

24 April 2018

Brett Hudson
Committee Chair
Governance and Administration Committee
Parliament Buildings
Wellington

Dear Sir

Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No. 2)

Thank you for the opportunity to comment on the Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No.2) (the Bill). The Bill seeks to meet the objective of the Sale and Supply of Alcohol Act (SAA Act) to reduce alcohol related harm to communities by extending the scope of Local Alcohol Policies (LAPs) to include the off-licence renewals.

The Bill seeks to address an anomaly created by the fact that the process for renewing existing off-licences does not take cognisance of those provisions of an existing LAP designed to control location and density. This is particularly problematic where a local policy seeks to reduce the concentration of licenced and off-licenced outlets in an area.

The Bill proposes to address this problem by requiring that a licensing authority or committee, when considering application for an off-licence renewal, must take into account any inconsistency between the renewal of a licence and any location and density rules set in the relevant LAP, should one exist.

The proposed amendment addresses an egregious problem with s.133(1) of the Act which specifically prevents a licensing authority or committee from considering a relevant alcohol policy when considering application for renewal of a licence.

LGNZ's view

LGNZ supports the Bill but it does not go far enough. We are concerned that the performance of LAPs is not meeting Parliament's objective. Nor is it meeting the needs of the many communities in New Zealand that expected these policies to address the multiple social problems related to the location and density of licenced and, in particular, off-licenced premises.

Research commissioned by the Health Promotion Agency, and others, clearly show that the liberal grounds on which LAPs can be appealed has had a detrimental effect on the efficacy of LAPs to achieve local community objectives. The cost of defending policies that are subject to appeal has:

- dis-incentivised some councils from adopting LAPs;
- resulted in councils "shelving" their draft LAPs instead of facing the cost of further appeals; and
- encouraged councils to water down their LAPs to the point where they are less likely to meet community aspirations and address the causes of local alcohol related harm.

The current grounds for appeal of a provisional policy, namely that it is "unreasonable in the light of the object of the SSA Act", are too open-ended and ill-defined.

The process appears to repeat the problems experienced with the first generation district plans under the Resources Management Act 1991, whereby litigation on provisional plans resulted in some plans taking more than ten years to actually be adopted.

LGNZ recommends a process similar to that used for the adoption of Class 4 Gaming Policies (Gambling Act 2001) and Easter Sunday Trading Policies (Shop Trading Hours Act 1990). This approach requires councils to follow robust policy development and consultation processes and is subject to judicial review. In addition, the accountability of the decision-makers is clearer, whereas under the framework of the SSA Act decision-makers cannot be held to account for a policy that is largely the result of ongoing litigation. We have a number of other specific points regarding the SSA Act that we wish to bring to the Committee's attention:

1. The principal legislation is unclear about the process for amending a LAP. The Act envisages that a Policy can be amended (s.95), but fails to provide the direction on whether an amendment (regardless of significance) requires use of the special consultative procedure or not. We note, that as drafted, an amendment could be interpreted as requiring a repeat of the process for adopting a new policy, including preparation of a provisional policy and providing a right of appeal. Clarity on this issue is important, as councils with operational LAPs should be starting their six-yearly reviews in the near future.
2. Should the Committee agree that existing off-licenses must conform to a LAP, and that this would take effect when licenses come up for renewal, then consideration should be given to whether or not the "inconsistency" is due to a sensitive site having opened after the off-license had been established. Further, in the case of density, consideration maybe given to whether the licensee is a "good operator" or not – noting that increasing the proportion of responsible operators is also a desirable objective. Both exceptions could be enabled by changing "may" in s.133(1) to "must" but allowing the authority or committee to make an exception should either of the examples described above apply.

LGNZ is a strong supporter of the right of communities through their councils to develop and apply LAPs. These policies should be an important instrument through which citizens can participate in the decision-making process to improve local well-being and quality of life. Unfortunately, this is not the case. LGNZ is concerned that the failure of LAPs to meet local expectations and ensure community voices are heard in licensing decisions not only exposes communities to harm but also puts at risk the willingness of citizens to participate in our civic life.

It is by participating in decisions about local issues, such as the adoption of a LAP, that citizens appreciate the nature of local democracy and learn how to become active citizens. Consequently, we need to ensure that mechanisms like LAPs are able to give effect to the preferences of local citizens.

Please note that LGNZ wishes to appear before the Committee.

Nāku iti noa, nā



Dave Cull
President
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