



9 February 2023

Ms Ginny Anderson
Chair
Justice Committee
Parliament Buildings
Wellington

Kia ora Ms Anderson

Sale and Supply of Alcohol (Community Participation) Amendment Bill

Thank you for the opportunity to comment on the Sale and Supply of Alcohol (Community Participation) Amendment Bill (the Bill). LGNZ supports the Bill and its proposals to improve communities' ability to influence alcohol regulation in their area. We want to see:

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

Unsafe and irresponsible consumption of alcohol is a key cause of extensive harm in communities. The best evidence we have suggests that concentration of outlets, which occurs in mostly low socio-economic communities, is an exacerbating factor. This Bill gives councils and communities the incentive to investigate and pursue the development of local alcohol policies (LAPs) to address this major exacerbating factor.

In our submission on the Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No. 2) in 2018, LGNZ stated that we were a strong supporter of the right of communities, through their councils, to develop and apply LAPs, to help to improve local well-being and quality of life.

Unfortunately, this has not been the case. The 2018 Bill did not go far enough, and created a number of concerns for LGNZ, councils and community organisations. The strength of local government's concern was reflected in a remit adopted at the 2018 LGNZ AGM, which asked LGNZ to seek the Government's agreement to:

- amend the Sale and Supply of Alcohol Act 2012 so that LAPs can more accurately reflect local community views and preferences; and
- review policy levers to reduce alcohol-related harm that will complement LAP provisions established by territorial authorities, and include consideration of mechanisms for addressing the density and location of off-licensed premises.



To date, LAPs have failed to meet local expectations and ensure community voices are heard in licensing decisions. This not only exposes communities to harm but also puts at risk the willingness of citizens to participate in our civic life. By participating in decisions about local issues, such as the adoption of a LAP, citizens can appreciate the nature of local democracy and learn how to become active citizens. We need to ensure that mechanisms like LAPs can genuinely give effect to the preferences of local citizens. The attachment to this letter provides more details about the nature of our concerns.

We are delighted that the Bill currently before the Justice Committee directly addresses LGNZ's key concerns and we are pleased to support it.

Our feedback on the bill

While LGNZ strongly supported the introduction of LAPs, we have been disappointed at how the provisions have worked in practice. The process to adopt a policy has often been so litigious that councils have been forced to abandon the effort or to make so many compromises that the final policy has failed to meet (and ultimately deliver) expected outcomes. This has had negative consequences for communities. The Bill addresses a number of these concerns.

Applications for renewal of licences

We are pleased that the Bill addresses the egregious problem with section 133(1) of the Act, which specifically prevents a licensing authority or district licensing committee (DLC) from considering a relevant LAP when considering an application for renewal of a licence. This has meant that decisions on licence renewals are less likely to reflect the provisions of relevant LAPs.

The new provision that allows a DLC to decline to renew a licence, if it would be inconsistent with conditions on location, or licence density, in a relevant LAP, will improve the effectiveness of LAPs, as renewal decisions are more likely to reflect communities' intentions.

We also support the introduction of clause 11, which amends section 128 of the Act to allow a person to object, whether as an individual or a representative of a group or an organisation (except for a person who is a trade competitor whose objection relates to trade competition), to the renewal of a licence. This will better enable communities to have their say on local issues that directly impact their wellbeing.

Applications for a new licence

It is also important to ensure that any new licence complies with a LAP. LGNZ recommends that section 105 of the principal Act be updated to make it mandatory for all new licences to be consistent with the relevant LAP. Currently DLCs are only required to have regard to the relevant LAP.

Community participation in decision-making

We think it's important that communities feel able to easily participate in decisions that relate to local issues and affect their wellbeing. Therefore, we strongly support a number of the provisions that will make it easier for communities to participate in decision-making relating to LAPs and licensing, including:

- the removal of the provision that limits those who can make an objection to people with “a greater interest than the public generally”, by allowing any person to object to an application for a licence or renewal of a licence; and
- the provisions to reduce the legalistic and adversarial nature of hearings by amending the principal Act so that hearings are conducted without unnecessary formality; submitters can participate by phone or audio-visual link; and to prevent those who appear at hearings questioning any party or witness.

Removing appeals on LAPs

The creation of a LAP is a decision made by councils, following extensive community consultation using the Special Consultative Procedure (SCP). The SCP is a robust statutory mechanism for councils to get feedback from interested people about a proposed policy.

While 41 councils have LAPs in place, some have had to endure lengthy and expensive court processes, and others have abandoned their LAPs after going through the appeal process.

We strongly urge the committee to remove the ability to initiate an appeal of a council’s LAP, other than on judicial review grounds, given that LAPs are adopted only after an extensive and democratic formal consultation process, where all interested parties can have their say. Other policies that councils are required to adopt, such as policies on the location of Class 4 gaming machines, are not subject to additional appeals, other than judicial review.

Supporting implementation of changes

The Bill proposes major changes to the way in which DLCs will work in the future. We are mindful that the changes will require new guidance and further training for DLC members. LGNZ suggests that the implementation of those parts of the Bill that govern the DLC processes, namely clauses 14, 15 and 16, could be delayed for three months to allow for DLC guidance to be updated.

Other changes

Other changes proposed by the Bill that we support are:

- Clause 6, which removes the requirement on councils to produce provisional LAPs, while retaining the requirement to consult on draft LAPs.
- The new section 80, which provides that territorial authorities must give public notice of the LAPs that they wish to adopt, and new section 81 that requires a LAP to be adopted 30 days after being publicly notified, but has no effect until it is brought into force.
- The new section 82, which provides councils with the ability to discontinue the development of their LAPs any time before they are adopted, as well as new section 83, which enables councils to recommence the development of a LAP.



- The changes to section 102, which provide for objections to applications for the grant of licences. The changes allow a person to make an objection, whether as an individual or as a representative of a group or an organisation. An exception is made for a trade competitor if the grounds for the objection relate to trade competition or the effects of trade competition.

LGNZ supports this Bill as it addresses concerns that are deeply held by councils and communities. It will not only support councils and communities to address the negative impacts that unsafe and irresponsible consumption of alcohol has on community wellbeing but will better enable citizens to participate in local decision-making. Being able to develop LAPs to address one cause of local social harm is a small but positive step in building community empowerment, providing agency and addressing communities' feelings of marginalisation and dis-empowerment.

If the Justice Committee would like to discuss any aspects of this submission in further detail, please contact Dr Mike Reid, Principal Policy Advisor at mike.reid@lgnz.co.nz.

Ngā mihi nui

A handwritten signature in blue ink, appearing to read 'S. A. Crosby', is positioned above the printed name.

Stuart Crosby
President
Local Government New Zealand

Attachment: Summary of LGNZ’s concerns with Local Alcohol Policies

The option to adopt Local Alcohol Policies (LAPs) reflected strong community concern about the effects of the increasing number of liquor outlets in many communities. This concern resulted in changes to the Sale and Supply of Alcohol Act in 2012, which devolved responsibility for alcohol policy-making from a central body to local government. The new legislation enabled each territorial authority to develop a LAP to control where and when alcohol can be sold. As designed LAPs can:

- restrict the further issue of new licences in a community (or across the district);
- restrict the location of new premises when they are close to other premises or sensitive sites;
- set maximum trading hours of alcohol sales from outlets e.g. pubs, night clubs, restaurants, sports clubs, supermarkets and bottle stores;
- determine permit conditions to be placed on licences to minimise alcohol-related harm.

However, LAPs have failed to meet Parliament’s objectives and in many cases have failed to meet community needs, including helping to address the multiple social problems related to the location and density of licenced and, in particular, off-licenced, premises. Research commissioned by the Health Promotion Agency, and others, clearly shows that the liberal grounds on which LAPs can be appealed has had a detrimental effect on the efficacy of LAPs to achieve local community objectives. The significant costs that councils face in defending policies that are subject to appeal have also created challenges, including:

- dis-incentivising some councils from adopting LAPs;
- councils “shelving” their draft LAPs instead of facing the cost of further appeals; and
- encouraging councils to water down their LAPs to the point where they are less likely to meet community aspirations and address the causes of local alcohol related harm.

The promise of increased community input through the adoption of a LAP is yet, for many New Zealanders, to be realised. While responsibility has been devolved, it has not been accompanied by the required authority and resources. As a result, the majority of LAPs that have been developed have been appealed by key alcohol industry groups and, in most cases, have resulted in adopted LAPs which closely align with national legislation.

As Alcohol Healthwatch states¹, “the devolution of policy-making to local governments with limited financial and personnel resources to fight appeals appears to have been, in the most part, an impossible ask”. The lack of provisions within many of the adopted LAPs (and the requirement for DLCs to only have

¹ http://www.ahw.org.nz/Portals/5/Resources/Documents-other/2017/LAPReport_2017_FINALWEB%20%2819_1_18%29.pdf



regard to a LAP in decision-making) creates a significant burden on communities to be involved in individual licensing decisions.