

Who's
putting local
issues on
the national
agenda?

**We are.
LGNZ.**

LOCAL GOVERNMENT NEW ZEALAND SUBMISSION

In the matter of Regulations to give effect to the new alcohol laws: A public consultation paper

To the Ministry of Justice

26 JULY 2013

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Introduction

1. *Local Government New Zealand* (LGNZ) welcomes the opportunity to submit on the Regulations to give effect to the new alcohol laws: A public consultation paper.
2. LGNZ is a member based organisation representing all 78 local authorities in New Zealand. LGNZ's governance body is the National Council. The members of the National Council are:
 - Lawrence Yule, President, Mayor, Hastings District Council
 - John Forbes, Vice-President, Mayor, Opotiki District Council
 - John Bain, Zone 1, Deputy Chair, Northland Regional Council
 - Richard Northey, Zone 1, Councillor, Auckland Council
 - Meng Foon, Zone 2, Mayor, Gisborne District Council
 - Jono Naylor, Zone 3, Mayor, Palmerston North City Council
 - Adrienne Staples, Zone 4, Mayor, South Wairarapa District Council
 - Maureen Pugh, Zone 5, Mayor, Westland District Council
 - Tracy Hicks, Zone 6, Mayor, Gore District Council
 - Len Brown, Metro Sector, Mayor, Auckland Council
 - Dave Cull, Metro Sector, Mayor, Dunedin City Council
 - Stuart Crosby, Metro Sector, Mayor, Tauranga City Council
 - Brendan Duffy, Provincial Sector, Mayor, Horowhenua District Council
 - Stephen Woodhead, Regional Sector, Chair, Otago Regional Council
 - Fran Wilde, Regional Sector, Chair, Greater Wellington Regional Council.

Regulations to give effect to the new legislation

Local Alcohol Policies

Q1.1 Do you agree that 'public notice' for the purposes of consulting on provisional local alcohol policies (LAPs) should be defined as set out in paragraphs 22 and 23?

1. LGNZ agrees with this definition. We would note that paragraph 32 may be more appropriate. LGNZ supports the proposal requiring notice to be given on at least **two** occasions. Even at the provisional stage, the publication may be a particularly newsworthy matter which would receive considerable local media publicity.

Q1.2 Should appeals to ARLA about provisional local alcohol policies follow the process covered in paragraphs 24 to 27? Are any of the suggestions not useful? Are there other matters that should be included?

2. LGNZ agrees with the process, however, suggests that the appellant be required to specify a specific remedy for the element of the LAP that they are appealing against. This could reduce

the potential for significant time delays that may result in the DLC and ARLA having to process appeals. Specifying a remedy also encourages the inclusion of the local communities' suggestions and viewpoints from an angle which may not be under current consideration or not known by the relevant licensing authorities and councils.

Q1.3 Do you agree that 'public notice' for the purposes of informing people about the adoption of a local alcohol policy should be defined as set out in paragraphs 32 and 33?

3. LGNZ agrees with this definition.

Q1.4 Do you agree that regulations should require territorial authorities to publish whole adopted LAPs (or amended LAPs) by making these LAPs permanently available on their websites, in public libraries, and available to view and obtain from their principal public office(s)?

4. LGNZ agrees with this requirement. The wording should mirror the wording in paragraph 34. Adopted LAPs should be permanently available on council websites, in public libraries, and available to view (**and obtained, if wished**) from public offices.

Q1.5 Are there other matters that should be regulated with respect to public notification and appeals of local alcohol policies that are not already covered in this document?

5. LGNZ believes that the matters identified in the document are sufficient and have no further comment to add in this regard.

Licensee obligations

Q2.1 Have we identified the right information to be prescribed in regulations which must be recorded by the licensee about their managers, acting managers and temporary managers?

6. LGNZ believes that the right information has been identified.

Q2.2 Is there additional information that should be recorded? Why?

7. LGNZ considers that the proposed list is comprehensive.

Q2.3 Is any of the information proposed to be recorded of a nature that need not or should not be held? Why?

8. The information to be recorded as stated in the discussion document is generally supported by LGNZ. Some clarity is required as to why the gender of managers is included. We would assume that this information would be for statistical purposes.

9. With regard to licensees notifying the relevant district licensing committee and local Police of the appointment, cancellation or termination of a manager, acting manager or temporary manager (section 231), LGNZ proposes the following information should be included:

- Detail the information that must be supplied by the licensee
- Outline the form that these notifications must be in

Licensing system

Q3.1 Do you think the proposed consolidation of forms and proposed changes to the fields on some forms will work? If not, why not?

10. LGNZ believes that the proposed consolidations and changes of/to the forms will be effective.
11. LGNZ suggests a provision on the 'renewals' application form for 'variation requests'. This would avoid further duplication of the application process whereby a separate form for 'variations' may be required.

Q3.2 Do you think that the forms should require evidence of amenity and good order such as a report detailing how the proposed business will mitigate any risk which could negatively impact the local community? What are your reasons?

12. LGNZ supports the principle behind the requirement for evidence of amenity and good order. Its application and implementation poses some questions. This information would generally be covered under the umbrella of matters considered by the issuing authority under section 106 of the Act. This information (i.e. as specified under section 106) would likely be gathered during the subsequent interview with the applicant following initial application.
13. LGNZ recognises that requiring evidence of amenity and good order at the time of application is good practice. It assists applicants being made aware of and accountable for amenity and good order. LGNZ also recognise that this requirement will make the application and process more lengthy.
14. The constitution of 'amenity' and 'good order' seems a rather broad categorisation and its interpretation subsequently subjective.
15. LGNZ suggests that information on amenity and good order could be provided by the applicant in the form of supporting documentation. This could be done via the completion of template guidance materials, something the Ministry of Justice should consider.
16. LGNZ would like to stress the intent behind the Act as per paragraph 44: "to make the licensing system more user-friendly and application, notification and appeal processes clear" and to "reduce compliance burden." While evidence of amenity and good order would support District Licensing Committees (DLCs) in considering applications, this should be balanced against the user-friendliness for applicants.

Q3.3 Do you think the forms should require a business case to be attached detailing the operation of the business including target market, licensee experience and licensee involvement, staff training and any other matter which may assist in determining the application? What are your reasons?

17. LGNZ recognises that a business case may include matters that would be dealt with at the time of the interview. It is good practice for the applicant to be aware of the necessity to handle such matters as they arise, but also that there may be considerable variation between the actual operating experience of a premise/business and their initial indications provided with their application. These variations may emerge within the first few months of trade.
18. LGNZ agrees that the requirement for the applicant to provide details of their licensee role in the business, their experience, and staff training, should be provided as supporting information.

Q3.4 Are there additional fields that should be included? Why?

19. LGNZ suggests the following additional fields and supplementary information should be included:

- Any pending prosecutions at the time of application.
- Noise management plan

This information would detail how the applicant would intend to address risk, and specifically, amenity.

This could be further substantiated by the inclusion of a Crime Prevention through Environmental Design (CPTED) self assessment.

Q3.5 Do you agree with the list of records to be kept by ARLA, as outlined in paragraph 50 above? Is there anything missing?

20. LGNZ agrees with the list of records to be kept by ARLA, with the following amendments suggested:

- Paragraph 50 (f) - clarity is needed as to what constitutes a 'determination', i.e. whether this is the date that the (initial) decision was made by the DLC, or the date on which the license was issued. This is of particular relevance where an application may be declined and subsequently appealed.
- Paragraph 50 (g) – LGNZ suggests that the same terminology as contained in the Act is applied, i.e. opposed/unopposed rather than contested/uncontested.
- Paragraph 50 (h) – LGNZ suggests the addition of a simple 'Public hearing Yes/No' declaration, and also the date of the hearing.
- Paragraph 50 (j) – clarification is needed as to what these conditions are, i.e. whether these are 'standard', 'discretionary', or 'all' as the onus to advise any and 'all' conditions would prove extensive.

Q3.6 Do you think that the regulations should specify that district licensing committees must notify ARLA of the relevant application particulars within 10 (ten) working days of a district licensing committee decisions OR within some other period of time? Why?

21. LGNZ supports the specification of 10 working days; it works in accordance with section 155 of the Act whereby ARLA has a copy of the particulars of an application at the time when appeals to ARLA close.

Defining grocery stores

Q4.1 What is your preferred option for the assessment of principal business as set out in paragraphs 63 to 75? Why?

22. LGNZ prefers Option 2 as it is consistent with overseas definitions, and its provisions mean it is less likely to include dairies. On that note, given that 'grocery stores' has been defined, clarity is needed as to what constitutes a 'dairy', as the term dairy/dairies is used in the Act, but with no clear definition.

Q4.2 If you prefer option one, what do you consider the percentage requirement should be? Why?

23. Not applicable as Option 2 is preferred.

Q4.3 Do you agree that the regulations need to prescribe that principal business will be assessed using a statement of the annual sales revenues (or projected annual sales revenues) of the premises, as outlined in paragraphs 76 to 80 above? If not, what do you think should be prescribed in regulations about this instead?

40. LGNZ agrees with the proposals, and in particular, the provision of annual sales figures for existing businesses in paragraph 77, and the post issuance relevant test for new businesses in paragraph 79.

41. LGNZ believes that the processes outlined in paragraphs 76 to 80 add credibility to the process.

Q4.4 If you do not agree with any method for the assessment of principal business suggested, please provide (with relevant supporting data, evidence and analysis) an alternative method.

24. Not applicable as Option 2 is preferred.

Q4.5 Do you agree with the proposed option for the assessment of ready-to-eat prepared food as set out in paragraphs 81 to 85? If not, what do you propose?

25. LGNZ agrees with the definition of ready-to-eat prepared food as set out in paragraphs 81 to 85.

Q4.6 Do you agree with the definition of snack foods as set out in paragraphs 86 to 88? If not, what do you propose?

26. LGNZ agrees with the definition of snack foods as outlined in paragraphs 86 to 88.

Managers' Qualifications

Q5.1 Do you agree that existing practice should continue in the regulations to recognise the qualifications of a manager for the purposes of applying for a manager's certificate? If not, why not? What are the alternatives?

27. The issue of the continuation of existing practice is a potentially contentious one. On the one hand, it continues established and known practice (since the old Act was brought into force), while on the other hand, when the practice of obtaining the Licence Controller Qualification (LQC) was first introduced, it was generally opposed by licensing inspectors.

28. LGNZ agrees with the need for minimum standards for managers. These are reflected in the achievement of a qualification. This would be supported, i.e. that evidence from an approved NAQA provider demonstrating achievement of the required Unit Standards 16705 and 4646 could suffice.

Q5.2 Do you agree that managers who already hold the Licence Controller Qualification should be tested on their proficiency to operate under the new Act through a short bridging test within one year of the expiry of their current managers' certificate, to be eligible for a new manager's certificate?

If not, what are the alternatives for ensuring that managers can prove that they are knowledgeable about their new responsibilities under the new Act?

29. LGNZ supports a bridging test in recognition of the new knowledge that managers certificate holders will be required to possess.

30. LGNZ suggests that this bridging test could perhaps be provided as a web based course, and hopefully at minimal cost.

31. LGNZ also suggests that there should be the provision for individual territorial licensing authorities to offer the bridging test to managers in their districts. (i.e. for those who may have difficulty gaining access to the internet, or who may find web based activities more challenging.)

32. LGNZ note that clarification is needed with respect to the variation in the quality of providers of training to the NZQA qualifications. There have been concerns about this, particularly given the variation in the qualification costs and the fact that the requirements under each of the Unit Standards 16705 and 4646 should be standardised.

Q5.3 At least one manager per club who has previously held a club manager's certificate will need to obtain the managers' qualification, within one year of the expiry of their club manager's certificate, to be eligible to apply for a manager's certificate. If the training and qualification fees are considered to be a barrier, what remedies do you suggest?

33. LGNZ view the training and qualifications required to obtain a club manager's certificate as a necessity and good practice.

34. LGNZ notes however, that those typically involved in the administration of sports clubs trend towards the elderly retired, who, more than occasionally, find the necessity of learning the required information as challenging. This new requirement is thus not viewed as imposing a significantly greater barrier than what currently exists, and is essentially a formal recognition by NZQA of training undertaken.

35. LGNZ would suggest that the Ministry of Justice work with the Sporting clubs Association of New Zealand (SCANZ) on this matter.

Evidence of age

Q6.1 What do you think about retaining the current regime with respect to prerequisites for being eligible for an evidence of age document; the '18+ Card', as outlined in paragraph 105?

36. LGNZ believes that a continuation of the current regime is satisfactory.

Q6.2 Are you aware of any difficulties in applying for the '18+ Card'? Are there any changes you think should be made? Why?

37. LGNZ believes that at present there are no considerable encumbrances for young people wishing to provide evidence of age in licensed premises, and uptake of the 18+ card has been reasonable.

Q6.3 Are there other issues or options with respect to the '18+ Card' – or with respect to other evidence of age documents - that you would like to bring to our attention?

38. LGNZ is not aware of any other issues.

Q6.4 Do we need more forms of ID? If so, what do you suggest?

39. LGNZ considers that the current system is sufficient at present.

Q6.5 What options do you propose to help minimise the potential for people to obtain more than one 18+ Card?

40. LGNZ has no options to propose.

Q6.6 Do you agree with the proposal that we regulate so that young people can apply for the 18+ Card in the month leading up to their 18th birthday, rather than after they turn 18 years old as currently? If not, why not?

41. If young people can apply in the month leading up to their 18th birthday, clarification is needed on the validity of the 18+ card when it is received. (I.e. would the applicant receive it on their birthday or would they receive it prior to their birthday?).

42. Early registration may encourage responsible behaviour and some recognition of accountability in young people (i.e. those turning 18), but this should be considered with the new Act's intent in mind, which includes the intent to reduce incidents of alcohol-related harm in young people.

43. The current system of applying on or after one's 18th birthday seems to have been working fine; applicants are able to use alternate forms of ID should they wish to purchase alcohol in the interim while they await the arrival of their 18+ card.

Infringement offences – fees, notices & reminders

Q7.1 What level of infringement fee should be set for the six infringement offences that have not already been agreed by Government? Should these fees be set as described in paragraph 115? If not, where would you set them?

44. LGNZ agrees in general with the proposed infringement fees outlined in paragraph 115 but note the following:

- Administrative failures that may not be directly linked with alcohol related harm may be too high, and should be reduced to \$250.00.
- Clarity is needed as to why the penalty outlined under section 214 (3) relates to the failure to display the manager's name, rather than the failure to have a manager on duty. A suggested remedy for this would be to replace Section 214 (3) with Section 214 (1).

Q7.2 What are your views about the proposal to model the infringement notice and reminder forms on those contained in schedules 1 and 5 of the Land Transport (Infringement and Reminder Notices) Regulations 2012, with amendments to reflect the Sale and Supply of Alcohol Act 2012? Are there other options you think would be better?

45. LGNZ supports the proposed model. It is a system that councils are familiar with in relation to a number of different infringement regimes which are already in use.

Alcohol control areas: fees, notices and reminders

Feedback on the proposals for infringement notices and reminder forms with respect to alcohol bans, in particular, to be provided in response to the general proposals under previous chapter 'Infringement offences – fees, notices & reminders'.

46. LGNZ have no comment to make.

Remote sales

Q9.1 Do you agree with the proposals for matters to be prescribed in regulations with respect to the information requirements for remote sellers of alcohol? If not, why not? Can you think of other requirements that should be included?

47. LGNZ recognises that regulating remote sales is an area which is difficult to monitor and control. LGNZ recognises that with increasing sales of alcohol through remote mechanisms, better alignment between the remote sale of alcohol and the sale of alcohol from premises is supported, however this should not result in over-regulation.

Q9.2 Do you think that examples in regulation of what constitutes 'reasonable steps', with respect to verification that a remote buyer of alcohol is not under the purchase age (and which would act as a guideline for sellers), should include both components:

- a) A two-step declaration of being over age; and
- b) Proof of age?

Why? If you do not agree, what do you suggest and why?

48. LGNZ recognises that what is considered 'reasonable' is subjective. LGNZ also recognise that practical application of a two-step declaration of being over age, and proof of age, may not necessarily be required. A declaration is deemed sufficient in some districts given that remote sales in their districts tend to be of high end alcohol products which sell at a premium price. These are therefore less likely to be attractive to potential underage alcohol buyers.
49. LGNZ suggests that DLCs have provision to issue a discretionary license condition whereby those sellers of cheaper alcohol products, which may be more likely to be attractive to young people with less disposable income, would be required to establish the second component of age verification as outlined in paragraph 141.

Q9.3 As an example of what might constitute 'reasonable steps', what do you think of a two-step declaration of age as set out in paragraphs 137 and 138?

50. LGNZ supports the principle behind the proposal.

Q9.4 As an example of what might constitute 'reasonable steps', what do you think about the options for obtaining proof of age of a purchaser as set out in paragraphs 139 to 143?

51. LGNZ agrees that regulating for examples of proof of age may not be helpful, but observe that provision for additional license conditions could be imposed by the DLC.

Licensing and community trusts

Q10.1 Are you aware of any problems with the current regulations governing trusts? If so, please specify?

52. LGNZ is not aware of any issues.

Q10.2 What do you think about the proposed method for public notification of financial statements, outlined in paragraph 147?

53. LGNZ supports the proposal as it increases transparency.

Q10.3 What do you think about the requirement for provision of maps of boundaries for 'exclusive right' trusts, as set out in paragraph 148?

54. LGNZ supports the provision of such maps as it would minimise confusion and prove more surety to potential license applicants.

Q10.4 Are there other regulations you think would be helpful to govern trusts?

55. LGNZ believes that the current regulations are sufficient.

Conclusions

56. LGNZ agrees with the principle that regulations are required to balance the practical application of the new Act while ensuring that over-regulation does not ensue.
57. LGNZ is supportive of the intent of the new Act, which focuses on reducing the availability and accessibility of alcohol, and the provision for community input into the license decision-making process.
58. LGNZ is broadly supportive of the expanded role of councils, particularly in the shift of license decision-making to the local level. Local communities have demonstrated a strong desire and interest in contributing towards such decisions, and have been supportive of the LAP framework in particular.
59. LGNZ recognises that while some elements of the proposed regulations may be contentious, the regulations should reflect the Act's objectives that:
 - The sale, supply and consumption of alcohol should be undertaken safely and responsibly
 - The harm caused by the excessive or inappropriate consumption of alcohol should be minimised