

SUBMISSION

To the Local Government and Environment Select Committee

On the Local Government Bill

INTRODUCTION

1. This submission is from the Alcohol Advisory Council of New Zealand - Te Kaunihera Whakatupato Waipiro O Aotearoa (ALAC), PO Box 5023, Wellington, New Zealand. Telephone 04 472 0997.

The Alcohol Advisory Council of New Zealand - Te Kaunihera Whakatupato Waipiro O Aotearoa

2. ALAC is a Crown Owned Entity that operates under the Alcohol Advisory Council Act 1976 and the Public Finance Act 1989.
3. ALAC reports to Parliament through the Associate Minister of Health, Hon Tariana Turia, who is responsible for the Alcohol and Drug Portfolio.
4. ALAC is funded by a fixed levy on all alcohol produced for consumption in New Zealand. The levy ensures that funds are targeted at alcohol-related problems and reflects the Government's desire to address the consequences of alcohol misuse and promote safe drinking behaviours.
5. ALAC comprises an 8 member Council appointed by the Minister of Health and a 23 member Secretariat. The Secretariat is based in the National Office in Wellington and Regional Offices in Auckland, Wellington and Christchurch. The National Office shares its premises with the Central Regional Office (Wellington). The Chief Executive Officer has responsibility for overall management and operations of ALAC.

Objectives and functions of the Alcohol Advisory Council

6. ALAC's primary objective is the encouragement and promotion of moderation in the use of liquor, the discouragement and reduction of the misuse of liquor, and the minimisation of the personal, social, and economic harm resulting from the misuse of liquor. ALAC's mission statement is "helping people make healthy choices about alcohol".
7. ALAC's core functions have been defined by Government as being:
 - Encouragement, promotion, sponsorship, and co-operation in alcohol-related research
 - Dissemination of information relating to problems of alcohol misuse
 - Development, promotion, implementation and support of educational programmes
 - Sponsorship of innovative programmes for treatment, care, and rehabilitation
 - Provision of policy advice and recommendations to the Government, public and private sectors
 - Monitor and make recommendations on the advertising of liquor.

GENERAL

8. ALAC supports the intent of this Bill because it:
 - shifts the focus of local government from prescriptive regulatory and compliance activities to meeting the requirements of their local communities;
 - allows local government to work in a flexible, community-friendly way by providing opportunities and powers to use other appropriate tools, rather than simply regulating or making bylaws;
 - provides for a fair and open consultative approach to bylaw-making and other regulation;
 - states clearly the obligations of local government to Māori through the Treaty of Waitangi.
9. This submission provides ALAC's comments on the parts and sections of the Local Government Bill relating to bylaws for prohibiting or otherwise regulating the consumption of liquor in public places, the bringing of liquor into public places, and the possession of liquor in public places.
10. The submission does not provide specific comments on any other part of the Local Government Bill.

Part 5: Subpart "Consultation"

11. ALAC supports the provisions of this subpart because it prescribes the foundations for a meaningful consultation process that will:
 - provide appropriate information to the community in an accessible manner;
 - enable key community stakeholders to participate effectively in local government decision-making;
 - ensure appropriate consultation with Māori;
 - ensure that community perspectives and opinions are taken into consideration in the decision-making process and that time is allowed for community feedback(i.e. 'meaningful consultation');
 - provide those who have made the effort to participate in the consultation process with local government rationales for decisions that are made.
12. ALAC is aware that local authorities have become increasingly concerned about levels of public drinking and the adverse impact public drinking can have on their communities through increased public disorder and vandalism. Consultation procedures as prescribed in this Part of the Bill will ensure that the local authorities have the opportunity to work with all members of the community, whether or not they share those concerns.

Sections 102 (“Specific bylaw-making powers of territorial authorities”), 112 and 113

13. ALAC supports the provisions of section 102 only in conjunction with sections 112 and 113.
14. This is because ALAC considers it important that territorial authorities be provided with the specific powers to make bylaws for the purposes of prohibiting or otherwise regulating the consumption of liquor in public places, bringing of liquor into public places, and the possession of liquor in public places (s. 102) under the proviso that—
 - a) *the local authority has first determined whether a bylaw is the most appropriate way to address the perceived problem (s. 112); and*
 - b) *that the local authority follows the special consultative procedure set out in section 67 (s. 113).*
15. Although regulation may address some of these problems, regulation of public drinking can also contribute to further problems, including displacement caused by moving drinkers on. In addition, public drinking by young people in particular often raises issues around supply or ease of access to alcohol, boredom or lack of other alcohol-free activities, parental awareness and responsibility, and the health of young people. These are not issues that can be addressed by regulatory measures.
16. ALAC acknowledges the need to regulate the drinking of alcohol in public places. However, regulation should only be part of a comprehensive alcohol policy developed by local government in collaboration with the whole community.
17. It is important that any local government policy surrounding alcohol targets the wider impact of alcohol use and misuse on the community and the issues that lead to misuse in addition to targeting problematic public drinking within a regulatory framework.
18. A number of local authorities have already adopted a Sale of Liquor Act Policy but as issues are wider than those related to the Sale of Liquor Act 1989 it is important that local authorities develop and adopt a wider alcohol policy. If targeted more widely than Sale of Liquor issues, an alcohol policy can incorporate all of the strategies and tools available to local authorities. A local government alcohol policy must be developed in consultation with the community including all agencies and bodies potentially affected by the policy (e.g. the NZ Police, public health services, the local hospitality industry).

Suggestion for clarification of the provisions of bylaw-making powers

19. It is vital that bylaws prohibiting or otherwise regulating the possession, consumption or bringing of liquor into public places do not impinge upon—
 - a) liquor licences provided under the Sale of Liquor Act 1989, the conditions of which may allow a premise to sell and serve alcohol in—
 - a building in the area affected by the bylaw;
 - a street setting (e.g. outdoor seating at a café) in the area affected by the bylaw;

- b) the carriage rights of merchants delivering liquor—
- for the purposes of sale under a licence (e.g. stock for a bottle store or bar) to a premise or public place in the area affected by the bylaw (e.g. to a hotel, outdoor concert, unveiling of a memorial, launching of a ship);
 - to private and public functions (e.g. a corporate function in a city centre) in the area affected by the bylaw.

Subsection 141(5)

20. ALAC supports the intent of subsection 141(5) as ALAC endorses the seizing of alcohol when a liquor-related bylaw has been breached. Seizing alcohol in the case of a breach may assist in reducing the likelihood of ongoing trouble in the bylaw-affected area.
21. ALAC is aware that the NZ Police have formerly met with problems regarding the seizure of alcohol as the provisions of the Local Govt Act have only allowed them to seize liquor containers but not actual liquor.
22. Therefore, ALAC suggests the following amendment to section 141 to ensure that the section is workable and the intent enforceable for the NZ Police.

Suggested amendment to subsection 141(5)

23. ALAC's view is that that section 141 must provide the Police with the power to seize what they "*reasonably believe to be liquor*" and "*reasonably believe to be a liquor container*" if they have reason to believe that the article concerned contributes to a breach of a bylaw prohibiting or otherwise regulating the possession, carriage or consumption of liquor in a public place.
24. As it stands, subsection 141(5) of the Bill will enable an enforcement officer to seize "liquor and its container if the liquor is in a public place in breach of a bylaw". However, to use such powers of seizure, the Police would first have to ascertain whether or not article or substance in question is definitely liquor or a liquor container.
25. As the section stands, it would not allow a police officer to seize a substance or a container that he or she reasonably believes to be alcohol until it has been proven beyond all reasonable doubt that the substance was in fact alcohol. Where this matter has caused problems in the past, some Police have sought certainty via ESR analysis. However, this procedure is time consuming and has at times enfeebled the intent of the Local Government Act in regard to the timely enforcement of liquor-related bylaws in the past.
26. Allowing the enforcement officer in the case of a suspected breach of a liquor bylaw to seize what he or she "*reasonably believes to be liquor*" or "*reasonably believes to be a liquor container*" would allow the liquor and container to be immediately disposed of, thus upholding the intent of that subsection.
27. Therefore, ALAC suggests that subsection 141(5) be amended as follows:
 - "A member of the police may seize and remove what he or she reasonably believes to be liquor and its container if the liquor is in a public place in breach of a bylaw."

Subsection 141(6)

28. ALAC supports the provisions in subsection 141(6) for liquor or a container seized to be forfeited to the Crown if the person from whom the liquor or container is seized is convicted of breaking the bylaw. ALAC strongly supports the provision that liquor or its container should in no circumstances be returned to the offender.
29. ALAC considers that “forfeited to the Crown” should be defined in regard to liquor so that all liquor seized must be disposed of by destruction by the Crown rather than disposed of by sale or otherwise as the Crown sees fit (cf. S140(7)).

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Alcohol Advisory Council