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Alcohol Reform Bill 2010

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Published: 10 November 2010 by John McSoriley BA LL.B, Barrister, Legislative Analyst P: (04) 817-9626 (Ext. 9626) F: (04) 817-1250 Public enquiries: Parliamentary Information Service: (04 817-9647)	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of this Bill is to implement the Government's decisions on the reform of alcohol legislation. "These decisions were made in response to the Law Commissions 2010 report, *Alcohol in Our Lives: Curbing the Harm*"¹.

Background

The Law Commission's recommendations

The Law Commission made substantial recommendations the key elements of which were:

- a new Alcohol Harm Reduction Act to replace the Sale of Liquor Act 1989;
- increasing the price of alcohol through excise tax increases in order to reduce consumption;
- regulating promotions that encourage increased consumption or purchase of alcohol;

¹ [NZLC R114](#).

- moving, over time, to regulate alcohol advertising and sponsorship;
- increasing the purchase age for alcohol to 20 years;
- strengthening the responsibility of parents supplying alcohol to minors;
- increasing personal responsibility for unacceptable or harmful behaviours induced by alcohol;
- cutting back the hours licensed premises are open;
- introducing new grounds upon which licences to sell alcohol can be declined;
- allowing more local input into licensing decisions through local alcohol policies and District Licensing Committees (the bodies recommended to replace District Licensing Agencies);
- streamlining the enforcement of the alcohol laws and placing the overall decision-making in a new Alcohol Regulatory Authority (building on the existing Liquor Licensing Authority) presided over by District Court judges especially selected for the task; and
- a substantially improved and reorganised system for the treatment of people with alcohol problems.

The Government's decisions

The Government in a recent media release set out the proposals it intended to implement as follows:

- “introducing a graduated approach to purchasing alcohol - 18 years of age for on-licences and 20 years of age for off-licences;
- “restricting RTDs to 5 per cent alcohol content and limiting RTDs to containers holding no more than 1.5 standard drinks;
- “making it an offence for anyone other than a parent or guardian to provide alcohol to an under-18-year-old without a parent's or guardian's consent;
- “where alcohol is provided to an under-18-year-old the parent, guardian or authorised person will need to ensure the alcohol is supplied in a responsible manner;
- “allowing the Minister of Justice, in consultation with the Minister of Health, to ban alcohol products which are particularly appealing to minors or particularly dangerous to health;
- “empowering local communities to decide on the concentration, location, and hours of alcohol outlets (including one-way-door policies) for both on and off-licences in their area through the adoption of local alcohol policies;
- “setting national default maximum hours of 7am - 11pm for off-licences and 8am - 4am for on-licence, club licence, and special licences for local authorities who do not adopt a local alcohol policy;
- “broadening the matters that must be considered in licensing decision-making to include such things as the object of the Act, the provision of the local alcohol policy, and whether the amenity or good order of the area would be lessened if the licence is granted;
- “strengthening the law on the type of stores eligible for an off-licence to reinforce the current approach that dairies and convenience stores are not eligible;

- “increasing penalties for a range of licence breaches, including allowing an intoxicated person to be on licensed premises, allowing violent behaviour to take place on premises, and running an irresponsible promotion;
- “widening the definition of ‘public place’ in liquor bans to include car parks, school grounds and other private spaces to which the public has legitimate access;
- “strengthening the existing offence of promotion of excessive consumption of alcohol by making it apply to any business selling or promoting alcohol, and setting out examples of unacceptable promotions, such as giving away free alcohol;
- “making it an offence to promote alcohol in a way that has special appeal to people under the purchase age. These changes will apply to any promotion, including TV advertising and billboards;
- “investigating a minimum pricing regime by giving retailers a year to provide sales and price data. If they are not forthcoming the Government will consider regulatory options for obtaining this data;
- “improving public education and treatment services for people with dependency issues;
- “requiring Parliament to lead by example by removing its licensing exemption”².

The Ministry of Justice produced a regulatory impact statement on 14 May 2010 to help inform the main policy decisions taken by the Government relating to the contents of this Bill. A copy of this regulatory impact statement can be found at:

- <http://www.justice.govt.nz/policy-and-consultation/alcohol/documents/alcohol-law-reform-ris.pdf> ; and
- <http://www.treasury.govt.nz/publications/informationreleases/ris> .

Main Provisions

Purpose and object

The Bill provides that its purpose is, for the benefit of the community as a whole:

- to put in place a new system of control, with certain stated characteristics, over the sale and supply of alcohol; and
- to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of the Bill (see below)

The characteristics stated for the new system are that it is reasonable and its administration helps to achieve the object of the Bill.

The object of the Bill is that:

- the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

² Media Release, Hon Simon Power, “[Government outlines balanced plan for alcohol reform](#)”, 23 August, 2010.

- the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

Harm “caused by the excessive or inappropriate consumption of alcohol is stated to include both:

- the crime, damage, death, disease, disorderly behaviour, illness, and injury caused or contributed to (directly or indirectly) by the excessive or inappropriate consumption of alcohol; and
- the harm to society generally and the community caused or contributed to (directly or indirectly) by that crime, damage, death, disease, disorderly behaviour, illness, or injury” (*Part 1, Clauses 3 and 4*).

Restriction on issue of off-licences: What is a grocery

The Bill restricts the issue of off-licences to:

- licensees of hotels and taverns; and
- specialist sellers of alcohol; and
- alcohol manufacturers; and
- owners of grocery stores.

The Bill provides that to be a grocery store, a shop must be a supermarket with a floor area of at least 1,000 m², or it must be a grocery shop. And for it to be a grocery shop, a shop must have as its principal business the sale of “main order household foodstuff requirements”. To determine whether this is so in a particular case, the licensing authority or a licensing committee must have regard to:

- a statement of the annual sales revenues of the premises (produced in accordance with regulations prescribing what information the statement must contain and how it must be set out); and
- the number and range of items on sale in the shop; and
- the size, layout, and appearance of the shop; and
- may have regard to any other matter it thinks relevant.

The Bill provides that having had regard to those matters, the licensing authority or a licensing committee forms its opinion; but it is obliged to form the opinion that the principal business carried on in a shop is the sale of main order household foodstuff requirements if:

- it is of the opinion that it is likely that at least half of the annual sales revenues of the shop are from the sale of main order household foodstuff requirements; and
- it is not persuaded that the shop does not, nevertheless, have the characteristics normally associated with a grocery shop (*Part 1, Clause 6 and Part 3, Clause 35*).

Effect of licence on “amenity and good order of locality”

The Bill provides that the licensing authority or a licensing committee must have regard to the following matters:

- in forming (in order to decide whether to issue a licence) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of issuing the licence; and

- in forming (in order to decide whether to renew a licence) an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence.

The matters applicable to both issue and renewal of licences are:

- the presence or absence of car-parking facilities;
- traffic movement and density;
- noise levels;
- levels of nuisance and vandalism;
- the harmony of the environment;
- the purposes for which land near the premises concerned is used.

In the case only of an application for the issue of a licence, the authority or committee must also have regard to the number of premises in the locality for which licences of the kind applied for are already held (*Part 1, Clause 7*).

Ages

The Bill provides that the age at which people may lawfully buy alcohol on licensed premises for consumption somewhere else is 20 years but that the age at which people may lawfully buy alcohol on licensed premises for consumption on those premises is 18 years (*Part 2, Clauses 9-11*).

Licensing exemptions

The Bill exempts certain commercial transactions from the requirements of the Bill by not applying to the sale or supply of alcohol by a person, in the course of the person's business as a maker, importer, distributor, or wholesaler of alcohol, to:

- people in business as makers, importers, distributors, or wholesalers of alcohol;
- licence-holders;
- holders of permanent club charters.

The Bill does not apply to:

- the sale or supply of perfume;
- the sale or supply of alcohol by pharmacists for medicinal purposes;
- the sale or supply of products (like cake, biscuits, and liqueur chocolates) that are intended to be eaten, and contain so little alcohol that they are unlikely to cause intoxication, even if eaten in large quantities;
- the sale or supply of alcohol that has been made unsuitable to drink;
- the sale or supply of products that contain alcohol, but are unsuitable to drink or eat.

The Bill does not apply to

- canteens or messes, or other places in naval ships or defence areas, where the consumption and possession of alcohol is authorised by or under the Defence Act 1990 or by the Chief of Defence Force;
- amenities set up and conducted by the Armed Forces Canteen Council;

- Police canteens; and
- fire service canteens.

The Bill also exempts certain sale carried out at international airports and sales carried out under the authority of the Civil Aviation Act 1990 and it exempts homestays from the requirements of the Bill. The Bill does not apply to the sale or supply of alcohol by people who let up to 10 guests stay in their home or residence (or other premises nearby) for commercial gain and sell liquor to some or all of their guests (*Part 3, Subpart 1, Clauses 12-14*).

Types of licences

The Bill provides for four type of licence: on-licences, off-licences, club licences, and special licences. These are broadly the same as under the existing law (*Part 3, Subpart 1, Clauses 17-34*).

Permitted trading hours

The Bill provides for “default maximum national trading hours” for the sale of alcohol which are:

- 8 am to 4 am for consumption on licensed premises;
- 7 am to 11 pm for consumption off licensed premises.

However more restrictive maximum trading hours may be imposed on the premises' licence by the conditions subject to which it was issued and these imposed hours become the trading hours for the premises concerned. These restricted hours are set under local alcohol policies (see below).

The Bill requires licensees to ensure that no alcohol is sold or supplied on their premises outside the permitted trading hours except that the holder of a special licence that has been issued for an event to be held on Anzac Day in connection with the commemoration of Anzac Day to sell or supply alcohol at or after 6 am.

Holders of on-licences must ensure that no alcohol is sold or supplied on their premises on Good Friday, Easter Sunday, or Christmas Day, or before 1 pm on Anzac Day, unless it is sold or supplied while the holder also holds a special licence for the premises or the buyer lives on the premises, or is on the premises to dine.

Holders of off-licences must ensure that no alcohol is sold or supplied on their premises on Good Friday, Easter Sunday, or Christmas Day, or before 1 pm on Anzac Day and no alcohol is sold on or delivered from the premises on Easter Sunday unless it is wine made on the premises or from fruit harvested from land on which the premises are situated (*Part 3, Subpart 1, Clauses 44-50*).

Local alcohol policies

The Bill empowers territorial authorities to have policies relating to the sale and consumption of alcohol within their districts (local alcohol policies). The policies may include policies on any of the following matters relating to licensing (and no others):

- for on-licences, off-licences, and club licences only,
 - the location of licensed premises by reference to broad areas;
 - the location of licensed premises by reference to proximity to premises or facilities of particular kinds;
 - whether further licences (or licences of particular kinds) should be issued for premises in the district, or any stated part of the district;

- for all licences, maximum trading hours and one-way door restrictions (see below)

The Bill sets out procedures and consultation requirements for territorial authorities in promulgating and implementing these policies including appeal rights and notification requirements (*Part 3, Subpart 2, Clauses 75-93*).

Applications for licences and appeals

The Bill sets out the requirements for licence applications (*Part 3, Subpart 3, Clause 93-124; Subpart 4, Clauses 125-139; Subpart 5, Clauses 140-157*).

Licensing bodies, and fees

The Bill sets out provisions relating to the Alcohol Regulatory and Licensing Authority (at present called the Liquor Licensing Authority) and licensing committees to be set up by territorial authorities and their powers (*Part 3, Subpart 6, Clauses 158-215*).

Enforcement

The Bill makes extensive provision for enforcement (*Part 5, Clauses 216-284*).

Licensing trusts and community trusts

The Bill sets out the law relating to licensing trusts comprising the how they are established, who is eligible to be a member, how members are elected, how their business is conducted, and other matters. “These provisions have been carried over from the Act with some rearrangement and modernisation to accord with current drafting practice. There are a few minor changes of substance from the former Act but these are of a technical nature only. They include:

- “the requirement that boundaries of new licensing trusts align with the boundaries of so-called meshblocks, which are used for Parliamentary and local electoral purposes, and provision for the alteration of boundaries of existing licensing trusts to be varied to align with meshblock boundaries;
- modernised provisions relating to financial records and financial statements;
- the application of the voluntary administration regime (Part 15A of the Companies Act 1993) to licensing trusts;
- the alignment so far as possible of comparable provisions in this Part and Part 7 (Community trusts)”³ (*Part 6, Clauses 285-335*).

The provisions of the Act are also largely carried over (*Part 6, Clauses 285-335; Part 7, Clauses 336-381*)).

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³ Alcohol Reform Bill, 2010 No 236-1, Explanatory note, Clause by clause analysis, p. 39.

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