

# **Sale and Supply of Alcohol (Community Participation) Amendment Bill**

Submission to the Justice Committee

January 2023



## What is Taituarā?

Taituarā — Local Government Professionals Aotearoa thanks the Justice Committee for the opportunity to submit on the Sale and Supply of Alcohol (Community Participation) Amendment Bill.

Taituarā — Local Government Professionals Aotearoa is a professional society of approximately 1000 members made up of local government chief executives, senior managers, and council staff. We are an apolitical organisation that can provide a wealth of knowledge about the local government sector, and in particular knowledge of the technical, practical, and managerial implications of legislation and policy.

Our vision is:

To enhance professional local government management, leading staff and enabling communities to shape their future.

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, and other important support activities such as election management and the collection of rates.

Our Regulations and Bylaws Reference Group (RBRG) provides a practitioner's view on alcohol regulation. We would like to thank the RBRG and members for their input into this submission and we stand ready and able to assist the Select Committee.

## Part One: Summary

We strongly support the recommendations in the Sale and Supply of alcohol (Community Participation) Amendment Bill (the Bill), particularly removing the ability to appeal Local Alcohol Policies and for licence renewals to align with Local Alcohol Policies. The ability for councils to reduce trading hours and control proliferation of licenced premises has been difficult due to the problems with the appeal process. It has cost some councils over a million dollars to put their policies through the appeals process. The Act has not been working as intended and we welcome these changes.

We also strongly support the changes to the hearings procedures which allows any person to object to an application. This will fix an issue limiting community participation in the licensing process. There is a large body of common law which makes it very difficult for people living further than one kilometre from the licensed premises to object.

Finally, we strongly support changes to the hearing process which will assist community participation through making the process less formal. The changes will reinforce the District Licensing Committees' inquisitorial role and decrease the adversarial role of lawyers. The changes provide equity to community objectors who do not usually have the resources to "lawyer-up" to make their case. The proposals create an even playing field for the community and support them to be involved in the process, as the Act originally intended.

We support the Bill and recommend a few additional changes as follows:

- That the transitional arrangements be clarified
- That it be mandatory for all new licenses to align with a Local Alcohol Policy (LAP)
- That any person *within the council area* of the DLC may object to a licence application
- That the Act include Te Tiriti as a fundamental consideration for decision-makers
- For all District Licensing Committee (DLC) members to be trained via a nationally approved provider as is currently required for Resource Management Act (RMA) Commissioners
- That there be a wider review of the licensing processes including District Licensing Committee fees.

## **Part Two: Specific Comments**

### **Appeals on Local Alcohol Policies**

A LAP is an important decision-making tool for councils. LAPs have the ability to minimise the alcohol related harm in their communities by controlling the location and density of outlets. They can also control “one-way door” conditions, trading hours, and discretionary conditions such as security requirements. They are important policy tools to have where there is alcohol related crime, health issues or behaviours which are negatively impacting communities.

The establishment of a LAP is a decision made by all the members of a council. The process is for the council to consult with its community using the Special Consultative Procedure (SCP) and to develop appropriate policy in response to community feedback. The SCP is a legislated and robust way for councils to hear from all interested people about its proposed policy. Once due consultation has been completed and submitters heard, the mayor and councillors decide on a LAP that will serve the interests of their communities.

There are 67 territorial authorities and 41 have LAPs in place. Some councils in developing LAPs have had to endure lengthy and expensive court processes. Other councils have abandoned their LAPs after going through the appeal process. Our major cities of Auckland, Hamilton, Wellington and Christchurch have not (yet) been successful in putting LAPs in place, although they all have significant alcohol related harm.

We strongly support the proposal that there be no ability to appeal a Council’s LAP. The decisions taken by Council in making the policy have already been through a consultative hearing process and submissions considered. Councils do not have other similarly significant policies open to court appeals, except for matters of judicial review. The proposed legislation will bring the decision-making process into alignment with other decisions that councils make for their communities.

#### ***Transitional arrangements***

Schedule 1AA provides the transitional arrangements for councils transferring over to the new process. The Bill points councils at this stage in the process to amended section 90 which refers to LAPs already in force. However, it should refer to amended sections 80-81 which refer to councils wishing to adopt a LAP. We recommend there be a clarification for councils with LAPs at the draft stage to use amended ss 80-81 as the next stage of progress.

## Recommendations

1. That councils decide their local alcohol policy and that there be no ability to appeal.
2. That the transitional arrangements in Schedule 1AA be clarified as follows:
  - a. Schedule 1AA(2)(a)(ii) - councils with LAPs at the draft stage to use amended ss80-81 as the next stage of their LAPs progress, i.e. the stage of wishing to adopt a LAP. The current drafting points them to amended s90.
  - b. Remove Schedule 1AA(2)(a)(iii) – councils with LAPs at the draft stage cannot review them under s97 which only pertains to LAPs already in force.

## Licence renewals and alignment with LAPs

At present, existing licensed premises do not have to align with the provisions in a LAP. This undermines the policy intent and could create an equity issue for new licence holders. DLCs need adequate tools to undertake their responsibilities in the object of the Act:

- That the sale, supply and consumption of alcohol should be undertaken safely and responsibly, and
- The harm caused by the excessive or inappropriate consumption of alcohol should be minimised

We generally support the proposal that licence renewals be consistent with LAPs. However, there may be instances where an existing premises has been operating without any problems but their licence is inconsistent with the new policy. We agree with the proposed wording for s133, that a DLC *may* decline or impose conditions on licence renewals where a relevant LAP is in place. Councils need to have the discretion to renew the licence, with or without conditions, in a fair way that is proportionate to the level of alcohol related harm for the area or premises.

### **Recommendation**

3. That District Licensing Committees *may* decline or impose conditions on licence renewal where a relevant Local Alcohol Policy is in place.

## **New licenses and alignment with LAPs**

All new licenses should align with relevant LAPs to ensure that the outcomes the councils are seeking are supported. We recommend that s105 be updated to make it mandatory for all new licences to align with LAPs. At present DLCs only have to have regard to them.

### **Recommendation**

4. That s105 be updated to make it mandatory for all new licences to align with Local Alcohol Policies.

## **Objectors**

Under common law, DLCs are unable to hear from members of their communities who may wish to object to a licence application due to living further than one kilometre from the premises. This is part of the significant body of case law on what amounts to a "greater interest than public generally". To be heard, they must establish that they would be affected in some way by the grant of the application.

A person or organisation (i.e. Trust), who has concerns about the effects of alcohol on the community in general, but who lives in a different area may not meet the criteria to formally object. However, advocacy groups hold significant data on what is occurring in their communities and would assist District Licensing Committees by participating. We strongly support the proposal to fix the legislation so that any person *within the council area* of the DLC will be able to object to a licence application. We recommend adding in the proviso, "within the council area", to ensure that the process remains local and not national or international.

### ***Te Tiriti o Waitangi principles***

Māori advocacy groups have been active in objecting to licence applications where there is alcohol related harm affecting their communities. Notable cases before the courts have been the Ka Pai Kaiti Trust in Gisborne, and Communities Against Alcohol Harm Inc. in South Auckland. In both cases the courts ruled they did not meet the criteria to be able to object because their representatives lived more than one kilometre from the premises. Research in 2022<sup>1</sup> found that Māori connection to a local area, their whakapapa, kaumatua status or māngai kōrero (authoritative spokesperson) were not accepted as reasons to give evidence.

There is specific research on alcohol related harm for Māori<sup>2</sup> because they are affected differently to non-Māori groups. Alcohol has a disproportionate impact on Māori health. We recommend that the Act include Te Tiriti o Waitangi principles as a fundamental consideration for decision-makers.

### ***Trade competitors***

We further support the proposal that trade competitors can only object if they are directly affected by the licence application to limit vexatious objections. This is consistent with similar provisions in the Resource Management Act (RMA).

#### **Recommendations**

5. That any person *within the council area* of the DLC may object to a licence application, whether an individual or group.
6. We note that Māori health advocacy groups have had difficulties in being heard at DLC hearings and recommend that the Act include Te Tiriti o Waitangi as a fundamental consideration for decision-makers.
7. That trade competitors can only object if they are directly affected and does not relate to trade competition.

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<sup>1</sup> New Research shows how institutional racism impacts alcohol licensing decisions.  
<https://www.massey.ac.nz/about/news/new-research-shows-how-institutional-racism-impacts-alcohol-licensing-decisions/>

<sup>2</sup>[https://www.hpa.org.nz/sites/default/files/Maori\\_attitudes\\_and\\_behaviours\\_towards\\_alcohol\\_September\\_2018.pdf](https://www.hpa.org.nz/sites/default/files/Maori_attitudes_and_behaviours_towards_alcohol_September_2018.pdf)

## Hearing Process

Any DLC hearings where lawyers are brought in become more adversarial than hearings with only the applicants and objectors. DLC Commissioners use an inquisitorial style of decision-making to probe and ask questions to ensure they have all the information necessary to reach a fair decision. We support removing the court-like questioning of cross-examination which puts objectors at a disadvantage. This will align the hearing the process with the RMA, where the process is less formal.

We further support the proposals which reinforce DLCs role of gathering and dissemination of evidence, particularly the pre-circulation of briefs of evidence by the applicant. However, to ensure the process is fair to the applicant, DLCs should also include the opposing agencies in their direction to disclose briefs of evidence 10 days in advance.

Members of DLCs need to have sufficient training to undertake their roles. Alcohol law is complex and members need to have a good understanding of the Act. We recommend that all DLC members be trained through a nationally approved provider, as is currently required for RMA Commissioners.

We further recommend that there be a wider review of the Act to review other licensing processes including DLC fees, which have not been raised since 2012. The fees are determined by central Government via Cabinet's Fees Framework.

Finally, we support DLCs developing procedures because it provides transparency and consistency for applicants and objectors.

### **Recommendations**

8. That hearings:
  - a. be less formal, and
  - b. without cross examination.
9. For District Licensing Committees:
  - a. to limit excessively repetitive evidence
  - b. to have discretion on whether briefs of evidence be recorded, read, limited to relevance or read to a time limit
  - c. to request further information or expert reports, and for dissemination



- d. to strike out of evidence or briefs that frivolous, vexatious, irrelevant, an abuse of process, not independent or expert, or are offensive.
10. For all District Licensing Committee members to be trained via a nationally approved provider as is currently required for RMA Commissioners.
  11. That there be a wider review of the licensing processes including DLC fees.
  12. That pre-hearing:
    - a. The applicant *and agencies* to provide briefs 10 working days before the hearing
    - b. Briefs of expert evidence provided 5 working days before the hearing
    - c. That all briefs received prior to the hearing be provided to all parties prior to the hearing
  13. For DLCs to conduct hearings by phone, audio-visual link or other remote access facility , if appropriate and facilities are available.
  14. For DLCs to develop procedures because it provides transparency and consistency for applicants and objectors.



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