

## **DRAFT SECOND READING SPEECH**

**HON. PETER GUTWEIN MP**

### ***Liquor Licensing Amendment Bill 2015***

*\*check Hansard for delivery\**

Madam Speaker

This Bill has been informed by the findings of a comprehensive review of the Liquor Licensing Act that commenced in September 2013.

The review considered submissions from numerous parties including government agencies, local government, the health and community sector, and industry in response to a number of Papers produced by the Department of Treasury. In addition, the review considered an extensive range of relevant research, and practices in other Australian jurisdictions.

After considering all relevant material from the review the Government has decided to make a number of amendments to the legislation that governs the sale of liquor in Tasmania.

The Bill provides both a more contemporary legislative framework, given that the current framework was designed in the 1980's, and also a package of amendments that better reflect current community needs and strikes the right balance between:

- regulating the sale, supply, promotion and consumption of alcohol;
- providing a framework that helps to appropriately minimise harm that can arise from the misuse of alcohol; and
- facilitating the responsible development of the hospitality industry in the best interests of the community.

In short, the *Liquor Licensing Amendment Bill 2015* amends the *Liquor Licensing Act 1990* to:

- align it more clearly with the Tasmanian Alcohol Action Framework;
- provide administrative efficiencies and greater transparency across the licensing and permit process;
- improve flexibility and effectiveness in compliance and enforcement;
- strengthen consumer responsibilities; and
- provide greater clarity to industry, the regulatory bodies and Tasmania Police.

Madam Speaker

I now turn to the measures.

All jurisdictions in Australia (with the exception of Tasmania) include an object or purpose provision in their liquor legislation. These provisions are designed to confirm the intent of the legislation, give guidance to its interpretation and provide direction to decision makers.

A new object provision in the Bill comprises the key elements of regulation: harm minimisation and responsible development of industry. It clarifies the context and purpose of the legislation and will underlie its operation. Those who perform functions or exercise powers under this Act will be required to do so in a manner that furthers these objects.

The object provision strikes an important balance between recognising alcohol as a potentially harmful product and acting to minimise the harm from its sale, supply and consumption, and supporting the liquor and hospitality industries to develop and grow in a responsible manner.

Madam Speaker

Under the Act, a reference point for a range of key decisions by regulatory bodies, such as when determining to grant or refuse licence or permit applications and approving alterations to licensed premises, is “best interests of the community”. The Act does not currently define this term.

To provide greater clarity and transparency, and to facilitate greater community understanding of the regulatory process, matters that the regulatory bodies would generally consider in determining the best interests of the community will be prescribed in regulations.

While there remains some work to be completed with stakeholders in refining the definition of this term, I anticipate that the definition will include matters such as:

- general costs and benefits to the community as a whole;
- impact on the amenity of the area;
- whether undue offence, annoyance, disturbance or inconvenience may be caused to persons who reside, work, or attend places of worship, school, or hospitals in the area;
- any potential for adverse effects on the health and safety of members of the public;
- the applicant’s knowledge and understanding of, and the ability to comply with, the provisions of the Act; and
- other matters as determined by the regulatory bodies.

New guidelines will also be prepared to provide a greater explanation of this term for licence and permit applicants, and other interested parties.

Madam Speaker

Ensuring that a person is qualified to hold a liquor licence, and remains so over time, is critical to maintaining the integrity of the sale and supply of alcohol in Tasmania. This includes the Commissioner being satisfied that a person is fit and proper.

This Bill strengthens the fit and proper provisions by extending this assessment to both licence and permit applications.

The Act requires the Commissioner for Licensing to consider whether a licence applicant is “fit and proper” prior to granting a licence. However, this assessment is currently not required for permit applicants.

The amendments will provide that the Commissioner for Licensing with the power to apply a “fit and proper” test to permit applicants. Circumstances where the Commissioner may consider this test to be necessary for permit applicants include where there is concern that the applicant is a member of a criminal organisation or where the permit is of high risk or impact to the community.

Other amendments relating to the “fit and proper” concept are:

- an obligation that licence and permit holders must notify the Commissioner when they or an associate has been found guilty of an offence (excluding minor traffic offences). This allows a person’s fit and proper status to be reassessed should the need arise; and
- that the fit and proper status be a matter for consideration in the cancellation, variation or suspension of a permit (as is the case currently with licenses).

Madam Speaker

Jurisdictions such as Victoria, New South Wales and South Australia apply conditions to licences and permits as a regulatory tool. In these jurisdictions conditions can be applied at both the commencement of the licence and later as a disciplinary measure.

Conditioning powers do exist in the Act now, however when compared to other jurisdictions, their use is restricted and inconsistent across licences types and permits. For example, while conditions may be applied to all permit types they may only be applied to one form of licence, and generally conditions may only be applied at the time the authority to sell alcohol is granted.

This Bill will provide for conditions to be applied to all licence and permit types at the time of granting from the date of Proclamation or at any time during their operation as a result of disciplinary action. The change to conditions will:

- provide a more consistent framework for all licence and permit types;
- increase the capacity and flexibility to address alcohol harm issues; and
- ensure that arrangements material to the grant of a licence or permit being in the best interests of the community will be upheld.

The appeal process against the application of a condition on a licence or permit remains.

Madam Speaker

This Government recognises that an effective compliance and enforcement system is essential to support well-functioning liquor and hospitality industries, particularly having regard to harm minimisation. The current compliance and enforcement system will be strengthened with the expansion of obligation and offence provisions and the introduction of a progressive administrative disciplinary process, similar to that already applying to the regulation of gaming.

Currently, there are no intermediate steps, such as a fine or conditioning of a licence, provided for the enforcement of obligations. There is also no discretion to determine an alternative course of action to that of suspension or cancellation of a license provided for by the Act. As a result, the current process can be convoluted and can fail to deliver an effective and timely response to non-compliance.

The amendments will include new disciplinary measures as well as the current measures of suspension or cancellation of a licence or permit.

This staged disciplinary process will provide the Commissioner with greater discretion in dealing with disciplinary actions. This approach also allows a more targeted response in managing harm from liquor. This will be achieved through a progressive administrative disciplinary process with additional options available to the Commissioner ranging from a letter of censure or a fine, to the current measures of suspension and cancellation of a licence or permit. The Commissioner will have the discretion to respond to an incident in a manner that is proportionate to the level of the breach and step the action up to the next level if the issue is not addressed. The process will also include a requirement to give notice to licence and permit holders about pending disciplinary action and to seek submissions from them. The appeal provisions of the Act are updated to reflect the new disciplinary process.

This approach will help reduce the likelihood that low level, but frequent, breaches develop into more serious issues.

Madam Speaker

The compliance and enforcement system will also be strengthened with changes to the obligations and offence provisions. Offences will be created for breaching licensee obligations under the Act. Obligations relate to harm minimisation and patron safety, and it is important that specific offences exist and appropriate disciplinary action may be taken if a breach occurs.

Obligations will also be extended to permit holders where appropriate, which will ensure more equal treatment of licensees and permit holders, and recognises that some permits can be issued for large events where the risk of harm from alcohol is inevitably higher.

New obligations will also be included, these being that: a person must not sell or serve alcohol while intoxicated; a licensee or permit holder must inform the Commissioner of personal detail changes; and, as I have mentioned, a licensee or permit holder must notify the Commissioner of any offences for which they are found guilty, whether or not a conviction was recorded.

Madam Speaker

The Government is aware of the trouble a person who is refused entry or who is asked to leave a licensed premises may cause for patrons and staff of the premises. This may be through continuing to re-enter or attempting to re-enter the premises, loitering outside or harassing other patrons. This behaviour consumes staff and police resources.

This Bill strengthens the powers of police and licensees to deal with this type of behaviour by:

- enabling them to issue barring orders for longer than 24 hours capped at six months; and
- strengthening the requirement for a person to leave a licensed or permit premises with provisions applying vicinity requirements.

Tasmania Police will be able to issue multi-venue or designated area barring orders where there is a justification to do so.

The details of the barring process will be developed and prescribed in regulations following consultation with Tasmania Police and industry.

Madam Speaker

Currently in Tasmania there is no minimum age requirement to sell or serve alcohol. A minor of any age can serve alcohol on a licensed or permit premises provided that they are under the direct and personal supervision of an adult, and have attained the appropriate course accreditation.

This Government has considered the potential harm that a minor may experience from selling and serving alcohol, as well as the difficulty a minor faces in properly applying responsible service requirements, and balanced this against the employment opportunities that currently exist for minors in the hospitality industry.

This Bill provides that a licensee or permit holder must ensure that the seller or server of liquor meets minimum age requirements as specified in Regulations. It is intended that the Regulations will be drafted to introduce a minimum age requirement of 16 years to sell or serve alcohol, and to restrict these persons to areas where minors are legally allowed to enter unsupervised. The Regulations will also provide for an exemption to the minimum age requirement under specific circumstances. The Commissioner will release advice on the circumstances under which an exemption may be granted.

These changes will contribute to managing harm, while not unduly restricting employment opportunities for young people in the hospitality industry.

To allow affected people in the industry time to adjust to the new age requirement, the Regulations will provide for a transitional period will apply before it commences.

Madam Speaker

The way alcohol is promoted and sold can influence the way it is consumed and the behaviour of patrons. The current Act is silent on promotion and advertising requirements, providing no legislative power to prohibit irresponsible practices. This has been called for by a range of stakeholders and supported by industry, which recognises that the practices of small number of venues can create difficulties for the wider sector.

This Bill allows the Commissioner to prohibit or restrict irresponsible advertising and promotion of alcohol by venues, and brings Tasmania in line with other jurisdictions. Guidelines will be developed to explain the types of promotions and activities that would be considered irresponsible.

Similarly, there is currently no legislative ability to prohibit undesirable and potentially harmful liquor products in Tasmania. The Act will be amended to include a provision for the Minister to prohibit alcohol products if it is in the public interest to do so. Products that would likely breach the provision would include those that are marketed in a way to be attractive to minors, may be confused with soft drinks and confectionary, or encourage irresponsible or excessive consumption.

This will bring Tasmania in line with Victoria, the Australian Capital Territory, New South Wales, Western Australia and Queensland, where there are legislative powers to prohibit alcohol products and offences for the sale or supply of prohibited alcohol.

The current definition of liquor is restricted to a beverage only. This definition will be extended to include other prescribed substances, which will, for example, take account of any undesirable alcoholic products that are not in liquid form.

Madam Speaker

The availability of reliable and up-to-date alcohol data in Tasmania is limited. This will be rectified by the Bill which provides for wholesale alcohol sales data to be collected from liquor licence holders.

Allowing alcohol sales data to be collected from wholesale and producer liquor licence holders will assist in identifying emerging trends to support 'evidence-based' policy, regulation and service delivery; and providing an objective measure for evaluating alcohol policy initiatives.

The collection of this data will also allow Tasmania to participate in the National Alcohol Sales Data Project. The Project collects wholesale alcohol sales data on at least an annual basis from the majority of jurisdictions and contains the most recognised, up-to-date and reliable source of information available in relation to alcohol sales in Australia.

The Bill provides for wholesale alcohol sales data to be collected from licence holders who conduct wholesale transactions as prescribed by regulations. The collection process and specific detail of those licensees who fall under the new provision will be developed following consultation with industry.

Madam Speaker

There a number of other miscellaneous amendments that are minor in nature and aim to improve regulatory operations, enhance administrative efficiency, and increase clarity to industry, regulatory bodies and Police. The miscellaneous amendments include:

- replacing existing, and introducing new, definitions to improve the clarity of the legislation;
- prohibiting the use of vending machines to dispense alcohol without approval of the Commissioner;
- ensuring that a transferee of a licence must satisfy the same qualification requirements as a person who applies for a new licence;
- providing for regulations to be made clarifying the types of documents that may be used as evidence of age;
- providing specific provisions dealing with online sales of alcohol;
- allowing products like craft beer, wine, cider and spirits to be sold at agricultural shows, fairs and craft markets under one permit, which will replace the requirement to apply for a separate permit for each location; and
- specifying a 14 day timeframe within which a person may commence an appeal against a decision of the Commissioner.

Madam Speaker

The Bill offers a balanced approach to change and has been developed through a highly consultative process. It will ensure that regulatory processes are transparent and effective; it promotes a culture of responsible consumption of alcohol within the community; and it emphasises the responsibilities of the liquor and hospitality industries, and acknowledges their contribution to the State.

Commencement of the Bill will be on a date to be proclaimed. This will allow sufficient time to develop and implement underlying systems, prepare necessary regulations, communicate with stakeholders and the community, and will ensure that changes are not required to be implemented over the Christmas/New Year period, the busiest period for the liquor and hospitality industries.

Madam Speaker

I commend this Bill to the House.