



SUBMISSION

Prepared by the
New Zealand Retailers Association

For the
Justice and Electoral Select Committee

In respect of the
Alcohol Reform Bill

February 2011

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Introduction

These submissions are presented by the New Zealand Retailers Association (the Association).

The Association is the largest trade organisation involved in the retail industry in New Zealand. We represent an industry that has annual sales of \$66billion and which employs 325,000 people (approx 20% of the New Zealand workforce) in more than 49,000 outlets throughout New Zealand.

Our national membership includes general merchandise chains, specialised chains, traditional department stores, grocery stores, supermarkets and thousands of owner operators spread throughout the country. The membership also includes a number of specialised trade groups representing manufacturers, distributors and retailers in the plumbing materials, metal fastener, pet, equestrian, jewellery, bicycle and sporting goods sectors.

These particular submissions have been prepared to reflect the views of our membership for whom liquor may be a significant or a smaller part of their product category offering, and who hold off-licences – including Liquor, Speciality Food and Convenience/Grocery retailers, Supermarkets, and Department stores, or on-licences – including Cafes and Restaurants.

Background

The Association has been involved in the recent Alcohol Reforms process that began with the Law Commission's comprehensive Review in 2009 and its subsequent report in 2010. This occurred simultaneously to the Sale and Supply of Liquor and Liquor Enforcement Bill being heard by Parliament's Justice and Electoral Committee, which was discharged in December 2010.

In response to the Law Commission's 2010 report, *Alcohol in our Lives: Curbing the Harm*, the Government has introduced the Alcohol Reform Bill (the Bill).

The Bill proposes to introduce measures that ***seek to support a safe and responsible drinking culture through controls on the availability of alcohol, requirements for safe and responsible licensed premises, and the management of alcohol in public.***

It is in this context that the policy objectives of the Bill are set, which are to:

- Reduce excessive drinking by young people and adults;
- Reduce the harm caused by alcohol use, including crime, disorder, public nuisance and negative public health outcomes;
- Support safe and responsible sale, supply and consumption of alcohol;
- Improve community input into local alcohol licensing decisions;
- Improve the operation of the alcohol licensing system.

Measures contained within the Bill include:

- The operation of the licensing system, including licence criteria, licence conditions and licensing bodies;
- The alcohol buying age;
- Supply of alcohol to under-18-year-olds by parents and other people;
- Promotion of alcohol;
- The management of alcohol in public places through alcohol-control bylaws;
- Provision to ban alcoholic products; and
- Enforcement of licenses and alcohol offences.

We reiterate our previous submissions and state at the outset our belief that individual personal responsibility must play a large part in the minimisation of the misuse of alcohol in New Zealand, given our perception that Government legislative intervention will not in itself solve the apparent harm from alcohol consumption in New Zealand.

Accordingly, we are pleased that the Bill will be supported by robust public education and treatment interventions as a complete package to address “New Zealand’s excessive drinking culture”.

We continue to challenge policy makers to provide empirical evidence that limiting purchase opportunities limits consumption, particularly amongst those most at-risk and fear that some of the proposals in the Bill will have a greater impact on the viability of many (particularly smaller) businesses than it will on effecting a positive change in excessive drinking behaviour.

Submission Summary

In this submission the Association has restricted our response to those matters affecting the operations of our membership. In the main, these matters are in relation to off-licence holders which are the majority of our membership for whom this Bill is relevant. However, where specific concerns in regards to on-licence matters arise, these are also commented on.

The Association note our support of the provisions for

- the replacement of the current Liquor Licensing Authority with the establishment of a new Alcohol Regulatory and Licensing Authority.
- the introduction of national default maximum trading hours.

The Bill proposes the default hours as being between 7 am and 11 pm from off-licensed premises. Without national guidelines we currently see a range of restrictions on trading hours imposed in some locales but not in others, and even imposed differently by licensee, and for those of our members who operate regional or national chains, there are often significant inconsistencies throughout their businesses. This can also cause considerable frustration for customers. A nationally applied maximum default adopted by Local Territorial Authorities is preferred and would in the main, address operational inconsistencies,

customer frustrations and reduce the likelihood of some customers (more likely to be those in the at-risk category) averting localised restrictions by driving to the next licence holder, or town which may have extended hours than that of an off-licence in closer proximity.

The Bill also provides for more restrictive maximum trading hours to be imposed by way of conditions on issue of a licence or under a local alcohol policy. In our view, restricting hours further than the national default is unlikely to curb purchasing volume (same number of customers over less hours)

Many of our members are currently trading within these proposed national default hours. Of those that are outside these hours, the majority would trade between 6am and 12midnight. They have indicated to us that they would be supportive of the proposed default hours for the sale of alcohol – noting that many of them may actually have trading hours beyond this for the sale of other items apart from alcohol. We believe that it is possible to control the hours of sale of liquor by appropriate systems or programming of point of sale terminals not allowing purchase of such products outside these hours. This type of control would be preferable and much more efficient than regulating around merchandising and store layout which could have additional impacts on business operations.

One final point we wish to add is that we recommend some discretion be given by allowing some flexibility on cut-off times, for instance a 15 minute window to facilitate sales to customers who are in a queue waiting to be served at the time of liquor sales “close off”.

We do have concerns on some provisions contained within the Bill, and will elaborate on these:

- Definitions of a Grocery Store and Main Order Household Foodstuff Requirements
- Licencing

- Local Alcohol Policies

Detailed Submissions

1. Part 1 – Preliminary Matters

1.1 Part 1 Section 5 – Interpretation

The Minister when introducing the Bill made it very clear from the outset that

“to limit the availability of alcohol, licences will be harder to get and easier to lose, buying alcohol at corner dairies will end when current licences expire...”. Simon Power, 9 November 2010

Prior definitions of a grocery store and main order household foodstuff requirements has led to differing interpretations, which latterly saw a tightened ruling from the LLA on the definition¹ of a grocery store. These interpretations were reflective of the change in retailing, where the traditional term “dairy” was less relevant in modern retailing as it can be applied to a small convenience outlet servicing inner-city apartment dwellers, a corner store in a suburban environment, a small supermarket styled general store operation in a semi-rural setting and everything in between. Accordingly the Bill has taken the steps to tighten the definitions as follows:

Grocery Shop means a shop where the principal business carried on is or will be the sale of **main order household foodstuff requirements**.

Grocery Store means premises that are-

- (a) a grocery shop; or
- (b) a supermarket with a floor area of at least 1,000m² (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items)

¹ Refer LLA Woodward Group Limited LLA PH 1415/2008:

Main order household foodstuff requirements-

- (a) means food items of a kind normally bought for preparation and consumption at home; and
- (b) does not include alcohol.

We do not agree with the definition of Main order household foodstuffs requirements being (a) “food items of a kind normally bought for preparation and consumption at home”. We are of the view that it is too restrictive and we recommend that it should instead be amended to

Main order household foodstuffs requirements -

“(a) means food items of a kind normally bought for consumption at home;.....”

We do not, for example, think it is appropriate to exclude the likes of products such as a packet of biscuits which is likely to be purchased for consumption (but not necessarily preparation) at home, and similarly a multi-pack of ice-creams such as a six pack of Trumpets. These items may in fact for some households be food items normally bought by them for consumption at home, but under the current proposed definition would be excluded as part of the retailers sales revenues (see 1.2 below) as preparation is not required.

To ensure clarity we would be supportive of the proposal in s(6)(1)(a) that regulations be developed that would clarify what types of food products should be included in the revenue calculation of main order foodstuffs.

1.2 Part 1 section 6 - Determining whether principal business of shop sale of main order household foodstuff requirements

Part 1 s6(1) states that in determining whether the principal business carried on in a shop is or will be the sale of main order household foodstuff requirements, the licensing authority or licensing committee

- (a) must have regard to –
- (i) 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
 - (ii) the number and range of items on sale in the shop; and
 - (iii) the size, layout and appearance of the shop; and
- (b) may have regard to any other matter it thinks relevant.**

We are concerned that having regard to any other matter it thinks relevant provides the licensing authority or licensing committee with a convenient fallback position, but creates great uncertainty for a current licence holder seeking a renewal or a new licence applicant as to what further criteria it may have to address. **We recommend Part 1 s6(1)(b) be deleted.**

Having had regard to those matters, the licensing authority or a licensing committee forms its opinions; but as stated in s6(2) 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-

- (a) it is of the opinion that it is likely that at least half of the annual sales revenue of the shop are from the sale of main order household foodstuff requirements; and
- (b) it is not persuaded that the shop does not, nevertheless, have the characteristics normally associated with a grocery shop.

When alcohol, tobacco and all other non-food items that are sold in a grocery shop are excluded, many genuine grocery stores will not meet the requirement of “at least half of the annual sales being from main order household foodstuff requirements”.

The ramification of the above is that many current licence holders will not have their licence renewed and under the provisions of the Bill have 3 months for that cancellation to come into effect. The concern for many of these businesses is that they are unlikely to be able to replace the

revenue line from those products easily, and this will stretch their viability. Should they then be forced to sell their business its value will have been affected also by the loss of the licence and ability to trade as previous. Sadly, we are likely to see the corner store becoming an urban myth, all the while not affecting consumption figures to the same effect.

Therefore we recommend that either:

- delete Section 6(2) (preferred), or
- amend Section 6(2)(a) to adopt the LLA proposition in SAI Ltd [PH 0018/2009]:

(2) The licensing authority or a licensing committee must form the opinion that the principal business carried on (or to be carried on) on any premises is or will be the sale of main order household foodstuff requirements if—

(a) it is of the opinion that main order foodstuffs either **exceeds 50% of total turnover or exceeds all other specialised items that are sold.**

2. Part 2 – Ages

2.1 We do not wish to comment specifically about the proposed changes in purchase age. The role of the retail sector and any other licence holder is to ensure that robust processes are in place and adhered to that support the sale of liquor only to those who have the legal right to purchase. We do not have a view on the proposal for a split age but wish to note that some of our membership have expressed a preference to assist with compliance, to have consistency applied across those products that have age restrictions (ie. tobacco and alcohol). This provides less opportunity for confusion both from a customer and retailer perspective, and more so from retail sales staff.

3. Part 3 – Licencing

Subpart 1 – Licencing generally, requirements on licensees, and conditions

3.1 Part 3 Section 21 – Kinds of licences and their effects (Off-licences):

We note the reflection of modern retail practices in the inclusion of an “*off-licence : sale for delivery and sales at a distance*” to recognise internet type retail operations.

3.2 Part 3 Section 35 – Kinds of premises for which off-licences may be issued

Under Section 35(1) an off-licence may be issued only-

- (a) To the holder of an on-licence issued for a hotel or tavern, for which the premises (or part of the premises) for which the on-licence is held; or
 - (b) For retail premises where (in the opinion of the licensing authority or licensing committee concerned) at least 85% of the annual sales revenue is expected to be earned from the sale of alcohol for consumption off the premises; or
 - (c) For premises where (in the opinion of the licensing authority or licensing committee concerned) the principal business carried on is the manufacture of alcohol; or
 - (d) For premises that (in the opinion of the licensing authority or licensing committee concerned) are a grocery store.
- (2) Subsection (1) is subject to sections 36,37, and 40.

Having determined the definitions of a grocery store (which include a grocery shop and a supermarket of at least 1,000m²) for the purposes of clarity, we would recommend that clause (d) specify these types of retailers (ie. Grocery shop, Supermarket etc). The importance of this definition is that under Subpart 2 – Local alcohol policies – these local policies may apply differently to premises for which licences of different kinds are held or have been applied for. So for example, a local alcohol policy may apply to grocery shops but not to Supermarkets or vice versa.

Accordingly we recommend that the provision for sub-levels of licences be made to off-licences CI 35 (d).

3.3 Part 3 Section 37 – Exception for certain complementary sales

We are pleased to note the inclusion of an exception from Part 3 s35 in regards to complementary sales which may allow for the issuing of an off-licence for premises not of a kind described in section 35(1) if it is satisfied that –

- (a) the premises are a shop (but not a grocery store); and
- (b) alcohol would be an appropriate complement to goods of the kind sold on the premises.

This alleviates concerns raised by a number of our specialist retailers with current off-licences, including delicatessens, department stores, and those that provide gift baskets etc.

Part 3 Licencing

Subpart 2 – Local alcohol policies

“Local communities, not people in Wellington, are best placed to decide how alcohol licences should be treated in their own area, which is why this Bill empowers communities to adopt local alcohol policies” Hon Simon Power, 9 November 2010

3.4 We acknowledge the intent of Local Alcohol Policies, and are pleased that the Bill provides for such policies to be voluntary (as they currently are already) as opposed to the Sale and Supply of Liquor and Liquor Enforcement Bill which sought to have these as mandatory. We also note that the Bill provides for territorial authorities to adopt joint local alcohol policies.

From a business perspective, particularly a national operation, there are a number of impacts that the introduction and adoption of local alcohol policies has.

Firstly, it would be necessary to submit on every local alcohol policy as this is the only means by which an appeal may be lodged to the licencing authority against any decisions (appeals are only available to those who submitted on the draft policy). However it must be noted that the only element of the draft that can be appealed against is a matter relating to licencing, of which there may be up to five policy matters.

Section 77 – contents of policies states that:

- (1) A local alcohol policy may include policies on any or all of the following matters relating to licensing (and no others):
 - (a) Location of premises by reference to broad areas;
 - (b) Location of licensed premises by reference to proximity to premises or facilities of particular kinds;
 - (c) Whether further licences (or licences of particular kinds) should be issued for premises in the district concerned, or any stated part of the district;
 - (d) Maximum trading hours;
 - (e) One-way door restrictions.

We are concerned that the above has significant impacts on many of our members who are located close to their communities and will inevitably as part of that community be in close proximity to the likes of schools, churches etc. Similarly the impacts for those of our membership who may be in the process of obtaining, or already have obtained Resource Management Consent (which can be a lengthy process) for a site, to then have further restrictions imposed on it that may render the proposition to no longer be viable.

Further, s77 (3) states:

(3) A local alcohol policy may include policies on any matter not relating to licensing that is relevant to the object of this Act.

Our interpretation is that if local alcohol policies were developed not relating to licensing but had an impact on the licensing or licence holders, then these could not be appealed against (ref s81(3) which states "*No element of the draft that is not a matter relating to licencing can be appealed against*"). This is surely not intended, but appears to be a dangerous loophole that we recommend be addressed.

Accordingly, we recommend that:

That s77(3) is amended as follows:

(3) A local alcohol policy may include policies on any matter not relating to licensing that is relevant to the objects of this Act **and is consistent with its purpose.**

That s81(1) be amended as follows

A person or agency that made submissions as part of the special consultative procedure on a draft local alcohol policy may, within 30 days of its public notification, appeal to the licensing authority against any element of it ~~that is a matter relating to licensing.~~

That s81(3) be deleted

~~(3) No element of the draft that is not a matter relating to licensing can be appealed against~~

That s82(1)(b) is deleted

~~(1)(b) is satisfied that the element is not a mater relating to licensing~~

That s82(2) is amended as follows:

(2) The licensing authority must ask the territorial authority concerned to reconsider an element of a draft local alcohol policy appealed against it if it is satisfied that

- (a) The appellant made submissions as part of the special consultative procedure on the draft; and
- (b) The element ~~is a matter relating to licensing and~~ is unreasonable in light of the object of this Act.

Part 3 - Licencing

Subpart 3 – Licensing process; on-licences, off-licences, and club licences

3.5 Section 107 - Other discretionary conditions

We are concerned again of another “catch all” clause that provides for the licensing authority or licensing committee concerned to (may) issue any licence subject to any reasonable conditions not inconsistent with this Act. This should be mirrored with a clause that provides for reasonable conditions to be subject to appeal. As currently drafted the Bill does not provide this.

To that end we recommend that s140 be amended as follows:

Who may appeal

*Any party to any proceeding before a licencing committee who is dissatisfied with the decision or any condition imposed therein, may appeal to the licensing authority against the decision **or condition**.*

Part 3 - Licencing

Subpart 6 – Licensing bodies and fees

3.6 As stated at the beginning of our submission we are supportive of the proposed continuation in existence of an authority renamed as the Alcohol Regulatory and Licensing Authority (currently the Liquor Licensing Authority).

District Licensing Committees are appointed by territorial authorities and they can appoint 1 or more of these committees – seeing (potentially) a

minimum of 72 licensing committees, but this could in reality be even greater. The composition of those committees consists of 3 members appointed for that territorial area. Lists of members are to be established and maintained, and Section 179(5) states that a person must not be included on the list if that person has any interest in the alcohol industry or is a constable, an inspector, or a Medical Officer of Health. We question the ability and experience required of Committee members in being able to provide informed viewpoints to the duties of the Committee if these people are excluded.

4. Part 5 – Enforcement

4.1 Advertising & Promotion

The Association supports the Government's decision to continue with the current self-regulatory approach to advertising and we encourage our members to comply with both the Code of Liquor Advertising and the Code for Liquor Promotion.

6. Minimum Pricing

The Government has announced a plan to investigate a minimum pricing scheme and the Association and our members have indicated a willingness to assist the Government in this regard.

Conclusion

The New Zealand Retailers Association recognises the need for alcohol reforms and the role of such reforms as part of a wider solution to address the drinking culture that exists today, particularly amongst our at risk groups such as youth.

The Association welcomes the opportunity to be heard by the Committee to further discuss the matters raised in our submission on behalf of our diverse membership.

New Zealand Retailers Association
February 2011