

**Submission to the Justice and Electoral Select Committee**

**In the matter of**

**Sale and Supply of Liquor and Liquor Enforcement Bill**

**From *Local Government New Zealand***

**April 2009**

<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>OUTLINE OF THIS SUBMISSION.....</b>	<b>4</b>
<b>PROCESS FOR DEVELOPING THIS SUBMISSION .....</b>	<b>4</b>
<b>HEARING.....</b>	<b>4</b>
<b>PART 1    ALCOHOL IN OUR COMMUNITIES .....</b>	<b>5</b>
<b>THE BROADER CONTEXT.....</b>	<b>5</b>
<b>AREAS OF LOCAL GOVERNMENT RESPONSIBILITY.....</b>	<b>5</b>
<b>RELATIONSHIP TO THE SALE OF LIQUOR (OBJECTIONS TO APPLICATIONS) AMENDMENT</b>	
<b>BILL .....</b>	<b>6</b>
<b>SALE AND SUPPLY OF LIQUOR AND LIQUOR ENFORCEMENT BILL: LOCAL GOVERNMENT</b>	
<b>INPUT .....</b>	<b>6</b>
<b>PART 2    SPECIFIC COMMENTS ON THE BILL .....</b>	<b>7</b>
<b>PART 1 - AMENDMENTS TO THE SALE OF LIQUOR ACT (CLAUSES 4-48).....</b>	<b>7</b>
<b>PART 2 - AMENDMENTS TO SUMMARY OFFENCES ACT 1981 (CLAUSES 49-53).....</b>	<b>20</b>
<b>PART 3 - AMENDMENTS TO LAND TRANSPORT ACT 1998 (CLAUSES 54-60).....</b>	<b>20</b>
<b>PART 3    CONCLUSION.....</b>	<b>21</b>

## Executive Summary

*Local Government New Zealand* supports the Sale and Supply of Liquor and Liquor Enforcement Bill. We consider it to be a practical and useful response to managing alcohol in our communities and providing greater community input into decision making. We consider that locally based alcohol policies or plans are the best mechanism for providing community input into decision making, considering local impacts and taking a comprehensive approach to alcohol related issues and liquor licensing.

This Bill, however, will only go part of the way. The social and economic costs of alcohol in New Zealand are significant. We will go into detail on these costs as we are certain you will receive this information in other submissions. While the local government sector supports this Bill, we strongly believe that a lot more needs to be done to address the sale, supply and consumption of alcohol in New Zealand. We consider that the Law Commission's review into the Sale of Liquor Act 1989 provides opportunities to consider the broader issues. At this stage the relative timing of this Bill vis-à-vis the review is unclear. This submission is made on the understanding that this Bill will go ahead despite the review being brought forward.

In summary, this Bill would make the following changes of particular significance to local government:

1. Prohibit the supply of liquor to a minor by anyone other than a minor's parent or guardian, or a person that has the consent (implied or explicit) of the minor's parent or guardian

**Local government supports the intent of these provisions but has concerns about their practicality and ability to be effectively implemented and has recommended an alternative approach**

2. Tighten definitions to stop the sale of liquor by convenience and small grocery stores

**Local government supports the intent of these provisions, but considers that the size limit should be increased to 200 sqm retail floor area**

3. Clarify that supermarkets (and grocery stores) cannot extend the range of liquor they sell beyond wine, beer, cider, and mead, by any means

**Local government supports this provision**

4. Preventing the establishment of liquor stores within stores or immediately adjacent to the supermarket or other store

**Local government supports this provision**

5. Make it explicit that local alcohol plans must be given effect to in licensing decisions

**Local government strongly supports these provisions**

6. Provide for social impacts to be considered in liquor licensing decisions

**Local government supports these provisions provided that social impact assessments are not mandatory for every application but only when deemed necessary by the local authority**

7. Provide for longer temporary closures of licensed premises

**Local government supports this provision.**

As a general point, we note that the Bill does not provide any additional mechanism for councils to recover the additional costs imposed through changes to the liquor licensing processes or to cover any development of “Local Alcohol Plans”. Currently many councils fund liquor licensing by up to 50% from rates while any plan or policy development is also funded from rates. In most other areas of council responsibility, councils can set fair and reasonable fees through their Annual Plan process. In contrast, liquor licensing fees are set by legislation. Local government seeks a change to the manner in which liquor licensing fees are currently set so that their real (and changing) costs can be more closely reflected in fees and charges. This is a change we will be seeking through this Bill and the Sale of Liquor Act review.

Finally, there may be a need to clarify the relationship of aspects of the Bill to the Resource Management Act 1991 (particularly around location and density controls) so that it is clear which aspects take precedence, that there is no duplication, and no grounds for revisiting consent decisions in the liquor licensing process.

### **Outline of this submission**

Part 1 of this submission provides some broad context to the issues.

Part 2 sets out specific comments on the Bill.

Part 3 provides a conclusion.

### **Process for developing this submission**

*Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of New Zealand local government. This submission outlines a general local government view on the Bill.

*Local Government New Zealand* invited all member local authorities to contribute comments to assist in formulating this submission.

A *Local Government New Zealand* working group of technical experts reviewed this submission and it was endorsed under delegated authority by Lawrence Yule, as the President of the National Council.

### **Hearing**

*Local Government New Zealand* wishes to be heard on this submission.

## **Part 1 Alcohol in our communities**

### **The broader context**

The many changes over recent decades liberalizing access to alcohol have brought benefits to communities, but also many significant costs. There is a broad sense that the 'pendulum' has swung too far with the liberalization New Zealand has experienced since the changes in the late 1980s. Furthermore the current tools are simply not adequate to deal with the challenges facing us in 2009 and into the future.

Challenges facing us include:

- an established culture where drinking to excess is normalised and often encouraged
- sales to minors and consumption by minors
- sales from dairies/small grocery stores (which the Act never intended)
- design and marketing of products aimed at minors
- low cost alcohol and loss-leading practices by large retailers
- the detrimental impact of the Commerce Act on local management of alcohol
- a perceived lack of community input into licensing decisions under the current Act
- inadequate funding for local government to manage alcohol in the community.

As the Committee will be aware, community concerns about alcohol and its impacts have been increasing over recent years. Communities are demanding more say in decision making about where and how alcohol is sold, supplied and consumed. There is support in local government for more community input into licensing decisions and the consideration of the wider impacts of alcohol sale and supply in the community.

We consider that the proposals in this Bill will go some way towards addressing our concerns. However, the broader review of the Sale of Liquor Act is critical in taking a holistic and comprehensive approach to these issues of great import to our communities and our nation.

### **Areas of local government responsibility**

Local authorities have broad responsibilities for promoting the social, economic, environmental and cultural wellbeing of communities under the Local Government Act. As such, councils implement a wide range of strategies and policies to fulfill these responsibilities.

Through District Licensing Agencies, territorial authorities, have significant and wide ranging statutory roles under the Sale of Liquor Act. Along with the Police and Public Health, local government is at the forefront of managing alcohol in our communities.

Many local authorities have also adopted local alcohol strategies policies in order to take a comprehensive district or city wide approach to managing alcohol and its effects and have addressed issues as broad as alcohol at council functions, sponsorship and youth access to alcohol.

Approaches will vary between local authorities as they address the unique needs and aspirations of their communities, including different population groups and neighbourhoods. Nevertheless, alcohol and its effects, is an issue for communities right across New Zealand.

### **Relationship to the Sale of Liquor (Objections to Applications) Amendment Bill**

In June 2008, the Sale of Liquor (Objections to Applications) Amendment Bill [known colloquially as the Hawkins' Bill] was tabled in Parliament. It proposed to amend the Sale of Liquor Act (SOLA) to: provide for more community input into liquor licensing decisions; require applicants to do a social/economic impact assessment which would be subject to public notice requirements; and allow the authority to take additional matters into account when an application is opposed.

*Local Government New Zealand* submitted to the Social Services Select Committee on this Bill. While we supported the intent of the Bill, we noted that there would not be widespread support for it as it stood. The mandatory requirements for impact assessments on every application were not supported by local government. Local government considered that local discretion around the use of/requirement for impact assessments is required. We considered that local alcohol strategies - where they exist - may be the best place/context to consider the need for a social impact assessment, be it at a district/city or community level or on an individual application basis. The Committee held hearings on the Bill, but made it clear that it would be passing all the submissions and hearings information to the Select Committee that considers the Sale and Supply of Liquor and Liquor Enforcement Bill.

### **Sale and Supply of Liquor and Liquor Enforcement Bill: local government input**

The feedback local government provided on the Sale of Liquor (Objections to Applications) Amendment Bill was taken into account by the previous Government in developing the Sale and Supply of Liquor and Liquor Enforcement Bill. Although the process for developing the Bill was very time constrained, *Local Government New Zealand* had some opportunities to provide input based on feedback received from the sector. At that time, we expressed general support for the changes with some concerns about the enforceability of the prohibition on sale to minors, and the practical considerations relating to social impact assessments. Our comments on the Bill, as introduced to Parliament, are outlined in Part 2 below.

## **Part 2                      Specific comments on the Bill**

### **Part 1 - Amendments to the Sale of Liquor Act (Clauses 4-48)**

#### **Generic amendment proposed to Part 1**

We consider that an amendment is required throughout Part 1 of the Bill in order to give full effect to Local Alcohol Plans (LAP). All relevant clauses of the Bill need to be amended so that, in addition to information that applicants are currently required to provide for licences or renewals, applicants must provide “any additional information required by a local alcohol plan” .

It would also be worth clarifying that a number of local authorities - for example adjacent councils with overlapping issues - may want to develop a joint LAP.

#### **Clause 2 - commencement**

##### *Content*

This clause provides for the commencement of the various parts of the Bill as follows:

- Part 1 (Amendments to the Sale of Liquor Act) comes into force on a date determined by the Governor-General through an Order in Council.
- Part 3 (Amendments to the Land Transport Act) commences 6 months after assent
- The remainder of the Act (including amendments to the Summary Offences Act) commences the day after assent.

##### *Comment*

We propose an amendment to this clause. Local government would prefer a set date for the commencement of the Bill (particularly Part 1). We suggest that the Bill be given immediate effect on the day it receives Royal Assent.

There is some concern that without a set date, the commencement of the legislation could be delayed. We do not consider that there needs to be a delay to the enactment of the Bill while any regulations are drafted. To highlight the possible consequences, local government is still waiting for regulations to be drafted under the Local Government Act, enacted in 2002. We do not wish to see the legislation delayed in any way pending regulations. We suggest that those councils who are ready to proceed do so, and any regulations developed be implemented via review of their policy.

If the Bill is to achieve its aim, then a new system of setting liquor licensing fees and charges needs to be given effect as soon as possible. As noted earlier councils face many challenges funding liquor licensing activities, and these challenges will only increase with the enactment of this Bill. We recommend a review of the setting of fees and charges to government as a matter of urgency.

At this stage the relative timing of this Bill vis-à-vis the Law Commission's review of the Sale of Liquor Act is unclear. This submission is made on the understanding that this Bill will go ahead despite the review. However we understand that there is a possibility the two may eventually be considered together. Transitional provisions may require re-consideration if that is the case.

## **Clause 5 - interpretation**

### *Content*

This clause provides definitions of key terms in the Bill.

### *Comment*

We suggest some amendments to this Clause.

Local government prefers the term "Local Alcohol *Policy*" to "Local Alcohol *Plan*". We suggest that what the Act envisages is more akin to other policies developed by local government such as Gambling Venue Policies. We consider that Local Alcohol Policies should provide a contextual framework for the consideration of local responses.

We also seek to have definitions for criteria relating to grocery stores included in the Bill. The definition of a grocery store (and distinguishing these from dairies) has been a significant challenge and concern for many involved in liquor licensing. Later sections of the Bill deal with grocery stores in more detail, however, we suggest that the Committee should consider including definitions, particularly for "principal business" and "main order household foodstuff requirements". Case law has provided greater clarification of key terms; however, we consider that legislative definition could increase certainty in this area.

## **Amendments relating to on-licences (Clauses 6 - 13)**

### *Summary*

Clauses 6-13 provide for "Local Alcohol Plans" be given effect in decisions relating to on-licences. They cover applications, variations and renewals, and the provisions are essentially repeated for each type of on-licence.

Under the current process:

- unopposed applications can be granted by the District Licensing Agency (DLA) (with or without conditions)
- opposed applications go to the Liquor Licensing Authority (LLA)

The Bill proposes that applications will have to be consistent with the Local Alcohol Plan (LAP). This means that:

- unopposed applications consistent with LAP can be granted by DLA
- unopposed applications inconsistent with LAP can be granted by DLA with conditions that ensure it becomes consistent with the LAP
- unopposed applications that cannot be made consistent with the LAP through conditions can be declined by the DLA (and appealed to the LLA)
- opposed applications will still go straight to the LLA

The various clauses are commented on in detail below. The general structure of this section is also repeated for off-licence, club licences and special licences, though there are some unique additions for off-licences which are outlined in the following section. We are generally in support of these clauses (though have some specific comments on particular aspects).

### **Clause 6 - notifications**

#### *Content*

Clause 6 requires applicant to notify the DLA when and where public notification of their application will occur.

#### *Comment*

We support this clause as it enhances one of the overall purposes of the Bill, to enhance public participation in the licensing process.

DLAs already have the ability to determine the publications in which notifications can be placed. However, some DLAs have expressed concerns about applicants deliberately advertising at times which result in little public awareness, such as Christmas Eve or New Years Eve. This means that interested or affected parties may not be made aware of the application. Clause 6 would require the applicant to inform the DLA of when and where notification would occur. The DLA may be able to negotiate with the applicant if a particularly inappropriate time is chosen.

Alternatively the DLA could place the notice on behalf of the applicant and charge the applicant (as under the Resource Management Act 1991) or there could be a requirement for a notice to be placed on a “working day” as defined in s2 of SOLA.

Overall, there is a view in local government that the current methods of public notification are not effective in informing the community. The broader issue of community notification, information and input need to be addressed in the wider review of the SOLA. We suggest that new options need to be considered: in some areas mail drops to surrounding residents may be necessary, while greater use of notification via email or websites could be another useful option.

## **Clause 7 - applications**

### *Content*

This clause prevents a DLA from granting an on-licence if there is an applicable LAP and the application is inconsistent with LAP. The DLA must impose conditions if these are required by LAP.

### *Comment*

We support this clause. It provides for LAPs to be given effect in the statutory decision making process. We consider that LAPs are a good mechanism for providing community input and greater local control over liquor licensing decisions.

## **Clause 8 - Criteria**

### *Content*

This clause provides that the LLA must not grant an on-licence, where there is an LAP, if it is inconsistent with the LAP, *and* the DLA has not notified LLA that it supports the granting. Further the LLA must impose conditions consistent with the LAP should it grant the licence.

### *Comment*

We support this Clause. It means that the LLA can't grant a licence if the DLA does not agree, and even if the DLA does agree, the LLA must impose any conditions necessary under LAP.

## **Clause 9 - support**

### *Content*

This clause provides for LLA and DLA to impose conditions provided for in LAP

### *Comment*

We support this clause which gives effect to the LAP as it is central to the entire Bill. We consider that there may be some aspects of the LAP that may need to be given effect to all licensed premises once the policy comes into force, and regardless of the date of their licence renewal. For example, should a council wish to establish a policy requiring licences to adopt a one way door policy; it would be more equitable for this to be imposed on all licences on the same date rather than waiting for renewals.

## **Clauses 10-13 - variations and renewals**

### *Content*

These clauses essentially repeat the content of cl.6-9. They provide that variations (cl.10) and renewals (cl.12-13) cannot be made if they are inconsistent with LAP. Clause 11 essentially repeats Clause 6 on notifications.

### *Comment*

We support these clauses as they give effect to the LAP during variations and renewals.

### **Amendments relating to off-licences (Clauses.14-22)**

Clauses 14-22 largely repeat the content of clauses 6-13, requiring that LAPs be given effect through decisions relating to off-licences. The key difference relates to small groceries.

### **Clause 15 - applications**

#### *Content*

This repeats the requirements to give effect to LAP; however it requires all applications for grocery stores under 150sqm to be dealt with by the LLA even if they are unopposed.

#### *Comment*

We support the requirement for off-licence decisions to give effect to the LAP. However, we have some concerns about the provisions relating to small grocery stores.

Most councils do not support all small grocery applications (under 150sqm in the Bill) going to the LLA automatically. Most consider that the DLA should be able to consider the application first, which could then be referred to the LLA.

See also our comments on Cl. 17 relating to the definition of grocery stores.

### **Clause 16 - Criteria for LLA**

#### *Content*

This clause essentially repeats cl. 8 but has particular additions.

Cl. 16 (1A) and (1C) provide that the LLA must not grant an on-licence, where there is an LAP, if it is inconsistent with the LAP, *and* the DLA has not notified LLA that it supports the granting. Further the LLA must impose conditions consistent with the LAP should it grant the licence.

Cl. 16 (1B) introduces a new element, preventing the LLA from granting a licence situated within a shop unless it is a supermarket or grocery store.

#### *Comment*

We support Cl. 16 (1A) and (1C) as the LLA can't grant a licence if the DLA does not agree, and even if the DLA does agree, the LLA must impose any conditions necessary under LAP.

We also support Cl. 16 (1B) as it prevents the 'store within a store' and any premises other than supermarkets and grocery stores (above 150 sqm) holding an off-licence. Note our previous comments about the definitions of grocery stores.

### **Clause 17 - types of premises**

#### *Content*

Cl. 17(1) amends the definition of grocery stores by adding a requirement that they have "a floor area of at least 150msq".

Cl. 17(1A) provides for a grocery store less than 150sqm to hold a licence if it is more than 10km from any other supermarket or grocery store and it would not be economic to establish a supermarket or grocery store.

#### *Comment*

We support the setting of a minimum size limit for grocery stores, to avoid what are essentially dairies from holding liquor licences. However, there are a number of challenges in defining a grocery store that require further consideration.

There is general, but not absolute, support within local government for minimum size to be a determining factor in defining grocery stores. Some councils believe that other criteria such as the principal purpose of the business, turnover, controls over the type of alcohol sold, and character of the licensee are more useful criteria. We believe both size and other criteria can be used together to provide greater clarity in this problematic area.

Firstly, we recommend that 200sqm as a preferable size limit. We consider that this is a reasonable limit given the 1000sqm requirement for supermarkets as the only other store in this category.

Secondly, we recommend that any size limit relate to "retail floor area" rather than the proposed "floor area". Under the proposed terminology stores can include non-retail areas such as store rooms and employee rest areas in their floor size. This makes a mockery of the law as various extensions to what are essentially dairies have been undertaken in the past to qualify for an off-licence. A requirement of "retail floor space" (with any necessary definitions) could prevent this.

Also we note our comments in relation to Cl. 5 where we seek definitions of key terms such as "principal business" and "main order household foodstuff requirements" that relate to grocery stores.

Cl. 17(1A) is essentially a rural exemption, allowing grocery stores less than 150sqm to hold a licence given distance and economic factors. We support the rural exemption generally, though consider that councils may wish to provide more local context within their LAP.

## **Cl. 18 - Conditions of off-licences**

### *Contents*

New section 3B restricts the type of alcohol that can be sold from off-licences within a shop or adjacent to a supermarket and under the same management as the supermarket to what may be sold by a supermarket - wine, fruit wine, mead and beer.

3D restricts off-licences whose principal business is the manufacture or sale of alcohol to continue to have the manufacture or sale of alcohol as its principal business.

### *Comment*

We support this clause. It clearly restricts grocery stores and supermarkets to selling their current range of alcohol: this cannot be expanded into spirits etc. It thereby prevents the 'store within a store' selling spirits.

"Loss leading" of alcohol (ie selling at a loss) by supermarkets is a significant concern to many councils and communities. We consider it imperative that there is no expansion of supermarket sales beyond the existing range of beer, wine and cider, as the consequences of cut prices spirits from supermarkets would be hugely detrimental in the community.

We note that there may need to be definition of "adjacent" in the Bill.

## **Cl. 19 - Variations**

### *Content*

This mirrors cl. 10 requiring variations on conditions to comply with any LAP

### *Comment*

We support this clause for the reasons noted previously in relation to Cl.10.

## **Cl. 20 - Renewals**

### *Content*

This clause mirrors cl. 6 requiring applicant to notify DLA or publication of application

### *Comment*

We support this clause for the reasons noted previously in relation to cl. 6.

## **Cl. 21 - Applications**

### *Content*

This clause mirrors cl. 7 & 15 prevents the DLA granting applications inconsistent with the LAP and any applications for grocery stores under 150sqm.

### *Comment*

We generally support this clause, but note our comments in relation to clauses 7, 15 & 17 around local decision-making and the size of grocery stores.

## **Cl. 22 - Renewals**

### *Content*

This clause provides for the renewal of off-licences and mirrors cl.18.

### *Comment*

We support this clause, for the reasons outlined in relation to cl. 18. However we believe there is an error within it. The new subsection (2)(a)(ii) should not include the word “not” and should read:

(ii) that shop is a shop of a kind described in section 36(1)(d)

## **Amendments relating to club licences (Clauses 23-30)**

These clauses mirror the provisions for on-licences. Our previous comments on on-licences apply to the relevant provisions here.

## **Amendments relating to special licences (Clauses 31-36)**

These clauses mirror the provisions for on-licences. Our previous comments on on-licences apply to the relevant provisions here.

## **Local alcohol plans (Clause 37)**

### **Clause 37**

### *Content*

This clause inserts a New Part 4A into the SOLA including a new:

- S84A which provides for territorial authorities to adopt LAPs
- S84B which sets out the contents of an LAP

## *Comments*

### **S84A**

This section empowers any territorial authority to adopt, amend or revoke an “alcohol plan” using the Special Consultative Procedure (SCP). It may be necessary to clarify that this is the SCP as set out in the Local Government Act 2002. As noted earlier in our submission there is support for communities having a greater say through the development of a local alcohol policy. Councils consider that the SCP is the most appropriate mechanism for community input and consultation on the LAP. This is the most robust consultation process available, is used for similar policies (like Gambling Venue Policies) and for other alcohol related tools such as Liquor Control Bylaws. We consider that councils should review their LAP at least every 6 years (using a 6 year period provides for the process to fit with the three year cycle of the Long term council community plan (LTCCP) process, but we consider that 3 years is too short a period). Councils could review their LAP at any other time providing they follow the SCP.

We seek some clarification from the Committee as to whether LAPs can exceed (but not undermine statutory limits) e.g. could councils place a larger (i.e. 250sqm) but not smaller size limit on grocery stores?

### **S 84B**

We consider that there are a number of other factors that should be considered in S84B to ensure that councils have the necessary tools to develop robust and effective LAPs.

We propose the following amendments to S84B:

S 84(B) be amended to read

“A local alcohol plan may include requirements relating to...”.

Add a new section after 84B

- (h) the size of outlets
- (i) any other matters the territorial authority considers relevant

Add to s84B(d):

- (d) (iii) other licensed premises
- (d) (iv) private residences
- (d) (v) places of worship

Note S84B(l) refers to a “policy (which may include a statement of circumstances in which applications are to be granted or refused) on how any criteria or conditions in the plan are to be applied to applications ...”. We have recommended that the term “local alcohol plans” be changed to “local alcohol policies” in the Bill. As such the term “policy” would apply to the wider LAP. The detailed “policy” referred to in S84B resembles current liquor licensing policies, and should be re-named “Liquor licensing policy” or given another term. In the event the LAP may incorporate the detailed information in S84B.

## **Amendments relating to management of licensed premises (Clause 38)**

### *Content*

Clause 38 provides for the mandatory cancellation of a manager's certificate after 3 incidents relating to minors within 2 years and provisions detailing the process for such cancellation. It prohibits them from being a manager, temporary manager or acting manager for five years after the third conviction.

### *Comment*

We support the intent of this Clause to remove repeat offenders from the system. However, we do not consider that this provision goes far enough. Manager certificates should be cancelled for 3 offences of *any type* under the SOLA within 2 years, not just those relating to minors.

## **Advertising and promotions (Clause 39)**

### *Content*

This Clause inserts a number of new sections:

- S136A - sets out principles around promotions not inconsistent with promotion of responsibility and moderation, minimizing exposure of children and young people, and not having strong appeal to children or young people
- S136B - provides for the Government to establish a body to review and enforce codes and deal with breaches and complaints
- S136C - empowers the Director General of Health to issue cease and desist orders
- S136G provides for fines of \$200,000 for body corporate and \$60,000 in other cases

### *Comment*

Alcohol advertising is currently self-regulated by the advertising industry through the Advertising Standards Authority. This Clause gives effect to the 2008 review which promoted a shift from self-regulation to enforced regulation. This review considered co-regulation (by government and the industry) and full government regulation. The preferred option of the review and in this Bill is enforced self-regulation.

We do not believe that this Bill goes far enough in controlling advertising and promotion. We consider that the current system of control is ineffective and needs radical change. We are facing significant alcohol related harm across New Zealand and there is a need for greater control of alcohol advertising and promotions both through the media and on site.

The proposed system will require close scrutiny to ensure the principles on which it is based are upheld. For example, the principles refer to limiting exposure of young people to alcohol, yet supermarkets often have large alcohol displays immediately on

entering a supermarket.

There is a great need to strengthen controls on promotion. We expect this to be seriously addressed in the Law Commission's review, but would like to see a stronger stance taken in this Bill also.

### **Amendments relating to offences and enforcement (Clauses 40-46)**

#### *Content*

These clauses provide for amendments or additions to current sections:

- restricting the defence for sale, or permitting minors to be in a restricted or supervised area, to having sighted an evidence of age document (Cl. 40 and 42)
- creating an offence to present, sell, hire, lend, give or otherwise dispose of a false evidence of age document and provides for a \$2000 fine (Cl 44)
- diversion of minors to alcohol treatment programmes instead of paying infringement fees (Cl. 43)
- prohibit the supply of liquor to a minor by anyone other than a minor's parent or guardian, or a person that has the consent (implied or explicit) of the minor's parent or guardian (Cl. 41)

#### *Comment*

We support the general intent of these provisions but have a number of practical concerns with two of them. We support Clauses 40, 42 and 44 regarding evidence of age documents. These are overdue provisions.

We support the intent of diverting minors to treatment programs, but issue a note of caution regarding the availability of youth alcohol and drug services. Anecdotal feedback from our members suggests that it is already difficult for youth to access relevant services, and this Bill would only increase demand. Government may need to look at corresponding funding in this area to provide for any changes in demand.

Whilst we support the intent of Clause 41 relating to supply, we are concerned about its practicality and ability to be implemented. Feedback from liquor licensing staff in local government suggests that proving consent (implied or explicit) will be extremely difficult to do in practice. There is no 100% perfect approach in addressing supply and consumption by minors. However, rather than the current proposal in Cl 41, we propose that the Bill provide that alcohol can only be consumed by minors under the direct supervision of parents or guardians. The parent or guardian will have to be present supervising at the time of consumption. This would avoid what we perceive will be very complex provisions around determining consent for supply (be it "implicit" or "explicit").

We suggest another amendment not currently contained within the Bill relating to Controlled Purchase Operations (CPOs). These are essentially “sting operations” run by the Police, DLA and Public Health to detect sales to minors). Currently the law does not provide an exemption to allow youth taking part in CPOs to lie about their age. We recommend an amendment to s172 to exempt young people volunteering for CPOs from the 172 offences of falsely representing their age.

We note that there also seems to be a lack of clarity about whether the law allows for “Shoulder Tap” CPO type Operations outside off-licences to approach patrons entering being asked to purchase. This needs to be clarified in the legislation.

### **Clause 45-46 - Closures**

#### *Content*

These clauses provide for closures by Police due to riots or fighting to have effect for 48 hours.

#### *Comment*

We support this clause. There is a flaw in the current system where closures only apply for that day. This means that a closure could be issued at 11.45pm and will only have effect until midnight. Such a provision is clearly unhelpful. We support the expansion of closure orders for 48 hours.

### **Amendment of regulation-making power (Clause 47)**

#### *Content*

Cl. 47 allows for the making of regulations providing for the preparation and contents of LAPs.

#### *Comment*

See our comments on Cl.2 regarding commencement

### **Provisions enabling limited renewal of certain otherwise unrenovable licences (Clause 48)**

#### *Content*

This Clause sets out a three year transitional period for on-licences and club licences after Cl. 12 (LAPs) comes into force. The Bill provides for one renewal during the transition period under the current regime, but any future renewals can not extend beyond the transition period if they are not consistent with any LAP.

In relation to off-licences the transition period is the earlier of three years from the commencement of Clause 17 (limiting small groceries from having licences) or

Clause 22 (giving effect to LAPs on renewals)

A new s258 clarifies that no compensation is available for either failure to receive a renewal, no longer being eligible for an off-licence (e.g. small groceries), for the imposition of new conditions by the LLA, or for the impacts of the transitional provisions. It should also specify this in regard to DLA decisions.

*Comments*

We support this Clause.

## **Provisions consequential on enactment of Part 1**

### **Part 2 - Amendments to Summary Offences Act 1981 (Clauses 49-53)**

#### *Content*

This makes it an offence under the Summary Offences Act, with a consequent fine of up to \$2000, to supply to a minor without parental consent.

#### *Comment*

We support the inclusion of significant fines in the legislation. However, we refer the Committee to our comments on Clause 41 where we point out the difficulties in implementing a “consent” based provision. We have suggested requiring alcohol to be consumed only under the direct supervision of a parent or guardian.

### **Part 3 - Amendments to Land Transport Act 1998 (Clauses 54-60)**

#### *Content*

This amends the Act to make it an offence for young people without a full licence to drive with any alcohol at all in their blood. (ie it institutes provisions for zero blood alcohol content for drivers under 20 without a full licence).

#### *Comment*

We support this provision.

## **Part 3 Conclusion**

New Zealanders have become increasingly concerned, over recent years, about the detrimental impacts of alcohol sale and consumption in our communities. There is a sense that the pendulum has swung too far in favour of liberalization of the sale and supply of alcohol, and that there are insufficient tools available for communities to correct this balance. There is a strong desire from the community to have more of a say in liquor licensing decisions, and for local authorities to have greater local discretion.

This Bill is an important first step in providing for greater local control over licensing decisions. By providing for Local Alcohol Plans (policies) which set a context for local decision making to have greater effect in the statutory process, local community wishes will have a stronger voice in these processes.

A number of other significant issues need to be addressed if we are to reverse the increasing levels of alcohol related harm we are seeing in our communities. Local government endorses the need for a comprehensive review of laws relating to the sale and supply of liquor, currently being undertaken by the Law Commission. This Bill is useful in that it will address some aspects of the picture, but many more, complex issues remain. We ask the Committee and the Government to take a broad and comprehensive consideration of both this Bill and the SOLA review.