

## **Attachment 2 – Alcohol Legislative Scoping Study Specification**

### **1 – Project Summary**

A scoping study of the legislative and regulatory framework dealing with the sale and supply of alcohol and the management of alcohol-related harm in Tasmania; and to prepare a discussion paper highlighting any issues of concern; perceived strengths and weaknesses; and opportunities for improvement and alignment of the legislative and regulatory framework. This is in accordance with the aims and strategies of the Tasmanian Alcohol Action Framework 2010-2015 *Rising Above the Influence* (the ‘Framework’).

### **2 - Project Steering Committee**

The Alcohol Advisory Group (AAG), on behalf of the IAWGD, is the Steering Committee for this project.

### **3 - Background**

The stated aims of the Framework are to:

- (a) reduce the volume of per capita alcohol consumption in Tasmania
- (b) reduce the incidence of illness, accidents and deaths related to the misuse of alcohol
- (c) reduce the level of social, economic, health and legal costs related to the misuse of alcohol
- (d) reduce the prevalence of violence, including family violence, disruption, antisocial behaviour and crime related to the misuse of alcohol
- (e) reduce the incidence of harmful alcohol use in the Tasmanian community
- (f) reduce the focus on alcohol as a necessary component of social activity in Tasmania

A key strategy of the Framework is an effective system for controlling the supply of alcohol in Tasmania. The Framework identifies the following areas for action:

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

Following discussions at the AAG and IAWGD, it was agreed that a scoping study would be undertaken in the first instance to identify opportunity to enhance the legislative and regulatory framework.

### **4 - Purpose of the Legislative Scoping Study**

The purpose of this project is to develop a Discussion Paper/Report for the IAWGD mapping and discussing the range of both the legislation and regulatory regime dealing with alcohol in Tasmania (including liquor licensing and the legislation addressing alcohol-related harm in Tasmania).

The Discussion Paper will highlight any issues of concern; perceived strengths and weaknesses of a number of primary legislations pertaining to alcohol; and any opportunity

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for improvement and alignment of legislation in line with the purpose and scope detailed above.

### 5- Scope of work

The Scoping study will:

- (a) Review and map the range of Tasmanian legislation dealing with alcohol-related matters in Tasmania – with a primary focus on liquor licensing legislation, public health legislation and police legislation - and comment on their application with regard to the consistency of structure and objective, the appropriateness/level of the structures and support (including collaborative partnerships and interaction of agencies) to achieve the desired goals.
- (b) Review the compliance enforcement regime and identify key stakeholders perspectives of the regime, highlighting possible changes to processes.
- (c) Review the process for submissions to the Licensing Board from police, Department of Health and Human Services and other government agencies with an interest, local councils, the general public and industry.
- (d) Review the criterion for determining licence and permit applications to determine whether public health and wellbeing, community safety, planning and development, and economic impact are considered in licensing decisions.
- (e) Determine the capacity of police or the Commissioner for Licensing to enforce liquor laws pertaining to the serving of intoxicated people.
- (f) Determine the extent of licensee responsibility under the *Liquor Licensing Act* and duty of care under common law with regard to the serving of intoxicated people.
- (g) Identify any gaps and or inconsistencies in the legislative and regulatory framework in Tasmania, and determine whether they have an impact on the control and supply of alcohol.
- (h) Identify possible synergies within and across primary alcohol legislation to better align the legislation to meet better the aims of the *Tasmanian Alcohol Action Framework*.
- (i) Identify specific areas and evidence based ways that current alcohol legislation or other relevant legislation in Tasmania can be strengthened.
- (j) It is not the intent of this study to compare legislation or regulatory regimes across jurisdictions, however the reviewer may need to highlight the legislative framework and practices of other jurisdictions or reference other relevant work as examples in the discussion and recommendations, where appropriate.

The Framework acknowledges the diverse and conflicting interests around alcohol. It recognises the Government's desire to find a balance between the important role that alcohol has on industry and economic development, and the adverse effects it has on public health and safety.

This scoping study is to be undertaken with a view to determining whether there is scope to improve the legislative framework and the arrangements supporting the operation of the legislation to meet the Government's aims in the *Tasmanian Alcohol Action Framework*.

A comprehensive rewrite or major amendment of the *Liquor Licensing Act* is not anticipated. Any potential legislative change to this legislation emanating from the scoping study would preferably be met by amendments to specific provisions or be capable of being addressed through miscellaneous amendments. The *Public Health Act*, however, is subject to a review and this legislative scoping study provides an opportunity to influence the outcome of that review.

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The scoping study will undertake to:

- (a) Identify and comment on the strengths, weaknesses of existing legislation that pertain to the sale and supply of alcohol and management of alcohol-related harm in Tasmania, and the potential to amend existing legislation to improve the regulation of the sale and supply of alcohol and the management of alcohol-related harm in Tasmania. The scoping study will cover such areas as:
- (b) the schema of licence and permit classifications and the level of licence and permit fees;
- (c) the criteria/conditions considered in the licence and permit application process;
- (d) the regulatory regime in practice around the sale and supply to minors and intoxicated persons;
- (e) the legislative coverage and regulatory regime around the management of alcohol-related harm in Tasmania;
- (f) the legislative coverage and impacts of public health issues related to the consumption of alcohol in Tasmania;
- (g) the detection and determination of breaches, from a licensing and other harm reduction perspective;
- (h) current penalty levels in the range of relevant legislation;
- (i) map the geographic distribution of licences and permits; and
- (j) the level of engagement by public health, police and Councils in the licensing and other regulatory processes.

The scoping study will be informed by discussions arising from the liquor licensing forum conducted in December 2010 by the Department of Police and Emergency Management. The forum assisted in highlighting anecdotal views on the key/specific issues of concern, the perceived weaknesses and opportunity for enhancement to the legislation and systems in place to control the sale and supply of alcohol and manage alcohol-related harm in Tasmania.

The scoping study will include a scan of existing legislation in Tasmania and engage with key stakeholders to clarify, verify and explore the key issues, the perceived weaknesses and the opportunities identified through the liquor licensing forum and through engagement with stakeholders. The key stakeholders include:

- operational staff involved in the licensing and enforcement process;
- policy and legislation officers dealing with the relevant legislation;
- industry representatives;
- the AAG;
- Community sector organisations;
- Local Government representatives; and
- IAWGD member organisations representatives.

The engagement with stakeholders may entail individual interviews / discussions, group forums, focus groups or workshops as deemed appropriate by the reviewer in consultation with the AAG.

### **6 - Timeframes**

The project is anticipated to be completed no later than 30 May 2012. This may be varied if deemed necessary or appropriate by the successful Bidder and the AAG by agreement.

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### 7 - Legislation Summary

Legislation	Relevance
<i>Liquor Licensing Act 1990</i>	<ul style="list-style-type: none"> <li>• The Act provides for the five types of licences in Tasmania: a general licence, a club licence, an on licence, an off licence and a special licence, and all applications are considered by the independent Licensing Board.</li> <li>• There are four types of liquor permits issued – an out-of-hours permit, an on-permit, an off-permit and a special permit.</li> <li>• Staff of the Department of Treasury and Finance facilitates the licensing and compliance processes required under the Act.</li> </ul>
<i>Police Offences Act 1935</i>	<ul style="list-style-type: none"> <li>• Provides alternatives for Police in dealing with the intoxicated person by removing them to a Place of Safety (PoS) or releasing them into the care of a responsible person. The authority for police to deal appropriately with an intoxicated person, where illegal activity or substantial behavioural problems are evident still applies. In such cases detention within cells remains as an option.</li> <li>• A 'Place of Safety' is defined in the Police Offences Act 1935, to mean, 'a hospital, charitable institution or any other appropriate facility that is capable of caring for an intoxicated person and includes a place declared by the Minister under Section 4C to be a place of safety for the purposes of the Act'.</li> <li>• Designated PoS include the three Regional Hospitals (RHH, LGH and NWRH), Carruthers, Salvation Army Bridge; Launceston City Mission and North West Sulphur Creek City Mission</li> <li>• Protocols exist with the DHHS and the DPEM for the provision of PoS</li> <li>• (Secondary Supply) Amendments enacted November 2009 (S 26) imposes penalties on people who irresponsibly supply alcohol to young people on private property.</li> <li>• The legislation does not stop parents and guardians from allowing their teenagers to drink alcohol at home, but provides conditions that must be taken into account to ensure this is done responsibly and appropriately. This also means that neither the parent nor the youth are to be intoxicated, and consumption is strictly supervised taking into account the quantity and type of alcohol and the period of time over which it is being consumed.</li> </ul>
<i>Public Health Act 1997</i>	<ul style="list-style-type: none"> <li>• Confers on the Director of Public Health the function to (inter alia) develop and implement strategies to promote and improve public health. The health of the</li> </ul>

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	<p>Tasmanian community is promoted and improved, and the incidence and severity of preventable consequences, conditions and diseases are reduced through the legislative requirements and administration of the Act.</p>
<p><i>The Marine Safety (Misuse of Alcohol) Act 2006</i></p>	<ul style="list-style-type: none"> <li>• Places certain restrictions on the use of alcohol by persons having responsibilities connected with the operation of vessels</li> <li>• Provides that the owner or person in charge of a commercial vessel must not cause or allow a person who has alcohol in his or her breath or blood to operate the commercial vessel.</li> <li>• Provides police officers with the power to breath test operators of marine vessels, and other powers about operation of commercial vessels if permitted concentration of alcohol is above prescribed amount of 0.05 of a gram of alcohol in – (a) 210 litres of breath; or (b) 100 millilitres of blood.</li> </ul>
<p><i>Road Safety (Alcohol and Drugs) Act 1970</i></p>	<ul style="list-style-type: none"> <li>• Makes it an offence to drive a vehicle whilst alcohol is present in a concentration greater than 0.05 blood alcohol content (BAC)</li> <li>• Confers powers on Tasmania Police to arrest an offender and confiscate the vehicle; to impose immediate disqualification of license under certain circumstances.</li> <li>• Contains a range of penalties dependent upon the BAC and number of prior offences. Tasmania Police also have the powers to impose immediate disqualification of a driver's license under certain circumstances.</li> </ul>
<p><i>Poisons Act 1971</i></p>	<ul style="list-style-type: none"> <li>• Provides classification and schedule of substances including those which are capable, or potentially capable, of producing addiction or dependence, and those which may only be permitted by prescription by authority, and including classification of new drugs.</li> <li>• Schedule 4 and 8 drugs of particular relevance to ADS.</li> <li>• Under amendment effective 1 September 2009, Section 59 regulated Schedule 8 prescribing now includes definitions for 'drug dependent person' and 'drug seeking behaviour'. Prescribers are required to seek authorities to prescribe Schedule 8 medications and alprazolam.</li> </ul>
<p><i>Alcohol and Drug Dependency Act, 1968 (ADDA)</i></p> <p><b>Note:</b> Review of ADDA commenced early 2010</p>	<ul style="list-style-type: none"> <li>• Allows for provision of treatment centres for the purposes of admitting clients with alcohol and or other drugs for treatment. Current legislation allows for involuntary detention for a period of up to 6 months.</li> <li>• The Alcohol and Drug Dependency Tribunal (ADDT) has authority to determine applications by patients</li> </ul>

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	<ul style="list-style-type: none"> <li>• Designated ‘Treatment Centres’ are the RHH, LGH, NWRH and Carruthers.</li> <li>• Part III of the ADDA - Notification of drug dependency and regulation of the supply of drugs to patients provides for the notification of drug dependence, restriction on supply of drugs for drug dependency, for continuous use; and authority for making drugs available to certain patients (Section 22). <b>Section 22 repealed in September 2009, now Section 59 of the Poisons Act 1971</b> (see under Poisons Act)</li> </ul>
<i>Misuse of Drugs Act 2001</i>	<ul style="list-style-type: none"> <li>• Provides for penalties for possession, use and diversion of controlled drugs.</li> </ul>
<i>Children, Young Persons and Their Families Act 1997</i>	<ul style="list-style-type: none"> <li>• Requirement for reporting/informing issues of abuse or neglect (Part 3/14) and assessment (Part 4/20 and 22) of children at risk.</li> <li>• Under amendment effective 1 August 2009, mandatory reporters can report concerns to the new Gateway Services; and mandatory reporting extended to include the ‘unborn’ child</li> </ul>
<i>Coroners Act, 1995</i>	<ul style="list-style-type: none"> <li>• Provides authority for reportable deaths under certain circumstances, and for investigation of those deaths, including access to information held by service areas.</li> <li>• The provisions of the Coroners Act 1995 have been extended to include deaths of forensic patients or persons being transported to and from a Secure Mental Health Unit</li> </ul>
<i>Family Violence Act, 2004</i>	<ul style="list-style-type: none"> <li>• Provision of specialist assessments to determine program suitability assessments under the DoJ Family Violence Offender Intervention Program (FVOIP).</li> <li>• The principal target group are individuals who have been charged under the Family Violence Act 2004, who are medium to high risk offenders and who have been referred by the Family Violence Offender Intervention Program as a result of mental health, disabilities and/or drug and alcohol issues.</li> </ul>
<i>Guardianship and Administration Act, 1995 (GAA)</i>	<ul style="list-style-type: none"> <li>• The Guardianship and Administration Board (GAB) similar to the ADDT under ADDA deals with the detention and/or treatment of people with a disability which can include people who are temporarily or permanently incapacitated due to alcohol or drug dependency. It is difficult to seek or obtain a treatment order under the GAA due to the complexity of assessment of alcohol and other drug dependency, and the meaning under the Act.</li> </ul>
<i>Sentencing Act 1997</i>	<ul style="list-style-type: none"> <li>• Provides sentencing options for Magistrates to divert defendants for assessment and treatment. Magistrates can and do request Court Reports to consider sentencing options.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Provides capacity for courts to remand a person to Secure Mental Health Unit.</li> <li>• Provides for assessment orders to obtain a report on sentencing options for the individual</li> </ul>
<i>Youth Justice Act 1997</i>	<ul style="list-style-type: none"> <li>• Tasmania Police currently have the ability to informally and formally caution young people (under 18 years of age) for a range of offences, including underage drinking in a public place, and diverting them away from the criminal justice system.</li> <li>• Determines admission of youths to the Secure Mental Health Unit</li> <li>• Provides capacity for courts to remand a person to Secure Mental Health Unit.</li> </ul>
<i>Other related:</i>	<p><b>The National Competition Policy</b></p> <p>In 1992 Federal, State and Territory governments agreed to the development of the National Competition Policy, followed by agreement in 1995 to implement a range of reforms to remove barriers to competition, unless there was a demonstrated ‘public interest’ not to do so. Liquor licensing legislation was included in the related reforms. The liberalisation of liquor licensing laws as a result of the impact of the National Competition Policy has arguably resulted in incompatibilities between the Commonwealth and the states and territories in the administration of liquor licensing laws.</p>