

Departmental Disclosure Statement

Sale and Supply of Alcohol (Community Participation) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

17 November 2022.

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Part One: General Policy Statement

The Sale and Supply of Alcohol (Community Participation) Amendment Bill (the **Bill**) aims to improve communities' ability to influence alcohol regulation in their area, and thereby, ensure that—

- the sale, supply, and consumption of alcohol is undertaken safely and responsibly; and
- the harm caused by excessive or inappropriate consumption of alcohol is minimised.

The Bill does this by making targeted changes to the alcohol licensing process provided for in the Sale and Supply of Alcohol Act 2012 (the **principal Act**).

Currently, the principal Act provides for parties to appeal provisional local alcohol policies (**LAPs**), developed by territorial authorities through the special consultative procedure, to the Alcohol Regulatory and Licensing Authority (**ARLA**). Appeals are not working as intended, which delays and prevents territorial authorities from adopting LAPs at all. The Bill amends the principal Act so that parties can no longer appeal provisional LAPs. This will allow territorial authorities to adopt LAPs more easily and apply them to licensing decisions.

Currently, district licensing committees (**DLCs**) must not take any inconsistency between LAPs and the renewal of licences into account when deciding whether to approve applications. That means decisions are less likely to reflect the relevant LAPs. The Bill amends the principal Act so that DLCs can decline to renew a licence if the licence would be inconsistent with conditions on location or licence density in the relevant LAP. This will improve the effectiveness of LAPs as renewal decisions are more likely to reflect communities' intentions for alcohol licensing.

Currently, people with “a greater interest than the public generally” can object to licensing applications. This has been interpreted narrowly to permit only a small number of people to object and to exclude community groups and organisations. The Bill amends the principal Act so that—

- any person can object to an application for a licence or renewal of a licence, whether as an individual or a representative of a group or an organisation; and
- trade competitors of an applicant may object to a licence application only if they are directly affected by the application in a way that does not relate to trade competition or the effects of trade competition; and
- DLCs and ARLA have provisions available to manage the volume of objections and appearances at licensing hearings.

Currently, licensing hearings can be legalistic and adversarial, and often result in non-professional and poorly resourced participants being disempowered and disadvantaged. The Bill amends the principal Act so that hearings—

- are conducted without unnecessary formality; and
- do not permit those who appear at hearings to question any party or witness; and
- do not permit cross-examination; and
- can be conducted by phone, audiovisual link, or other remote access facility if that is appropriate and the facilities are available.

<https://www.treasury.govt.nz/publications/guide/disclosure-statements-government-legislation-technical-guide-departments-html#section-8>

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>“R114 <i>Alcohol In Our Lives: Curbing the Harm</i>,” by Te Aka Matua o te Ture The Law Commission, dated 27 April 2010. Available from the Law Commission’s website at https://www.lawcom.govt.nz/our-projects/regulatory-framework-sale-and-supply-liquor.</p> <p>“<i>He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction</i>,” Chapter 9 (pp. 171–179), dated November 2018. Available from the Inquiry’s website at https://mentalhealth.inquiry.govt.nz/inquiry-report/he-ara-oranga/.</p> <p>“<i>Turuki! Turuki! Move Together: Transforming our criminal justice system</i>,” recommendation 10 (pp.52–55). the second report of Te Uepū Hāpai i te Ora Safe and Effective Justice Advisory Group, dated 12 December 2019. Available from the New Zealand Government’s website at https://www.beehive.govt.nz/release/new-direction-criminal-justice-reform.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Supplementary Analysis Report: Sale and Supply of Alcohol (Community Participation) Amendment Bill</i>, by the Ministry of Justice, dated 17 November 2022.¹</p> <p>This will be published at:</p> <p>https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/; and</p> <p>https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments.</p>	

¹ The urgency given to the development of legislative proposals to address the challenges communities face to influence alcohol regulation meant that a Regulatory Impact Analysis was not able to be provided when policy decisions were agreed by Cabinet. Accordingly, the Ministry of Justice prepared a Supplementary Analysis Report for consideration by Ministers alongside the advice for the Cabinet seeking approval of the Sale and Supply of Alcohol (Community Participation) Amendment Bill.

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Supplementary Analysis Report did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Team based in the Treasury.</p> <p>The Supplementary Analysis Report was assessed internally by the Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel. It was determined to meet the quality assurance criteria.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
<p>The size and nature of potential costs and benefits of the policy to be given effect by the Bill are detailed in the Supplementary Analysis Report prepared by the Ministry of Justice.</p>	
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>The Bill amends the principal Act so that DLCs can decline to renew a licence if the licence would be inconsistent with the policies on location or licence density in the relevant LAP.</p> <p>This amendment will improve the effectiveness of LAPs as it will mean that renewal decisions are more likely to reflect communities' intentions for alcohol licensing. This could also impact the interests of persons applying to renew a licence.</p> <p>The Bill enables greater community participation in licence application decisions and licensing hearings. This too will improve the influence that communities can have on licensing decisions in their area, while potentially impacting the interests of persons applying for a licence or licence renewal.</p> <p>The Bill allows DLCs to retain ultimate discretion in these decisions, which mitigates the impacts that the changes may have on the person applying for a licence or licence renewal, and their associated interests. The conditions within a relevant LAP will be only one of the factors that the DLCs will take into account. The Bill does not change the requirement for licensing committees to have regard to factors such as the suitability of the applicant and whether the applicant has appropriate systems, staff and training to comply with the law.</p> <p>Individual licence decisions may still be appealed to ARLA.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
<p>The principal Act enables territorial authorities to design LAPs in consultation with their communities to set conditions about the way alcohol is sold, supplied and consumed in the area.</p> <p>To maintain the efficacy of LAPs and their role in reflecting communities' intentions, under new section 79 of the Bill, territorial authorities will still be required to use the special consultative procedure set out in section 83 of the Local Government Act 2002. Compliance with this requirement is important for benefits of the policy to be given effect by the Bill.</p> <p>Furthermore, the existing training and guidance DLC members receive from territorial authorities will need to be updated, to support them adapt to the changes in licensing procedures.</p>	
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Justice analysed the Bill and did not identify any international obligations that conflict with the policies contained in the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The policy to be given effect in the Bill is consistent with the principles of the Treaty of Waitangi in a number of ways.

The Waitangi Tribunal's understanding of the principle of reciprocity acknowledges that the guarantee of Māori tino rangatiratanga lies at the core of the concept of partnership.² Accordingly, the Crown is obliged to respect Māori autonomy as far as practicable, that is, Māori authority and rights to manage their own policies, resources and affairs according to their own preferences. The changes in the Bill as they relate to LAPs mean that communities can better influence the development of LAPs through consultation. The Bill will also improve the effectiveness of LAPs. The Bill will, therefore, enable Māori communities to have a greater say on policies that affect how alcohol is sold and consumed in their area.

The changes in the Bill relating to objections to licence applications and DLC hearings are also consistent with the principles of the Treaty of Waitangi. For example, a narrow interpretation of 'person' as provided for in the current principal Act has led to exclusion of community groups. Some DLCs have interpreted the use of the words 'he or she' to mean that only natural persons have standing to object to licence applications. Iwi representatives, school principals and addiction clinicians have found they have to object in their personal capacity. As a result, their objection may carry less weight than it may otherwise do.

The Wai 2624 claim has highlighted the impact of these exclusions for Māori. Wai 2624 claims that the principal Act breaches the principles of Te Tiriti o Waitangi in a number of ways, including around who has standing to object to applications. The principal Act fails to guarantee that Māori have standing, even though the alcohol-related prejudice suffered by Māori is greater than that of the general public. In a recent case, a Māori public health organisation was denied standing to object to a licence as its 'interest' was seen to be no greater than that of the public.

The Bill amends the principal Act so that any person can object to an application for a licence or renewal of licence application, whether as an individual or representative of a group or organisation.

² *He Tirohanga o Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal* (Te Puni Kōkiri: Wellington, 2002), pp.80-81.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
The Crown Law Office has provided advice to the Attorney-General. This advice will be available on the Ministry's website at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/ .	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Bill removes the ability for parties to appeal provisional LAPs to ARLA. LAPs are intended to enable interested parties to influence decisions on alcohol regulation at a local level, so that licensing decisions can be tailored to the local area. LAPs also have a harm-reduction role. LAPs can impact the density of alcohol outlets and trading hours. Evidence shows the harmful effects of high densities and long trading hours.</p> <p>Although intended as an additional check and balance, in practice, appeals bring delays and financial costs to councils and ratepayers. No part of any LAP can come into effect until appeals against it have been concluded. LAPs are often appealed by well-resourced parties with a strong interest in challenging the implementation of more restrictive controls on the sale, supply and consumption of alcohol. In some cases, councils have been unable to adopt LAPs altogether. Until they are adopted, licensing decisions continue to be made without reference to them. By removing the ability to appeal provisional LAPs, the Bill strengthens community influence on local decision-making and contribute to the object of the principal Act.</p> <p>Existing mechanisms in the principal Act, local government, and the wider justice system will remain in place to moderate councils' ability to develop LAPs. For example, the special consultative procedure set out in the Local Government Act 2002 must be used to create a LAP. This ensures individuals and groups will be able to have their say on the LAP during consultation.</p> <p>The Legislation Design and Advisory Committee (LDAC) guidance advises that an appeals process is appropriate where the rights and interests of a particular person are affected by a decision.</p> <p>LAPs are not decisions that directly affect the rights and interests of any particular person. Rather, they are frameworks, which licensing committees must have regard to when making licensing decisions. LDAC guidance advises that the appropriate mechanism for disputing such a process or product is judicial review.</p> <p>Natural justice (the right to be heard and the rule against bias) will not be affected by this Bill. The right to bring judicial review proceedings will not be affected by removing the ability to appeal.</p> <p>Ministry of Justice officials also consulted with the Crown law Office.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Ministry of Health, New Zealand Police, Te Puni Kōkiri, Ministry of Business Innovation and Employment, Accident Compensation Corporation, Ministry of Social Development, Ministry for Primary Industries, Department of Internal Affairs, the Treasury, Ministry for Pacific Peoples and Ministry for the Environment were consulted on the policy to be given effect by this Bill.</p> <p>Ministry of Justice officials maintain active relationships with stakeholders that have an interest in alcohol regulation, including organisations delivering the licensing regime, public health professionals, academics, businesses, and professional bodies. Through these, we have explored concerns about the current alcohol regulatory framework, and tested a range of proposals in response to these concerns.</p> <p>There will be the opportunity for stakeholders and the wider public to provide feedback and recommendations on the proposed changes through the Select Committee stage.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill amends the principal Act so that DLCs can decline to renew a licence if the licence would be inconsistent with the policies on location or licence density in the relevant LAP.</p> <p>Currently, DLCs must not take any inconsistency between a LAP and the renewal of a licence into account when deciding whether to allow the application. This means that renewal application decisions are less likely to reflect the policies within the relevant LAP.</p> <p>This amendment will improve the effectiveness of LAPs as it will mean that renewal decisions are more likely to reflect communities' intentions for alcohol licensing. This could also impact the interests of persons applying to renew a licence.</p> <p>The Bill allows DLCs to retain ultimate discretion in these decisions, which mitigates the impacts that the changes may have on the person applying for licence renewal and their interests. LAPs will be only one of the factors that the DLCs will take into account. The Bill does not change the requirement for DLCs to have regard to factors such as the suitability of the applicant and whether the applicant has appropriate systems, staff and training to comply with the law.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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