ALCOHOL REFORM BILL

Departmental Report for the Justice and Electoral Committee

PART TWO

Social Policy and Justice Group
July 2011

CONTENTS

INTRODUCTION

1. This report is Part 2 of the Ministry of Justice's advice to the Justice and Electoral Committee (the Committee) on the issues arising from submissions on the Alcohol Reform Bill (the Bill).

2. The Ministry of Health, the New Zealand Police and the Department of Internal Affairs have contributed to the development of this report.

3. The report covers the following matters:

   3.1. Single display area for supermarkets;

   3.2. Advertising, promotions and sponsorship;

   3.3. Minimum price information gathering;

   3.4. Trading hours;

   3.5. Premises eligible for an off-licence, in particular grocery stores;

   3.6. Content and expiry of local alcohol policies;

   3.7. Alcohol control bylaws;

   3.8. Exemptions for Police, Fire Service and Defence Force canteens;

   3.9. Kinds of licence;

   3.10. Management requirements;

   3.11. Penalties for persistent non-compliance with licensing laws;

   3.12. Miscellaneous matters.

4. The report focuses on substantive issues raised by submitters. As agreed by the Committee on 12 May 2011, minor technical drafting matters will be addressed directly with Parliamentary Counsel, for the Committee's consideration in the revision-track version of the Bill.

5. The following abbreviations are used in this report:

   ALAC – Alcohol Advisory Council of New Zealand

   ARLA – Alcohol Regulatory and Licensing Authority

   BORA – New Zealand Bill of Rights Act 1990

   LAP – Local Alcohol Policy

   LAC - Legislation Advisory Committee

   LLA – Liquor Licensing Authority

   SOLA – Sale of Liquor Act 1989

   DLC – District Licensing Committee

   NZILLI – New Zealand Institute of Liquor Licensing Inspectors

6. A list of all recommended amendments made in this report is provided in Appendix 1.

OUTSTANDING TOPICS

7. This section addresses those clauses of the Bill not covered in part 1 of the departmental report and issues on which the Committee asked officials to give further consideration. It is presented by topic, with the relevant clauses discussed together rather than in a consecutive clause-by-clause style. However, the Appendix is presented clause-by-clause.

8. The more substantive policy topics are discussed first, followed by more technical areas and miscellaneous matters.

9. Recommendations that propose specific amendments to clauses are made subject to Parliamentary Counsel's view as to the exact form these amendments should take.

Supermarket and grocery store sales - single area display restriction

10. Supermarkets are eligible under clause 35 to sell alcohol under an off-licence. They are restricted by clause 59 to only selling beer, mead, or wine not exceeding 15% alcohol by volume (abv). This means that they are not permitted to sell spirits or spirit-based beverages, or fortified wines such as sherry and port if they are stronger than 15% abv.

Submissions

11. As noted in part 1 of the departmental report, 133 submitters commented on the Law Commission's recommendation to require alcohol in supermarkets to be confined to a single display area, with the majority supportive of such a restriction. Submitters considered that a single display area would reduce the prominence and visibility of alcohol within supermarkets, particularly for children and young people.

Comment

12. A single area display restriction would go some way to addressing submitters' concern about the normalising effect of alcohol sales in supermarkets, by treating alcohol differently from other household items and reducing its visibility. It is likely to reduce the frequency that children and young people are exposed to alcohol in supermarkets, and is therefore consistent with other provisions of the Bill. It may also limit the opportunity for price discounts that are negotiated on the basis of the display of products in key positions (e.g. aisle ends, entrances and checkouts).

13. Given the strong submitter support for further restrictions on supermarket sales of alcohol and the potential for changes in this area to shift the profile of alcohol, we recommend the Bill be amended to require supermarkets to display alcohol in a single area of the premises only, which may not be in a prominent area. This condition will avoid the risk that the display area is located in a highly visible place, such as at the entrance of the store or at the checkout, which would undermine the intended effect of the restriction.

14. This restriction would have some initial impact on store layouts, with possible associated compliance costs, but the ongoing costs are likely to be low. During oral submissions, Progressive Enterprises Ltd and Foodstuffs (NZ) Ltd indicated that that they would not be opposed to a single area restriction. Progressive Enterprises Ltd noted that they are already restricting alcohol displays to one area in some of their new stores.

15. For consistency, we also recommend this restriction apply to grocery stores. Other restrictions that apply to supermarkets, such as the limitation on what they can sell, also apply to grocery stores. Application of the single area display restriction to grocery stores would also eliminate the risk that grocery stores could move to make the display of alcohol more prominent. We note that what constitutes a prominent area within grocery stores is likely to differ from that in supermarkets, given the different size and layout of the respective premises.

16. To support the intended effect of the restriction to reduce the visibility of alcohol within supermarkets and grocery stores, we also recommend that in-store alcohol advertising and promotions may only be displayed within the single display area. This will mitigate the risk that large advertisements and promotions are used as a substitute for product displays.

17. We do not recommend requiring total physical separation or separate checkouts for alcohol sales. This would impose a much higher cost on supermarkets and grocery stores and create practical difficulties for shoppers, without any significant gain in terms of reducing access to alcohol and alcohol-related harm.

Recommendations

We recommend the Bill be amended to require supermarkets and grocery stores to display alcohol in only one area of the store that is not a prominent area. We also recommend that the Bill provide that alcohol advertising and promotions within supermarkets and grocery stores may only be displayed within the single display area.

Advertising, promotions and sponsorship

18. This section discusses general submissions on advertising and sponsorship and then moves on to address submissions on the irresponsible promotions offence included in the Bill (clause 220). Submissions about restrictions on price advertising and discount advertising are discussed under clause 220.

Advertising and sponsorship

Submissions - advertising

19. 58% of substantive submitters made general comments on alcohol advertising. 94% of the substantive submitters indicated support for greater restrictions on alcohol advertising, such as:

    19.1. requiring alcohol advertising to include warning statements;

    19.2. prohibiting alcohol advertising at sporting events and grounds;

    19.3. prohibiting all alcohol advertising except for objective product information; and

19.4. prohibiting all alcohol advertising in total.

20. Several submitters recommended the establishment of an independent statutory agency to oversee alcohol advertising, including packaging and display, or recommended a pre-vetting procedure of alcohol advertisements or promotions by the Director-General of Health, on the basis that the current self-regulatory system has not been successful.

Submissions - sponsorship

21. 34% of submitters commented specifically on alcohol sponsorship. Of these, 79% favoured a complete ban on sponsorship. A further 11% supported other restrictions such as prohibiting sponsorship at sporting events or events with young audiences.

Submissions – form

22. 6132 form submitters expressed support for "an end to all alcohol advertising and sponsorship, except objective printed product information".

Comment

23. There is growing evidence that exposure to alcohol advertising increases the likelihood that young people will start drinking or that they will drink more if they already drink alcohol. On the other hand, some studies have found little impact from alcohol advertising on overall alcohol consumption. On balance, it appears that alcohol advertising has an impact on alcohol consumption, particularly in relation to young people, and plays a role in shaping the drinking culture.

24. A thorough consideration of the latest evidence and the impact of further restrictions on alcohol advertising and sponsorship is desirable before further regulation is imposed in this area, over and above the proposed restriction on irresponsible promotions. This would include considering the impact on businesses and the recipients of alcohol sponsorship, including community organisations, and the expected impact on alcohol-related harm.

25. The Government has decided to establish an expert forum to consider the effectiveness of further restrictions on advertising and sponsorship to reduce alcohol-related harm. This approach will allow for comprehensive consideration and analysis of a range of options to restrict advertising and sponsorship, some of which would have significant implications for businesses and sponsorship recipients.

Clause 220 - Irresponsible promotions

26. Clause 220 expands on the existing offence of promotion of excessive consumption of alcohol. The new irresponsible promotions offence applies to all types of licensed premises and to any other place in the course of running a business. This includes broadcast advertising and billboards. The following types of behaviour will constitute an offence:

26.1. Doing anything that encourages people to consume alcohol to an excessive extent;

26.2. Promoting or advertising discounts on alcohol (except within licensed premises) in a way that that indicates there is 25% or more off the normal price;

26.3. Promoting or advertising alcohol that is free of charge;

26.4. Offering goods or services on the condition that alcohol is purchased; and

26.5. Promoting or advertising alcohol in a manner that is likely to have special appeal to minors.

27. The penalty is a maximum $10,000 fine, with the additional possibility of licence suspension for up to seven days for a licensee.

Overview of submissions

28. 30% of submitters commented on the irresponsible promotions offence. Of those, 213 submitters (44%) supported the offence. A number of these submitters supported the offence as the first step in a three stage programme of restrictions on advertising and sponsorship, as recommended by the Law Commission. Other submitters considered that the offence provided a reasonable level of restriction on alcohol advertising and promotion. Particular support was expressed for the application of the offence to all types of licensed premises and the prohibition on advertising targeted at, or holding particular appeal to, minors.

29. 127 submitters (26%) who commented on clause 220 supported it in principle, but sought clarification of aspects of the clause or suggested amendments, which are discussed below.

30. 117 submitters (24%), who were mainly from the alcohol industry, did not support the offence. Many of these submitters were concerned that it would prevent them undertaking low-risk promotional activities that were considered important to the profitability of their business. A number of these submitters considered that there was little point in restricting promotions at on-licence premises if nothing was to be done about supermarket prices, because the effect would be to encourage more people to purchase cheaper off-licence alcohol from supermarkets.

31. Other submitters did not support clause 220 on the basis that it would be ineffective without further controls on advertising or low prices. Some submitters considered that the intention of clause 220 is already covered by the Advertising Standards Authority's voluntary Code for Advertising Liquor and the National Protocol on Alcohol Promotions and that it is therefore unnecessary, would be inefficient and may undermine the self-regulatory system.

Summary comment

32. In light of both the submissions received and further consideration we have given to this issue, we recommend that the overall policy of the irresponsible promotions offence is not changed. We will, however, recommend specific improvements to the operation of the clause. These are detailed below, in response to the particular concerns raised.

Clause 220(1)(a) - Doing anything that encourages people to consume alcohol to an excessive extent, whether on licensed premises or at any other place

Submissions

33. A small number of submitters noted that the existing promotions offence in the Sale of Liquor Act 1989 (SOLA) includes the phrase "or is likely to encourage" and recommended that this phrase be included in clause 220(1)(a).

34. A number of submitters from the alcohol and marketing industries considered that the language used in clause 220(1)(a) such as "does anything" and "excessive extent" is too vague and is therefore open to interpretation. A number of winery submitters were concerned about how the offence would apply to off-licences, particularly cellar doors, given these premises have no control over how alcohol purchased there will be consumed.

35. A small number of alcohol industry submitters considered that the irresponsible promotions offence should only apply to licensed premises, not producers, distributors, wholesalers and marketers.

Comment

36. It was not intended to narrow the scope of the revised offence by omitting the phrase "or is likely to" and we therefore recommend that this phrase is inserted in the appropriate place to clause 220(1)(a).

37. We note that the terms "does anything", "encourage", and "excessive extent" are not new and are taken directly from the existing promotions offence. The drafting is deliberately constructed to cover the diverse and innovative range of promotions run by the different types of premises. It is expected that promotions of particularly cheap alcohol at off-licence premises would fall within the scope of this offence.

38. The Government policy is for this offence to apply to any person who is involved in the promotion of alcohol, including producers and distributors, to encourage all those involved in the promotion of alcohol to do so in a responsible way. Accordingly, we do not recommend any change to the coverage of this clause.

Recommendation

We recommend that clause 220(1)(a) be amended to cover anything "...that encourages, or is likely to encourage, people to consume alcohol to an excessive extent..."

Clause 220(1)(b) - Promoting or advertising discounts of 25% or more except on licensed premises

Submissions - level of prohibition on discount advertising

39. Several submitters considered that advertising of any discounts, except within licensed premises, should be prohibited. A small number of submitters considered that all price-based advertising, except within licensed premises, should be prohibited. The general reason for this view was that discounting or price-based advertising unnecessarily stimulates demand for alcohol.

Comment

40. The Bill strikes a balance between preventing the advertising of heavy discounts on alcohol, which have been demonstrated to encourage increased purchase and consumption, with the general right of consumers to have readily available information about price to help them make informed purchasing decisions.

41. A ban on price or discount advertising could reduce the influence of advertising on consumption patterns. However, within premises shoppers need to be advised of the price of items when making decisions about what to purchase. The Bill allows for this.

42. Further, as licensees would still be permitted to advertise price information on the premises, we do not consider that they would alter their pricing behaviour as the result of a ban on price or discount advertising. This removes a key benefit of such a ban.

43. On balance, we recommend against a ban on price or discount advertising.

Submissions - threshold

44. Some submitters supported restricting the advertising of cheap or heavily discounted alcohol, but considered that this would be problematic to define or quantify. These submitters recommended developing a formula such as a minimum unit price for advertising, but noted a preference for the adoption of minimum price.

45. One submitter considered that a lower discount percentage, such as 15%, may be more appropriate. Two submitters considered that a percentage approach would create confusion and suggested using a phrase such as “significantly below” instead.

Comment

46. We note that a percentage approach for restricting heavy discounts provides a higher degree of certainty for licensees, enforcement officers and the public than a phrase such as “significantly below”, which could be subject to different interpretations.

47. Setting a formula for a minimum unit price for advertising raises the difficulty of determining what that minimum unit price should be. The Government intends considering the issue of minimum pricing further, following the completion of work by the Ministry of Justice. Should some form of minimum pricing be adopted in the future, this would automatically flow through to the advertising restrictions. There is further discussion on minimum pricing from paragraph 91.

48. For these reasons, we recommend no change to the percentage approach adopted in clause 220(1)(b).

Submissions – key industry

49. Some submitters, such as the Advertising Standards Authority, The Mill Liquorsave and the Newspaper Publishers Association, considered that

restricting the level of discount able to be advertised would not have a material impact on irresponsible drinking practices. Progressive Enterprises Ltd opposed the restriction imposed by clause 220(1)(b). However, they considered that if it was to be retained it should be clarified that the promotion or advertising used for determining whether a discount of 25% or more is being made should be a single advertisement. The Distilled Spirits Association did not support clause 220(1)(b), considering it unreasonable to limit consumer access to legitimate market information.

Comment

50. As noted above, the advertising and promotion of heavy discounts on alcohol has been demonstrated to encourage increased purchase and consumption. Restricting this practice is therefore likely to reduce excessive consumption of alcohol. We note that consumers will still have access to discount information within licensed premises to enable them to make informed purchase choices.

51. In response to the concern raised by Progressive Enterprises Ltd, we would expect that a determination would generally be made on the basis of a single communication that relates to a particular time period, though it may be relevant to consider other advertisements or promotions for the same premises occurring at the same time.

Submissions - exception for "on licensed premises"

52. Some submitters working within the industry considered that the phrase "except on licensed premises" should be amended to refer to "in" licensed premises, so that promotions and advertising subject to clause 220(1)(b) may only be visible from within the premises.

53. A number of submitters were concerned that use of the phrase "except on licensed premises" excluded on-licences from being subject to the offence, and recommended the clause be amended to apply to all licensed premises. Palmerston North City Council were concerned about the exception for "on licensed premises", given its view that the volume of alcohol price promotion in store can be as significant and influential as external price promotion.

Comment

54. The use of the term "except on licensed premises" is intended to allow any discounts to be advertised in-store, including those not allowed externally, but is not intended to exempt premises holding an on-licence from the clause. We consider the drafting could be clarified to better convey this intention and to ensure that, as far as possible, any advertising of discounts that is conducted on premises is not visible from outside of the premises, as this would undermine the restriction.

Recommendation

We recommend that clause 220(1)(b) be amended to clarify that the offence applies to all types of licensed premises and that a licensee must take reasonable steps to ensure that any discount covered by clause 220(1)(b) that is promoted or advertised within any physical licensed premises is not visible from outside the premises.

Submission

55. A small number of submitters queried the interaction between clause 220(1)(a), which concerns promotions that encourage excessive consumption, and clause 220(1)(b).

Comment

56. The different elements of clause 220 are independent of each other and each represents a type of promotion deemed irresponsible. Clause 220(1)(b) treats the advertising of large discounts as irresponsible, because it is likely to unduly stimulate demand. This may not always encourage or be likely to encourage people to consume alcohol to an excessive extent, such as in the case of a discount on expensive champagne, where even with a discount, the price is still relatively high. In this case, a person may be in breach of clause 220(1)(b), without being in breach of clause 220(1)(a) (doing anything that encourages people to consume alcohol to an excessive extent).

57. It is also possible that an advertisement or promotion could comply with clause 220(1)(b), but be in breach of clause 220(1)(a), such as an in-store promotion of heavily discounted alcohol that results in prices so cheap as to encourage, or be likely to encourage, people to consume alcohol to an excessive extent.

Submissions - effect on advertising discounts of excess wine stock

58. A number of submitters from the advertising and alcohol industries, and in particular wine producers, commented that discount advertising is important for the clearance of excess stock or product close to its best before date, which would be hindered by clause 220(1)(b). Some of these submitters noted that many wineries or wine distributors rely heavily on remote sale avenues, such as the internet, to sell their products and discount advertising through this medium was an important part of their business.

Comment

59. While external advertising would be prohibited, advertising in-store of discounts of 25% or more would still be permitted under clause 220(1)(b), which could be used to help shift excess stock or product close to its best before date.

60. We consider, however, that there should be an exemption for retailers who sell remotely only, so that this type of operation is not unfairly penalised compared to sales through physical premises. In remote sale situations, the remote medium is the interface between seller and customer, rather than a physical store. Since there are no actual premises, we propose that clause 220(1)(b) should not apply to these situations.

Recommendation

We recommend that the Bill be amended to provide that clause 220(1)(b) does not apply to remote sale channels (eg, websites, mail order catalogues) where the remote sale channel is the primary point of contact for the customer and constitutes contact solicited by the customer.

Submissions - use of phrase “below the price at which that alcohol is ordinarily sold”

61. A small number of submitters were concerned about how ordinary price would be determined, or that the consequence of linking the advertised discount to ordinary price would in effect lower the ordinary price. Some of these submitters made suggestions for defining ordinary price.

Comment

62. We consider that it would not be too difficult to identify the ordinary price of an alcoholic product at particular premises. We also consider the risk of reductions in ordinary price in order to be able to promote discounts at current levels is low. We note that the offence does not prevent discounting of 25% or more off the ordinary price, only the external advertising or promotion of such discounts. We also note that the Fair Trading Act 1986 places obligations on anyone in trade concerning the promotion and sale of goods and services, including that promotions may not be misleading. The Commerce Commission provides guidance for businesses on the promotion of mark-downs, particularly in relation to “usual” price.

Clause 220(1)(c) - Promoting or advertising alcohol that is free of charge

Submissions

63. A number of submitters sought clarification on the effect of clause 220(1)(c), which prohibits promotion or advertising of alcohol that is free of charge. Industry submitters were concerned that clause 220(1)(c) may prevent them from undertaking low-risk activities such as offering free tasting at wineries and breweries, offering a complimentary drink, and offering a complimentary bottle of wine on the next visit for a re-booking at a hotel. Many of these submitters recommended that the clause be amended to target promotions of free alcohol that encourage excessive consumption, or that the clause be removed on the grounds that promotions of free alcohol that encourage excessive consumption would be covered by clause 220(1)(a).

Comment

64. Clause 220(1)(c) is directed at promoting or advertising free alcohol; it is not intended to prohibit the provision of free alcohol. The policy intent is that premises will still be able to provide free alcohol to customers, but they will not be able to promote or advertise that free alcohol will be provided.

65. The Government considers that promoting free alcohol as an inducement in any way is inappropriate, given the risks associated with excessive consumption. We note that alcohol included as part of a package, for example a meal package, accommodation package, or entry charge, would not be subject to this provision (so long as the alcohol was not denoted as free or complimentary), because the alcohol would be “paid for” as part of the package.

66. In light of submissions, however, it would be desirable to clarify that licensed premises are permitted to inform customers inside the premises that complimentary alcohol is available and to allow complimentary sampling to be advertised or promoted.

Recommendation

We recommend that clause 220(1)(c) be amended to clarify that:

- the advertising of complimentary sampling for consumption on the premises is not captured by this offence; and
- the promotion or advertising of free alcohol is permitted within licensed premises.

Clause 220(1)(d) - Offering goods or services on the condition that alcohol is bought

Submissions

67. Fifty submitters commented on clause 220(1)(d), of whom 82% did not support the provision. The main reasons given for opposing this clause were that it will limit competitive options for companies and prevent innocuous activities, such as the provision of free food and transport. A number of submitters suggested the clause should be clarified to target inducements that encourage excessive consumption. Some submitters requested clarification on whether the clause would apply to loyalty programmes and competitions, with a small number of submitters considering that loyalty programmes should be captured.

Comment

68. The Government considers that inducements to buy alcohol by offering free goods and services on the condition that alcohol is purchased inappropriately stimulate demand for, and normalise, alcohol. Point of sale promotions have also been shown to have particular appeal to young people.

69. We note that the clause does not preclude the provision of free food or transport (including courtesy vans), provided this is not offered as an inducement to buy alcohol. Supplying such services on the condition that alcohol is purchased would be likely to encourage heavier alcohol consumption, and would therefore be irresponsible and inappropriate. Supplying these services regardless of the quantity of alcohol purchased would be consistent with good host responsibility practice.

70. In response to submissions that the clause should focus on high-risk promotions, it would be very difficult to implement an offence targeting inducements that result in excessive consumption while excluding low-risk inducements.

71. To provide greater certainty about the type of conduct captured by clause 220(1)(d), we consider it desirable to clarify the status of loyalty programmes and competition entries.

72. We consider that loyalty programmes which provide rewards points or discounts do not fall within the typical understanding of goods or services and would therefore not be covered by this offence. The rewards points or discounts provide an opportunity to obtain goods and services, either outright or at a reduced price, but are not themselves a tangible good or service in the typical sense.

73. While research evidence demonstrates that point-of-sale promotions increase purchase volumes, to our knowledge this evidence does not specifically address

the effect of loyalty programmes involving rewards points or discounts on other products. There would also be significant implications for business arrangements (including a number of credit card schemes) if loyalty programmes were covered by clause 220(1)(d), which we are not in a position to quantify.

74. For these reasons, we recommend that clause 220(1)(d) be amended to make it clear that loyalty programmes which provide reward points or discounts, except for those that are only earned from the purchase of alcohol and can only be redeemed for alcohol or alcohol-related merchandise (eg, outlet-specific alcohol rewards schemes), are not included.

75. Competition entries could also be considered to fall outside of the typical meaning of goods or services, as the entrant is given a chance to win goods or services, but there is no guarantee that goods or services will be received. There is evidence to suggest, however, that competitions (particularly those offering branded merchandise as prizes) increase purchase volume and contribute to creating a pro-alcohol environment. We also consider that the exclusion of competitions from the scope of clause 220(1)(d) could encourage the proliferation of competitions as a means to circumvent the offence (eg, through competitions where everyone wins a prize of some sort).

76. We therefore recommend that clause 220(1)(d) be amended to make it clear that promotions providing the chance to win goods or services are included in the offence.

Recommendation

We recommend that clause 220(1)(d) be amended to clarify that:

- loyalty programmes that provide rewards points or discounts, except for those that only involve alcohol, are not covered by clause 220(1)(d); and
- competitions (ie, promotions that offer the chance to win goods or services) are covered by clause 220(1)(d).

Clause 220(1)(e) - Promoting or advertising alcohol in a manner aimed at, or that has or is likely to have, special appeal to minors

Submissions

77. Several submitters considered that the wording of clause 220(1)(e) needed to be amended to be clearer or provide a more objective test, such as by removing the phrase “or is likely to have”. Some submitters noted that clause 220(1)(e) was unnecessary given that it is covered by the voluntary Code for Advertising Liquor.

Comment

78. The Government considers that the existing system of self-regulation has been ineffective in curbing alcohol marketing that is aimed at young people, and therefore needs to be backed by a legislative sanction to clearly demonstrate that this type of advertising is inappropriate. The drafting of the offence is deliberately wide to capture all instances of advertising that has or is likely to have special appeal to minors, even if the promotion or advertisement would also appeal to other age groups.

Submission

79. The Advertising Standards Authority was concerned that clause 220(1)(e) could directly undermine the self-regulatory system, through businesses choosing to await the results of a criminal or civil process, rather than engaging with the Advertising Standards Authority.

Comment

80. In response to the concern raised by the Advertising Standards Authority, it would likely be in the best interests of a business to engage with the voluntary process alongside a criminal or civil process. For example, it is possible that compliance with the voluntary process could be treated as a mitigating factor when any sanctions are considered through the criminal or civil process.

Clause 220 - Penalty level

Submissions

81. Twenty-two submitters commented on the proposed penalty level for this offence. Of those, 73% were supportive, while 23% considered that the penalty level is too low, noting that it is an insignificant amount of money for large companies and would therefore not be an effective deterrent.

82. Waipa District Council submitted that suspension of a manager's certificate for a prescribed period should be added as a possible penalty for managers committing this offence.

Comment

83. The penalty level for the irresponsible promotions offence is consistent with other offences of similar severity in the Bill, such as sale to a minor and sale to an intoxicated person. We note that the offence will operate alongside the existing voluntary process, so people found guilty of the offence could be convicted and fined by the courts and be required to withdraw the advertisement or promotion by the Advertising Standards Complaints Board.

84. Subject to an application from a licensing inspector or the Police, the suspension of a manager's certificate could be considered and imposed by the Alcohol Regulatory and Licensing Authority (ARLA) for conduct by a manager that falls within the scope of this offence. Enforcement action to suspend managers' certificates is taken through ARLA, rather than the District Court, given its expertise in liquor licensing. It is therefore unnecessary to provide this penalty option to the District Court.

Clause 220 - Other comments

Submissions - types of promotions covered

85. A small number of submitters suggested additional types of alcohol promotions that should be included as an offence under clause 220, such as those that undermine road safety objectives, glorify alcohol, or hold particular appeal to pregnant women.

Comment

86. The clause is focused on the types of promotions most likely to inappropriately stimulate demand for alcohol. Adding further types of promotions would broaden the scope of the offence and risk creating uncertainty about what is and is not permitted. We therefore recommend against adding any further types of promotions to clause 220.

Submissions - definitions of key terms

87. Several submitters noted that there was no definition of the terms "advertise" or "promote". Alcohol Healthwatch also suggested that the term "irresponsible" should be referenced to the object of the Act to clarify its meaning.

Comment

88. A definition of "advertise" or "promote" is not necessary because those terms are intended to be given their ordinary meaning. The elements of the clause itself describe the types of advertising and promotion that is considered irresponsible.

Submissions - alcohol as a prize

89. A small number of submitters considered that alcohol should be prohibited as a prize in any promotion, raffle or competition.

Comment

90. The Gambling (Prohibited Property) Regulations 2005 already prohibit alcohol from being offered as a prize for any gambling activity, including raffles and competitions.

Minimum Price

91. As noted in part 1 of the departmental report, setting a minimum price per unit of alcohol was supported by 29% of substantive submitters and 6070 form submitters. We noted in that report that the Ministry is currently investigating a minimum pricing regime and will provide a progress report to Government later this year.

92. While the larger alcohol retailers have been generally co-operative in providing information for this work so far, we consider it important to assure the availability of essential information for the entire alcohol market on an ongoing basis. We therefore recommend the inclusion of an obligation for the alcohol industry to provide information to be prescribed by regulation to enable the collection of alcohol price and sales data to inform the consideration of a minimum pricing regime.

93. The Government hopes to gather this information from the alcohol industry voluntarily, but this power will clearly signal to both the industry and the public the importance that Parliament places on accurately assessing, and if appropriate implementing, a minimum price regime.

94. In the unlikely event that a retailer refused to comply with any regulations made under this power, we recommend such failure be punishable on summary conviction with a fine not exceeding $20 000. This penalty is in line with failure to comply with similar regulations around product restrictions and banning.

95. We note that information provided under such regulations could be withheld from a third party who requested it on the grounds that making the information available would be likely unreasonably to prejudice the commercial position of the person who supplied or is the subject of the information (Official Information Act 1982, s 9(2)(b)(ii)).

Recommendation

We recommend the Bill be amended to include:

- a requirement for the alcohol industry to provide (without charge) prescribed information on the price and quantity of alcohol sold;
- power for the Governor-General, by Order in Council made on the recommendation of the Minister of Justice, to make regulations prescribing the information required and from whom; and
- a penalty for failure to comply with such regulations, being a fine of up to $20,000.

Trading hours

96. Clause 44 sets the default maximum hours, which apply unless an LAP specifies different hours. Alcohol sold for consumption on the premises (for example, from an on-, club or special licence) may only be sold between 8am and 4am the following day. Alcohol sold for consumption off the premises (for example, from an off-licence) may only be sold between 7am and 11pm.

97. Clause 45 sets out the maximum trading hours that apply to licensed premises in an area that is not covered by an LAP. It specifies that if the licence has been issued subject to a condition which imposes more restrictive hours than the maximum, these are the permitted trading hours for that premises. If the licence has not been issued subject to such a condition, the hours stated in clause 44 are the permitted trading hours.

98. Clause 46 sets out the maximum trading hours that apply to licensed premises in an area covered by an LAP. It specifies that if the licence has been issued subject to a condition which imposes more restrictive hours than the maximum stated in the LAP, these are the permitted trading hours for that premises. If the licence has not been issued subject to such a condition, the hours stated in the LAP are the permitted trading hours.

99. The overall effect of these clauses is to maintain the current system where the licensing decision-maker can impose permitted trading hours on a licensee. It alters the system however to place maximum limits on what those trading hours may be, with LAPs permitted to override the default national maximum hours.

Default maximum trading hours for off-premises sale

Submissions - opening hour

100. The default national maximum opening hour for the sale of alcohol for consumption off the premises was commented on by 378 submitters (23%). 66% supported further restrictions on off-licence opening hours, with many such submitters concerned about school children being exposed to the sale and consumption of alcohol on their way to school. A number of submitters noted that a later opening hour, such as 9am, would be consistent with standard retail hours. 11% considered that 7am is an appropriate opening time for off-licences.

Submissions - closing hour

101. The default national maximum closing hour for the sale of alcohol for consumption off the premises was commented on by 388 submitters (24%). 63% supported further restrictions on off-licence closing hours, on the basis that the majority of individuals purchasing off-licence alcohol late at night are not likely to be consuming that alcohol in a responsible manner. An additional 11% considered that 11pm is an appropriate closing time for off-licences.

Comment

102. While the majority of submitters supported more restrictive maximum trading hours for off-licences, evidence suggests that small changes to the default maximum trading hours will have little substantive effect on purchase and drinking behaviour. To achieve a greater reduction in alcohol-related harm, trading hours would need to be reduced considerably. Any reduction in harm achieved this way must be balanced against the effect on purchasing convenience for responsible consumers.

103. The Bill enables these issues to be considered and addressed at a local level through LAPs. Communities will be able to adjust the default maximum trading hours to reflect the particular needs of their area, rather than having to fit within a one-size-fits-all model.

104. For these reasons, we do not recommend any change to the default maximum trading hours for off-premises sales.

Default maximum trading hours for on-premises sale and supply

Submissions - opening hour

105. The default maximum opening hour for on-premises sale and supply of alcohol (on-licence, clubs licences, and on-site special licences) was commented on by 407 submitters (25%). 42% of those submitters supported further restrictions on on-licence opening hours, the most common reason for this being that there is a link between the trading hours for alcohol and alcohol-related harm, so limiting opening times would reduce alcohol-related harm. An additional 12% considered that 8am is an appropriate opening time.

Submissions - closing hour

106. The default maximum closing hour for on-premises sale and supply of alcohol was commented on by 460 submitters (28%). 40% supported further restrictions on on-licence closing hours, again due to the link between alcohol-related harm and hours of availability. Many of these submitters expressed one preferred closing time, but also expressed support for a later closing time if a one-way door is in force. An additional 29% considered that 4am the following morning is an appropriate closing time.

Comment

107. A degree of flexibility in the default maximum trading hours for premises selling alcohol for consumption on the premises is desirable given the wide variety of premises in this category. Some premises cater for daytime dining and activities, some focus on evening and late-night dining and entertainment, while others fill multiple and completely distinct rolls at different times of the day. Restrictive default maximum hours would not sufficiently cater for the variety of premises.

108. Further, to have any significant effect on alcohol-related harm, trading hours would need to be reduced considerably, particularly at the closing end. The peak time for crime, disorder and injury is midnight to 3:00am, based on Police and hospital data. This means that the closing time would need to be brought back to somewhere around 12 midnight to have a noticeable effect, which was not strongly supported by submitters. There would be significant consequences for industry and there could also be negative consequences, such as fast-paced consumption to drink as much as possible before closing, and larger numbers of people leaving bars at the same time because of the shorter period for natural dispersal.

109. As for off-licence hours, the Bill enables these issues to be considered and addressed at a local level through LAPs. Where desired, communities will be able to set more restrictive hours for on-premises sale and supply.

110. For these reasons, we do not propose any change to the default maximum hours for on-premises sale and supply of alcohol.

Breakfast trading and early morning events

Submissions

111. The on-licence industry expressed a particular concern regarding the impact of maximum trading hours on their ability to cater for breakfasts. 107 submitters raised concerns regarding breakfasts, with 62% of these submitters supporting an extension of licensing hours to permit on-licences to serve breakfasts, whether they include alcohol or not, while a further 34% of those who commented on the issue only requested the Bill be clarified to ensure on-licences could permit individuals to be on licensed premises outside hours, although not to permit the sale of alcohol at those times.

112. A number of on-licence submitters were also concerned about the impact of maximum trading hours on their ability to open for the screening of live northern hemisphere sporting fixtures or to host champagne breakfast events.

Comment

113. We acknowledge the concerns raised by submitters and consider that two amendments to the Bill will respond to these concerns, without undermining the reduction in alcohol-related harm that the proposed limitations on trading hours are designed to achieve.

114. The service of breakfast without alcohol on licensed premises is prevented for some, but not all, on-licences by clauses 238 and 239 (discussed below from paragraph 305), which makes it an offence to be on any part of a licensed premises where the principal purpose is the sale, supply, or consumption of alcohol outside of the licensed hours.

115. In practice, this means that restaurants, where the principal purpose is the sale of food, may serve breakfasts before their licensed hours begin, but taverns (particularly smaller taverns where the premises is a single room), where the principal purpose is the sale of alcohol, may not.

116. We recommend amending these offences to permit people to be on such licensed premises before their licensed trading hours. This will allow them to open for the sale of breakfast, but will not permit the sale of alcohol until their trading hours begin.

117. We recommend this exception begin from 6am, rather than at any time. This will ensure a two hour period (from the default national 4am closing time) during which the premises must be closed. We consider that without such a limit, customers could stockpile drinks before the end of sales and continue drinking while the premises remained open. This would result in increased alcohol-related harm and enforcement difficulties.

118. In response to concerns around champagne breakfasts and international sporting events outside the maximum hours, we recommend amending the Bill to permit special licences outside the maximum hours. Special licences may only be issued for a particular event or series of events, and should therefore permit such occasions without creating a way for licensees to remain open outside maximum hours on a business-as-usual basis.

Recommendation

We recommend the Bill be amended to:

- adjust the scope of the offences of being on licensed premises outside licensing hours (clause 238) and allowing people on licensed premises outside licensing hours (clause 239) to permit people on licensed premises outside licensing hours from 6am until the licensing hours begin; and
- permit a special licence to be issued outside of the relevant maximum trading hours.

Restrictions relating to trading hours

Clause 47 - No sale or supply outside permitted trading hours: all licences

119. Clause 47 provides that a licensee may not sell or supply alcohol outside the trading hours permitted by the Bill and their licence. There are two exceptions to this:

    119.1. Sale and supply under a special licence from 6am on Anzac Day morning, for events connected to the commemoration of that day; and

    119.2. Casinos, which are not subject to the trading hours restrictions in the Bill but to those that apply under the Gambling Act 2003.

Submissions

120. 11 submitters commented on the exemption for casinos from the hours restrictions. 8 submitters opposed the exemption due to concerns such as the additional potential for harm by mixing alcohol and gambling. 3 casino operators supported the exemption, stating that their premises are low-risk, particularly as they are subject to additional compliance requirements under the Gambling Act.

Comments

121. Casinos are a relatively low-risk drinking environment that are monitored primarily under the Gambling Act 2003. A range of conditions attach to a casino licence, including security and surveillance requirements, which are more stringent than those which apply to an alcohol licence. Any issues of harmful drinking could result in the suspension of not only their licence to sell alcohol, but also their casino licence. We also note that of the six casinos in New Zealand, only three operate beyond 4am. We consider that the risk of suspension of both the liquor and casino licences is a sufficient control to manage any risk of harm arising from allowing casinos to sell alcohol at any time that they are permitted to trade under their casino licence.

Clauses 48 - Sale and supply on Anzac Day morning, Good Friday, Easter Sunday and Christmas Day restricted: on-licences

122. Clause 48 prohibits the sale of alcohol for consumption at on-licence premises on Anzac Day morning, Good Friday, Easter Sunday and Christmas Day. This continues the position under SOLA but applies it to all on-licence premises, rather than just hotels and taverns. There are three exceptions:

    122.1. For people who live or are staying on the premises;

    122.2. For people who are on the premises to dine; and

    122.3. For club licences, because they may only sell and supply alcohol to members and their guests as opposed to the general public.

Submissions

123. 191 submitters commented on the restricted days. 52% of these supported their retention and 38% were opposed.

Submission – religious basis

124. A number of submitters were concerned that the restricted days are primarily days of religious significance, which do not apply to many New Zealanders and should therefore be removed. Other submitters were concerned that the restricted days have an undue impact on the tourism industry.

Comment

125. The restrictions on when alcohol may be sold at an on-licence are consistent with the general restrictions applying under shop trading hours legislation. There is no good reason for different treatment of the sale of alcohol on these days. Creating exceptions for particular premises or businesses, even if they are considered to be low-risk, would cut across the general policy for restricted days, create inconsistencies and add unnecessary complexity to the Bill.

Submission – consistent treatment

126. On-licence submitters were particularly concerned about the differing treatment between on-licences, which are subject to the prohibited days restrictions, and club licences, which are not.

Comment

127. The restricted days provisions reflect broader shop trading restrictions which limit commercial activities on those days. We consider that it is appropriate to exempt club licences, for which the commercial sale of alcohol is not the primary purpose of the organisation, to continue to operate on these days.

Submission – air services

128. Air New Zealand noted that the extension of these provisions to all on-licence premises, rather than only taverns and hotel premises, will prevent their Koru Clubs and aircraft serving alcohol on the restricted days. They seek a change to permit the continued service of alcohol by Air New Zealand on these days.

Comment

129. As noted above, the restrictions on when alcohol may be sold at an on-licence are consistent with the general restrictions applying under shop trading hours legislation, and there is no good reason for different treatment of the sale of alcohol on these days, either in general, or for particular premises or businesses.

Submission - clubs

130. Clubs New Zealand requested that explicit provision be made to clarify the position of clubs. They submitted that chartered clubs, but not sports clubs, should be expressly permitted to sell and supply alcohol on the restricted days.

Comment

131. We do not consider further clarification for club licences is necessary, as clause 48 applies to on-licences only.

Clause 49 - Sale and supply on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day restricted: off-licences

132. Clause 49 is the off-licence equivalent of clause 48, and prohibits the sale of all off-licence alcohol on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day. The only exception to this is for wineries, which may sell their own wine (either made on the premises, or made from fruit harvested from the land) on Easter Sunday.

Submission

133. New Zealand Winegrowers were concerned that linking the exemption to wine made on the premises, or from grapes grown on the premises, will prevent some wineries from operating on the restricted days, contrary to the policy intention. They considered this is best remedied by creating a separate category of off-licence for wineries, to which the exception could be linked.

Comment

134. We note at the outset that the restrictions contained in the Bill have been carried over from SOLA, and on this basis we reject concerns that this provision will place restrictions on wineries beyond those they are already subject to.

135. We have considered the submission of New Zealand Winegrowers in detail. As noted at paragraph 220, we recommend against the creation of a separate licence category for wineries as we consider there are more effective ways of reducing costs to all low-risk retailers, such as through risk-based licensing fees.

136. We have also considered whether clause 49 can be amended to serve the same purpose as the exception proposed by New Zealand Winegrowers. We have concluded that any amendment to clause 49 along these lines risks widening the exemption too far and permitting unintended off-licence premises to trade on restricted days, which would undermine the policy intention of this provision.

137. We therefore recommend no changes to clause 49.

Premises eligible for an off-licence

138. The Bill largely continues the existing restrictions on the types of premises for which an off-licence may be issued. Clause 35 sets out the types of premises eligible for an off-licence, as follows:

- Hotels and taverns that hold an on-licence;
- Retail premises where at least 85% of the annual sales revenue is expected to be earned from the sale of off-licence alcohol;
- Premises where the principal business is the manufacture of alcohol (for example, breweries and wineries); and
- Grocery stores (which includes supermarkets).

139. Definitions of key terms relating to grocery stores are provided in clause 5.

140. Clause 36 provides an exception for remote areas where the establishment of a dedicated alcohol retail store, manufacturing premises, or a grocery store would not be economic.

141. Clause 37 provides another exception for stores where the sale of alcohol would be an appropriate complement to the type of goods sold on the premises.

142. Clauses 36 and 37 were addressed in part 1 of the departmental report.

143. This section addresses submissions on clause 35 and associated provisions.

Grocery store definition

Content

144. The definitions in clause 5 and the guidance provided in clause 6 are intended to clarify the distinction between a grocery shop, which is eligible for an off-licence, and a dairy, which is not eligible for an off-licence.

145. Clause 5 defines grocery shops as a shop where the principal business carried on is or will be the sale of main order household foodstuff requirements.

146. Clause 6 provides guidance for ARLA and District Licensing Committees (DLCs) on determining whether the principal business of a shop is the sale of main order household foodstuff requirements. It sets out a number of factors to be considered with a rebuttable presumption that a shop is a grocery shop where at least 50% of the annual sales revenue is derived from the sale of main order household foodstuff requirements (the 50% test).

147. We will address these matters in four parts:

147.1. The structure and location of these provisions;

147.2. The definition of 'main order household foodstuff requirements';

147.3. The test for what the 'principal business' of a store is; and

147.4. Other miscellaneous matters on this topic.

Structure and location

148. 'Grocery store' is defined in the Bill (clause 5) as premises that are:

- a grocery shop; or
- a supermarket with a floor area of at least 1000m^2 (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items).

Submission

149. A number of submitters considered the definitions of grocery shop and grocery store unsatisfactory or ambiguous. A subset of this group were particularly opposed to introducing a new term, grocery shop, into an area of law they see as already fraught with confusion.

Comment

150. The use of the terms grocery store, grocery shop and supermarket in the Bill is potentially confusing. We propose changes to address this by creating two discrete categories rather than a single combined one.

151. We propose that the term grocery store no longer be an over-arching definition. Instead, we propose that, consistent with the terminology in SOLA, it be used only to refer to the stores currently called grocery shops in the Bill. This would mean that the term grocery store would be substituted for grocery shop in the Bill.

152. Supermarkets would be separated out and be eligible under a separate paragraph of clause 35(1).

153. Relevant restrictions under the Bill would apply to both categories.

Recommendations

- We recommend that the definitions of food retailers eligible to sell off-licence alcohol be replaced with the following:
  - Supermarkets, as currently qualified; and
  - Grocery stores, (as described in the following recommendation).
- The term grocery shop will no longer be required.
- A consequential amendment to clause 35(1) will be required to list supermarkets separately to grocery stores.
- We recommend that the definitions of 'supermarket' and 'grocery store' be located immediately following clause 35, for ease of reference.
- Consequential amendments will be required to clause 37, which provides an exception for certain complementary sales, and clause 59, which specifies restrictions on the kinds of alcohol that may be sold in grocery stores.

Definition of main order household foodstuff requirements

154. Main order household foodstuff requirements are defined as "food items of a kind normally bought for preparation and consumption at home and do not include alcohol".

Submissions

155. Several submissions raised concerns about the definition of "main order household foodstuff requirements", particularly that it does not reflect how the term is used in the grocery trade, will be difficult to implement because it lacks specificity or is too broad to achieve the intended objective, and may actually prevent a number of grocery stores from being eligible for an off-licence. The 'preparation' element of the definition was of particular concern.

Comment

156. In light of submissions we consider that the definition of a grocery store (using the term as recommended below) could be improved to better achieve the policy intention of allowing the issue of off-licences for grocery stores, but not for dairies.

157. We recommend amending the definition of a 'grocery store' by omitting the reference to main order household foodstuffs. Instead we propose substituting a definition that covers premises that sell a range of food products and other household items (which would not include food), where the principal business is the sale of food products. We recommend defining food products to exclude:

- alcohol;
- confectionery;
- snack food, including but not limited to potato chips, biscuits, crackers and ready-to-eat popcorn;
- beverages of 1 litre volume or less (but not milk); and
- ready-to-eat takeaway food.

158. The definition of 'main order household foodstuff requirements' would be removed.

159. This approach will capture those stores that are genuine grocery stores, operating in a similar way to a supermarket but on a smaller scale, while excluding premises that are not intended to be eligible for an off-licence such as convenience stores and food stores that are not grocery stores (for example, sandwich bars). However, to further bolster this approach, we propose including convenience stores with dairies in the list of premises for which an off-licence cannot be issued in clause 38.

160. To ensure accurate application of the test, we recommend that a definition of ready-to-eat takeaway food be included, to be defined as "prepared or cooked food ready to be eaten immediately in the form it is sold."

Recommendations

We recommend the Bill be amended to:

- change the definition of 'grocery store' to premises that sell a range of food products and other household items, where the principal business is the sale of food products;
- define 'food products' to exclude alcohol, confectionary, snack food (including but not limited to potato chips, biscuits, crackers and ready-to-eat popcorn), beverages of 1 litre volume or less (but not milk), and ready-to-eat takeaway food;
- define 'ready-to-eat takeaway food' to be 'prepared or cooked food ready to be eaten immediately in the form it is sold', or words to this effect;
- move the definitions of 'grocery store' and 'food products' to be located with or immediately following clause 35, for ease of reference (as noted in the previous recommendation);

- remove the definition of ‘main order household foodstuff requirements’ from clause 5; and
- insert ‘convenience stores’ into clause 38.

Determination of principal business (clause 6)

161. Clause 6 defines how a decision-maker should consider what the principal business of a retailer is when deciding whether or not it is a grocery store. In particular, subclause (2) creates a presumption that if a store receives at least 50% of its revenue from the sale of main order household foodstuff requirements then the store is a grocery store. This presumption may be rebutted by other factors.

Submissions

162. A small number of submitters commented on this clause. Some submitters supported the guidance provided by clause 6 for the assessment of principal business. Submitters from the local government sector expressed concern about the placement of the clause. Several submitters noted that the use of a double negative in clause 6(2) was confusing and difficult to follow. Foodstuffs (NZ) Ltd was particularly concerned about the effect of clause 6(2), noting that it could become a default requirement which would have a negative effect on grocery store eligibility. The New Zealand Retailers Association also expressed concern about the effect of clause 6(2) as well as the open-ended nature of clause 6(1)(b). Several submitters were concerned that the focus on sales revenue may be inappropriate or problematic.

Comment

163. It would aid clarity if this clause were located with clauses relating to off-licence eligibility (such as clause 35) and we recommend it be moved accordingly.

164. Further analysis has shown that the 50% test (as described in paragraph 146) will not be effective in separating grocery stores from other smaller convenience-type stores, as the wide range of products sold by modern grocery stores means few derive 50% of their revenue from food.

165. We therefore recommend that subclause (2) be removed. This will address concerns as to the complexity of this provision, and better reflect the reality of modern grocery store retailing.

Recommendations

We recommend that clause 6 be:

- amended to remove subclause (2); and
- moved to be located immediately following clause 35, for ease of reference.

Minimum floor area requirement

Submissions

166. Several submitters suggested including a minimum retail floor area requirement (such as 250m² or 300m²) in the definition of "grocery shop".

Comment

167. While a minimum floor area requirement is a seemingly simple way to distinguish between grocery stores and dairies, it would be arbitrary and open to the risk that dairies and other convenience-type stores would increase in size in order to be eligible for an off-licence, undermining the policy intention. The focus of the Bill on the substantive nature of the business provides a fairer and more considered basis for eligibility decisions to be made.

Delicatessens

Submissions

168. One submission suggested there should be a separate category for delicatessens, distinct from grocery stores. The submitter considered that these premises are low-risk environments for selling alcohol and therefore are very different from supermarkets or grocery shops.

Comment

169. We do not support the creation of a separate category for delicatessens. It would be very difficult to define a delicatessen in such a way as to clearly delineate it from other businesses such as convenience stores and takeaway shops. We note that delicatessens may still qualify for a licence under existing categories, such as the grocery store category, if they meet the relevant requirements.

Alcohol retail premises

Submission

170. At least one submission raised a concern that the reference to "retail premises" in clause 35(1)(b) would prevent an off-licence being issued to a business that only sells alcohol remotely and does not have a physical retail premises.

Comment

171. We agree that this clause does not readily accommodate businesses that only sell alcohol remotely. We recommend clause 35(1)(b) and other relevant clauses be amended to account for the nature of remote sale businesses and will work with Parliamentary Counsel to achieve this.

Recommendations

We recommend that clause 35(1)(b) be amended to ensure that businesses that only sell alcohol remotely can obtain a licence without a requirement for physical retail premises.

We also recommend that other relevant provisions, such as the requirements to display signs (clause 57) and the licence (clause 58) on the premises, be amended as necessary to take account of the nature of remote sale businesses.

Submission

172. A small number of submitters considered that a lower threshold for annual alcohol sales revenue would be more appropriate for alcohol retail premises, rather than the 85% threshold set by clause 35(1)(b). These submitters considered this would still require specialist alcohol retail outlets to principally sell alcohol, but would allow for income from complementary goods.

Comment

173. The purpose of the 85% threshold is to limit the ability for stores that were granted an off-licence on the basis that they would be a specialist alcohol retailer (with the associated right to sell spirits and spirit-based drinks) to diversify into other goods, contrary to the policy intention. The 85% threshold allows for the sale of a small proportion of complementary goods, which provides convenience for customers, while ensuring that the original basis for the grant of the licence is not eroded by inappropriately altering the core nature of the business.

Local alcohol policies

174. This section deals with the following aspects of the Local Alcohol Policy (LAP) provisions:

174.1. Content of LAPs (clause 77);

174.2. Information that must be considered before producing a draft policy (clause 79); and

174.3. Expiry of LAPs (clause 92).

175. The process for developing an LAP was addressed in part 1 of the departmental report.

Clause 77 - Contents of LAPs

176. Clause 77 sets out what an LAP may contain. It can deal with:

176.1. location of outlets in relation to broad areas (eg, a suburb);

176.2. location of outlets in relation to their proximity to specific facilities (eg, schools or churches);

176.3. whether any additional licences should be issued for the district, or a part of the district;

176.4. maximum trading hours;

176.5. one-way doors; and

176.6. any other non-licensing matter.

177. The licensing content of LAPs (location, density and hours) was discussed in part 1 of the departmental report. However the Committee has asked officials to consider whether there needs to be further controls in this area. This issue is addressed in this section as well as submissions on the inclusion of non-licensing matters in LAPs.

Provision for local alcohol policies to include non-licensing matters

Submissions

178. Many submitters, particularly from industry, who commented on clause 77 were concerned that including non-licensing matters in LAPs, would permit territorial authorities to impose a range of other restrictions on licensees. They were concerned this could result in a disproportionate increase in compliance costs or the imposition of restrictions without proper process. A number of these submitters were concerned that appeals are not permitted on non-licensing matters contained in an LAP. They considered that this would give territorial authorities the ability to impose any policy on licensees, without any recourse to the courts should the policy be unreasonable, and recommended that the right of appeal to be widened to cover any matter contained in an LAP.

179. Some submitters suggested that non-licensing matters be expressly limited to the matters dealt with in the Bill and be no more restrictive. The Advertising Standards Authority submitted the breadth of subclause (3) could permit territorial authorities to impose advertising restrictions that conflicted with their own standards, creating considerable confusion for licensees and national operators.

180. Other submitters were supportive of the wide power, with some commenting specifically that the non-licensing matters should include a plan to reduce alcohol-related harm in the area.

Comment

181. The ability to include non-licensing matters in an LAP was not intended to confer additional powers on territorial authorities. The inclusion of such matters in an LAP was intended to enable LAPs to deal with additional matters, relevant to the functions of territorial authorities and the objects of the Bill, in one place, for the convenience of members of the public and licensees.

182. However, a number of concerns around non-licensing matters were raised by submitters, including:

182.1. uncertainty around the breadth of this provision;

182.2. the risk that non-licensing content could be unreasonable or contrary to the primary legislation; and

182.3. the possible confusion about appeal rights.

183. Non-licensing matters in an LAP would not be enforceable. Given the level of concern, we consider it preferable to remove non-licensing matters as permitted LAP contents.

184. Territorial authorities will continue to be able to address non-licensing matters through powers conferred under other legislation, such as bylaw-making powers under the Local Government Act 2002. These measures could sit alongside an LAP made under the Bill and other alcohol management policies as part of an overall alcohol strategy for the area.

Further comment

185. We consider that it is necessary to balance the removal of non-licensing matters from LAPs with some additional scope for licensing matters, to avoid creating the perception that LAPs, which are the primary mechanism for the wider community to contribute to licensing decisions, do not adequately fulfil this role. We recommend this be accomplished by permitting LAPs to include discretionary licensing conditions.

186. This recommendation would permit local communities to establish recommended discretionary conditions for licensed premises in their area. This would have the dual benefits of increasing the scope of communities to have input on licensing, and of giving additional certainty to prospective licensees, who would have a single reference point for conditions the territorial authority will seek to have placed on licences in their area.

187. In response to concerns that this change will decrease national consistency of licensing decisions, we note that the Bill already contains the discretion for licensing decision-makers to impose any reasonable condition not inconsistent with the Bill. Therefore, allowing LAPs to contain conditions will not increase the range of conditions that could be imposed on a licence, and rather than decreasing national consistency, may actually support it by facilitating standard conditions.

Recommendation

We recommend that clause 77(3) (non-licensing matters) be omitted, with any necessary consequential amendments.

We further recommend that clause 77(1) be amended to make discretionary licensing conditions a permitted licensing matter for LAPs.

Scope of licensing content

188. The Committee requested officials to consider whether there should be further limitations on the possible licensing content of LAPs, such as minima and maxima, to reduce the risk that LAPs would be considered unreasonable. It was noted that this could help to reduce the number of appeals, which add cost and delay to the process for implementing an LAP.

Comment

189. We do not consider that imposing minimum and maximum standards for LAPs are desirable or practical.

190. In reaching this view, we have considered the following matters:

190.1. Removal of the ability include non-licensing matters should significantly limit inappropriate policies in an LAP, as elements may only relate to defined licensing matters.

190.2. To place maximum and minimum standards for LAPs would be directly contrary to a key underlying principle of the Bill, that communities are best placed to assess their own needs around alcohol controls. In our view, placing maximum and/or minimum standards for LAP elements would arbitrarily limit the ability of communities to provide for their particular circumstances.

190.3. In contrast, the ground on which LAPs may be appealed, that the element is unreasonable in light of the object of the Bill, provides an appropriate check on unreasonable decision-making, but does so in a way that otherwise respects the competence of local communities to assess their own needs.

190.4. Further, while maximum and minimum standards could be easily expressed for trading hours, the remaining licensing elements of an LAP are widely drawn. Although this breadth is necessary to give communities flexibility to respond to alcohol-related harm, it would make it very difficult to anticipate (and then limit) LAP elements.

190.5. As with any new area of law, we anticipate that a body of case law will develop over time. While every LAP appeal will be decided on its own merits, this case law will provide authoritative guidance as to what elements ARLA may or may not find to be unreasonable in light of the object of the Bill. This guidance should reduce the number of appeals.

Clause 79 - Information required by territorial authority before producing draft policy

191. The Committee raised a concern about the wording of clause 79(1)(c) during consideration of part 1 of the departmental report, in particular the phrase "including socio-economic status".

Comment

192. The inclusion of the phrase "socio-economic status" was intended to reflect that there is a correlation between areas of lower socio-economic status and higher levels of alcohol-related harm, which may be relevant to the content of an LAP.

193. However, having reconsidered this matter, we agree that a particular focus on socio-economic status is not warranted or necessary to guide consideration of how alcohol is impacting on the local community. We therefore recommend it be removed.

194. Our view is that the broader demography of both regular residents and tourist populations should remain as a specified consideration. This will provide information important in assessing alcohol-related harm and appropriate measures to reduce it, for example the age and mobility of the population and seasonal changes which may materially alter the character of the area.

Recommendation

We recommend that clause 79(1)(c) be deleted.

Clause 92 - Local alcohol policies expire after six years

195. The Committee requested that officials reconsider whether expiry of an LAP was necessary or desirable, or whether it would be more appropriate to require review within a defined time period. The Committee noted that a ten year review requirement may be appropriate to coincide with the term of a district plan.

Comment

196. The intention behind LAPs expiring after six years was to force a comprehensive review of an LAP, to ensure they remain relevant to their communities. Having examined the matter further, we now consider that appropriate provision can be made to require a review of the LAP without having to require their expiry.

197. We therefore recommend that clause 92 be replaced with a clause specifying that six years after the adoption of an LAP, or the last review of that LAP, a territorial authority must review an LAP using the special consultative procedure. The territorial authority would then give effect to the results of that review by amending, revoking, or replacing the LAP through the processes in clauses 90, 91(b) or 91(a) respectively, or taking no further action if the LAP continues to appropriately serve the community.

198. We consider that a six year review period is appropriate, as opposed to ten year requirement, because it aligns with the review period for many other local government plans and policies [for example rates remission policies (six-yearly), rates postponement policies (six-yearly), long term council community plans (three-yearly), class 4 gambling policies (three-yearly)]. It also aligns with the local electoral cycle, in that two local elections will be held during the life of an LAP, during which the territorial authority that created it may be held to account by the voters.

199. We also note minor drafting amendments will be required to clause 91 to align it properly with this process.

Recommendation

We recommend clause 92 be removed and replaced with a provision requiring that territorial authorities review an LAP six years after it comes into force, and six years after each review. The provision should require that the review be conducted using the special consultative procedure.

We further recommend clause 91 be amended to require any revocation, or revocation and replacement, to be undertaken using the processes of the Bill, with any necessary modifications, as if it were the adoption of an LAP.

Alcohol control bylaws (Part 9)

200. Part 9 of the Bill contains amendments to the Local Government Act 2002. These are focused on the creation and enforcement of alcohol control bylaws (more commonly called 'liquor bans').

201. The following aspects of Part 9 of the Bill were discussed in part 1 of the departmental report:

    201.1. the definition of 'public places' to which alcohol control bylaws can apply (clause 402, new section 147);

    201.2. signage requirements for an alcohol control bylaw area (clause 402, new section 147B); and

    201.3. enforcement of alcohol control bylaws (clauses 403 to 408).

202. This section discusses the proposed new criteria that must be met for an alcohol control bylaw to be made or continued (clause 402, new section 147A).

Clause 402, new section 147A - Criteria for making or continuing bylaws under section 147

203. Clause 402 inserts new section 147A into the Local Government Act, which introduces new criteria for making or continuing alcohol control bylaws. Before making or continuing an alcohol control bylaw, a territorial authority must be satisfied that:

    203.1. taken together, the proposed bylaw area and time for the bylaw can be justified as a reasonable limitation on people's rights and freedoms;

    203.2. there is evidence that the proposed bylaw area has experienced a high level of crime or disorder that can be shown to be caused or made worse by alcohol consumption in the area; and

    203.3. the proposed area and time for the bylaw are appropriate and proportionate in light of this evidence.

<u>Submissions</u>

204. Many submitters from the local government sector did not support the new criteria. The Alcohol Advisory Council of New Zealand (ALAC), the Hospitality Association of New Zealand, the New Zealand Police Association and several others also opposed the new criteria. The main reasons for this view were that:

    204.1. the threshold included in the Bill to create a new liquor ban - evidence of crime and disorder - is too high. This means an effective preventative tool will no longer be available;

    204.2. the Bill's criteria may limit the ability for councils to be responsive to the wishes of their community; and

    204.3. an effective liquor ban may negate the ability for it to be ongoing. In other words, if crime and disorder is reduced the renewal of a liquor ban may not be possible because it will not meet the high harm threshold.

205. Most of these submitters advocated for a return to the current provisions of the Local Government Act 2002, while some suggested a lower threshold of nuisance caused or made worse by alcohol consumption in the area.

206. Two submitters supported the new criteria if the power to make alcohol control bylaws is retained.

Comment

207. Alcohol control bylaws have come to be applied very broadly, with little evidence available on their effectiveness at reducing alcohol-related crime, disorder and nuisance. Given the availability of a range of offences for crime and public disorder, it is appropriate that any restriction on the use of public places by all people needs to be a proportionate response to the possible risk of harm. It is also appropriate to set a high threshold for alcohol control bylaws given the risk of a criminal sanction (an infringement fine) being imposed. This is because public drunkenness is not a criminal offence (for reasons previously outlined in part 1 of the departmental report) and that possession or consumption of alcohol in public is only a general offence in limited circumstances (if someone is aged under 18 or is on an unlicensed conveyance). The new criteria are also consistent with the object of the Bill to minimise the harm caused by the excessive or inappropriate consumption of alcohol.

208. We acknowledge, however, the concerns raised by submitters about the effect of the criteria on renewal of an alcohol control bylaw. It would be undesirable if a bylaw had to lapse and the problems recur before a fresh ban could be put in place. We therefore recommend that territorial authorities must instead be satisfied that the high level of crime or disorder that justified the making of the bylaw would be likely to return if the bylaw were lifted, before deciding to renew an alcohol control bylaw. For the same reasons, we recommend this test also be applied to the decision to introduce a bylaw to replace one made before the commencement of the new regime which is expiring pursuant to clause 410, as this is in effect a renewal.

Recommendation

We recommend that new section 147A(2) in clause 402 be amended to delete the criteria specified for continuing an alcohol control bylaw and instead require territorial authorities to be satisfied that the high level of crime or disorder that justified the making of the bylaw would likely return if the bylaw was lifted, before deciding to renew an alcohol control bylaw.

We also recommend that this test be applied to the replacement of existing bylaws covered by clause 410 or 411.

Submission

209. Auckland Council was concerned that the new provisions remove the ability for territorial authorities to create an enabling alcohol control bylaw that allows specific controls (time and place) to be adopted by resolution. This would then require district-wide consultation under the special consultative procedure each time the bylaw is amended. In the context of Auckland, district-wide consultation for alcohol controls that apply to specific geographic locations would be unnecessarily onerous and costly.

Comment

210. We acknowledge the point raised by Auckland Council that the new provisions will prevent the use of the general resolution process for territorial authorities for setting details of an alcohol control bylaw. This could impose additional consultation costs on territorial authorities, particularly in the Auckland context. We consider that the flexibility to use the resolution process for setting the details of alcohol control bylaws should be retained and recommend the opening phrase of new section 147A(1) be amended to allow for this. The general consultation requirements relating to decisions of territorial authorities, which are set by the Local Government Act 2002, will apply where the resolution process is used.

Recommendation

We recommend that the opening phrase of new section 147A(1) be amended to require a territorial authority to be satisfied that the criteria specified in section 147A(1) are met before specifying any public places and periods of time to which a bylaw made under section 147 will apply.

Additional comment

211. We are aware that territorial authorities from time to time make temporary bylaws through the resolution process, generally for one-off events such as concerts in a public park, to avoid a high risk of harm if alcohol were permitted to be consumed. In these cases, the criteria under new section 147A(1)(b) and (c) are unlikely to be satisfied. We therefore recommend that only 147A(1)(a) must be satisfied before specifying any public places and periods of time to which a bylaw made under section 147 will apply on a temporary basis for a large scale event.

Recommendation

We recommend the Bill be amended to require that a territorial authority must be satisfied that section 147A(1)(a) only is met before specifying any public places and periods of time to which a bylaw made under section 147 will apply on a temporary basis for a large scale event.

Exemptions for Police, Fire Service and Defence Force canteens (clause 14)

212. Clause 14 provides an exemption for Police, Fire Service and Defence Force messes and canteens from the requirement to hold a licence to sell and supply alcohol.

Submissions

213. A small number of submitters commented on the exemptions in this clause, with 110 commenting on Police canteens, and similar numbers on Defence Force and Fire Service canteens. Submitters were largely against the continued exemption of these premises (ranging from 77% to 97% depending on the exemption). These submitters were mainly from the industry, advocating the application of the same rules to all sellers of alcohol.

214. The Police Association and Fire Service commented in favour of retaining the exemptions.

Comment

215. Full removal of these exemptions would create enforcement complexities, as it is not clear who could appropriately enforce the licensing regime for these premises, particularly on defence force bases and ships. On the other hand, it is appropriate for these premises to demonstrate that they are selling and supplying alcohol in a way that is consistent with the requirements imposed on licensed premises. We therefore recommend an intermediate approach by requiring the Police Commissioner, Fire Commissioner and Chief of Defence to put in place, and implement, internal codes of practice that follow as closely as practicable the rules and restrictions applying to clubs under the Bill. The Police, Defence Force and Fire Service already have strategies and controls in place that mean this requirement could be implemented easily and at low cost.

Recommendation

We recommend that the Bill be amended to require the Commissioner of Police, Fire Service Commissioner and Chief of Defence to put in place and implement internal codes of practice for exempt canteens and messes which follow, as closely as practicable, the rules and restrictions applying to clubs under the Bill.

Kinds of licence (clause 17)

216. Clause 17 continues the four categories of licence from SOLA. These are:

216.1. on-licence, for the sale of alcohol to be consumed on the licensed premises (such as a bar or restaurant);

216.2. off-licence, for the sale of alcohol to be consumed off the licensed premises (such as a supermarket, bottle store or winery);

216.3. club licence, which operates as an on-licence for clubs, the requirements of which recognise the restricted nature of club membership; and

216.4. special licence, which permit the sale of alcohol for particular events rather than in the course of regular business.

Submissions

217. Some submitters, including the Wellington City Council, advocated the creation of additional classes of licence, including support for the creation of a ‘low-risk’ on-licence, to separate (and reduce compliance costs on) small on-licence premises such as cafes from high-risk premises such as night-clubs.

218. New Zealand Winegrowers and a number of their members supported the creation of a grape wine cellar door off-licence with special conditions to reflect the low risk nature of their operations.

Comment

219. We are aware of the impact of compliance costs on low-risk businesses and are conscious of the need to minimise these costs as far as possible. However,

attempting to reduce compliance costs for low-risk businesses through changes to licensing requirements would introduce additional complexity and risk a perverse outcome of considerable time being spent to differentiate true low-risk premises from other applicants, and the cost increase this administrative work would entail. We consider a risk-based licensing fees system, which the Bill permits, a more effective way of adjusting the cost of the licensing system to better reflect the different costs imposed by different premises.

220. While we acknowledge the relatively low risk and low volume nature of 'winery cellar door' operations, for the reasons noted above we do not support a new type of licence specifically for wineries. We do, however, consider there may be scope to impose lesser notification requirements on low-risk applications within the current licence structure. This would reduce compliance costs for low-risk premises such as wineries. We will consider this further in the development of the notification regulations following the passage of the Bill.

Management requirements

Clause 198 - Manager to be on duty at all times and responsible for compliance

221. Clause 198 requires that a manager is on duty at all times that alcohol is sold to the public, and that they are responsible for ensuring compliance with the Bill.

Submission

222. Submissions from New Zealand Winegrowers and their member wineries proposed a new licence type for 'winery cellar door' operations, which would be exempt from the requirement to have a certified manager on duty.

Comment

223. The requirement to have a certified manager on duty is an additional compliance cost. However, we consider the role of managers in preventing alcohol-related harm due to the excessive or irresponsible consumption of alcohol is an essential one that should be required of all licensed premises, including wineries.

224. While some other premises (such as clubs and BYO restaurants) are exempt from the requirement to have a certified manager on duty, the exemption is due to factors unique to the operation of those premises. For example:

224.1. Club licences operate on the basis that they sell only to their members, whereas winery cellar doors retail to the public generally.

224.2. BYO licences may not be required to have a manager on duty as alcohol is only a small part of their business, which is primarily the sale of food. Winery cellar doors primarily sell wine.

225. We therefore recommend no substantive changes to clause 198.

Clause 202 - Manager must hold prescribed qualification

226. Clause 202 specifies that a manager's certificate may not be issued unless the manager holds the prescribed qualification. This qualification is set by regulation.

Submission

227. A number of submitters commented on the training standards for managers, and were in favour of more stringent training requirements.

Comment

228. As part of the Government's response to the Law Commission's recommendations, it undertook to review the manager's qualification requirements. As these qualification requirements are contained in regulations, this process will be conducted following passage of the Bill.

Submission

229. A related concern raised by some submitters, such as the New Zealand Institute of Liquor Licensing Inspectors (NZILLI) and many territorial authorities, is the lack of minimum age for managers. They submit that peer pressure is a significant factor in the decision to refuse service, particularly for younger managers, and that considering the fundamental importance of managers in ensuring compliance with the Act, a minimum age should be mandated. All such submitters recommended the minimum age be set at 20 years, in line with the minimum age to hold a licence.

Comment

230. In considering the desirability of placing a minimum age for managers we note the following factors:

230.1. Under both SOLA and the Bill, a person must be at least 20 years of age to be a licensee;

230.2. Current practice by the Liquor Licensing Authority (LLA) is to require an applicant for a manager's certificate be at least 18 years of age; and

230.3. Approximately 43 individuals aged 18 or 19 years currently hold manager's certificates, out of approximately 45 000 certified managers. No information is available to assess their adherence with the law compared with managers aged 20 years or over.

231. We consider it desirable to set a minimum age for an individual to hold a manager's certificate at 20 years of age. This is a positive step towards ensuring national consistency on this matter (particularly in light of increased local decision-making) which will not have a large impact on employment opportunities for young people.

232. We have considered the implications of this policy with regard to the New Zealand Bill of Rights Act 1990. Given the relatively small impact of the policy set against the importance of the policy objective of ensuring compliance with the Bill, we consider imposing a minimum age for manager's certificates a justified limitation on the right to freedom from discrimination.

233. Finally, we recommend that those under 20 years of age who hold a manager's certificate when the Bill receives Royal Assent be permitted to keep and renew that certificate on a transitional basis.

Recommendations

- We recommend that the Bill be amended to include a further restriction preventing an individual under the age of 20 years from being issued a manager's certificate.
- We also recommend that transitional provisions be included to 'grandparent' any person under the age of 20 years who holds a manager's certificate at the time the provision commences.

Clauses 203 & 208 - Applications for (renewal of) manager's certificates

234. Clause 203 specifies how an application for a manager's certificate is made, and what must accompany that application. Clause 208 repeats this for the renewal of manager's certificates.

Submission

235. Local Government New Zealand and one territorial authority submitted that evidence of age should be required when applying for a manager's certificate.

Comment

236. DLC staff are not prevented from sighting evidence of age during the application process, and that if there is doubt as to the age of the applicant, DLCs have powers to demand proof of age be provided. We recommend against such a wholesale requirement.

Penalties for persistent non-compliance (clauses 273 to 279)

237. Clauses 273 to 279 establish the 'repeat offending scheme'. This scheme is designed to mandate increased penalties for licensees and managers who breach key provisions of the Bill three times in three years.

238. The scheme covers breaches of the following four offence provisions:

238.1. Irresponsible promotion of alcohol (clause 220);

238.2. Sale or supply to people under the buying age (clause 222);

238.3. Unauthorised sale or supply (clause 230); and

238.4. Sale or supply to an intoxicated person (clause 231).

239. The scheme also captures similar behaviour which is dealt with by enforcement action before ARLA, rather than prosecution in the District Court.

240. For licensees caught by this scheme, an application must be made to ARLA to consider the cancellation of their licence. The scheme requires this application is made at the same time as the enforcement application which, if proven, will result in the third breach. ARLA then has full discretion whether to cancel the licence. If it is cancelled, the licensee may not apply for a new licence for that premises for at least five years. The cancellation does not affect any other licences the licensee holds.

241. For managers caught by this scheme, their certificate is automatically cancelled, and they may not apply for a new certificate for at least five years. There is no discretion to refuse to cancel the certificate.

General Submissions

242. 136 submitters commented on the repeat offending scheme in some way. Of those that expressed an overall view, the majority (53%) opposed the scheme. 51 of the 55 submitters who held this view were from the alcohol industry.

243. Approximately one quarter of the submitters who commented on the scheme expressed support for it without significant amendment. The common reason for this was that it reflects the seriousness of such breaches of the law and sends a clear signal to licensees and managers of the importance of ensuring compliance with the law at all times.

Submission

244. A number of submitters expressed support for the scheme, but suggested amendment to it. The most common comment was that three breaches in three years does not provide sufficient deterrence. The submitters suggested that the scheme should instead be triggered after two breaches within five years.

Comment

245. We consider that activating the scheme after only two breaches in five years is not appropriate. Three breaches in three years strikes an appropriate balance between removing inappropriate licensees and managers and giving licensees and managers an opportunity to improve their compliance and remain in the industry.

Submission

246. Among submitters expressing opposition to the repeat offending scheme, the most commonly expressed reason was that it was “unfair” on licensees and managers.

247. A particular subset of submitters who held this concern considered that the heavy responsibility shouldered by duty managers will mean the repeat offending scheme will fall particularly on them. Submitters noted that managers are often young, not highly paid, part time workers, and (in the submitters’ view) subject to greater compliance requirements than many professions.

Comment

248. In response to industry concerns about the ‘fairness’ of the repeat offending scheme, we note that licensees and managers choose to enter an industry that is, due to the nature of the product they are selling, highly regulated. The scheme is designed to only target licensees who show themselves to be consistently unable to or unwilling to comply with the law, and therefore compliant licensees should have no reason to feel the scheme is ‘unfairly’ targeting them.

249. We do not consider that the scheme will disproportionately target managers. We note that if there are genuine issues with managers struggling to comply with the law, individual licensees need to reconsider the support and training they provide their managers and staff.

Submission

250. The other major ground of opposition raised was that it is not appropriate to place additional responsibilities on licensees without placing similar requirements on individual consumers.

Comment

251. We note that the Bill includes a number of measures, such as the supply to minors offence (clause 224) and expanded offences around using false evidence of age documents (clause 240), which place increased responsibility on individual consumers. As we noted in part 1 of the departmental report regarding the offence of selling alcohol to an intoxicated person (paragraph 937), licensees and managers chose to enter an industry where their customers have reduced decision-making capacity due to the effects of alcohol. We consider that the Bill strikes the right balance between placing responsibility for their actions on the individual where this will have a positive effect on them and requiring licensees and managers to take responsibility for the way they serve their customers.

Submission

252. A small number of industry submitters also opposed the scheme due to the commercial impact it would have, either on individual licensees or on the industry generally.

Comment

253. While we accept that these proposals will have a commercial impact on some licensees and managers, we note that the object of the Bill is to reduce the harm caused to society from the inappropriate consumption of alcohol and that it is not possible to reduce this harm without taking measures to ensure licensees comply with their legal obligations. This will by necessity result in some poorly performing licensees being removed from the industry.

Submission

254. A number of submitters suggested drafting changes. In particular, many felt that the term ‘holding’ was an inappropriate way of expressing convictions and ARLA decisions.

Comment

255. We recommend the following changes to deal with these drafting concerns.

256. Having reconsidered the repeat offending scheme, in light of submissions, legal concerns and drafting issues, we recommend changes to the mechanisms used to give effect to the scheme.

257. Currently, ARLA's power to cancel is triggered by three convictions for any combination of four specified offences, or findings by ARLA that the person has acted so as to contravene the offence provisions.

258. Requiring ARLA to determine that the person has acted so as to contravene the offence provisions risks blurring the distinction between criminal and civil processes in the Bill. This could result in the courts requiring the criminal standard of proof be applied to ARLA determinations and that licensees and managers have the same protections as defendants in criminal cases.

259. If this occurred it would decrease the number of successful enforcement actions, thereby reducing the deterrent value of the enforcement regime. It would also increase costs to both central and local government.

260. We recommend the Bill be amended by changing the trigger for the persistent non-compliance scheme to be activated. It would now be activated after three orders made by ARLA under its enforcement powers. Only orders made as a result of specific conduct would count towards the scheme. The specified conduct would be set out in the Bill. It will reflect behaviour currently covered by the repeat offending scheme (listed above in paragraph 238.

261. The consequences of such a finding would not change. For managers, after three such findings, ARLA will be required to cancel the manager's certificate. For licensees, the constable or licensing inspector bringing the enforcement action which, if proven, will be the third finding within three years will be required to at the same time bring an application for cancellation under this scheme.

262. These recommendations have a number of benefits, including:

    262.1. maintaining the clear distinction between the criminal and civil processes in the Bill to avoid the risk of criminal standards applying to ARLA hearings;

    262.2. reflecting current enforcement and administrative practice (see below); and

    262.3. helping ensure a consistent interpretation and implementation of the repeat offending scheme, which was a concern raised by a number of submitters.

263. Removing the explicit link to key offences will not prevent licensees and managers who commit those offences being punished for them. The vast majority of enforcement action currently occurs via an application to the LLA, rather than a prosecution in the District Court. It is not anticipated that this practice will change under the Bill.

264. Owing to the changed trigger for the scheme, it is no longer appropriate to refer to it as 'repeat offending'. We suggest the term 'persistent non-compliance' be adopted in its place.

265. We also recommend that Parliamentary Counsel consider whether, in light of the policy changes to the persistent non-compliance scheme, further drafting and structural changes are desirable to aid in the accessibility of these provisions.

Recommendations

We recommend that clause 273 be amended as follows:

- Clause 273(a) should be removed; and
- Clause 273(b) should be amended to remove the link to the offence provisions, and instead describe the relevant behaviour, covering the same grounds as currently covered.

We further recommend that Parliamentary Counsel consider whether any drafting and structural changes to clauses 273 to 279 are desirable.

MISCELLANEOUS MATTERS

Matters raised during consideration of part 1 of the departmental report

266. During consideration of part 1 of the departmental report the Committee requested that officials give further consideration to a number of matters, which, with the exception of the LAP matters, are discussed in this section. The LAP matters are addressed above at paragraphs 174 to 199.

Clause 7 - Considering effects of issue or renewal of licence on amenity and good order of the locality

267. Clause 7 provides guidance for DLCs and ARLA on determining the likely impact of a new or renewed licence on the amenity and good order of the area.

268. We have given further consideration to the drafting of clause 7, and in particular clause 7(2)(f), in response to the Committee's request to clarify the language and operation of this clause. We agree that further guidance can be included to require the decision-maker to consider not only the use of neighbouring land, but the compatibility of that use with the proposed licensed premises.

269. However, we consider that it is only appropriate for neighbouring land use, particularly in its expanded form, to be given weight in an application for a new licence. Extending it to an application for renewal of a licence could result in licences being refused due to changes in the characteristics of the area. If licensed premises were in operation in the area first, it would be inappropriate to penalise the licensee in this way.

270. We note that this is consistent with the approach taken to the matter of density of licensed premises as a factor in the amenity and good order of the locality. It is also consistent with the approach taken to LAPs, which may not be considered when deciding whether to issue or refuse to renew a licence.

271. Therefore, in light of the above comments and our discussions with the Committee, we recommend that clause 7 be amended as outlined below.

272. The matters which the decision-maker is required to take into consideration when forming a view on whether the amenity and good order of the locality will be affected are:

272.1. current, and possible future, noise levels;

272.2. current, and possible future, levels of nuisance and vandalism;

272.3. the compatibility between the proposed licensed premises and the purposes for which land near the premises are used; and

272.4. the number of premises for which licences of the kind concerned are already held.

273. The factors in paragraphs 272.3 and 272.4 will only be required to be considered when deciding whether to issue a new licence. These factors will not be permitted to be taken into account when considering whether to renew a licence.

274. The decision-maker will be permitted to take into account any other factors which contribute to their view on the impact of the proposed or existing premises on the amenity and good order of the area.

Recommendation

We recommend that clause 7 be amended to:

- omit paragraphs (a), (b) and (e) from subclause (2);
- amend paragraph (f) to have the decision-maker have regard to the compatibility between the proposed licensed premises and the use of the neighbouring land;
- amend clause 7(1)(b) to exclude paragraph (f) from consideration when deciding whether the amenity and good order of a locality would likely be increased, by more than a minor extent, by refusing to renew a licence; and
- permit the decision-maker to consider any other factors in reaching their opinion.

Clause 52 - Low-alcohol drinks to be available

275. Clause 52 requires the holders of on-licences and club licences to have low-alcohol drinks available for purchase at all times.

276. The Committee accepted our recommendation in part 1 of the departmental report to provide a discretionary exemption to this requirement for licensees who sell only their own alcohol, which does not include low alcohol beverages.

277. The Committee also requested that officials consider extending this discretionary exemption to include producer cooperatives.

Comment

278. We have considered at length how this exemption could be extended to include producer cooperatives. While we agree that this is desirable in principle, we have been unable to formulate an effective way of implementing such an option without creating an unacceptable risk of broadening the exception beyond genuine producer co-operatives.

279. This is the result of two factors, the first being that producer cooperative arrangements could take a variety of legal forms. For example, a formal partnership structure could be used or a separate company, trading trust or joint venture. This means any solution we recommend must be broad enough to capture all such arrangements, or we risk favouring some arrangements over others. This could also create inappropriate incentives on how future arrangements should be structured to come within the exception.

280. The second factor is that there is no unique characteristic which distinguishes restaurants operated by winery cooperatives from all other types of licensed restaurants or taverns. Therefore, any change which moves away from the sale of their own alcohol risks other restaurant or tavern premises (which comprise over 70% of on-licence premise) also being able to avoid the requirement to have low-alcohol beverages available for sale. This risks significantly undermining the intention of this policy.

281. We note however that as currently drafted some producer cooperatives could still make use of the exception. For example, a winery cooperative restaurant operated by a partnership where the wineries are the partners could be seen to be selling the alcohol of the partnership and fall within the exception.

282. In light of the above and of discussions with the Committee relating to part 1 of the departmental report, our recommendation regarding this clause is to permit the licensing decision-maker to exempt on-licence premises that sell their own alcohol (and that alcohol does not include low-alcohol beverages) from the requirements of clause 52.

Recommendation

We recommend provision be made for licensing decision-makers when granting a licence to exempt the premises from the requirement in clause 52, on the grounds that the premises sells only the licensee's own alcohol, which does not include low-alcohol beverages.

Clause 178 - Quorum (of district licensing committees)

283. Clause 178 sets the number of members of a DLC required for a quorum.

284. The Committee accepted our recommendation in part 1 of the departmental report to require all three members of the DLC to be present to establish a quorum for a meeting of the DLC.

285. The Committee requested that officials give further consideration to enhanced transparency requirements to support the recommendation that the Chair of a DLC be authorised to sit alone for decisions on uncontested applications. Possibilities noted by the Committee were a requirement for the Chair to sit in public, or a requirement for the Police and Medical Officers of Health to submit a report, even where there were no concerns with the application.

Chair-alone public hearings

Comment

286. While a requirement for decisions of the Chair sitting alone to be made at a public hearing would appear to enhance transparency, we do not consider it appropriate.

287. In relation to the application and decision-making process, we note the following factors:

287.1. All licensing applications must be publicly notified. This is the primary mechanism through which members of the community are made aware of an application.

287.2. Any person who may be affected by the application (has "a greater interest in the application than the public generally") may make an objection. The Bill expands the timeframe for making an objection from 10 working days to 15 working days.

287.3. To be an application that the Chair may decide alone, based on our recommendation, the application must have not received any valid objections from the public following the above process.

288. Further, we consider that requiring a public hearing of Chair-alone applications risks a number of unintended consequences:

288.1. It risks giving the impression that further input from the public is possible. Those who have attempted to lodge an invalid objection, such as one based on personal financial interest in another licensed premises, or a vexatious objection, may attempt to relitigate their concerns despite their objection being previously rejected.

288.2. An applicant subject to such a hearing will still be faced with the costs of attending a hearing, such as time away from work and lawyers fees. This removes any potential efficiency savings to applicants.

288.3. Territorial authorities are still required to convene a hearing, with the associated costs of providing staff and appropriate facilities for this. This removes the majority of potential efficiency savings to territorial authorities.

289. We therefore recommend against requiring any matters decided by the Chair alone to be decided at a public hearing.

290. However, in response to the concern over the risk of reducing transparency and accountability of the licensing process, we propose that the Bill be amended to require the territorial authority to make available to members of the public copies of all decisions made by DLCs. This will ensure that all decisions made, whether by the Chair alone or by the entire Committee, will be subject to public scrutiny.

Recommendation

We recommend that clause 194 be amended to require territorial authorities to make all decisions of licensing committees publicly available.

Mandatory reporting

Comment

291. The Committee requested we specifically consider and report on the merits of requiring Police and Medical Officers of Health, as well as licensing inspectors, to file a report on every application, even if they have no concerns with the application.

292. Such a requirement was included in SOLA when it was originally enacted, with the consequence that an application could not proceed until a report was received from each enforcement agency. However, this requirement was repealed in 1999 as it created delays in the licensing process, the cost of which fell solely on applicants. Licensing inspectors are still required to file a report on all applications.

293. Furthermore, we consider mandatory reporting on all licences to be contrary to the Bill's intention of minimising unnecessary costs. While Police considers that a mandatory reporting requirement would have little impact on Alcohol Harm

Reduction Officers, the impact on Medical Officers of Health would be significant given their role covers a number of fields, of which alcohol licensing is only one. While the time required completing a "no concerns" report may be small, this would still detract from other priority work for Medical Officers of Health.

294. As part of the daily working relationship between Alcohol Harm Reduction Officers and licensing inspectors, Police encourages reporting on all licensing applications as a matter of best practice, even if only in a brief and pro forma manner. While we agree that this is best practice, and agencies will continue to encourage it where circumstances permit, we consider that the objectives of increasing accountability and transparency can be achieved without creating an inflexible rule that risks the problems noted above.

295. Instead, we recommend that the decision-maker be required to note in their decision, in brief and general terms, what reports were received and the view of the application taken in those reports. We consider that making the receipt (or lack thereof) of reports and the views expressed in those reports a matter of public record in the decision, will improve the transparency of the decision-making process and the accountability of those involved in process. Furthermore, it will do so in a way that will not risk adding unnecessary costs or delays to any group.

Recommendation

We recommend the Bill be amended to require that all decisions on applications must note (in brief and general terms) what reports were received and the view of each report towards the applications.

Other miscellaneous matters

Clause 5 - Interpretation

296. We addressed the majority of submissions relating to the interpretation clause in part 1 of the departmental report, and now address one final issue raised by submitters.

Submission

297. New Zealand Winegrowers submitted that a separate definition of 'grape wine' should be included, which was necessary to support the separate licence category they proposed.

Comment

298. We have given further consideration to the definitions of alcohol products in the Bill. This has been done in consultation with the Ministry of Agriculture and Forestry, who administer the Australia New Zealand Food Standards Code (the Food Code) through Food Standards Australia New Zealand.

299. We recommend that the definitions of wine, fruit wine and vegetable wine, mead and beer contained in the Food Code be used in the Bill. This will increase consistency between different areas of law related to alcoholic beverages and

provide improved clarity as to what products are, and are not, permitted to be sold in supermarkets.

300. We recommend this be accomplished by amending or inserting appropriate definitions in clause 5 which refer to those products as defined by the Food Code. This will ensure consistency is maintained if the Food Code is altered in the future.

301. For clarity, we note that 'wine' as defined in the Food Code includes only products produced from grapes and that cider and perry are both noted in the standard as types of fruit wine.

302. We do not recommend any further changes to the definition of spirit. As noted at paragraphs 169 and 170 of part 1 of the departmental report, we consider that spirits should be defined to include any distilled alcohol of 23% abv or greater (as opposed to 37% abv or greater), to prevent the development of new high strength products that nevertheless are not subject to the restrictions placed on spirits. We note that the spirit definition included in clause 5 mirrors that in the Food Code, differing only in the minimum alcohol by volume percentage for spirits.

Recommendation

We recommend the following changes to clause 5:

- The definitions of wine, mead and beer should be amended to refer to those products as defined in the Food Code; and
- A definition of fruit wine and vegetable wine, as defined in the Food Code, should be included.

We further recommend that clause 59 be amended to include fruit wine and vegetable wine in subclause (1)(b).

Clause 87 - When local alcohol policy is in force

303. Following further consideration of this clause, we believe it necessary to ensure that licensees whose trading hours are altered by an LAP are notified of this change.

304. We therefore recommend that for any LAP that is subject to the three month delay before it may come into force as it contains new hours or one-way door restrictions, the territorial authority should be required to notify all licensees who are affected by the changed hours of this change and when the change comes into force. Such notification should be given as soon as is practical.

Recommendation

We recommend that provision be made requiring that for any LAP subject to clause 88(2) the territorial authority must notify all affected licensees of the new maximum trading hours. Such notification should be required to be made as soon as is practicable.

Clauses 238 and 239 - Being on licensed premises outside licensing hours

305. Clause 238 continues the existing offence for a person to be found on any part of licensed premises, other than club premises, that is used principally or exclusively for the sale, supply, or consumption of alcohol any later than 30 minutes after the required closing time or any other time when the premises are required to be closed for the sale of alcohol. The penalty for this offence is a maximum $2,000 fine.

306. Clause 239 continues the existing offence for a licensee or manager to allow a person to be on licensed premises in contravention of clause 238. The penalty for this offence is a maximum $10,000 fine.

Submissions

307. A number of industry submitters commented that there should be no differentiation between different types of premises, such as clubs, restaurants, bars and hotels, about when people can be on licensed premises, particularly in light of proposed maximum trading hours. Two submitters considered the purpose of clause 238(3)(f) (exception for employee to be on premises for 60 minutes after shift has finished) needed to be clarified.

Comments

308. The issue of the service of breakfast is discussed fully above, from paragraph 111.

309. In light of the amendments proposed above, we do not consider it necessary to further amend the provision to equalise the treatment of different types of licensed premises. The offence as drafted reflects the fact that different types of licensed premises are used for different purposes and therefore present different risks.

Minor matters

310. During further work on the Bill in preparation for this report, a number of small matters have come to our attention. These are not substantive policy changes, but minor corrections to improve the consistency and accessibility of the Bill.

311. We recommend the following minor changes to the following clauses:

Clause	Reason and recommendation
Clause 38 - No off-licences for certain premises	For clarity of the operation of this rule in relation to monopoly licensing trusts, we recommend that clause 38 be amended to clarify that restrictions on who may hold a licence due to the presence of a monopoly licensing trust (clause 335) do not affect the operation of the store-within-a-store restriction.
Clause 59 - Restriction on kinds of alcohol sold in grocery stores and premises accessible from grocery stores	For consistency between requirements on different products sold by supermarkets, we recommend that clause 59 be amended to specify that all alcohol sold in supermarkets and grocery stores must not exceed 15% alcohol by volume measured at 20ºC.

Clause 68 - Licensees and managers to have address for service	To ensure efficient and effective delivery of notices to licensees and managers, we recommend the following changes to requirements around the service of documents: • Service should be permitted by posting the documents to the address for service of that licensee or manager, by being delivered to the licensee or manager, or by being left at the address for service. • Subsection (2) should be qualified that posting notice to the address for service will be taken as service at in the absence of proof to the contrary. • It should be specified that service of notice may be proven by proving the notice was properly addressed and posted to the address for service.
Clause 98 - Police, Medical Officer of Health, and inspector must inquire into applications	For consistency between licence applications, we recommend clause 98 be amended to change the time after which the DLC may assume that there is no opposition to the application if no report has been received from 20 working days to 15 working days.
Clause 104, 106 & 107 - Licensing conditions	To ensure a smooth transition from SOLA, we recommend the Bill be amended to include a provision requiring that when licences in force under the SOLA are renewed under the Bill, mandatory conditions must be imposed on them in accordance with the appropriate clauses.
Clause 110 - Variation of conditions	To ensure consistency of the role of LAPs in licensing decisions, we recommend omitting subsection (8), and replacing it for a requirement for the decision-maker to have regard to any inconsistency between the proposed variation of the licence and any relevant LAP.
Clauses 144 to 147 - Appeals	To ensure procedural fairness in appeals, and align processes with the High Court Rules, we recommend clauses 144 and 147 are clarified to: • permit the High Court to extend the time for lodging an appeal in appropriate circumstances, as ARLA is permitted to by clause 141(2); • align the language used regarding the time limit for initiating an appeal, to make clear that the time limit runs from the date of the determination of the decision under appeal; and • amend the notice requirement to require notice to be served on parties in accordance with the High Court Rules.
Clause 168 - Chairperson and deputy chairperson [of ARLA]	To ensure valid decision-making, we recommend the inclusion of provision, similar to section 88(2) and (3) of SOLA, stating clearly that when a deputy Chair is acting as the Chair they may exercise all powers and duties of the Chair, and no decision may be questioned on the grounds of their assumption of that position.
Clause 181 - Resignation or removal	To enhance the clarity of the Bill, we recommend removing references to commissioners from subclause (3).
Clause 194 - Decisions	To ensure valid decision-making, we recommend the inclusion of provision expressly stating that a decision of

to be given in writing	ARLA or a DLC is not invalid due to an invalid appointment or delegation.
Clause 197 - Appointment of manager: special licences	For consistency between licence types, we recommend clause 197 be amended to require all special licence holders to appoint a duty manager, subject to subsection (2).
Clause 270 - Hearing for variation, suspension, or cancellation of special licences under section 269	To ensure accurate interpretation of the Bill and the appropriate application of the enforcement regime, we recommend amending subsection (2)(c) to permit a DLC to suspend a special licence for any period the committee thinks fit.
Structure	Consider possible rationalisation of the Parts of the Bill to simplify its structure.

Appendix 1 - Summary of recommendations

PART 1 – Preliminary matters		

Clause 5 - Interpretation	*Product definitions*
	• We recommend the definitions of wine, mead and beer be amended to refer to those products as defined in the Australia New Zealand Food Standards Code.
	• We recommend the inclusion of a definition of fruit and vegetable wine, as defined in the Australia New Zealand Food Standards Code.
	
	Grocery stores
	• We recommend that the definitions of food retailers eligible to sell off-licence alcohol be replaced with the following:
	  ○ Supermarkets, as currently qualified; and
	  ○ Grocery stores, being premises that sell a range of food products and other household items, where the principal business is the sale of food products.
	• The term grocery shop will no longer be required.
	• We recommend food products be defined to exclude alcohol, confectionary, snack food (including but not limited to potato chips, biscuits, crackers and ready-to-eat popcorn), beverages of 1 litre volume or less (but not milk), and ready-to-eat takeaway food.
	• We recommend that 'ready-to-eat takeaway food' be defined to be 'prepared or cooked food ready to be eaten immediately in the form it is sold', or words to this effect.
	• We recommend that the definitions of 'supermarket', 'grocery store', 'food products' and 'ready-to-eat takeaway food' be located immediately following clause 35, for ease of reference.
	• The definition of main order household foodstuff requirements will no longer be required.
		Page 51
		
		Page 26
		
		Page 27
		
		Pages 26 and 27

Clause 6 – Determining whether principal business of shop [is] sale of main order household foodstuff requirements	• We recommend that clause 6 be: ○ amended to remove subclause (2); and ○ moved to be located immediately following clause 35, for ease of reference	Page 28
Clause 7 – Considering effects of issue or renewal of licence on amenity and good order of locality	• We recommend that clause 7 be amended to: ○ omit paragraphs (a), (b) and (e) from subclause (2); ○ amend paragraph (f) to require the decision-maker to have regard to the compatibility between the proposed licensed premises and the use of the neighbouring land; ○ amend clause 7(1)(b) to exclude paragraph (f) from consideration when deciding whether the amenity and good order of a locality would likely be increased, by more than a minor extend, by refusing to renew a licence; and ○ permit the decision-maker to consider any other factors in reaching their opinion.	Page 47

PART 3 – Licensing		
Clause 14 – Certain messes and canteens exempt	• We recommend that the Bill be amended to require the Commissioner of Police, Fire Service Commissioner and Chief of Defence to put in place and implement internal codes of practice for exempt canteens and messes which follow, as closely as practicable, the rules and restrictions applying to clubs under the Bill.	Page 38
Clause 35 – Kinds of premises for which off-licences may be issued	• We recommend that clause 35(1)(b) be amended to ensure that businesses that only sell alcohol remotely can obtain a licence without a requirement for physical retail premises. • As a result of recommended amendments to clause 5, consequential amendments will be required to clause 35(1)(d) to separately permit grocery stores and supermarkets to sell alcohol.	Page 30 Page 26
Clause 37 – Exemption for certain complementary sales	• The clause will require consequential amendment due to changes in clauses 5 and 35.	Page 26

Clause 38 - No off-licences for certain premises	• We recommend that clause 38 be amended to clarify that restrictions on who may hold a licence due to the presence of a monopoly licensing trust (clause 335) do not affect the operation of the store-within-a-store restriction. • We recommend inserting "convenience store" into the list of premises ineligible for a licence.	Page 52 Page 27
Clause 47 – No sale or supply outside permitted trading hours: all licences	• Permit a special licence to be issued outside of the relevant maximum trading hours.	Page 21
Clause 52 – Low-alcohol drinks to be available	• We recommend provision be made for licensing decision-makers when granting a licence to exempt the premises from the requirement in clause 52 on the grounds that the premises sells only the licensee's own alcohol, which does not include low-alcohol beverages.	Page 48
Clauses 57-58 – display of signs and licences	• We recommend these clauses be amended as necessary to take account of the nature of remote sale businesses.	Page 30
Clause 59 – Restrictions on kinds of alcohol sold in grocery stores and premises accessible from grocery stores	• We recommend that clause 59 be amended to include fruit and vegetable wine and wine in subclause (1)(b). • We recommend that clause 59 be amended to specify that all alcohol sold in supermarkets and grocery stores must not exceed 15% ethanol by volume measured at 20ºC. • We recommend the Bill be amended to require supermarkets and grocery stores to display alcohol in only one area of the store that is not a prominent area. • We further recommend that the Bill provide that alcohol advertising and promotions within supermarkets and grocery stores may only be displayed within the single display area. • The clause will require consequential amendment due to changes in clauses 5 and 35.	Page 52 Page 6 Page 26

Clause 68 – Licensees and managers to have address for service	• We recommend the following changes to requirements around the service of documents: ○ Service should be permitted by posting the documents to the address for service of that licensee or manager, by being delivered to the licensee or manager, or by being left at the address for service. ○ Subsection (2) should be qualified that posting notice to the address for service will be taken as service at in the absence of proof to the contrary. ○ It should be specified that service of notice may be proven by proving the notice was properly addressed and posted to the address for service.	Page 52
Clause 77 – Contents of [local alcohol] policies	• We recommend that clause 77 be amended to: ○ make discretionary licensing conditions a permitted licensing matter for LAPs under clause 77(1); and ○ omit clause 77(3), with necessary consequential amendments to the rest of subpart 2.	Page 32
Clause 79 – Information required by territorial authority before producing draft policy	• We recommend that clause 79(1)(c) be deleted.	Page 34
Clause 87 – When local alcohol policy is in force	• We recommend that provision be made requiring that for any LAP subject to clause 88(2) the territorial authority must notify all affected licensees of the new maximum trading hours. Such notification should be required to be made as soon as is practicable.	Page 51
Clause 91 – Revocation of local alcohol policies	• We recommend clause 91 be amended to require any revocation, or revocation and replacement, to be undertaken using the processes of the Bill, with any necessary modifications, as if it were the adoption of an LAP.	Page 34
Clause 92 – Local alcohol policies expire after 6 years	• We recommend clause 92 be removed, and replaced with a provision requiring that territorial authorities review an LAP six years after it comes into force, and six years after each review. The provision should require the review be conducted using the special consultative procedure.	Page 34

Clause 98 – Police, Medical Officer of Health, and inspector must inquire into applications	• We recommend clause 98 be amended to change the time after which the licensing committee may assume that there is no opposition to the application if no report has been received from 20 working days to 15 working days.	Page 52
Clauses 104, 106 & 107 – Licensing conditions	• We recommend the Bill be amended to include a provision requiring that when licences in force under the SOLA are renewed under the Bill, mandatory conditions must be imposed on them in accordance with the appropriate clauses.	Page 52
Clause 110 – Variation of conditions	• We recommend omitting subsection (8), and replacing it with a requirement for the decision-maker to have regard to any inconsistency between the proposed variation of the licence and any relevant LAP.	Page 52
Clauses 144-147 – Appeals	• We recommend clauses 144 and 147 be clarified to: ○ Permit the High Court to extend the time for lodging an appeal in appropriate circumstances, as ARLA is permitted to by clause 141(2); ○ Align the language used regarding the time limit for initiating an appeal, to make clear that the time limit runs from the date of the determination of the decision under appeal; and ○ Amend notice requirement to require notice to be served on parties in accordance with the High Court Rules.	Page 52
Clause 168 – Chairperson and deputy chairperson [of ARLA]	• We recommend the inclusion of provision, similar to section 88 (2) and (3) of SOLA, stating clearly that when a Deputy Chair is acting as the Chair they may exercise all powers and duties of the Chair, and no decision may be questioned on the grounds of their assumption of that position.	Page 53
Clause 181 – Resignation or removal	• Subclause (3) – remove references to commissioners.	Page 53

Clause 194 – Decisions to be given in writing	• We recommend that clause 194 be amended to require territorial authorities to make all decisions of licensing committees publicly available. • We recommend the Bill be amended to require that all decisions on applications must note (in brief and general terms) what reports were received, and the view of each report towards the applications. • We recommend the inclusion of provision expressly stating that a decision of ARLA or a DLC is not invalid due to an invalid appointment of delegation.	Page 49 Page 50 Page 53

PART 4 – Management of licensed premises		
Clause 197 – Appointment of manager: special licences	• We recommend clause 197 be amended to require all special licence holders to appoint a duty manager, subject to subsection (2).	Page 53
Clause 202 – Manager must hold prescribed qualification	• We recommend that the Bill be amended to include a further restriction preventing an individual under the age of 20 from being issued a manager's certificate. • We also recommend that transitional provisions be included to 'grandparent' any person who holds a manager's certificate at the time the provision commences from this requirement.	Page 41

PART 5 – Enforcement		
Clause 220 – Irresponsible promotion of alcohol	• We recommend that clause 220(1)(a) be amended to cover anything "...that encourages, <u>or is likely to encourage</u>, people to consume alcohol to an excessive extent..." • We recommend that clause 220(1)(b) be amended to clarify that the offence applies to all types of licensed premises and that a licensee must take reasonable steps to ensure that any discount covered by clause 220(1)(b) that is promoted or advertised within any physical licensed premises is not visible from outside the premises. • We recommend that the Bill be amended to provide that clause 220(1)(b) does not apply to remote sale channels (eg, websites, mail order catalogues) where the remote sale channel is the primary point of contact for the customer and constitutes solicited contact on the part of the customer.	Page 9 Page 11 Page 12

	• We recommend that clause 220(1)(c) be amended to clarify that:
	  ○ the advertising of complimentary sampling for consumption on the premises is not captured by this offence; and
	  ○ the promotion or advertising of free alcohol is permitted within licensed premises.
	• We recommend that clause 220(1)(d) be amended to clarify that:
	  ○ Loyalty programmes that provide rewards points or discounts, except those that only involve alcohol, are not covered by clause 220(1)(d); and
	  ○ Competitions (ie, promotions that offer the chance to win goods or services) are covered by clause 220(1)(d).
		Page 14
		
		Page 15

Clauses 238-239 – Being on licensed premises outside licensing hours	• We recommend these clauses be amended to adjust the scope of the offences of 'being on licensed premises outside licensing hours' (clause 238) and 'allowing people on licensed premises outside licensing hours' (clause 239) to permit people on licensed premises outside licensing hours from 6am until the licensing hours begin.	Page 21
Clause 270 - Hearing for variation, suspension, or cancellation of special licences under section 269	• We recommend amending subsection (2)(c) to permit a DLC to suspend a special licence for any period the committee thinks fit.	Page 53

Clauses 273-279 – Persistent non-compliance scheme	• We recommend that clause 273 be amended as follows:
	  ○ Clause 273(a) should be removed; and
	  ○ Clause 273(b) should be amended to remove the link to the offence provisions, and instead describe the relevant behaviour, covering the same grounds as currently covered.
	• We further recommend that Parliamentary Counsel consider whether any drafting and structural changes to clauses 273 to 279 are desirable.
		Page 45

PART 8 – Other matters		
Clause 382 – Regulations	• We recommend the Bill be amended to include: ○ a requirement for the alcohol industry to provide (without charge) prescribed information on the price and quantity of alcohol sold; ○ power for the Governor-General, by Order in Council made on the recommendation of the Minister of Justice, to make regulations prescribing the information required and from whom; and ○ a penalty for failure to comply with such regulations, being a fine of up to $20,000.	Page 18

PART 9 - Amendments to Local Government Act 2002		
Clause 402 – New sections 147 to 147C	• We recommend that the opening phrase of new section 147A(1) be amended to require a territorial authority to be satisfied that the criteria specified in section 147A(1) are met before specifying any public places and periods of time to which a bylaw made under section 147 will apply. • We recommend that the Bill be amended to require that a territorial authority must be satisfied that section 147A(1)(a) only is met before specifying any public places and periods of time to which a bylaw made under section 147 will apply on a temporary basis for a large scale event. • We recommend that new section 147A(2) in clause 402 be amended to delete the criteria specified for continuing an alcohol control bylaw and instead require territorial authorities to be satisfied that the high level of crime or disorder that justified the making of the bylaw would likely return if the bylaw was lifted, before deciding to renew an alcohol control bylaw.	Page 37 Page 37 Page 36
Clauses 410-411 – Transitions for existing bylaws	• We recommend that the replacement of existing bylaws covered by clauses 410 and 411 apply the same criteria as renewals, that the territorial authorities must be satisfied that the high level of crime or disorder that justified the making of the bylaw would likely return if the bylaw was lifted.	Page 36

Structure		
Structure	• We recommend considering the possible rationalisation of the Parts of the Bill to simplify its structure.	Page 53