

Department of Health and Human Services

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Senate Standing Committee on Community Affairs
Department of the Senate
PO Box 6100
PARLIAMENT HOUSE CANBERRA ACT 2600

Subject: Responsible Takeaway Alcohol Hours Bill 2010

About the Inter Agency Working Group on Drugs

The Inter Agency Working Group on Drugs (IAWGD) is a cross-agency working group established to coordinate the service delivery of drug-related initiatives. It is the principal advisory body to Government and is responsible for implementing and progressing the Tasmanian Drug Strategy (TDS) and related strategic policy in response to the use of alcohol, tobacco and other drugs in the Tasmanian community.

The IAWGD consists of representatives from:

- Department of Health and Human Services (DHHS)
- Department of Police and Emergency Management (DPEM)
- Department of Premier and Cabinet (DPAC)
- Department of Treasury and Finance (Treasury)
- Commissioner for Licensing
- Department of Education
- Department of Justice
- Local Government Association of Tasmania
- Alcohol, Tobacco and Other Drugs Council of Tasmania (ATDC)
- Australian National Council on Drugs

The IAWGD welcomes this opportunity to provide feedback to the Senate Standing Committee on Community Affairs' inquiry into the Responsible Takeaway Alcohol Hours Bill 2010.

General Comments

The IAWGD supports the intent of the Bill, to impose a level of control in relation to the sales of takeaway alcohol and regulate and restrict its availability. However, the IAWGD does not support the use of Corporations Powers to achieve this and therefore does not support the Bill.

There is a significant body of evidence to support a causal relationship between the availability of alcohol, and associated social and health harms. The need to control the availability of alcohol is recognised and

acknowledged in the recently released *Tasmanian Alcohol Action Framework 2010-2015*, which is the Tasmanian Government's strategic priority for dealing with alcohol issues in the State.

A general licence in Tasmania allows the sale of alcohol from 5:00 am to midnight. The Bill seeks to impose restriction of takeaway alcohol sales between midnight and 7:00 am. This will in essence restrict takeaway alcohol sales in Tasmania by two hours each day. In this regard, the IAWGD is in-principle supportive of the proposal.

The reality however, is that this restriction would only impact on a small number of takeaway alcohol sales, predominantly those from on-license premises, as off-license premises are only permitted to trade to midnight. Whilst the general licence conditions allow alcohol to be sold from 5:00 am in Tasmania. In practise, very few licensees trade before 8:00 am. Although some benefit may be gained in Tasmania from the introduction of the Bill, concerns are raised in relation to other aspects of the Bill, including:

- The use of 'Corporation' powers may have little impact on Tasmanian liquor licenses as they are issued to individuals, rather than corporations.
- The interpretation of takeaway alcohol is considered to mean 'any alcohol sold in bottles or cans', this interpretation does not include casks, or any other containers.
- The introduction of a Federal Bill that relies on the Corporations powers overrides the ability of states and territories to enact their own restrictions. As it stands, the scope of the restrictions contained in the Bill will undermine current takeaway restrictions in a number of states and territories.

Further details of these issues are discussed in Attachment I.

The IAWGD's position is to maintain the status quo with regard to the regulation of alcohol supply. The regulatory framework and experience in regulating alcohol supply rests with the individual State and Territory. They are therefore best placed to control the legislation on such matters as the needs and condition of each jurisdiction can vary significantly. In this regard, Tasmania has committed through the *Tasmanian Alcohol Action Framework 2010-2015* to reviewing legislation covering alcohol, to ensure legislation is appropriate and consistent with legislative and regulatory framework to support the control and supply, of alcohol.

Dr John Crawshaw
Chair, Inter Agency Working Group on Drugs

26 August 2010

Responsible Takeaway Alcohol Hours Bill 2010 Discussion of the Issues

APPLICATION OF CORPORATIONS POWERS

The Bill, presented by Senator Fielding – proposes:

***“a corporation must not sell takeaway alcoholic beverages during the period from midnight to 7am on any day”*; and**

***“a corporation must not permit any person to sell takeaway alcoholic beverages during the period from midnight to 7am on any day from any premises owned, operated, leased or otherwise controlled by the corporation”*.**

The Bill further states that “this Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act”.

However, the Bill is likely an attempt to impose Commonwealth corporation law on licensing issues that presently come under the jurisdiction of States and Territories.

The Bill clearly refers to ‘a corporation’ as the operative license holder to be covered by the Act.

The Inter Agency Working Group on Drugs (IAWGD) does not support the use of Corporations Powers to achieve the purpose of the Bill.

Current situation in Tasmania:

Tasmania’s Liquor Licensing requirements are governed by the *Liquor Licensing Act 1990*. Under this Act there are five license types that can be applied for and granted:

1. **General Liquor License** - usually for a Hotel or Tavern - Authorises the sale of liquor on the premises between **5am and 12 midnight daily - for consumption on or off the premises**.
2. **Club Liquor License** – usually for a Club - Authorises the sale of liquor on the clubs premises between **5am and 12 midnight daily – for consumption on or off the premises**.
3. **On License** – usually for Nightclub, Bar or Bar/Restaurant - Authorises the sale of liquor on premises between **5am and 12 midnight daily – for consumption on the licensed premises**.
4. **Off License** – usually for a Bottle Shop as a stand alone facility or bottle shop business from an existing Hotel Bottleshop - Authorises the sale of liquor **between 5am and 12 midnight daily – for consumption off the licensed premises**.
5. **Special License** – usually for restaurants, function centres, tertiary institutions, accommodation providers, wine producers or tourist attractions - authorises the sale of liquor **between specified times, subject to specific conditions of the license and subject to specific limitations and restrictions**.

An **Out of Hours Permit** to authorise the sale of liquor for any period between midnight and 5am can also be applied for under the *Liquor Licensing Act 1990*.

A Liquor License in Tasmania can only be held by a natural person who is at least 18 years old. The Commissioner for Licensing in Tasmania has to be satisfied that the liquor license applicant is a fit and proper person to be a licensee.

In essence, a Liquor License *cannot* be held by more than one person, or by companies or trusts.

At the current time, three types of liquor license in Tasmania (General, Club and Off) authorise the sale of alcohol for takeaway purposes between 5am and midnight daily. As well, it is possible to apply for a Special Licence that might include take away provisions outside these times.

The present wording of the Bill precludes reference to individuals – and only makes reference to ‘a corporation’. From this perspective it would appear that the Bill will have no jurisdiction or effect on the

take away hours in Tasmania as there are no provisions under the Tasmanian legislation to allow a *corporation* to hold a liquor license.

Furthermore, the Bill seeks to impose restriction of takeaway alcohol sales between midnight and 7:00 am. In Tasmania, this restriction would only impact upon takeaway alcohol sales from on-license premises, as off-license premises are only permitted to trade to midnight. Whilst the general licence conditions allow alcohol to be sold from 5:00 am in Tasmania. In practise, very few licensees trade before 8:00 am.

CONSIDERATION OF LIQUOR LICENSING REGULATIONS FROM OTHER JURISDICTIONS

The variations in takeaway hours that are operative across jurisdictions do not appear to have been taken into account. There are a number of more stringent restrictions in operation in various jurisdictions that are relevant to the Bill. The Bill would have a reverse effect than that intended for those states where presently there are fewer hours where alcohol can be purchased for take away than what might eventuate from introduction of the Bill. This would undermine the current takeaway restrictions that apply in a those states and territories.

EVIDENCE SUPPORTING THE REDUCTION OF AVAILABILITY

Much of the current research in Australia around reduction in *takeaway* alcohol and reduction in takeaway hours of sale targets Aboriginal communities. Even so, the broad principle of reduced sale and purchase hours have been shown to influence a number of alcohol related issues in many countries including Australia. These areas of influence are listed below:

- change in days of sale can affect the prevalence of alcohol problems (Stockwell & Gruenewald 2001);
- small changes in hours of sale can result in local change in alcohol problems (Stockwell & Gruenewald 2001);
- changes in Sunday closing time in Perth, Australia resulted in a shift in the distribution, but not occurrence of accidents (Smith 1983);
- introduction of extended trading permits in Perth, Australia resulted in significant increases in monthly assault rates for hotels with late trading (Chikritzhs and Stockwell 2002);
- hours in which alcohol is sold affects timing of consumption (Moskowitz 1989);
- the level of consumption is not necessarily affected (Modkowitz 1989).

The situation In Tasmania

Prior to 10 August 1977, the standard opening hours in Tasmania were:

- a) 10.00am to 10.00pm Monday to Saturday; and
- b) 12 noon to 8.00 pm on Sunday.

Following that date, more flexible trading hours were introduced, with hotels able to open for as few or as many hours as they pleased, subject to notifying the Tasmanian Licensing Commission 7 days prior to any change in their hours of trading. The only other restriction on flexible hours was that hotels could not open from 5.00am to noon on Sunday, from 8.00pm to 12 midnight on Sunday or 'Good' Friday." (Smith 1988 p. 219).

Writing of these changes in the British Journal of Addiction (Smith 1988) concurred that "the introduction of flexible trading hours for hotels in Tasmania was the factor responsible for the significant 10.8% increase in the number of casualty traffic accidents from 10.01pm to 6.00am" (Smith 1988 p. 221) . Smith also argued that "rather than increasing the availability of alcoholic beverages as in Tasmania - Governments should be decreasing their availability" (Smith 1988 p. 222). Greater flexibility in trading hours is now reflected in the breadth of licensing provisions possible under current Liquor Licensing requirements in Tasmania.

Tasmania has one of the most accessible liquor licensing provisions of any state or territory in Australia. Enactment of the Bill would reduce the number of hours that takeaway alcohol can be purchased by two hours: from the present 5am to 12 midnight to the proposed 7am to 12 midnight. From this perspective, any reduction to availability – such as the indicated reduction in take away hours – might contribute to a decrease in alcohol associated harms.

However, where only one aspect of alcohol availability is to be addressed, there are most likely ways around such restrictions for both licensees and drinkers alike. In other examples of restrictions on alcohol availability, drinkers have been seen to buy in bulk, and can often drink quickly in order to achieve their usual and intended level of consumption.

Areas of influence on alcohol availability that are most evidenced to have an effect at the jurisdictional level - and therefore need to be considered concurrently are:

- Hours and days of sale (not just takeaway hours);
- Density of liquor outlets;
- Legal age of purchase;
- Lock out provisions – (still under research);

There is a significant body of evidence to support a causal relationship between the availability of alcohol, and associated social and health harms. From this perspective, the IAWGD supports the intent to regulate and restrict the availability of alcohol, and acknowledges the proposed Bill seeks to impose a level of control in relation to the sales of takeaway alcohol.

LIMITATION OF THE INTERPRETATION OF TAKEAWAY ALCOHOL

The Bill defines takeaway alcohol as 'any alcohol sold in bottles or cans'. This definition is restrictive and fails to capture the full range of alcoholic beverages that are available for takeaway sale. For example, the application of this interpretation would exclude casks, or any other containers.

RECOMMENDATIONS:

1. That a more comprehensive and structured approach to alcohol reform in Australia be considered that in the first instance seeks to:
 - remove alcohol from the jurisdiction of the National Competition Policy;
 - develop a national framework for consistent Liquor Licensing Legislation across jurisdictions;
 - develop a national framework for robust Public Health Legislation around alcohol.
2. National frameworks for policy and legislative change need to consider and include provision for:
 - Reduced hours and days of sale (not just takeaway hours);
 - Reduced density of liquor outlets;
 - Increasing legal age of purchase by one year - based on international evidence;
 - Use of mandatory toughened glass or plastic containers for serving alcohol.
3. That the "Responsible Takeaway Alcohol Hours Bill 2010" be considered as indicative only of the comprehensive change that needs to occur around alcohol in Australia.