
REPORT 1
(1215/52/IM)

SUBMISSION TO THE JUSTICE AND ELECTORAL SELECT COMMITTEE ON THE ALCOHOL REFORM BILL

1. Purpose of Report

The report seeks Committee agreement to the attached submission to the Justice and Electoral Select Committee on the Alcohol Reform Bill.

2. Executive Summary

The Government has introduced the Alcohol Reform Bill which, once enacted, will become the Sale and Supply of Alcohol Act, a Local Government Amendment Act and a Summary Offences Amendment Act.

The Bill gives effect to the Government's response to the Law Commission's report on the review of the regulatory framework for the sale and supply of liquor— *'Alcohol in our lives: An issues paper on the reform of New Zealand's liquor laws'*. The Government has adopted 126 of the Law Commission's 153 recommendations as well as making other changes.

The draft bill and related legislative amendments reflect many of the recommendations Council made in its October 2009 submission to the Law Commission.

In line with Council's submission, the Government has proposed a split purchase age, a fee structure that is based on an assessment of risk and premised on a cost recovery model, flexibility for local authorities to set trading hours, broader grounds on which decision-makers can refuse licenses, increased community input to decision-making processes, some new enforcement options and recognition of the important role local alcohol policies play in allowing communities to set limits around the sale and supply of alcohol.

However, there remain some significant financial and operational aspects of the Bill which have implications for Council's ability to cost effectively manage alcohol in the city through licensing premises and events, promoting a broad

range of entertainment, keeping people safe, managing effects on city amenity and giving local communities more say over the management of alcohol in their area.

These aspects should be addressed by the Select Committee to give better effect to the underlying principles of the reforms. The focus of the attached submission, therefore, is on the financial, operational and social implications the draft legislation would have on Council's ability to manage alcohol.

Three key themes flow through the submission:

1. Wellington City Council supports the intent of the reforms reflected in the draft legislation, particularly those related to increased emphasis on harm reduction, community involvement and cost recovery.
2. Local authorities play a central role in managing the sale and supply of alcohol in New Zealand. Decision making structures must be both effective and cost efficient to support that role. This implies clear lines of accountability and delegation of straightforward and non-contentious decision making.
3. Many of the proposed legislative changes have significant resource implications for territorial authorities. It is critical that fee setting mechanisms reflect the specific contexts in which each territorial authority operates. This implies relevant fees should be set locally to, as far as possible, achieve cost recovery. Where relevant, infringement revenue should also be retained by territorial authorities to partially offset enforcement costs, and to minimise the extent to which good operators (or ratepayers) are required to fund enforcement action against poor operators.

Commentary focuses on those aspects of the Bill where it is Council's view that the proposed provisions would adversely and significantly impact on Council's resources, operational structure and ability to manage alcohol in the community.

In particular:

- Local alcohol policies (Subpart 2)
- Decision making structures (licensing committee decision-making (clause 175), statutory independence of licensing inspectors (clause 184))
- Closure of licensed premises by Police (clause 249)
- Fees and infringement revenue (clauses 246 - 7 and 382 - 388)
- Alcohol in public places (clause 402)

The Council has contributed to the development of a Local Government New Zealand submission which addresses a range of more detailed issues.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Agree to the attached submission (Appendix 1) on the Alcohol Reform Bill.*
3. *Agree to delegate to the Chief Executive Officer and the Mayor the authority to edit the submission and include any amendments agreed by the Strategy and Policy Committee.*

4. Background

In October 2009, Wellington City Council submitted on the Law Commission's consultation document '*Alcohol in our lives: An issues paper on the reform of New Zealand's liquor laws*'. In April 2010, the Law Commission issued its report to Government on the review of the regulatory framework for the sale and supply of liquor. On 23rd of August 2010, the Government released its response to that report and indicated a timeframe for introducing an Alcohol Reform Bill.

The Government intends to pass the Bill into law during the current Parliamentary term (ie by November 2011). Submissions are due by 18 February 2011. The Committee is scheduled to report back by 11 May 2011. The attached submission includes a request to be heard before the Select Committee.

Due to the scope of change, implementation will be phased so some changes will come into force relatively quickly, while others will require more time for business and government agencies to prepare for change. Most changes will be in force within twelve months of the bill being passed into legislation.

5. Discussion

The Government is determined to reduce alcohol-related harm through a set of reforms that are designed to:

- provide better controls around supply
- reduce demand
- limit problems, and
- empower communities.

The reforms that impact most significantly on the role of local councils relate to:

- The licensing framework

- Enforcement of the licensing framework and
- The management of alcohol in public places.

The detail of legislative change in these areas has revealed some significant structural and resourcing implications for territorial authorities. It is not clear that the government fully appreciates the extent of the impact these changes will have. Accordingly, Council's submission puts forward the case for an adequately resourced, efficient and robust regulatory structure.

5.1 Submission: Summary of key points

The legislation includes some significant structural changes to the framework for decision making, policy procedure and expectations around compliance, monitoring and education. It is anticipated these changes will significantly increase the costs to Council of performing its regulatory role.

Local Alcohol Policies

The current provisions in the Bill do not provide for existing policies relating to liquor made under the Sale of Liquor Act to be considered alcohol policies under the new Sale and Supply of Alcohol Act.

The Bill establishes very specific process requirements for the development of Local Alcohol Policies. Specifically, a territorial authority must:

- Consult with Police, inspectors and the Medical Officer of Health
- Assess a range of specified demographic, social, commercial and environmental factors
- Develop a "draft" Local Alcohol Policy using the Special Consultative Procedure (s83 LGA 2002).

The draft policy is then subject to limited appeal rights (submitters only) to the Licensing Authority (against its fit with the objectives of the Sale and Supply of Alcohol Act).

Appeals (and subsequent potential appeals to amendments arising) have the potential to extend decision making processes and considerably undermine community input. The special consultative process focuses on understanding and carefully balancing the full range of perspectives and interests within a community to establish robust policies that reflect the interests of the community as a whole.

The submission presents the Council's firm view that a policy established under the special consultative process should be considered final. All policies developed by territorial authorities are guided by, and subject to, any relevant legislation. There is no sound basis for introducing specific provision for challenges concerning consistency with alcohol legislation. The potential delays created by appeals, or series of appeals, undermine Council's mandate to deliver on our communities' aspirations.

Wellington City Council's current liquor licensing policy¹ is dated, and was made under differing criteria than those proposed under the new Bill. The existing Policy has a framework for determining maximum trading hours relating to licensed premises' general location, and the criteria for decision making for extended premises trading hours.

The lead in time for introduction of the appropriate sections of the Act relating to alcohol policies creates a tight timeframe to introduce an Alcohol Policy in accordance with the specifications described in the Alcohol Reform Bill. The work would need to commence immediately considering the requirements of full special consultative process, and the significance of the Policy as a framework for the issue or decline of liquor licenses.

Licensing Committees

The Government proposes to move from the current District Licensing Agency structure to a District Licensing Committee (DLC). The DLC is required to determine all applications.

The DLC will comprise a chairperson (who must be a territorial authority member - ie a councillor or a community board member) and two members. The chair and one member make up a quorum. There are strict criteria for the appointment of suitable members to the committee. Members must be selected from a list of licensing committee members established by the territorial authority (or jointly with other territorial authorities). Listed licensing committee members must have experience relevant to licensing matters, but persons with interests in the alcohol industry are excluded from membership.

This structure seeks to achieve better community involvement in the decision making process for licences. This intent was supported in principle in WCC's submission to the Law Commission.

WCC currently receives in excess of 2000 applications per year.² If all application decisions were required to be considered by the Committee as envisaged by the legislation, this would impose a significant workload on the elected member and appointed committee members.

The committee requirement as it is currently drafted does not provide for any delegation of the determination/decision making for licence applications to other than a commissioner.

Our position is we support the opportunity for greater community involvement but that due to the potential impact on resourcing for committee determinations that consideration of limited delegations to the CEO (Secretary of the Licensing

¹ Wellington City Council Liquor Licensing Policy 2004

² Refer DLA annual report years 2006/07, 2007/08, 2008/09, 2009/10

Committee) be included in the Bill to manage committee workloads more efficiently.

Implications of statutory independence of licensing inspectors

The Bill provides that inspectors must act independently when exercising their functions. Decisions made by a DLC are appealable by anyone appearing before the committee to the new Alcohol Regulatory Authority (including licensing inspectors).

In our view inspectors employed by the Chief Executive of the local authority should not have statutory independence. There is no precedent for a territorial authority officer, performing regulatory functions on behalf of the authority, to have statutory independence in any other legislation local authorities operate under. In mounting an appeal, an inspector would effectively require a local authority to resource a challenge to its own decision.

It is in any case, unnecessary. The inspector's recommendation represents a review of all available information, including community submission/ opposition and reports from required agencies. A right of appeal available to submitters to the process and reporting agencies provides for natural justice and quality control, therefore there is no need to provide licensing inspectors with similar rights of appeal.

Closure of licensed premises by Police

The Bill provides Police with the power to close licensed premises immediately (i.e. without first obtaining a Court Order) where:

- A riot takes place within licensed premises, or where there are reasonable grounds for believing a riot would occur
- There is fighting or serious disorder, or there are reasonable grounds for believing that fighting or serious disorder will break out within licensed premises
- There is a significant threat to public health or safety

The submission supports the removal of a requirement to obtain a court order to close a premise, however, it is our view that Police, in all but the most serious of cases i.e. a riot, should be required to develop a wind-down protocol that would see Police engage the manager or licensee and request the wind down of service i.e. stop or reduce the sale of alcohol, turn off music and turn on lights. This would encourage gradual dispersal of patrons as opposed to patrons leaving premises on mass and causing more issues on the street.

Fees and infringement revenue

The Bill provides for government to set fees in regulations. The Bill also provides that Orders in Council can be made authorising territorial authorities to prescribe fees by bylaw. The regulations will not be drawn up until after the Bill is passed into legislation. Whilst the government has indicated it intends to,

as far as possible, recover the costs incurred by territorial authorities through licensing fees, there is no clear indication of the model it intends to use to calculate these costs.

Our position is clear. We are a larger territorial authority and as such the costs incurred within our regulatory framework, i.e. wage, compliance, monitoring and those associated with the impact of alcohol-related harm will be higher than for those of smaller territorial authorities. We are an entertainment hub for the region. It is therefore vital we have the ability, as we do under other legislation such as the Resource Management Act, to set our own fees based on a cost recovery model. We are opposed to fees being prescribed in the regulations.

Where relevant, infringement revenue should also be retained by territorial authorities to partially offset enforcement costs, and to minimise the extent to which good operators (or ratepayers) are required to fund enforcement action against poor operators.

Liquor bans

The government has developed specific criteria for implementing liquor bans in an effort to improve consistency of application across the country, by amendment to the Local Government Act 2002.

The net effect of the new criteria is to require a much stronger evidential base for any decision to implement a ban. Councils will have to be satisfied that:

- “the area to which the prohibition is proposed to apply can be justified as a reasonable limitation on people’s rights and freedoms; and
- there is evidence that the area to which it is proposed to apply 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
- the area to which it is proposed to apply and the time for which it is proposed to apply are appropriate and proportionate in the light of that evidence”.

This serves to limit the problem to disorder and offending. However, our position has always been that the problem is also, significantly, about perceptions of safety and public alcohol consumption as a precursor to disorder and offending.

In addition to combating safety and disorder concerns in problem areas, this Council has employed liquor bans as a preventative tool to deal with perceptions of safety, perceptions of the intimidating nature of groups drinking, perceptions of disorder arising from rubbish, vomit etc. In this sense, liquor bans have complemented a suite of initiatives such as Walkwise officers, CCTV, annual educational campaigns, various council policies and close working relationships with the NZ Police and welfare agencies that demonstrate a strong commitment to safety, help to reduce crime and disorder and improve perceptions of safety.

It is possible that under the regime proposed by Government our bylaw would not reach the necessary evidential threshold. It may be difficult to establish liquor bans on areas of any size as the area has to be shown to have density of offending. Our position has been that alcohol-related disorder and offending or the threat/perception of this has just as significant, if not more, impact in suburban settings - even if it is not experienced in high levels, or reported to the Police.

The Bill extends the scope for liquor bans to include schools and other areas which may not be public places, but to which the public have access. This is paradoxical given such areas may be unlikely to present high levels of offending or disorder and would therefore not meet the proposed new threshold for a ban. It is more likely that the current immunity of such areas to liquor bans present an opportunity for alcohol consumption to migrate from nearby public spaces that are subject to a ban.

The proposed criteria in the Bill do not provide for the management of any migration of disorder or offending to a neighbouring area or location. Wellington has experienced a degree of migration with the movement of disorder from the CBD to Oriental Bay and then most recently to Newtown.

The criteria set out in the bill is, in our opinion, contrary to the empowering intent of the legislation designed to encourage public involvement in the management of alcohol in their respective communities.

Our recommendation to Government is that it takes a broader view of the purpose of liquor bans and that the current provisions in the Local Government Act 2002 relating to liquor bans are adequate.

6. LTCCP Implications

There are no LTCCP implications from this submission. However, once the legislation is passed, it is likely there will be. These will be assessed once the final form of the legislation becomes clear.

7. Conclusion

The attached submission responds to draft legislation proposed by Government related to the sale and supply of alcohol in New Zealand. It outlines the impact of these changes, recommends some practical amendments to improve efficiencies and highlights our concerns around the need to ensure adequate resourcing of territorial authorities. The focus is on operational issues linked to the regulatory role of local authorities contained within the legislation, and related funding issues.

Our expectation is that the final form of the legislation will produce an efficient and effective framework, one that enables territorial authorities to effectively

manage drinking environments within their respective jurisdictions to the extent intended by government.

Contact Officer: Peter Leniston, Senior Policy Advisor

Supporting Information

1) Strategic Fit / Strategic Outcome

The submission supports Council's overall vision of supporting economic growth, building strong, safe and healthy communities for a better quality of life.

2) LTCCP/Annual Plan reference and long term financial impact

None. There are no LTCCP, Annual Plan reference and long term financial implications from this submission.

3) Treaty of Waitangi considerations

None.

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

Limited to internal business units.

b) Consultation with Maori

This report does not require consultation.

6) Legal Implications

None. This is a submission on a draft Bill. At this stage there are no legal implications for local government.

7) Consistency with existing policy

This report is consistent with some existing policy.