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Sale and Supply of Alcohol (Extended licensing hours during Rugby World Cup) Bill

Local Government New Zealand's submission to Justice and Electoral
Committee

20 August 2015

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We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand.

Introduction

Thank you for the opportunity to comment on the Sale and Supply of Alcohol (Extended licensing hours during Rugby World Cup) Bill ("the Bill"). This submission has been prepared on behalf of New Zealand's territorial authorities who have a legislated role for alcohol licencing and District Licensing Committees under the Sale and Supply of Alcohol Act 2012 ("the Act"). LGNZ has endeavoured to discuss this Bill with its members and establish a sector view within the very tight timeframe for public consultation.

LGNZ and its members support the intent of the Bill to provide communities with the opportunity to gather together to enjoy the 2015 Rugby World Cup 2015 (RWC). We recognise the significance of this event to New Zealanders and acknowledge how the hospitality sector can help facilitate community gatherings.

However, LGNZ does not consider the Bill is necessary. The special licensing regime under the Sale and Supply of Alcohol Act 2012 ("the Act") is the most appropriate mechanism to enable the watching of special events in licensed premises. Councils are comfortable with certain licensed premises being granted special licences to hold RWC-related events, including events outside their normal permitted trading hours. Many licensees have already applied for special licences for RWC-related events, and in some areas, licenses have already been granted. Having said this, LGNZ and its members do recognise that improvements could be made to the existing special licensing regime and would strongly encourage the Ministry of Justice to facilitate this work.

We strongly endorse the Act's current position that decisions around alcohol are best made at the local level, on a case-by-case basis with input from communities, through the following mechanisms:

- **District Licencing Committees (DLCs)**, which enable applications for licences to be assessed on their individual merits and appropriate conditions to be set based on the type and location of the premises; and
- **Local Alcohol Policies (LAP)**, which provides communities with the ability to determine how alcohol is sold in their communities.

Extensive research and engagement went into developing the Act and we note that to date, the focus has been to tighten, rather than extend, the hours for premises supplying and selling alcohol. It would be disappointing to see this Bill override existing LAPs in areas such as Tasman, Ruapehu and Waimakariri, where councils have gone to considerable effort to establish LAPs that their community and local hospitality industry have agreed upon and adopted.

If the Bill is to progress, LGNZ and its members would like to work with the Select Committee to ensure the Bill can be implemented in the best manner possible for our communities. We have identified a number of drafting issues with the Bill, in that it:

- does not establish any conditions to minimise alcohol-related harm; and
- raises a number of concerns regarding implementation.

We outline below our recommendations to address these concerns and ensure that the intent of the Act can be preserved.

Optimising the special licence regime

LGNZ considers the special licensing regime is the suitable mechanism for facilitating special events such as the 2015 RWC and we strongly support decision-making at a local level, on a case-by-case basis. We can foresee many future events such as the Olympics and Football World Cup that could justify a similar extension of licensing hours like the RWC 2015. As an alternative to the enactment of special legislation in each case, our preferred approach would be to utilise the special licensing regime for this.

Our members are generally supportive of the process to consider and issue special licences. As noted above, many DLCs have already received applications and in some cases, special licences have been issued.¹ However, we have identified some implementation issues that need to be addressed going forward, and recognise that some parties may consider the process to be costly and time consuming.

LGNZ recommends that the Ministry of Justice consider:

- delegating responsibility for special licence applications to council staff, with urgency under certain circumstances, to enable decisions on special licences to be made more quickly and with fewer costs associated;
- whether further guidance and clarification may help applicants understand the process and timeframes necessary for submitting a special licence application and the grounds upon which they can be approved (where specified in LAPs);
- whether DLCs could set guidance for the granting of special licences for events such as the RWC 2015; and
- whether further support is required for DLCs around the granting of special licences.

LGNZ notes that cost of special licences can be prohibitive for many clubs in rural areas, and that this is impacting on the community. Clubs play an important role in rural areas, providing a place a hub for community activity and councils advise that gatherings are now less frequent. We encourage the Ministry of Justice to investigate this issue further, alongside the implementation issues we have raised above.

Recommendation

LGNZ recommends that the Ministry of Justice meet with LGNZ and its members to discuss the special licensing regime and how it can be optimised for future events of a similar nature.

LGNZ recommends that the Ministry of Justice meet with LGNZ and rural councils to understand the unintended impact that the special licensing regime is having on rural communities.

¹ We understand that the Select Committee has requested information on special licences from DLCs, in order to understand the number received to date and conditions applied.

Amendments to address implementation of the Bill

If the Bill is to progress, LGNZ and its members would like to work with the Select Committee to address the following points and make amendments to improve its implementation across New Zealand.

Types of premises

LGNZ is concerned that the Bill does not make any differentiation between the type and location of premises that will be covered by the Bill. As drafted, the Bill focuses on all club licences and on-licences. It is questionable whether the Bill is intended to cover all types of premises that fall under the category of on-licence (eg restaurants, BYO restaurants, caterers, function centres, cinemas, brothels) or whether it should be focused solely on bars, pubs and taverns (the venues most likely to screen the RWC).

The Bill also makes no distinction between premises located in the central business district (CBD) of a region and those premises located in the suburbs or rural areas. The impact of extending the licensing hours for a premise within a CBD will be quite different to that of a premise located within a suburban environment. In the normal licensing process, a DLC may set different conditions to address the impact the individual premise would have on its specific environment (ie noise management) and establish measures, on a case-by-case basis, to minimise alcohol-related harm (ie a one way door policy).

Recommendation

LGNZ recommends that the Bill further clarify the type of on-licence premises that are intended to be covered, or as noted below, introduce some specific conditions to minimise alcohol-related harm.

Conditions to minimise alcohol-related harm

The Bill sets out no conditions to reinforce the need for licensees to minimise alcohol-related harm, a key foundation of the Act. We consider that conditions should be included within the Bill so that potential alcohol-related harm is minimised. This is particularly important for premises near sensitive sites, or with recent infringements, or for those premises that may essentially be eligible for 24/7 hour trading during the 2015 RWC period.

Relying on the sole provision of “implementing a system to ensure that the primary purpose of persons...is watching the game or games”² will be difficult to both monitor and enforce. Extending the licencing hours to all club and on-licence premises will also substantially widen the scope for monitoring and enforcement, for not only council licensing inspectors, but also Police and Medical Officers of Health. In areas where a larger numbers of premises may now take up the opportunity to extend their licensing hours without an individual special licence, this may place a strain on resourcing, potentially leading to an increased risk for alcohol-related harm.

Given the timing of the games, it is also unlikely that the public will have access to public transport options. A reduction in safe transport options creates an additional risk for communities.

We strongly encourage the Select Committee to consider the introduction of further conditions to minimise potential alcohol-related harm. Options used by DLCs at present include (but are not limited to):

- a one-way door policy;
- the need for special licence holders to be vigilant in monitoring intoxication levels at the time of entry, as well as during the event;

² Clause 5(2)(ii) of the Bill.

- entry by ticket only, but no restriction on when such tickets may be purchased;
- ensuring substantial food (such as a cooked breakfast) is available prior to and during the match;
- only beer, or wine, or spirits in glasses or RTD bottles/cans may be sold or supplied during the extension of hours; and/or
- a noise management plan, including measures such as restrictions on the use of outside areas during extended hours.

Recommendation

LGNZ recommends that the Select Committee consider the introduction of additional conditions into the Bill to minimise alcohol-related harm and preserve the intent of the Act.

Conflict between extended hours and district planning regulations

The Bill does not consider the district planning regulations that sit alongside the alcohol licensing system. District plans and resource consents apply to on-licenses and may specifically restrict the hours of operation. In some cases the district plan may specify operating hours as a permitted activity condition (resource consent may not be required) and in other instances, a resource consent may set the hours for an activity. These are in order to minimise local environmental effects.

It is likely that in suburban locations particularly, the Bill will be in conflict with the district plan provisions and conditions of resource consent. In order to remove the conflict, all the relevant local regulations will need to be overridden. If this is not done, licensees will be in breach of the district plan or their resource consent and a council would be placed in a difficult position from an enforcement perspective.

We note that noise is likely to be the primary adverse environmental effect associated with the Bill and any complaints will be directed to local authorities. However, in terms of enforcement, existing powers under the Resource Management Act 1991 are sufficient to address any issues arising from excessive noise.

Recommendation

LGNZ recommends that the Bill be amended to include a specific reference to the Resource Management Act 1991 and district plan provisions, and that that any operating hours rules or conditions should be deemed to be overridden by the Bill for the period of the 2015 RWC

Treatment of existing special licences

A number of councils have advised LGNZ that they have already received applications for special licenses for the RWC 2015 period, and in some cases, these applications have been approved by the DLC with specific conditions. However, there have not been a huge number of applications across the country, with the majority of applications received in metro areas. Councils have noted that many applicants have put their application on hold until this Bill is progressed.

LGNZ is concerned that the Bill is silent on how councils should treat existing applications for special licences if the Bill is enacted. Councils have incurred costs related to processing the applications and convening the DLC to consider, and in some cases, approve the applications. It would be unreasonable for councils to bear the costs of these changes, if there was an expectation to refund the fee for these individual special licences that are no longer required.

There are also likely to be differences between special licences conditions issued by DLCs and the extension of hours for all club and on-licenses granted via the Bill (where no conditions are essentially set). Clause 5 of the Bill provides no clarity on what conditions take precedence when a special licence is already in place. This lack of clarity will make it difficult for councils to enforce.

Recommendation

LGNZ recommends that the Ministry of Justice issue advice to all territorial and unity authorities regarding the treatment of fees for special licence applications already processed and/or granted. We consider a suitable approach could be that councils provide a refund of the application fee, net of any costs incurred to date.

We also recommend that the Bill be amended to clarify that the Bill overrides any existing special licences that have been granted for the RWC 2015 period.

Comments on drafting of the Bill

LGNZ has the following recommendations on the drafting of the Bill, in order to provide clarity and improve its implementation if it proceeds.

Terminology used in the Bill

LGNZ notes that the Bill uses the term “licensing hours” and introduces new terminology such as “extended licensing day”, “standard licensing day” and “standard licensing hours”. This is inconsistent with the Act which uses the term “trading hours”. We recommend that the Bill be amended so that it is consistent with the terminology in the Act and it avoids the introduction of unnecessary new terminology.

Amendments to clause 3

We note that the definition of *current licence* incorrectly makes reference to an “off-licence”. This should be amended to “on-licence” to ensure a clear definition of current licence is established.

We also recommend amending the phrase “part of the licence that is current” as the meaning of this phrase is unclear. It would be more appropriate for the Bill to note that a licence may expire during the RWC 2015 period and what conditions should apply in this circumstance.

Amendments to clause 5(2)

LGNZ recommends that clause 5(2) be amended to clarify that the extended licensing hours under the Bill only apply to the live broadcasts of games during the RWC 2015. Without this clarification, there is a potential risk that the repeat screenings of games could lead to licensing hours being extended beyond that envisaged by the Bill. We recommend the clause 5(2) be amended as follows:

- (i) “broadcasts on 1 or more televisions in the licensed premises the live game or games in the 2015 Rugby World Cup to which the paragraph relates; and
- (ii) implements a system to ensure that the primary purpose of persons who enter the licensed premises is that of watching the live game or games

if a live game or series of games in the 2015 Rugby World Cup takes place, wholly or partly, on a day that is not a standard licensing day, the day or the part of the day is an extended licensing day

if a live game or series of games in the 2015 Rugby World Cup starts within a 2 hour period after the standard licensing hours end, the licensing hours are extended until 1 hour after the end of the game or final game

if a live game or series of games in the 2015 Rugby World Cup starts more than 2 hours after the standard licensing hours end, the licensing hours are extended to half an hour before the start of the game or first game until 1 hour after the end of the game or final game..”

Clause 5(2) outlines the additional conditions to be added to special licences. However, it is unclear whether this creates an obligation to physically amend the text of each licence and if so, who would be the responsible party for this task. LGNZ recommends that the clause be amended as follows:

“The following conditions are deemed to be added to current licences after the condition about the days on which, and the hours during which, alcohol may be sold....”

Amendments to clause 5(3)

We recommend that this clause be amended to state that the notice must be displayed for the whole 2015 RWC 2015 period and state the specific extended hours, alongside the days. The clause should be amended as follows:

“A licensee whose licensed premises are affected by the extensions described in subsection (2) must prominently display at the premises, for the 2015 Rugby World Cup period —

- (a) the specific extended licensing days and hours; and
- (b) a general statement about the extended hours.”

Amendments to clause 5(5)

LGNZ supports the requirement for licensees to have to notify both the DLC and the Police if they are intending to open for extended hours. However, our members would find it more effective for monitoring and enforcement purposes if the licensee was required to provide this notification in writing and outline the specific days and extended hours they intend to operate during the 2015 RWC period. We recommend the clause be amended as follows:

“At least 1 week before the first opening on an extended licensing day or at an extended hour, whichever occurs first, the licensee must inform the following of the licensee’s intention:

- (a) the relevant district licensing committee; and
- (b) the police.

The licensee must inform both these parties in writing and specify the specific days and hours they intend to operate during the 2015 Rugby World Cup period. “