

Sale and Supply of Alcohol (Community Participation) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Sale and Supply of Alcohol (Community Participation) Amendment Bill (the **Bill**) aims to improve communities' ability to influence alcohol regulation in their area and, thereby, ensure that—

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

The Bill does this by making targeted changes to the alcohol licensing process provided for in the Sale and Supply of Alcohol Act 2012 (the **principal Act**).

Currently, the principal Act provides for parties to appeal provisional local alcohol policies (**LAPs**), developed by territorial authorities through the special consultative procedure, to the Alcohol Regulatory and Licensing Authority (**ARLA**). Appeals are not working as intended, which delays and prevents territorial authorities from adopting LAPs at all. The Bill amends the principal Act so that parties can no longer appeal provisional LAPs. This will allow territorial authorities to adopt LAPs more easily and apply them to licensing decisions.

Currently, district licensing committees (**DLCs**) must not take any inconsistency between LAPs and the renewal of licences into account when deciding whether to approve applications. That means decisions are less likely to reflect the relevant LAPs. The Bill amends the principal Act so that DLCs can decline to renew a licence if the licence would be inconsistent with conditions on location or licence density in the relevant LAP. This will improve the effectiveness of LAPs as renewal decisions are more likely to reflect communities' intentions for alcohol licensing.

Currently, people with “a greater interest than the public generally” can object to licensing applications. This has been interpreted narrowly to permit only a small number of people to object and to exclude community groups and organisations. The Bill amends the principal Act so that—

- any person can object to an application for a licence or renewal of a licence, whether as an individual or a representative of a group or an organisation; and
- trade competitors of an applicant may object to a licence application only if they are directly affected by the application in a way that does not relate to trade competition or the effects of trade competition; and
- DLCs and ARLA have provisions available to manage the volume of objections and appearances at licensing hearings.

Currently, licensing hearings can be legalistic and adversarial and often result in non-professional and poorly resourced participants being disempowered and disadvantaged. The Bill amends the principal Act so that hearings—

- are conducted without unnecessary formality; and
- do not permit those who appear at hearings to question any party or witness; and
- do not permit cross-examination; and
- can be conducted by phone, audiovisual link, or other remote access facility if that is appropriate and the facilities are available.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=205>

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 17 November 2022 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—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on the day after the date of Royal assent.

Clause 3 provides that this Bill amends the Sale and Supply of Alcohol Act 2012 (the **principal Act**).

Part 1

Amendments to principal Act

Clause 4 amends section 5, which sets out the defined terms used in the principal Act, to add a definition of trade competitor.

Clause 5 inserts *new section 6A*, which provides for transitional, savings, and related provisions set out in *new Schedule 1AA*.

Clause 6 amends section 79, which currently provides that territorial authorities must produce provisional local alcohol policies using the special consultative procedure set out in section 83 of the Local Government Act 2002. The amendments dispense with the requirement to produce provisional local alcohol policies but retain the requirement to consult on draft local alcohol policies.

Clause 7 replaces sections 80 to 88 (which relate to the development and adoption of local alcohol policies) with *new sections 80 to 83*.

New section 80 provides that territorial authorities must give public notice of the local alcohol policies that they wish to adopt.

New section 81 provides that a local alcohol policy is adopted 30 days after being publicly notified but has no effect until it is brought into force.

New section 82 provides that territorial authorities may discontinue the development of their local alcohol policies any time before they are adopted.

New section 83 provides that territorial authorities may recommence the development of their local alcohol policies.

Clause 8 amends section 89, which concerns the disallowance of local alcohol policies. The amendment removes a reference to a provisional local alcohol policy.

Clause 9 amends section 90, which specifies when local alcohol policies come into force. The amendment removes a reference to provisional local alcohol policy.

Clause 10 amends section 102, which provides for objections to applications for the grant of licences. The amendments provide that a person may object, whether as an individual or as a representative of a group or an organisation. However, a person who is a trade competitor may object only if the objection does not relate to trade competition or the effects of trade competition.

Clause 11 amends section 128, which provides for objections to applications for the renewal of licences. The amendments provide that a person may object, whether as an individual or a representative of a group or an organisation. However, a person who is

a trade competitor may object only if the objection does not relate to trade competition or the effects of trade competition.

Clause 12 replaces section 133, which concerns the renewal of licences where local alcohol policies exist. *New section 133* provides that a licensing committee or the licensing authority may decline to renew a licence if it considers that renewing the licence would be inconsistent with a policy set out in a local alcohol policy relating to a matter specified in section 77(1)(a) to (d).

Clause 13 amends section 202, which concerns procedure. The amendment provides that licensing committees and the licensing authority may conduct hearings remotely.

Clause 14 inserts *new section 203A*, which provides that licensing committees must establish appropriate procedures, being ones that avoid unnecessary formality, prohibit parties to question other parties or the witnesses of other parties, and prohibit cross-examination.

Clause 15 amends section 204, which concerns the right of certain persons to appear in proceedings. The amendments provide that certain persons may appear and be heard, and call witnesses, in respect of hearings before licensing committees. They also provide that the same persons may appear and be heard, and call, examine, or cross-examine witness in respect of hearings before the licensing authority. In addition, the amendments provide that the chairperson of a licensing committee or the licensing authority may limit the circumstances in which parties having the same interest in a matter may speak or call evidence in support if the chairperson considers that repetition is likely to be excessive.

Clause 16 replaces section 205, which concerns the right of persons to appear in relation to an appeal under section 81 (right of appeal to licensing authority, which *clause 7* is removing), with several new provisions regarding the conduct of hearings before a licensing committee or the licensing authority.

New section 205 provides that a licensing committee or the licensing authority conducting a hearing under section 204 may exercise a power under *new sections 205A to 205C*.

New section 205A provides that a licensing committee or the licensing authority may direct applicants to provide evidence or briefs at least 10 working days before a hearing.

New section 205B provides that a licensing committee or the licensing authority may make certain directions before and at hearings.

New section 205C provides that a licensing committee or the licensing authority may strike out evidence or a brief (in whole or in part) under certain circumstances. It also provides a right of objection in respect of evidence or a brief that is struck out (in whole or in part).

Clause 17 inserts *new Schedule 1AA*, which sets out the transitional, savings, and related provisions for the Bill.

Part 2

Amendments to Sale and Supply of Alcohol Regulations 2013

Clause 18 provides that Part 2 of the Bill amends the Sale and Supply of Alcohol Regulations 2013, which are regulations made under the principal Act. The amendments align the regulations with the amendments that the Bill makes to the principal Act.

Clause 19 amends regulation 16, which concerns territorial authorities adopting joint local alcohol policies. The amendment removes a reference to a provisional local alcohol policy.

Clause 20 amends regulation 17, which concerns public notice of provisional local alcohol policies. The amendments remove references to a provisional local alcohol policy.

Clause 21 revokes regulation 18, which concerns appeals against elements of provisional local alcohol policies.

Clause 22 amends regulation 19, which concerns public notice of the adoption of local alcohol policies. The amendments remove references to a provisional local alcohol policy.

Hon Kiritapu Allan

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sale and Supply of Alcohol (Community Participation) Amendment Act **2022**.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

3 Principal Act

This Act amends the Sale and Supply of Alcohol Act 2012.

Part 1
Amendments to principal Act

- 4 Section 5 amended (Interpretation)**
- In section 5(1), insert in its appropriate alphabetical order:
- trade competitor**, in relation to an application for a licence or for a renewal of a licence, means a person who holds a licence of any type to sell alcohol regardless of—
- (a) whether the person actually sells alcohol; or
 - (b) where the person sells alcohol
- 5 New section 6A inserted (Transitional, savings, and related provisions)**
- After section 6, insert:
- 6A Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 6 Section 79 amended (Territorial authority must produce provisional policy by consulting on draft policy using special consultative procedure)**
- (1) In the heading to section 79, replace “**produce provisional policy by consulting**” with “**consult**”.
 - (2) In section 79(1), replace “produce a provisional policy by using” with “use”.
 - (3) In section 79(2), replace “producing a provisional policy” with “consulting”.
- 7 Sections 80 to 88 replaced**
- Replace sections 80 to 88 with:
- 80 Territorial authority must give public notice of finalised policy**
- (1) If, after consulting under section 79 and finalising a local alcohol policy, a territorial authority wishes to adopt the policy, it must give public notice of the policy.
 - (2) The public notice must be given in accordance with regulations made under this Act.
- 81 When local alcohol policy adopted**
- A local alcohol policy—
- (a) is adopted 30 days after the date on which it is publicly notified; but
 - (b) has no effect until it is brought into force.

82	Territorial authority may discontinue development of local alcohol policy	
	A territorial authority may discontinue the development of a local alcohol policy at any time before it is adopted.	
83	Territorial authority may recommence development of local alcohol policy	
(1)	A territorial authority may recommence the development of a local alcohol policy that it has discontinued developing.	5
(2)	If a territorial authority recommences the development of a local alcohol policy, the territorial authority must consult as required under this Act as if it were developing a new local alcohol policy unless the territorial authority—	
(a)	has completed consultation on the local alcohol policy before its development was discontinued; and	10
(b)	has recommenced the development of the local alcohol policy within 6 years of the date on which its consultation was completed.	
8	Section 89 amended (Disallowance of local alcohol policy)	
	In section 89(1), replace “Once a provisional local alcohol policy has been adopted and ceased to be provisional,” with “If a local alcohol policy has been adopted,”.	15
9	Section 90 amended (When local alcohol policy is in force)	
	In section 90(1), replace “Once a provisional local alcohol policy has been adopted and ceased to be provisional,” with “If a local alcohol policy has been adopted,”.	20
10	Section 102 amended (Objections to applications)	
	Replace section 102(1) with:	
(1)	Any person may object to an application for the grant of a licence, whether as an individual or as a representative of a group or an organisation.	25
(1A)	However, a person who is a trade competitor of the applicant may object only if the person is directly affected by the application in a way that does not relate to—	
(a)	trade competition; or	
(b)	the effects of trade competition.	30
11	Section 128 amended (Objections to renewal)	
	Replace section 128(1) with:	
(1)	Any person may object to an application for the renewal of a licence, whether as an individual or as a representative of a group or an organisation.	
(1A)	However, a person who is a trade competitor of the applicant may object only if the person is directly affected by the application in a way that does not relate to—	35

(a)	trade competition; or	
(b)	the effects of trade competition.	
12	Section 133 replaced (Renewal of licences where relevant local alcohol policy exists)	
	Replace section 133 with:	5
133	Renewal of licences where relevant local alcohol policy exists	
	A licensing committee or the licensing authority may—	
(a)	decline to renew a licence if it considers that renewing the licence would be inconsistent with any policy set out in the relevant local alcohol policy relating to a matter specified in section 77(1)(a) to (d):	10
(b)	impose conditions on any licence it renews if it considers that the renewal of the licence, or the consequences of the renewal of the licence, without those conditions would be inconsistent with the relevant local alcohol policy.	
13	Section 202 amended (Procedure)	15
	Replace section 202(5) with:	
(5)	The hearing of a matter or any part of it by a licensing committee or the licensing authority may be conducted by telephone, audiovisual link, or other remote access facility if the licensing committee or licensing authority considers it appropriate and the necessary facilities are available.	20
14	New section 203A inserted (Licensing committees must establish appropriate procedures)	
	After section 203, insert:	
203A	Licensing committees must establish appropriate procedures	
(1)	A licensing committee must establish appropriate procedures to consider applications.	25
(2)	When doing so, a licensing committee must ensure that those procedures—	
(a)	avoid unnecessary formality; and	
(b)	do not permit parties or their representatives to question other parties or witness of other parties; and	30
(c)	do not permit cross-examination.	
(3)	To avoid doubt, nothing in subsection (1) applies to the licensing authority.	
	Compare: 1991 No 69 s 39	
15	Section 204 amended (Right of certain persons to appear in proceedings)	
	Replace section 204(3) with:	35

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- (3) In the case of proceedings specified in subsection (1) that are before a licensing committee, any of the following persons may appear and be heard (whether personally or by counsel) and call witnesses:
- (a) the applicant:
 - (b) an objector: 5
 - (c) an inspector:
 - (d) a constable:
 - (e) a Medical Officer of Health.
- (4) In the case of proceedings specified in subsection (1) that are before the licensing authority, any of the following persons may appear and be heard (whether personally or by counsel), and call, examine, or cross-examine witnesses: 10
- (a) the applicant:
 - (b) an objector:
 - (c) an inspector:
 - (d) a constable: 15
 - (e) a Medical Officer of Health.
- (5) Despite anything in subsection (2), (3), or (4), the chairperson of a licensing committee or the licensing authority may limit the circumstances in which parties having the same interest in a matter may speak or call evidence in support if the chairperson considers that repetition is likely to be excessive. 20

16 Section 205 replaced (Right of persons to appear in relation to appeal under section 81)

Replace section 205 with:

205 Control of hearings

A licensing committee or the licensing authority conducting a hearing on a matter described in **section 204** may exercise a power under any of **sections 205A to 205C**, after considering whether the scale and significance of the hearing makes the exercise of the power appropriate. 25

Compare: 1991 No 69 s 41A

205A Directions to provide evidence within time limits 30

- (1) A licensing committee or the licensing authority may direct the applicant to provide evidence or briefs to the licensing committee or licensing authority before the hearing.
- (2) The applicant must provide the evidence or briefs at least 10 working days before the hearing. 35

- (3) A licensing committee or the licensing authority may direct a person who is intending to call an expert to provide evidence or a brief to the licensing committee or licensing authority before the hearing.
- (4) The person must provide the evidence or brief at least 5 working days before the hearing. 5
- Compare: 1991 No 69 s 41B

205B Directions and requests before or at hearings

- (1) Before or at the hearing, a licensing committee or the licensing authority may— 10
- (a) direct the order of business of the hearing, including the order in which evidence and briefs are to be presented; or
 - (b) direct that evidence and briefs be— 15
 - (i) recorded; or
 - (ii) taken as read; or
 - (iii) limited to matters in dispute; or
 - (c) direct any person who is presenting evidence or a brief to present it within a time limit.
- (2) Before or at the hearing, a licensing committee or the licensing authority may request a person who has presented evidence or a brief to provide further information. 20
- (3) At the hearing, a licensing committee or the licensing authority may—
- (a) request the applicant to provide further information:
 - (b) direct a person presenting evidence or a brief not to present— 25
 - (i) the evidence or brief if it is irrelevant or not in dispute; or
 - (ii) any part of it that is irrelevant or not in dispute:
 - (c) commission an expert or any other person employed for the purpose to prepare a report on any matter about which a licensing committee or the licensing authority requires further information.
- (4) A licensing committee or the licensing authority must provide a copy of any further information requested under **subsection (2)**, and received before the hearing, to the applicant and every person who has presented evidence or a brief. 30
- (5) **Subsection (6)** applies to—
- (a) any further information that— 35
 - (i) is requested under **subsection (2) or (3)**; and
 - (ii) is received in writing or electronically after the start of the hearing; but
 - (iii) is not given as evidence at the hearing:

- (b) any report that is commissioned under **subsection (3)(c)**.
- (6) A licensing committee or the licensing authority must—
- (a) provide a copy of the further information or report to the applicant and every person who has presented evidence or a brief and stated a wish to be heard; and 5
 - (b) make the further information or report available to any person who has presented evidence or a brief and did not state a wish to be heard.
- (7) However, a licensing committee or the licensing authority does not need to provide further information to the applicant or person who provided the information. 10
- Compare: 1991 No 69 s 41C

205C Striking out evidence or briefs

- (1) A licensing committee or the licensing authority may direct that evidence or a brief (in whole or in part) be struck out if the licensing committee or licensing authority is satisfied that at least 1 of the following applies to the evidence or brief (in whole or in part): 15
- (a) it is frivolous or vexatious;
 - (b) it discloses no reasonable or relevant case;
 - (c) it would be an abuse of the hearing process to allow the evidence or brief (or the part) to be taken further: 20
 - (d) it is supported only by material that, though purporting to be independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter:
 - (e) it contains offensive language. 25
- (2) A licensing committee or the licensing authority—
- (a) may make a direction under this section before, at, or after the hearing; and
 - (b) must record its reasons for any direction made.
- (3) A person whose evidence or brief is struck out (in whole or in part) has a right of objection. 30
- Compare: 1991 No 69 s 41D

17 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act. 35

Part 2

Amendments to Sale and Supply of Alcohol Regulations 2013

18 Principal regulations

This Part amends the Sale and Supply of Alcohol Regulations 2013.

19 Regulation 16 amended (Territorial authorities adopting joint LAP) 5

In regulation 16, replace “a provisional LAP” with “an LAP”.

20 Regulation 17 amended (Public notice of provisional LAP)

- (1) In the heading to regulation 17, replace “provisional” with “finalised”.
- (2) Revoke regulation 17(1).
- (3) In regulation 17(2),— 10
 - (a) replace “provisional” with “finalised”; and
 - (b) replace “notice” with “public notice given by a territorial authority under section 80(1) of the Act”.
- (4) In regulation 17(2)(b), delete “provisional”.
- (5) In regulation 17(3),— 15
 - (a) replace “provisional” with “finalised”; and
 - (b) replace “notice” with “public notice given by a territorial authority under section 80(1) of the Act”.
- (6) In regulation 17(3)(b), delete “provisional”.

21 Regulation 18 revoked (Appeal against element of provisional LAP) 20

Revoke regulation 18.

22 Regulation 19 amended (Public notice of adoption of LAP)

- (1) Replace regulation 19(1) with:
 - (1) A public notice of the adoption of an LAP given by a territorial authority under section 90(1) of the Act must state that the LAP has been adopted. 25
- (2) In regulation 19(2), delete “provisional”.
- (3) In regulation 19(3), delete “provisional”.

Schedule
New Schedule 1AA inserted

s 17

Schedule 1AA
Transitional, savings, and related provisions

5

s 6A

Part 1
Provisions relating to this Act

There are no transitional, savings, or related provisions in this Act as enacted, apart from those set out in sections 406 to 415 (as they read on 18 December 2012).

10

Part 2
Provisions relating to Sale and Supply of Alcohol (Community Participation) Amendment Act 2022

1 Transitional provisions in respect of certain local alcohol policies

- (1) This clause applies to— 15
- (a) a draft or an adopted local alcohol policy in existence immediately before the commencement of this clause:
 - (b) a local alcohol policy in force immediately before the commencement of this clause.
- (2) If this clause applies,— 20
- (a) the draft local alcohol policy may be—
 - (i) discontinued under section 88 as it read immediately before the commencement of this clause:
 - (ii) brought into force in accordance with section 90 (as amended by the Sale and Supply of Alcohol (Community Participation) Amendment Act **2022**): 25
 - (iii) reviewed under section 97:
 - (b) the adopted local alcohol policy may be brought into force in accordance with section 90 (as amended by the Sale and Supply of Alcohol (Community Participation) Amendment Act **2022**): 30
 - (c) the local alcohol policy in force immediately before the commencement of this clause—
 - (i) is to be treated as if it had been—

(A)	adopted under section 81 (as inserted by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022); and	
(B)	brought into force in accordance with section 90 (as amended by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022):	5
(ii)	may be reviewed under section 97.	
2	Transitional provisions in respect of applications for licences	
(1)	This clause applies to an application for a licence that is lodged before the commencement of this clause but not determined before that commencement.	10
(2)	If this clause applies,—	
(a)	in the case of proceedings begun before the commencement of this clause, the procedures specified in this Act immediately before the commencement of this clause continue to apply as if the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022 had not been enacted (apart from section 205C(3)):	15
(b)	in the case of proceedings not begun before the commencement of this clause, the procedures specified in this Act immediately after the commencement of this clause (as amended by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022) apply.	20