

Sale and Supply of Alcohol (Community Participation) Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Sale and Supply of Alcohol (Community Participation) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

About the bill as introduced

The Sale and Supply of Alcohol (Community Participation) Amendment Bill seeks to increase the influence of local communities on alcohol licensing decisions in their area. The bill aims to achieve this by amending the alcohol licensing process provided for in the Sale and Supply of Alcohol Act 2012.

Although the principal Act provides for community participation in licensing decisions, in practice the arrangements are not operating as intended.

The Act allows councils to develop local alcohol policies (LAPs) in consultation with the local community, to influence factors like the number, location, and opening hours of businesses licensed to sell alcohol in the area. Once a LAP is in force, council-appointed District Licensing Committees (DLCs) must consider it when they make decisions about alcohol licensing applications. As things stand, licensing hearings are formal and adversarial, and people who want to object to licensing applications are often excluded from participating.

In practice, interested parties can appeal against provisional LAPs, preventing them from coming into force. Of the 33 provisional LAPs developed since 2017, 32 have been appealed. Appeals are heard by the Alcohol Regulatory and Licensing Authority (ARLA). Because of the time and cost involved in fighting appeals, many local

authorities (representing over 50 percent of New Zealand's population) have halted or abandoned the implementation of LAPs.

The bill would:

- remove provisional LAPs and the ability for parties to appeal provisional LAPs to the ARLA
- enable DLCs and the ARLA to decline to renew a licence if the licence would be inconsistent with the local LAP
- allow any person or group to object to a new or renewed licence, except for trade competitors where the objection relates to trade competition
- enable DLCs and the ARLA to manage the volumes of objections and appearances at hearings
- require DLCs to establish procedures so that hearings avoid unnecessary formality and cross-examination
- make clear that licensing hearings can be conducted by phone, audio-visual link, or other means where appropriate and available.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss most minor or technical amendments.

Changes to the commencement date

Clause 2 of the bill establishes that it would come into force on the day after it received Royal assent. However, local government would likely require time to update guidance and complete the necessary training of staff to effectively implement the changes relating to licence hearings proposed by this bill.

We recommend amending clause 2 so that commencement of the changes relating to licence hearings in clauses 13 to 15A would be nine months after the date of Royal assent. This would allow local government time to prepare for the changes this bill would make to the licensing process.

Removal of provisional LAPs

Clause 6 of the bill would amend section 79 of the Act. Section 79 currently requires territorial authorities to produce provisional LAPs using the special consultative procedure in the Local Government Act 2002.

The amendments to section 79 made by clause 6 would dispense with the requirement to produce provisional LAPs. It would, however, retain the requirement to consult on draft LAPs. We suggest several changes to reflect the removal of provisional LAPs.

Consultation requirements

We recommend amending clause 6(3) to change section 79(2) to reflect that provisional LAPs would no longer be required. We recommend amending the wording of section 79(2) from “producing a provisional policy” to “amending a draft policy as a result of consultation”.

Public notice of a LAP

The Act currently requires territorial authorities to notify the public about a LAP on two occasions. The first is when a provisional LAP is produced, and the second is when a LAP has been adopted and is no longer provisional, following the appeals process. As the bill would remove the ability to appeal, we consider that one of these two instances of public notification would be unnecessary.

We recommend amending clause 9 to remove section 90(1)(a) of the Act and clause 22 to revoke regulation 19 of the Sale and Supply of Alcohol Regulations 2013. Section 90(1)(a) and the regulations relate to public notification after a provisional LAP has been adopted.

Transitional provisions relating to LAPs

Clause 17 would insert Schedule 1AA, setting out transitional, savings, and related provisions. We believe several provisions in clause 17 could be altered to make the bill’s application clearer.

We recommend redrafting the transitional provisions to provide that the current rules would continue to apply to provisional licences where an appeal has already been made. The new rules (following the commencement of the bill) would apply in all other cases.

Ensuring the licensing process cannot be exploited by competitors

Clauses 10 and 11 of the bill would insert new sections 102(1) and 128(1) into the Act. These new sections would allow any person to object to the granting or renewal of an alcohol licence, except for a “trade competitor”. This is designed to prevent the licensing process from being used by an established alcohol retailer to hamper potential competition.

Clause 4 of the bill would add a definition of “trade competitor” to the Act. The definition would be:

a person who holds a licence of any type to sell alcohol regardless of—

- (a) whether the person actually sells alcohol; or
- (b) where the person sells alcohol.

A trade competitor would only be able to object if they were directly affected in a way that does not relate to trade competition or its effects.

We believe the bill should be strengthened to introduce restrictions to trade surrogates objecting. A surrogate is someone who receives, or is likely to receive, direct or indirect help from a trade competitor to object.

We therefore recommend amending clauses 10 and 11 to insert new sections 102(1A)(b) and 128(1A)(b). New sections 102(1A)(b) and 128(1A)(b) would expand the prohibition on trade competitors filing a licence objection to those receiving or likely to receive direct or indirect help from a competitor to object to the application.

Objections to applications for a licence variation or a special licence

As discussed earlier, clauses 10 and 11 of the bill would insert new sections 102(1)–102(1A) and 128(1)–128(1A). These sections would allow anyone, except for a trade competitor and surrogates, to file an objection to an application for a new or renewed alcohol licence.

As introduced, the bill would not expand the eligibility to file an objection to an application for a variation of conditions on an existing licence or an application for a special licence. We recommend amending sections 120(4) and 140(1)(a) to make the eligibility to file an objection in these circumstances consistent with the eligibility criteria established in clauses 10 and 11 for filing an objection to an application for a new or renewed licence.

Remote access to DLC hearings

Clause 13 would amend section 202(5) of the principal Act to clarify that DLCs can conduct hearings remotely if they consider it appropriate and the necessary facilities are available. Amended section 202(5) would make the licensing process more accessible.

We note that although amended section 202(5) would give DLCs the power to hold hearings remotely, it would not impose any requirements for a DLC or the ARLA to consider requests for a remote hearing. While we do not consider that DLCs and the ARLA should be required to hear evidence remotely, we think they should be required to consider any reasonable request to submit remotely. We recommend amending clause 13 to add this requirement.

Making DLC hearings more accessible

Clauses 14 and 15 would insert new section 203A and amend section 204. These provisions seek to reduce barriers to community participation by making licensing hearings less intimidating and adversarial, and avoiding unnecessary formality.

We consider that section 203A as introduced should be amended to provide a non-binding, non-exhaustive list of factors that a DLC could consider to make licensing hearings less formal. These examples include:

- the location and timing of the hearing

- the layout of the venue of the hearing
- the timetable of the hearing
- the language and terminology to be used at the hearing.

Recognising the importance of tikanga

We acknowledge the role of tāngata whenua and the importance of tikanga Māori in protecting local communities from alcohol-based harm. We note that, at present, tikanga can sometimes be poorly observed in licensing hearings.

We recommend amending clause 14, proposed new section 203A, so that a DLC must ensure that its procedures allow for tikanga Māori to be incorporated into proceedings. Our amendments would also ensure that written and oral evidence to a DLC could be made in te reo Māori.

Increasing the timeframe to submit an objection

Sections 102(2) and 128(2) of the Act require any objection to a licence application to be filed with a DLC within 15 working days of public notification.

We think that the 15 working day timeframe does not give communities adequate time to gather evidence. We recommend inserting new clauses 10(2) and 11(2) to increase the time allowed in sections 102(2) and 128(2) for objecting to a licence application to 25 working days. This change would make participating in alcohol licensing decisions more accessible for communities.

Consistency with the Evidence Act

Section 207(2) of the Act provides that the provisions of the Evidence Act 2006 apply to alcohol licensing proceedings. However, new sections 203A(2)(b) and (c), inserted by clause 14, would be inconsistent with part 3, subpart 4 of the Evidence Act. Sections 203A(2)(b) and (c) relate to the removal of cross-examination and the ability to question other parties or their witnesses in licensing hearings. Part 3, subpart 4 of the Evidence Act provides a procedure for questioning witnesses and allows relevant parties to cross-examine witnesses on relevant matters.

Section 5 of the Evidence Act specifies that where there is an inconsistency between the Evidence Act and any other Act, the provisions of the other Act prevail. We recommend inserting new clause 15A to amend section 207 to make it clear that the Evidence Act would apply to the principal Act, except for sections 203A(2)(b) and (c).

Allowing DLCs to better handle submissions

Clauses 15 and 16 would insert new sections 204(5) and 205A–205C. Section 204(5) would give DLCs and the ARLA the power to limit oral evidence when it is likely that multiple parties will present similar evidence.

Sections 205A–205C would give DLCs and the ARLA more powers to control hearings. For example:

- section 205A would empower DLCs and the ARLA to direct the licence applicant and any person who planned to call an expert to provide evidence or a brief in advance of the hearing
- section 205B would enable DLCs and the ARLA to make directions and requests, such as setting the order of business or requesting additional information in advance of a hearing
- section 205C would enable DLCs and the ARLA to strike out evidence if it met set criteria.

We heard from submitters with a range of views about how these provisions would likely work in practice. We consider that it is important to strike a balance between ensuring that DLCs and the ARLA have the ability to manage their hearings, and ensuring that there are not unreasonable barriers for community participation in the hearings. We are concerned that these provisions could exclude valid objections and discourage participation. We note that the ARLA and DLCs already have broad powers to manage their hearings, such as section 203(9), which enables them to regulate their procedures as they see fit.

For these reasons, we recommend that sections 204(5) and 205A–205C be deleted from the bill.

Further alcohol reform

We are aware that the Government intends to progress further alcohol reforms in 2024. We suggest the Government consider the following points in these further reforms.

Greater Māori involvement in developing LAPs

We heard many submissions recommending greater Māori involvement in the development of LAPs. One hundred and twenty five submissions raised concerns about the absence of references to Te Tiriti o Waitangi in the Principal Act, a failure to give Māori tools to bring about change, and persistent harm experienced by Māori as a result of alcohol.

Section 78(4) of the Act requires territorial authorities to consult the Police, inspectors, and Medical Officers of Health when developing a LAP, but not Māori. Involving Māori in the development of a LAP has the potential to ensure that LAPs reflect the perspectives of hapū and iwi.

We suggest that the Government consult with Māori on ways to increase the involvement of local iwi and tāngata whenua in decision-making about alcohol licensing in their communities as part of the next tranche of alcohol reform.

Improving notification requirements

Currently, the Sale and Supply of Alcohol Regulations 2013 require applicants to notify the public of a licence application. Doing so involves the applicant placing a notice in a local newspaper or on a website nominated by the relevant DLC.

We consider that the notification requirements are an essential factor in ensuring that communities have an opportunity to object to a licence application in their area.

As part of its further reform work, we suggest that the Government should investigate ways to modernise the notification requirements and ensure that they are fit for purpose for communities.

ACT New Zealand differing view

The ACT Party opposes the continuation of this bill in its suggested amended format.

Every citizen should have the right to an affordable and non-confrontational appeal process, their voices to be heard, and have inclusion in the development of LAPs. However, this bill does not afford that right to every citizen. It specifically excludes those whose continued existence and livelihoods are being debated.

All businesses are being treated the same way based on what bigger businesses like the supermarkets do within the current appeal processes. This means that smaller or boutique outlets are left to fend for their right to continue their businesses only by judicial review proceedings, not by partaking in LAP development. A licence to operate is only valid for 12 months after the initial approval with renewals needed every three years. Businesses will struggle with no certainty over their continuation and knowing there is no ability to defend themselves through the amended LAP process.

This bill was brought about because the pendulum had swung too far in one direction, allowing big business to override the LAP process and tie up the councils both in expense and time with appeals. We agree that an alternative process was needed. We agree that the voices of the community need to be heard. We agree that communities were being prevented from having a fair hearing and participating in a community outcome due to the appeals process.

What we do not agree with, is swinging the pendulum all the way over to the other side of the problem, so that the businesses now have no say. It is ACT's opinion that the Labour Government have justified the silencing of one side of the argument, by silencing the other. The issues that the community faced of not being heard, will now be the issues that businesses face.

ACT promotes a fair and democratic process to solving the issues our communities are involved in. It is our view that this means everyone should have a say in processes that determine the viability of an existing business, regardless of what that business is.

Appendix

Committee process

The Sale and Supply of Alcohol (Community Participation) Amendment Bill was referred to the committee on 13 December 2022.

We called for submissions on the bill with a closing date of 12 February 2023. We received and considered submissions from 420 interested groups and individuals. We heard oral evidence from 80 submitters.

We received advice on the bill from the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Vanushi Walters (Chairperson from 13 February 2023)

Hon Ginny Andersen (Chairperson until 1 February 2023, member until 8 February 2023)

Hon Paul Goldsmith

Dr Emily Henderson

Anahila Kanongata'a (from 8 February 2023)

Marja Lubeck (from 8 February 2023)

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Hon Willow-Jean Prime (until 8 February 2023)

Arena Williams

**Sale and Supply of Alcohol (Community Participation)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Kiritapu Allan

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sale and Supply of Alcohol (Community Participation) Amendment Act **2022**.

2 Commencement

- (1) This Act comes into force on the day after ~~the date of~~ Royal assent.
- (2) However, **sections 13 to 15A** come into force 9 months after Royal Assent.

3 Principal Act

This Act amends the Sale and Supply of Alcohol Act 2012.

Part 1
Amendments to principal Act

4 Section 5 amended (Interpretation) 5

In section 5(1), insert in its appropriate alphabetical order:

~~trade competitor, in relation to an application for a licence or for a renewal of a licence,~~ means a person who holds a licence of any type to sell alcohol regardless of—

- (a) whether the person actually sells alcohol; or 10
- (b) where the person sells alcohol

5 New section 6A inserted (Transitional, savings, and related provisions)

After section 6, insert:

6A Transitional, savings, and related provisions 15
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

6 Section 79 amended (Territorial authority must produce provisional policy by consulting on draft policy using special consultative procedure)

- (1) In the heading to section 79, replace “**produce provisional policy by consulting**” with “**consult**”. 20
- (2) In section 79(1), replace “produce a provisional policy by using” with “use”.
- (3) In section 79(2), replace “producing a provisional policy” with “~~consulting~~ amending a draft policy as a result of consultation”.

7 Sections 80 to 88 replaced 25
Replace sections 80 to 88 with:

- 80 Territorial authority must give public notice of finalised policy**
- (1) If, after consulting under section 79 and finalising a local alcohol policy, a territorial authority wishes to adopt the policy, it must give public notice of the policy.
 - (2) The public notice must be given in accordance with regulations made under this Act. 30
 - (3) Regulations prescribing the manner in which the public notice must be given may require publication of the whole of the local alcohol policy.

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81	When local alcohol policy adopted
	A local alcohol policy—
	(a) is adopted 30 days after the date on which it is publicly notified; but
	(b) has no effect until it is brought into force.
82	Territorial authority may discontinue development of local alcohol policy
	A territorial authority may discontinue the development of a local alcohol policy at any time before it is adopted.
83	Territorial authority may recommence development of local alcohol policy
(1)	A territorial authority may recommence the development of a local alcohol policy that it has discontinued developing.
(2)	If a territorial authority recommences the development of a local alcohol policy, the territorial authority must consult as required under this Act as if it were developing a new local alcohol policy unless the territorial authority—
	(a) has completed consultation on the local alcohol policy before its development was discontinued; and
	(b) has recommenced the development of the local alcohol policy within 6 years of the date on which its consultation was completed.
8	Section 89 amended (Disallowance of local alcohol policy)
	In section 89(1), replace “Once a provisional local alcohol policy has been adopted and ceased to be provisional,” with “If a local alcohol policy has been adopted,”.
9	Section 90 amended (When local alcohol policy is in force)
(1)	In section 90(1), replace “Once a provisional local alcohol policy has been adopted and ceased to be provisional,” with “If a local alcohol policy has been adopted,”.
(1)	<u>Replace section 90(1) with:</u>
(1)	<u>If a local alcohol policy has been adopted, the territorial authority concerned may bring it into force on a day stated by resolution.</u>
(2)	<u>In section 90(2), in each place, replace “subsection (1)(b)” with “subsection (1)”.</u>
(3)	<u>In section 90(2)(a), replace “public notice of its adoption was given” with “public notice of the policy is given (see section 80)”.</u>
(4)	<u>Repeal section 90(4).</u>
10	Section 102 amended (Objections to applications)
(1)	Replace section 102(1) with:

(1) Any person may object to an application for the grant of a licence, whether as an individual or as a representative of a group or an organisation.

~~(1A) However, a person who is a trade competitor of the applicant may object only if the person is directly affected by the application in a way that does not relate to—~~

~~(a) trade competition; or~~

~~(b) the effects of trade competition.~~

(1A) However,—

(a) a trade competitor may object to an application only if the trade competitor is directly affected by the application in a way that does not relate to—

(i) trade competition; or

(ii) the effects of trade competition; and

(b) a person may not object to an application if the person receives, or is likely to receive, direct or indirect help from a trade competitor to object to the application.

(2) In section 102(2), replace “15” with “25”.

10A Section 120 amended (Variation of conditions)

Replace section 120(4) with:

(4) Any person may object to the grant of the application, whether as an individual or as a representative of a group or an organisation.

(4A) However,—

(a) a trade competitor may object to the grant only if the trade competitor is directly affected by the grant in a way that does not relate to—

(i) trade competition; or

(ii) the effects of trade competition; and

(b) a person may not object to the grant if the person receives, or is likely to receive, direct or indirect help from a trade competitor to object to the grant.

11 Section 128 amended (Objections to renewal)

(1) Replace section 128(1) with:

(1) Any person may object to an application for the renewal of a licence, whether as an individual or as a representative of a group or an organisation.

~~(1A) However, a person who is a trade competitor of the applicant may object only if the person is directly affected by the application in a way that does not relate to—~~

~~(a) trade competition; or~~

	(b) the effects of trade competition.	
	<u>(1A) However,—</u>	
	<u>(a) a trade competitor may object to an application only if the trade competitor is directly affected by the application in a way that does not relate to—</u>	5
	<u>(i) trade competition; or</u>	
	<u>(ii) the effects of trade competition; and</u>	
	<u>(b) a person may not object to an application if the person receives, or is likely to receive, direct or indirect help from a trade competitor to object to the application.</u>	10
(2)	<u>In section 128(2), replace “15” with “25”.</u>	
12	Section 133 replaced (Renewal of licences where relevant local alcohol policy exists)	
	Replace section 133 with:	
133	Renewal of licences where relevant local alcohol policy exists	15
	A licensing committee or the licensing authority may—	
	(a) decline to renew a licence if it considers that renewing the licence would be inconsistent with any policy set out in the relevant local alcohol policy relating to a matter specified in section 77(1)(a) to (d):	
	(b) impose conditions on any licence it renews if it considers that the renewal of the licence, or the consequences of the renewal of the licence, without those conditions would be inconsistent with the relevant local alcohol policy.	20
12A	<u>Section 140 amended (Objections to applications)</u>	
	<u>Replace section 140(1) with:</u>	25
(1)	<u>Any person may object to the grant of a special licence, whether as an individual or as a representative of a group or an organisation, but only if the secretary of the licensing committee concerned has under section 139(b) required the applicant to give notice of the application for the grant.</u>	
(1A)	<u>However,—</u>	30
	<u>(a) a trade competitor may object to the grant under subsection (1) only if the trade competitor is directly affected by the grant in a way that does not relate to—</u>	
	<u>(i) trade competition; or</u>	
	<u>(ii) the effects of trade competition; and</u>	35

- (b) a person may not object to the grant under subsection (1) if the person receives, or is likely to receive, direct or indirect help from a trade competitor to object to the grant.

13 Section 202 amended (Procedure)

Replace section 202(5) with:

- (5) The hearing of a matter or any part of it by ~~a licensing committee or the licensing authority~~ the licensing authority or licensing committee concerned may be conducted by telephone, audiovisual link, or other remote access facility if the ~~licensing committee or licensing authority~~ licensing committee considers it appropriate and the necessary facilities are available.
- (6) The licensing authority or licensing committee concerned must consider any reasonable request made by a person to participate in the hearing of a matter or any part of it by telephone, audiovisual link, or other remote access facility.

14 New section 203A inserted (Licensing committees must establish appropriate procedures)

After section 203, insert:

203A Licensing committees must establish appropriate procedures

- (1) A licensing committee must establish appropriate procedures to consider applications.
- (2) When doing so, a licensing committee must ensure that those procedures—
- (a) avoid unnecessary formality, including for example (without limitation) by making appropriate provision about—; and
- (i) the location and timing of the hearing;
- (ii) the layout of the venue of the hearing;
- (iii) the timetable for the hearing;
- (iv) the language and terminology to be used at the hearing; and
- (b) do not permit parties or their representatives to question other parties or ~~witness~~ witnesses of other parties; and
- (c) do not permit cross-examination; and
- (d) allow for tikanga Māori to be incorporated into proceedings; and
- (e) allow for persons to be heard, and to make submissions, in te reo Māori.
- (3) To avoid doubt, nothing in **subsection (1)** applies to the licensing authority.

Compare: 1991 No 69 s 39

15 Section 204 amended (Right of certain persons to appear in proceedings)

Replace section 204(3) with:

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- (3) In the case of proceedings specified in subsection (1) that are before a licensing committee, any of the following persons may appear and be heard (whether personally or by counsel) and call and examine their own witnesses:
- (a) the applicant:
 - (b) an objector: 5
 - (c) an inspector:
 - (d) a constable:
 - (e) a Medical Officer of Health.
- (4) In the case of proceedings specified in subsection (1) that are before the licensing authority, any of the following persons may appear and be heard (whether personally or by counsel), and call, examine, ~~or~~ and cross-examine any witnesses: 10
- (a) the applicant:
 - (b) an objector:
 - (c) an inspector: 15
 - (d) a constable:
 - (e) a Medical Officer of Health.
- ~~(5) Despite anything in subsection (2), (3), or (4), the chairperson of a licensing committee or the licensing authority may limit the circumstances in which parties having the same interest in a matter may speak or call evidence in support if the chairperson considers that repetition is likely to be excessive. 20~~

15A Section 207 amended (Evidence in proceedings before licensing authority or licensing committee)

In section 207(2), replace “Subject to the foregoing provisions of this section” with “Subject to subsection (1) and to section 203A(2)(b) and (c)”. 25

16 Section 205 replaced (Right of persons to appear in relation to appeal under section 81)

~~Replace section 205 with:~~

205 Control of hearings

~~A licensing committee or the licensing authority conducting a hearing on a matter described in **section 204** may exercise a power under any of **sections 205A to 205G**, after considering whether the scale and significance of the hearing makes the exercise of the power appropriate.~~ 30

~~Compare: 1991 No 69 s 41A~~

205A ~~Directions to provide evidence within time limits~~

- (1) ~~A licensing committee or the licensing authority may direct the applicant to provide evidence or briefs to the licensing committee or licensing authority before the hearing.~~
- (2) ~~The applicant must provide the evidence or briefs at least 10 working days before the hearing.~~ 5
- (3) ~~A licensing committee or the licensing authority may direct a person who is intending to call an expert to provide evidence or a brief to the licensing committee or licensing authority before the hearing.~~
- (4) ~~The person must provide the evidence or brief at least 5 working days before the hearing.~~ 10

Compare: 1991 No 69 s 41B

205B ~~Directions and requests before or at hearings~~

- (1) ~~Before or at the hearing, a licensing committee or the licensing authority may—~~ 15
 - (a) ~~direct the order of business of the hearing, including the order in which evidence and briefs are to be presented; or~~
 - (b) ~~direct that evidence and briefs be—~~
 - (i) ~~recorded; or~~
 - (ii) ~~taken as read; or~~ 20
 - (iii) ~~limited to matters in dispute; or~~
 - (c) ~~direct any person who is presenting evidence or a brief to present it within a time limit.~~
- (2) ~~Before or at the hearing, a licensing committee or the licensing authority may request a person who has presented evidence or a brief to provide further information.~~ 25
- (3) ~~At the hearing, a licensing committee or the licensing authority may—~~
 - (a) ~~request the applicant to provide further information:~~
 - (b) ~~direct a person presenting evidence or a brief not to present—~~
 - (i) ~~the evidence or brief if it is irrelevant or not in dispute; or~~ 30
 - (ii) ~~any part of it that is irrelevant or not in dispute:~~
 - (c) ~~commission an expert or any other person employed for the purpose to prepare a report on any matter about which a licensing committee or the licensing authority requires further information.~~
- (4) ~~A licensing committee or the licensing authority must provide a copy of any further information requested under **subsection (2)**, and received before the hearing, to the applicant and every person who has presented evidence or a brief.~~ 35

- (5) **Subsection (6)** applies to —
- (a) any further information that —
 - (i) is requested under **subsection (2) or (3)**; and
 - (ii) is received in writing or electronically after the start of the hearing; but
 - (iii) is not given as evidence at the hearing;
 - (b) any report that is commissioned under **subsection (3)(c)**.
- (6) A licensing committee or the licensing authority must —
- (a) provide a copy of the further information or report to the applicant and every person who has presented evidence or a brief and stated a wish to be heard; and
 - (b) make the further information or report available to any person who has presented evidence or a brief and did not state a wish to be heard.
- (7) However, a licensing committee or the licensing authority does not need to provide further information to the applicant or person who provided the information.
- Compare: 1991 No 69 s 41C

205C Striking out evidence or briefs

- (1) A licensing committee or the licensing authority may direct that evidence or a brief (in whole or in part) be struck out if the licensing committee or licensing authority is satisfied that at least 1 of the following applies to the evidence or brief (in whole or in part):
- (a) it is frivolous or vexatious;
 - (b) it discloses no reasonable or relevant case;
 - (c) it would be an abuse of the hearing process to allow the evidence or brief (or the part) to be taken further;
 - (d) it is supported only by material that, though purporting to be independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter;
 - (e) it contains offensive language.
- (2) A licensing committee or the licensing authority —
- (a) may make a direction under this section before, at, or after the hearing; and
 - (b) must record its reasons for any direction made.
- (3) A person whose evidence or brief is struck out (in whole or in part) has a right of objection.
- Compare: 1991 No 69 s 41D

17 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Amendments to Sale and Supply of Alcohol Regulations 2013 5

18 Principal regulations

This Part amends the Sale and Supply of Alcohol Regulations 2013.

19 Regulation 16 amended (Territorial authorities adopting joint LAP)

In regulation 16, replace “a provisional LAP” with “an LAP”.

20 Regulation 17 amended (Public notice of provisional LAP) 10

- (1) In the heading to regulation 17, replace “provisional” with “finalised”.
- (2) Revoke regulation 17(1).
- (3) In regulation 17(2),—
 - (a) replace “provisional” with “finalised”; and
 - (b) replace “notice” with “public notice given by a territorial authority under section 80(1) of the Act”. 15
- (4) In regulation 17(2)(b), delete “provisional”.
- (5) In regulation 17(3),—
 - (a) replace “provisional” with “finalised”; and
 - (b) replace “notice” with “public notice given by a territorial authority under section 80(1) of the Act”. 20
- (6) In regulation 17(3)(b), delete “provisional”.

21 Regulation 18 revoked (Appeal against element of provisional LAP)

Revoke regulation 18.

22 Regulation 19 revoked (Public notice of adoption of LAP) 25

Revoke regulation 19.

~~22 Regulation 19 amended (Public notice of adoption of LAP)~~

- ~~(1) Replace regulation 19(1) with:~~
- ~~(1) A public notice of the adoption of an LAP given by a territorial authority under section 90(1) of the Act must state that the LAP has been adopted.~~ 30
- ~~(2) In regulation 19(2), delete “provisional”.~~
- ~~(3) In regulation 19(3), delete “provisional”.~~

Schedule

New Schedule 1AA inserted

s 17

Schedule 1AA

Transitional, savings, and related provisions

5

s 6A

Part 1

Provisions relating to this Act

There are no transitional, savings, or related provisions in this Act as enacted, apart from those set out in sections 406 to 415 (as they read on 18 December 2012).

10

Part 2

Provisions relating to Sale and Supply of Alcohol (Community Participation) Amendment Act 2022

1 Transitional provisions in respect of certain local alcohol policies

(1) ~~This clause applies to—~~ 15

(a) ~~a draft or an adopted local alcohol policy in existence immediately before the commencement of this clause;~~

(b) ~~a local alcohol policy in force immediately before the commencement of this clause.~~

(2) ~~If this clause applies,—~~ 20

(a) ~~the draft local alcohol policy may be—~~

(i) ~~discontinued under section 88 as it read immediately before the commencement of this clause;~~

(ii) ~~brought into force in accordance with section 90 (as amended by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022);~~ 25

(iii) ~~reviewed under section 97;~~

(b) ~~the adopted local alcohol policy may be brought into force in accordance with section 90 (as amended by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022);~~ 30

(c) ~~the local alcohol policy in force immediately before the commencement of this clause—~~

(i) ~~is to be treated as if it had been—~~

	(A) adopted under section 81 (as inserted by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022); and	
	(B) brought into force in accordance with section 90 (as amended by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022);	5
	(ii) may be reviewed under section 97.	
	<i>Interpretation</i>	
(1)	<u>In this clause—</u> <u>new rules means this Act and the Sale and Supply of Alcohol Regulations 2013, as in force on the commencement of this clause</u> <u>old rules means this Act and the Sale and Supply of Alcohol Regulations 2013, as in force immediately before the commencement of this clause.</u>	10
	<i>Draft local alcohol policies</i>	
(2)	<u>The new rules apply to a draft local alcohol policy in existence immediately before the commencement of this clause as if it were produced under section 78 (as in force on the commencement of this clause).</u>	15
	<i>Provisional local alcohol policies</i>	
(3)	<u>The old rules continue to apply to a provisional local alcohol policy in existence immediately before the commencement of this clause if an appeal has been made against any element of the policy under section 81 (as in force immediately before the commencement of this clause).</u>	20
(4)	<u>The new rules apply to a provisional local alcohol policy in existence immediately before the commencement of this clause as if it were a draft local alcohol policy that has been consulted on under section 79 (as in force on the commencement of this clause) and finalised, if no public notice of the policy has been given under section 80(1) (as in force immediately before the commencement of this clause).</u>	25
(5)	<u>The new rules apply to a provisional local alcohol policy in existence immediately before the commencement of this clause as if it were a finalised local alcohol policy in respect of which public notice has been given under section 80 (as in force on the commencement of this clause), if the following conditions are met:</u>	30
	(a) <u>public notice of the policy has been given under section 80(1) (as in force immediately before the commencement of this clause); and</u>	35
	(b) <u>no appeal has been made against any element of the policy under section 81 (as in force immediately before the commencement of this clause).</u>	

Schedule	Sale and Supply of Alcohol (Community Participation) Amendment Bill	
	<i>Adopted local alcohol policies</i>	
(6)	<u>The new rules apply to an adopted local alcohol policy in existence immediately before the commencement of this clause as if it were a local alcohol policy adopted under section 81 (as in force on the commencement of this clause).</u>	
2	Transitional provisions in respect of applications for licences	5
(1)	This clause applies to an application for a licence that is lodged before the commencement of this clause but not determined before that commencement.	
(2)	If this clause applies,—	
	(a) in the case of proceedings begun before the commencement of this clause, the procedures specified in this Act immediately before the commencement of this clause continue to apply as if the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022 had not been enacted (apart from section 2056(3)) :	10
	(b) in the case of proceedings not begun before the commencement of this clause, the procedures specified in this Act immediately after the commencement of this clause (as amended by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2022) apply.	15

Legislative history		
7 December 2022	Introduction (Bill 205–1)	
13 December 2022	First reading and referral to Justice Committee	