to existing and new licensees an information resource on how to deal with severely intoxicated persons so that they can incorporate the relevant information in their standard operating procedures for their supervisors, serving staff and crowd controllers.
 | The LLA makes it an offence to sell liquor to a person that appears to be drunk. The Branch will develop a fact sheet on this issue for distribution to new licensees when the licence is transferred or granted. The fact sheet will also be sent to existing licence holders with the annual fee notices that will go out in early 2014.Furthermore, section 4.3.1 of the Discussion Paper poses questions around an LLA amendment with regards to the definition of ‘appears to be drunk’. |
| 4.2.1 | Liquor permit applications are not subject to the same scrutiny/ public consultation requirements as liquor licence applications. Some liquor permits can substantially alter the nature of the licenced premises, e.g. after hours permit. Amending the process would improve the transparency and ensures that substantial change in the nature of a licensed premise would be subject to appropriate scrutiny. | 1. Make no change (e.g., the status quo).2. Administratively introduce a public consultation process to be conducted by the Commissioner for Licensing to determine whether new liquor permit applications should be approved.  | 1. That a public consultation process be administratively introduced for new liquor permit applications.

This should include Commissioner for Licensing investigating the most efficient model for the public consultation process for new liquor permit applications that does not impose unreasonable administrative or industry compliance costs. | This issue is currently under consideration by the Branch. The current provision allows the Commissioner for Licensing to provide for a public consultation processes at his discretion. A public consultation process for every application would have an administratively large impact on the Branch and the results may not provide the value to justify it. A public consultation process would not be suitable for permit applications which require a fast turn‑around such as that of a Football club that won’t know its participation in Finals until the week before. |
| 4.2.2 | Lack of clear differentiation between the local government planning approval and the licensing processes can be a cause of confusion amongst applicants and the public. There is also a lack of clear, easy to access information describing the requirements and interaction between the planning and the licensing processes, leading to confusion. | 1. Make no change.2. Local government authorities consider, in the development of their planning schemes, the establishment within appropriate zones of standards including local area objectives and/or desired future character statements about the location and nature of licensed premises. This could be achieved as part of the current local government planning reform process. Further, this matter could also be progressed through the regional planning processes under the State Government’s Regional Planning Initiative to encourage consistency in the planning approaches taken by local councils in relation to licensed premises within a region. 3. Local government authorities consider introducing a Liquor Licensing Policy that expresses the authority’s expectations for licensed premises in specific zones and which can form the basis of council submissions to the Licensing Board regarding liquor licence applications.4. The Liquor and Gaming Branch, in consultation with LGAT, strengthen the current guidelines for applicants and other relevant publications with clear information on how the liquor licensing approval process interacts with local government planning approval processes.  | 1. That local government authorities consider, for inclusion in relevant zones in their planning schemes, standards including local area objectives and/or desired future character statements about the location and nature of licensed premises.

This could be achieved as part of the local government planning scheme standardisation process. Further, this matter could also be progressed through the regional planning processes under the State Government’s Regional Planning Initiative to encourage consistency in the planning approaches taken by local councils in relation to licensed premises within a region.1. That local government authorities consider introducing a Liquor Licensing Policy that expresses the authority’s expectations for licensed premises in specific zones and which can form the basis of council submissions to the Licensing Board regarding liquor licence applications.
2. The Liquor and Gaming Branch, in consultation with the Local Government Association of Tasmania (LGAT), strengthen the current guidelines for applicants and other relevant publications with clear information on how the liquor licensing approval process interacts with local government planning approval processes.
 | This issue is one which has been raised through the Discussion Paper. It has been the consistent view of councils for some time that the LLA should be amended to require that an applicant receive planning approval prior to applying for a liquor license. This is the case in a number of other jurisdictions. In relation to the other similar recommendations (as mentioned in the LGAT submission to the ALSS):1. In regard to the first recommendation it would be very difficult to draft appropriate local area objectives or desired future character statements (within the planning scheme) for each settlement within the municipality that are quite specific about “the location and nature of licensed premises”. The way in which these existing provisions have been drafted is not conducive to this type of description and it would also be difficult to know on what to base any such statements (in the absence of a detailed policy – see next recommendation). It is suggested that, what is really needed are practical tests in the relevant Acceptable Solutions/Performance Criteria and in the Tables of Use. For example, these may require measurable distances from main roads, schools or other sensitive uses, other hotels and residential zones. It would be appropriate that these tests be developed through the regional planning project, to ensure a consistent approach is taken in the new planning schemes being developed. LGAT will work with the Planning Commission to further examine this opportunity once the Liquor Licensing Review has been finalised.
2. In regard to the second recommendation around developing Council Liquor Licensing Policy, Adelaide City Council’s Liquor Licensing Policy is quoted as being a good example as it forms the basis for Council’s responses to liquor licence applications and as a basis for planning scheme provisions as appropriate. A comment on this is that such a policy (similar to the Adelaide City example) could be developed but such broad policies often do not provide the detailed site or neighbourhood information required when commenting on individual applications. The Adelaide policy is also supported by legislation which requires planning approval prior to the granting of a liquor licence. Therefore relevant conditions imposed by Council on a Development Approval are adopted by the Licensing Authority as licence conditions and repeated on the liquor licence issued. This approach is strongly supported by Tasmanian Councils. This issue will be further examined after the outcomes of the liquor licensing Act are known.
3. The last recommendation appears appropriate in that improved information should be provided to applicants. This would also be consistent with a subsequent recommendation that states “that the Licensing Board and the Commissioner for Licensing produce improved guidance material for liquor licence and permit applicants and those seeking to make representations regarding applications”. This particularly relates to an assessment as to whether the granting of a licence or permit is “in the best interests of the community”.

This new information needs to describe the differences between the assessment of such licence applications and the assessment of new development/business proposals by the planning authority. The main issue from a council’s perspective in this regard is however not addressed within the report and that the liquor licensing Act should be redrafted to ensure that a planning permit is granted prior to applying for a liquor license. The issue of timing around planning approval and the granting of a liquor license is being examined through the Liquor Licensing Review.The Branch is currently considering this issue and the Director of the Branch has been liaising with the CEO of LGAT on this issue. Section 4.2.5 of the Discussion Paper covers this issue in depth.There is currently flexibility in the LLA to allow the Board to take an in principle stance that it would not generally consider applications ahead of the resolution of planning and development matters, however there may be situations where it would be prudent for an applicant to seek a licence prior to planning approvals. The guidance material will be updated to reflect this.  |
| 4.2.3 | Lack of transparency of the decision criteria used by the Licensing Board and Commissioner for Licensing to assess liquor licence and permit applications. | 1. Make no change (ie, status quo).2. The Licensing Board and the Commissioner for Licensing produce improved guidance material for applicants for liquor licences and permits and those seeking to make representations regarding applications. | 1. That the Licensing Board and the Commissioner for Licensing produce improved guidance material for liquor licence and permit applicants and those seeking to make representations regarding applications.
 | The Branch provides a number of brochures and fact sheets to new applicants. An inter-jurisdictional review will be undertaken to see how Tasmania compares. |
| 4.2.4 | Lack of clarity regarding the security requirements imposed on the holder of licences and permits, potentially leading inadequate security being provided at venues/events.  | 1. Make no change (ie, the status quo).2. The Commissioner for Licensing, in conjunction with Tasmania Police, improve guidance material for licence and permit applicants on the expectations for the security requirements that may need to be provided in relation to licensed premises or permitted events. This should include investigating the establishment of an indicative grading system for security requirements to streamline the process of determining security requirements. | 1. That the Commissioner for Licensing, in conjunction with Tasmania Police, improve guidance material for licence and permit applicants on the expectations for the security requirements that may need to be provided in relation to licensed premises or permitted events.

This should include investigating the potential for establishing an indicative grading system for security requirements to streamline the process of determining security requirements for prospective licence or permit holders. | Where required, Tasmania Police will work with the Commissioner for Licensing, to progress the development of guidance material to inform licence and permit applicants regarding security requirements of licensed premises or permitted events. The Liquor and Gaming Branch has fact sheets available on its website titled "Security in Licensed Premises" and "wet areas" to guide permit holders on what would be considered sufficient security. The branch will also undertake an inter-jurisdictional review to gauge how Tasmania compares. |
| 4.2.5 | There is currently no criterion to define whether a liquor licence applicant is ‘fit and proper’. | 1. Make no change.2. Develop and publish guidance material that objectively defines what constitutes grounds for considering a licence applicant to be not ‘fit and proper’.3. Amend the LLA to objectively define what constitutes grounds for considering a licence applicant to be not ‘fit and proper’. | 1. That the Commissioner for Licensing develop and publish guidance material that objectively defines what may constitute grounds (by the applicant or their associates) for considering a licence applicant to be not ‘fit and proper’.
 | The Branch is currently considering this issue and it is also covered in Section 4.2.2 of the Discussion Paper. While a defined test for 'fit and proper' is a good idea for licence holders, it is not as straight forward for permits and so this area needs thought and discussion. |
| 4.2.6 | The LLA does not require liquor licenses/permits, once obtained, to be reviewed to ensure that they are continuing to meet the decision criteria for granting a licence. | 1. Make no change (ie, the status quo).2. Amend the LLA so that it includes a requirement for liquor licences and permits to undergo a regular review process. | No action to be taken. | While Stenning and Associates recommended that no action be undertaken with regards to this issue, this issue has been included in the Discussion Paper along with the above issue in Section 4.2.2. |
| 4.2.7 | The LLA does not contain a complaints process for the public to report issues against licensees. | 1. Make no change (ie, the status quo).2. Amend the LLA so that explicitly provides for a public complaints process. | No action to be taken. | No action being taken. |
| 4.3.1 | There is not a consistent level of detailed understanding at senior police levels of the processes supporting the operation of the liquor licensing legislation, particularly those processes that involve the Commissioner for Licensing. | 1. Make no change (ie, status quo).2. Investigate ways of implementing more formal communications between senior Police and the Commissioner for Licensing regarding the enforcement processes undertaken and outcomes achieved by Tasmania Police and the Commissioner for Licensing. 3. Investigate ways to strengthen the induction process for new Licensing Police to ensure they have a sound understanding of liquor licensing support processes and the role of, and constraints on, the Commissioner for Licensing and the Liquor and Gaming Branch. | 1. That Tasmania Police and the Commissioner for Licensing investigate ways of implementing more formal communications at a senior level regarding the enforcement processes undertaken and outcomes achieved by Tasmania Police and the Commissioner for Licensing.
 | Tasmania Police has established the Public Order and Safety Forum (POSF). The POSF meets regularly to provide an avenue for high-level discussion and consideration of a range of operational public order and safety matters, including alcohol and liquor licensing-related issues. The POSF comprises senior officers from all Tasmania Police District Commands and representatives from the Liquor and Gaming Branch, Department of Treasury and Finance. |
| 1. That Tasmania Police investigate ways to strengthen the induction process for new Licensing Police to ensure they have a sound knowledge of liquor licensing support processes and the role of, and constraints on, the Commissioner for Licensing and the Liquor and Gaming Branch.
 | To enhance the knowledge of officers, Tasmania Police is to progress development of a liquor licensing-related on-line training package. |
| 4.3.2 | There is a lack of clarity on the criteria used by the Commissioner for Licensing or the Licensing Board to determine whether offences under the LLA should lead to suspension or cancellation of the licence, giving the appearance of a reluctance to impose penalties. | 1. Make no change (ie, status quo).2. Commissioner for Licensing to document (and provide to Tasmania Police) the considerations used when determining whether to suspend a licence or permit or whether to apply to the Licensing Board for the cancellation of liquor licences.3. Legislative change to introduce an objective “three-strikes” or similar infringement-to-suspension/cancellation process. | 1. That the Commissioner for Licensing documents the considerations to be used when determining whether to suspend a licence or permit or whether to apply to the Licensing Board for the cancellation of liquor licences. These criteria should be communicated to Tasmania Police and updated as required.
 | There is currently a disciplinary process in place and each instance is determined on its merit. An inter-jurisdictional review will be undertaken. |
| 1. That the Commissioner for Licensing considers whether this advice should be made public to inform industry about how the issue of licence suspensions and cancellations is approached.
 | The Commissioner will consider recommendation 15 once the disciplinary process and criteria is finalised. |
| 4.3.3 | The *Personal Information Protection Act 2004* (PIP Act) prevents Police providing the Commissioner for Licensing with full information relating to offences in or around licence premises for which infringement notices are issued. This reduces the Commissioner for Licensing’s ability of effectively enforce sections of the LLA. | 1. Do nothing (ie, the status quo);2. Investigate the potential for an exemption to be obtained under the PIP Act to allow Tasmania Police to provide information on breaches of the LLA to the Commissioner and for the Commissioner to use that information in determining enforcement actions.3. Amend the PIP Act to allow Tasmania Police to provide information on breaches of the LLA to the Commissioner for Licensing. | 1. That Tasmania Police and the Commissioner for Licensing investigate the potential for an exemption to be obtained under the PIP Act to allow Tasmania Police to provide information on breaches of the LLA to the Commissioner and for the Commissioner to use that information in determining enforcement actions. If an exemption is not able to be granted, then the avenue of amending the PIP Act should be pursued.
 | Any application required for an exemption under the PIP Act, to enable information regarding breaches of the LLA to be provided between the Agencies, will need to be progressed by the Branch, on behalf of the Commissioner for LicensingThe Branch is currently liaising with Tasmania Police to correct this oversight |
| 4.3.4 | Division 5 of the LLA sets out a range of obligations that licensees are required to adhere to. However, Police is unable to immediately enforce these in the same manner as breaches under Division 6. | 1. Make no change (ie, status quo).2. Amending the LLA to ensure that, where appropriate, there are offences for breaches of the licensee obligations outlined in Section 5 of the LLA. Tasmania Police and the Liquor and Gaming Branch to jointly investigate which breaches of Division 5 obligations under the LLA should be accompanied by an offence under Division 6. | 1. That the LLA be amended to ensure that, where appropriate, there are offences for breaches of the licensee obligations outlined in Section 5 of the LLA. It is further recommended that Tasmania Police and the Liquor and Gaming Branch jointly investigate which breaches of Division 5 obligations under the LLA should be accompanied by an offence under Division 6.
 | To is being considered as part of Discussion Paper (4.5). |
| 4.3.5 | Inability under current arrangements to impose conditions on licence at the time of issue or conditions to be imposed on a group of licences, on risk based approach, to manage alcohol related harm. | 1. Make no change (ie, status quo).2. Amend the LLA to provide the Commissioner for Licensing with the ability to proactively impose conditions on all types of liquor licence/permits at the time of issue, provided that there is a sufficient evidence base to justify the imposition of the conditions and subject to appropriate appeal rights. This should also be accompanied by:  the amendment of the LLA to ensure there are rights of appeal against the imposition of licence conditions; the amendment of the LLA to introduce liquor licence/permit subtypes; and a review of Section 43 of the LLA to ensure that the conditions contained outlined by that section provide sufficient scope for the Commissioner to effectively employ a risk based approach to managing the activities of licensees/permit holders. | 1. That the LLA be amended to provide the Commissioner for Licensing with the ability to proactively impose conditions on all types of liquor licence/permits at the time of issue, provided that there is a sufficient evidence base to justify the imposition of the conditions and subject to appropriate appeal rights. This should be accompanied by:
* the amendment of the LLA to introduce liquor licence/permit subtypes; and
* a review of Section 43 of the LLA to ensure that the conditions contained outlined by that section provide sufficient scope for the Commissioner to effectively employ a risk based approach to managing the activities of licensees/permit holders.
 | This issue is being considered as part of the Discussion Paper - section 4.2.4. |
| 4.3.6 | There is a reference in the LLA to the serving a people appearing to be “drunk”, but no definition for it.  | 1. Make no change (ie, the status quo).2. Amend the Liquor Licensing Act to include a definition of ‘intoxicated’ that provides guidance to licensees and their staff in determining whether a person is drunk.  | 1. That the LLA be amended to include a definition of ‘intoxicated’’ that provides guidance to licensees and their staff in determining whether a person is drunk. This definition should be developed having regard to the definitions used in other State and Territory liquor licensing/control legislation. It will also require a review of the use of the word ‘drunk’ in the LLA.
 | Section 4.3.1 of the Discussion Paper poses questions about the definition of ‘appears to be drunk’ being incorporated into the LLA. |
| 4.3.7 | There are currently two avenues to introducing restriction or prohibition of drinking in public places – through the Police Offences Act or the *Local Government Act 1993*. This can lead to confusion amongst the administering agencies regarding when it might be appropriate to use which law and who has enforcement responsibility.  | 1. Make no change (ie, the status quo).2. Tasmania Police to liaise with local government through LGAT with a view to encouraging Councils to:  approach Tasmania Police when they have specific public areas where there are demonstrable problems with the misuse of alcohol to allow an assessment of whether alcohol restrictions should be introduced under Section 25 of the Police Offences Act; and  liaise with Tasmania Police on enforcement requirements if they implement by-laws restricting the consumption of alcohol in public places that require enforcement by Tasmania Police.3. Amend the Local Government Act to prevent local government authorities from making by-laws that impose restrictions on the consumption of alcohol in public places.  | 1. That Tasmania Police liaise with local government through LGAT with a view to encouraging Councils to:
* approach Tasmania Police when they have specific public areas where there are demonstrable problems with the misuse of alcohol to allow an assessment of whether alcohol restrictions should be introduced under Section 25 of the Police Offences Act; and
* liaise with Tasmania Police on enforcement requirements if by-laws are implemented to restrict the consumption of alcohol in public places.
 | Tasmania Police continues to work collaboratively with Councils to address issues regarding public consumption of alcohol, and the misuse of alcohol in the community.In February 2013, the *Police Offences Regulations 2013* was enacted to prohibit and restrict the use of alcohol in a number of prescribed public parks.As a member of the Safer Hobart Community Partnership, Tasmania Police investigates a range of options to address issues of alcohol use in public places.Tasmania Police works with Council’s in the organisation and planning of upcoming major public events, including those where alcohol is to be served. |
| 4.4.1 | Although there is an awareness of the TAAF through the consultations undertaken during development, there is a lack of continued engagement from industry. | 1. Make no change (ie, status quo).2. Examine ways of encouraging and formalising industry commitment to TAAF. | 1. That ways be examined of encouraging and formalising industry commitment to TAAF.
 |  |
| 4.4.2 | There is insufficient data collected in Tasmania regarding the consumption of alcohol and the social impact of alcohol misuse to inform debate and policy formulation and decision by relevant authorities. | 1. Make no change (ie, status quo).2. The IAWGD establish an overarching data strategy that articulates what impacts need to be monitored and assessed in order to evaluate the success or otherwise of TAAF and what data is required to inform that assessment. This data strategy needs to:  detail the types of data that needs to be collected and the methods are the most appropriate/efficient to collect that data; and includes strategies for disseminating the data to key stakeholders and the public. | 1. That an overarching data strategy be established by the IAWGD that articulates what impacts need to be monitored and assessed in order to evaluate the success or otherwise of TAAF and what data is required to inform that assessment. This data strategy needs to:
* detail the types of data that needs to be collected and the methods are the most appropriate/efficient to collect that data; and
* includes strategies for disseminating the data to key stakeholders and the public.
 |  |