



## **SUBMISSION**

Prepared by the  
**New Zealand Retailers Association**

For the  
**Justice and Electoral Select Committee**

In respect of  
**The Sale and Supply of Liquor and Liquor  
Enforcement Bill**

April 2009

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## **Introduction**

These submissions are presented by the New Zealand Retailers Association.

The Association is the largest trade association 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 majority or a smaller part of their product category offering.

## **1. Submission Overview**

We support the Purpose of the Sale and Supply of Liquor and Liquor Enforcement Bill (the Bill) and its attempts to minimise harm arising from the misuse and excessive consumption of alcohol in New Zealand.

We are aware that the Law Commission is currently undertaking a fully comprehensive review of alcohol law, and is due to report its recommendations back to Government mid 2010. The Association is supportive of the Commission's review for the following reasons:

- it is a first principles and totally embracing review;
- it is the first comprehensive review of our liquor laws for 20 years;
- it is a review that is being undertaken independent of the political process;
- it is a review that is being undertaken in a transparent manner over a reasonable tract of time; and
- it is a review where submissions can be tested amongst various interested parties through ongoing consultation..

In forming the most effective intervention strategies for harm minimisation, it is essential that Government takes a considered, fact and evidenced based approach.

We therefore recommend that the Select Committee not proceed with the Sale and Supply of Liquor and Liquor Enforcement Bill until considered in light of the current Law Commission review.

However, should the Committee decide to proceed with the current Bill prior, then it is our recommendation that the Bill does not proceed with

- Provision and recognition of Local Alcohol plans as prescribed in the Bill
- Size restrictions on grocery stores permitted to obtain/renew liquor licences
- Restrictions on adjacent liquor store ownership.

## **2. General Submissions**

In our view, some of the proposals contained within the Bill are inappropriate measures to achieve the desired outcome of reducing alcohol harm, and further, they would only serve to increase compliance and enforcement costs.

We believe that the current regulatory structure is satisfactory and we disagree with the rationale of abandoning the concept of a national, non-politicised, expert body (the Liquor Licencing Authority) ("LLA") in favour of 72 sets of local and potentially inconsistent rules.

The cost of compliance and the potential inconsistency leading to inefficient outcomes weigh heavily in favour of the LLA maintaining its current status and discretion.

The Explanatory Note of the Bill cites "increasing concern" as regards harmful use of alcohol, and of "community frustration". The Bill also seeks to increase local control. Community input can be achieved by input into the development of local alcohol plans through the current Special Consultative Procedure.

Improvement of "local control" can be achieved in a variety of ways without conferring a veto through the requirement that the LLA decisions must be consistent with local alcohol plans. For example, providing a legislative basis for the LLA's current practice of placing weight upon well developed local alcohol plans would achieve that purpose. The Act could positively oblige the LLA to have regard to the plan - it doesn't now. Therefore, an amendment to s.13 would achieve the stated purpose of the Bill without dispensing with the experience and knowledge of the LLA.

In the following pages our submission

1. confirms that much of the current legislation and processes are working adequately and need only minor amendments to optimise optimum outcomes for harm minimisation;
2. reviews in specific submissions the implications to our membership of key issues within the Bill, namely
  - proposed amendments relating to off licences
  - local alcohol plans as amended by the Bill.

3. provides the Committee with alternative suggestions on how the Bill's objectives might best be advanced.

Finally, we wish to draw the Committee's attention to the Appendix to this submission which highlights a number of preconceived myths which are challenged on the facts.

### **3. Specific Submissions**

#### **3.1 Proposed Amendments to Off Licences**

- 3.1.1 The Association has concerns about **criteria for off-licences**, and the proposed new s35 (1B) is of great concern.

*"The District Licencing Agency or Licencing Authority must not grant an off-licence in respect of any premises if –*  
*(a) they are situated (wholly or partially) within a shop, and*  
*(b) that shop is not a shop of a kind described in section 36(1)(d)*

That being:

*36(1)(d)*

- (i) Any supermarket having a floor area of at least 1000 square metres (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items); or*
- (ii) Any grocery store, where the Licensing Authority or District Licencing Agency, as the case may be, is satisfied that the principal business of the store is the sale of main order household foodstuff requirements.*

As proposed, this would serve to prevent some retailers, such as a department store (eg. Smith & Caughey in Auckland and Ballantynes in Christchurch), who currently holds a licence in respect of part of their premises, from renewing that licence. We believe this is an unintended consequence of the Bill.

We recommend that the proposed amendments to s35(1) not proceed.

- 3.1.2 We also have concern about the **types of premises in respect of which off-licences may be granted**. The new s36 (1) imposes a minimum "floor area" of 150 m<sup>2</sup> on licensed grocery stores, subject to the exceptions referred to in the proposed new s36(1A) – being:

*"(1A) The Licencing Authority may grant an off-licence in respect of a grocery store having a floor area of less than 150m<sup>2</sup>, if satisfied that –*  
*"(a) the principal business of the store is the sale of main order household foodstuff requirements; and*  
*(b) There are not within 10km of the store premises of a kind described in subsection (1)(c) or (d); and*

*(c) it would not be economic to establish within 10km of the store premises of a kind described in subsection (1)(c) or (d)."*

Store size should not automatically determine suitability for a licence. A sizing benchmark is the wrong determinant to judge whether liquor licences should or should not be granted. It is necessary (and is more appropriate in the context of harm minimisation) to consider whether or not the person applying for the licence is an appropriate person to be granted such a licence.

We also wish to point out that there is no definition contained in the proposed legislation as far as the 150m<sup>2</sup> floor area benchmark is concerned. It is not clear whether storage areas/space of the store is to be included.

While we recommend s36(1) not proceed, should the Committee not agree, we recommend that the size must be defined and in our opinion should be inclusive of the storage area. We refer to a statement by the LLA that it "has been pushing to include storage space given the need to have good storage space for well run grocery."

- 3.1.3 The new s36 (1A) proposes to prohibit the grant of an off-licence to a grocery store smaller than 150 m<sup>2</sup> if there is a liquor store, supermarket, or even another grocery store "within 10km". It even prohibits the establishment of such a licenced grocery store unless the Authority "is satisfied" that it "would not be economic" to establish a supermarket, grocery store or liquor store within 10km.

It is not appropriate that onus be placed on the applicant to produce feasibility evidence in that regard. It is not reasonable for a small grocery operator to be expected to be fully conversant about the economics of standalone liquor stores. Further, if the applicant is required to bring evidence from a retail feasibility consultant, there is additional and considerable cost implications.

In regards to the definition of the 10km – it is unclear if this is proposed to be measured by road, or "as the crow flies". If the latter, it would seem to fly in the face of the presumed remoteness justification inherent in the proposal. If the former, does the operator lose the licence if there is a highway realignment?

Councils' District Plans and the Resource Management Act 1991 ('RMA') process should be the mechanism for determining zoning and the appropriate provision and placement of services and amenities including without limitation the provision and positioning of liquor outlets of any kind.. Ad hoc provisions of local alcohol plans would have serious ramifications for those retailers relying on the District Plan process for their

choice of locations to invest and develop. Potential inconsistencies between District Plan and Local Alcohol Plans will inevitably lead to uncertainty.

We recommend that the proposed amendments to s36 do not proceed.

- 3.1.4 We are also concerned at the proposed restrictive **conditions of off-licences**. The new s37(3B) proposes to prohibit the grant of a full off-licence if the applicant is already the holder of an off-licence in respect of an "adjacent" supermarket or grocery store. There is no definition of "adjacent" in the Bill which could lead to ambiguity and inconsistency of interpretation.

We are not clear what social harm this restriction is intended to overcome. Why should a liquor store be allowed to establish next to a supermarket (on land owned by the supermarket) if it is independently owned, but not if it is owned by the supermarket operator?

Further the proposal appears to prevent any entity which is not involved in the food or liquor business from leasing adjoining lots, one to a grocery store and one to a liquor store. It would also seem to prevent shopping centre owners from leasing space to specialist liquor retailers in those centres containing a supermarket if the liquor store will be "lying near to" the supermarket .

It is unreasonable for consumers to be denied the convenience of purchasing alcohol near any store that sells groceries. Further we question the social benefit to be derived from such a prohibition.

We recommend that the proposed changes to s37 do not proceed.

### **3.2 Local Alcohol Plans**

We have major concerns (summarised below) about Clause 37 of the bill that will require territorial authorities (TAs) using their consultative procedures under the Local Government Act to adopt plans relating to the sale of alcohol within their jurisdictions and recommend it not proceed.

We foresee that the proposals create the potential for a proliferation of different community based rules and regulations, and increased costs of compliance for those retailers who operate across most of the 72 territorial authorities spread throughout New Zealand.

We wish to specifically note:

- 3.2.1 The Bill gives an absolute veto power to Territorial Authorities in respect of the granting and renewal of licences which are not compliant with their local

alcohol plan. This prohibition even applies to the LLA and DLA – there is no potential for flexibility or exceptions. This removes any discretion of the LLA. Even if the Territorial Authority has written a letter in support, the LLA is prevented from granting a licence if, in its opinion, the grant or its consequences would be inconsistent with the plan.

The object of the Act is to "establish a reasonable system of control over the sale and supply of liquor" - s.4. However by unreasonably constraining the LLA's discretion (not taking into account the LLA's vast knowledge and experience) would hardly seem consistent with that objective. By ensuring the LLA cannot approve an application inconsistent with a local alcohol plan completely removes the LLA's control of the process. This is all the more so when one takes into account the fact that there is absolutely no right of appeal against the policy. This is contrary to the principles of natural justice and all other Council processes and decisions dealt with by major legislation.

We have seen many examples of local communities seeking to address, through their District Plan, policy objectives that whilst popular locally, are not well founded in the wider public interest. A comparison between the different conservation approaches prevailing on the West Coast and the Coromandel, serves well to make the point that local government will not always get it right.

It should not be presumed that a local alcohol plan will necessarily produce an optimal social outcome, or one as well constructed or informed as that which is likely to emerge from an expert tribunal with national experience.

3.2.2 The Councils' alcohol plans are to be established by way of the special consultative procedure of the Local Government Act. As stated above, there is no right of appeal against decisions made under that procedure.

We are not aware of another example of a use of the procedure to regulate a commercial activity, let alone one which is already governed by a national licensing body.

The present situation is that councils are free to develop alcohol policies, and many have. They do so through a variety of formal and informal means best fitting their local needs and priorities. Those policies are held in high regard by the LLA.

At present we have the best of both worlds.

- (i) Councils' plans are given great weight by the LLA.
- (ii) The plans do not have the effect of a veto.
- (iii) Councils are not put to the expense of the special consultative procedure.

- (iv) We have an expert body with national experience that can both smooth over the rough edges of a poor plan and allow legitimate exceptions in appropriate cases.

We have a social problem with alcohol abuse; but we also have a licensing system that works well to accommodate local concerns. This can be improved by including a mandatory requirement that the LLA take into account local alcohol plans whilst still preserving a degree of flexibility through maintaining its discretion and accordingly bringing to bear the wisdom and experience of dealing with similar issues nationwide.

### 3.2.3 The content of the local plans is set out in the new s84B.

- (i) The concept of density of premise is flawed. If one limits the density, a natural consequence is that the premises will be bigger. A poorly drafted rule could well lead to a supermarket being unable to secure a licence because of the presence nearby of a number of small operators.

Local councils are not experienced in assessing a desirable density, and we risk finishing up with either ill-expressed or inept rules, or both. This is where a body of national experience is better suited to judge what is appropriate, assuming one accepted the validity of the density concept in the first place.

- (ii) A minimum distance provision will be extraordinarily difficult to devise and apply, and is unworkable  
Will the distance be taken from any point on the perimeter of a school for example? What happens when a day care centre opens up on the edge of a shopping centre - can the existing licensees be required to forfeit their licences?
- (iii) Being required to produce a social impact report is highly unlikely to achieve any social gain, and will certainly add to cost and delays. (Furthermore, this and the strong focus on location of premises overlooks the point that abuse, so far as it can be attributed to liquor outlets, arise from the management of the premises not their location.)

A social impact report does not ensure compliant behaviour by the licensee; management and enforcement of the deterrence provisions under the current legislation are the determining factors in harm minimisation, not the premises' location.

### **3.3 Advertising and Promotions**

We are generally supportive of the proposals contained in section 39 of the Bill.

However, we question the necessity for the Minister of Health to be involved in the administration of this section of the Bill and also the specific powers proposed to be given to the Director General of Health to make cease and desist orders in relations to a liquor advertisement.

Our reservations about the involvement of the Director General of Health in legislative matters affecting food were outlined in some details in our submissions on the Public Health Bill which has been reported back to Parliament and in this instance we recommend any delegated powers should rest solely with the Secretary for Justice who carries the statutory responsibility for the administration of the Sale of Liquor Act.

### **3. Other Considerations**

If a guiding intent of the Bill is to address the issue of sales to minors - then focussing on the premises, and their location will achieve nothing. That is a function of management. We believe the problem is best attacked by focussing on the problem operators (and on other licensing controls, e.g. hours of trading perhaps). Imposing compliance costs on compliant licensees and setting up a cumbersome process is a very blunt instrument for dealing with a social problem.

With many areas of undesirable social activity, surely the answer lies in effective enforcement – i.e. regular enforcement and an enhanced likelihood of offenders being apprehended. The prospect of being caught and the loss or suspension of licence is the biggest incentive to complying behaviour by operators. In addition, for smaller operators at least, substantial fines may be effective, yet there are very few prosecutions brought.

For DLAs, their staff are already heavily occupied in the processing aspects of the regime, and we believe this Bill would accentuate that problem. Territorial Authorities don't sufficiently resource their DLA's due to other priorities deemed more worthy.

### **Conclusion**

We support the Purpose of the Bill to minimise harm caused by alcohol misuse. In our opinion, focussing on compliance (necessary ID checks and problem operators) through adequate enforcement procedures are the best means of achieving the objectives of the Bill.

We recommend that the Select Committee not proceed with the Sale and Supply of Liquor and Liquor Enforcement Bill until considered in light of the current Law Commission review. However, should the Committee decide to proceed with the

Bill prior to that, that the Association's recommendations within this submission are adopted.

We wish to appear to speak to our submission

**New Zealand Retailers Association  
April 2009**

## Appendix I

### The Alcohol Market in New Zealand

#### The Data

##### Assumption One:

The number of licensed premises has exploded in recent years and is totally out of control.

##### *The Reality:*

<b>Year</b>	<b>No of Licensed Premises</b>
1990	6295
1991	7200
1992	N/A
1993	N/A
1994	N/A
1995	11280
1996	11698
1997	11973
1998	11461
1999	11787
2000	12596
2001	13408
2002	14131
2003	14557
2004	15242
2005	14202
2006	14594
2007	14596
2008	15066
2009	14225

*Source: Distilled Spirits Association/Ministry of Justice Liquor Licensing Authority*

Since 1990 the number of licenced premises in New Zealand has risen from 6295 to 14225 having peaked in 2004 at 15242.

So... while the number has grown considerably since 1990, there has been a very stable picture since 2002. The initial growth (1990/95) reflected the change in the law permitting the grocery sector to be involved in the sale of wine and the rapid growth of cafes, restaurants and nightclubs throughout the country.

**Assumption Two:**

We are getting dozens of off-licences – there’s a grog shop on every corner.

***The Reality:***

<b>Year</b>	<b>No of Off-Licence</b>	<b>% Total</b>
1990	1675	27
1991	2182	30
1992	N/A	
1993	N/A	
1994	N/A	
1995	3436	30
1996	3461	30
1997	3578	30
1998	3404	30
1999	3508	30
2000	3785	30
2001	4062	30
2002	4364	31
2003	4364	30
2004	4568	30
2005	4280	30
2006	4387	30
2007	4383	30
2008	4508	30
2009	4206	30

*Source: As Above*

As with “total licenced premises” the off-licence numbers grew from 1990 when the grocery sector became involved. Currently 4206 outlets hold an off licence with these numbers peaking back in 2004 at 4568. Since 1991 the share of licence numbers held by off licence operators has been constant at 30%.

**Myth Three:**

Greater availability of alcohol has resulted in people drinking more.

***The Reality:***

When we consider the total pure alcohol and total volume of alcoholic beverages available on a per capita basis we see the true reality. Has the increase in outlet numbers resulted in greater consumption of alcohol?

**Volume of Pure Alcohol/Capita (all persons 15+)**

	Litres/capita
1986	10.96
87	10.10
88	9.81
89	9.96
1990	10.12
91	9.65
92	9.50
93	9.04
94	9.26
95	9.04
96	8.76
97	8.64
98	8.62
99	8.81
2000	8.84
01	8.77
02	9.14
03	8.92
04	9.16
05	9.32
06	9.35
07	9.20
08	9.50

*Source: Statistics NZ*

So... on a “pure alcohol” equivalised basis we have seen consumption decline from 10.96 litres in 1986 to 9.50 litres in 2008.

In spite of the increase in outlet numbers (both on and off licence) consumption has declined. It “bottomed out” in 1998 at 8.62 litres per head and even today at 9.50 litres it is still 13% below the 1986 level – ie. before the changes to the Sale of Liquor Act in 1989.

This trend is further demonstrated when we consider per capita consumption on a “volume consumed basis”.

	Litres Consumed/Head
1986	181.4
87	178.4
88	167.4
89	168.3
1990	168.5
91	159.6
92	158.0

93	152.9
94	154.1
95	150.3
96	144.8
97	138.0
98	139.4
99	141.3
2000	138.2
01	138.1
02	141.6
03	139.1
04	139.2
05	141.5
06	140.8
07	140.8
08	143.9

Again we get a similar pattern. The annual consumption per head of population is currently some 20.6% below where it was in 1986.

Increased availability has **NOT** resulted in increased consumption.

**Assumption Four:**

Our drinking habits are “out of hand” and are getting worse by the day, particularly among young people.

***The Reality:***

We absolutely realise that ‘two wrongs don’t make a right’ and drinking by young people does need a change in behaviour.

The WHO have developed a measure to give a totally numeric score of the ‘proportion of drinkers with a potentially hazardous drinking pattern’. This has been reviewed by age group and gender and the studies have been conducted by the Ministry of Health.

There is no question that young people have a problem with around 40% falling into the ‘potentially hazardous drinking pattern’ group compared with the following:

<b>Age group</b>	<b>Proportion of drinkers with a potentially hazardous drinking pattern (2006/07)</b>
15 – 24	41.1
25 - 34	27.1

35 - 44	19.2
45 - 54	14.2
55 - 64	14.0
65 - 74	9.1
75+	5.2

*Source: Ministry of Health*

Males have consistently higher scores than females.

However, while our young show the worst score it is not deteriorating over time:

1996/97	Male	49.8
	Female	31.6
	Total	40.8
2002/03	Male	45.8
	Female	31.0
	Total	38.7
2006/07	Male	49.2
	Female	32.6
	Total	41.1