

Hon Kiri Allan
Minister of Justice

Proactive release – Sale and Supply of Alcohol (Community Participation) Amendment Bill

Date of issue: 24 February 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	Additional Item: Proposed Approach to Policy Work on the Sale and Supply of Alcohol Act: Update <i>Cabinet oral item</i> Office of the Minister of Justice 12 September 2022	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none">• section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials; and• section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions.
2.	Additional Item: Proposed Approach to Policy Work on the Sale and Supply of Alcohol Act: Update <i>Cabinet Minute CAB-22-MIN-0385</i> Cabinet Office 12 September 2022	Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.
3.	Reforms to the Sale and Supply of Alcohol Act 2012 <i>Cabinet Paper</i> Office of the Minister Justice 19 October 2022	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none">• section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of

		<p>advice tendered by Ministers of the Crown and officials; and</p> <ul style="list-style-type: none"> • section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions; and • section 9(2)(h) to maintain legal professional privilege.
4.	<p>Reforms to the Sale and Supply of Alcohol Act 2012</p> <p><i>Cabinet Minute CAB-22-MIN-0457.02</i> Cabinet Office 25 October 2022</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.</p>
5.	<p>Reforms to the Sale and Supply of Alcohol Act 2012: Licensing procedures</p> <p><i>Cabinet Paper</i> Office of the Minister of Justice 9 November 2022</p>	<p>Some information has been withheld in accordance with the following sections of the OIA:</p> <ul style="list-style-type: none"> • section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials; and • section 9(2)(h) to maintain legal professional privilege.
6.	<p>Reforms to the Sale and Supply of Alcohol Act 2012: Licensing Procedures</p> <p><i>Cabinet Minute SWC-22-MIN-0199</i> Cabinet Office 9 November 2022</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.</p>
7.	<p>Sale and Supply of Alcohol (Community Participation) Amendment Bill: Approval for Introduction</p> <p><i>Cabinet Paper</i> Office of the Minister of Justice 24 November 2022</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.</p>

8.	<p>Supplementary Analysis Report: Sale and Supply of Alcohol (Community Participation) Amendment Bill</p> <p><i>Attachment to Cabinet Paper</i> Ministry of Justice 24 November 2022</p>	<p>This document is publicly available at: https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/</p> <p>and</p> <p>https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments.</p>
9.	<p>Departmental Disclosure Statement: Sale and Supply of Alcohol (Community Participation) Amendment Bill</p> <p><i>Attachment to Cabinet Paper</i> Ministry of Justice 24 November 2022</p>	<p>This document is publicly available at: https://disclosure.legislation.govt.nz/.</p>
10.	<p>Sale and Supply of Alcohol (Community Participation) Amendment Bill</p> <p><i>Attachment to Cabinet Paper</i> Parliamentary Counsel Office 24 November 2022</p>	<p>Copies of the Bill provided to Ministers with this paper have been withheld in accordance with section 131 of the Legislation Act 2019 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege. The final copy of the Bill for introduction is publicly available at: www.legislation.govt.nz.</p>
11.	<p>Sale and Supply of Alcohol (Community Participation) Amendment Bill</p> <p><i>Cabinet Minute LEG-22-MIN-0219</i> Cabinet Office 24 November 2022</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.</p>

Cabinet oral item: Proposed approach to policy work on the Sale and Supply of Alcohol Act

Hon Kiri Allan
Minister of Justice

Purpose

1. This aide memoire supports a discussion at Cabinet on a proposed approach to policy work on the Sale and Supply of Alcohol Act.

Stakeholders have repeatedly and increasingly called for a review of the Act

2. The Act is not operating as intended or meeting its objectives to ensure alcohol sale, supply and consumption is done safely and responsibly, and to minimise the harm caused by excessive or inappropriate consumption. There is strong support for a review of the Act among stakeholders who raise their concerns directly with Ministers, and indirectly through the media. Interested groups include agriculture, retail, hospitality, tourism, health and social services, law enforcement and the justice system, as well as individuals, families and communities.
3. The Ministry of Justice has identified a range of issues with the Act as it currently stands, summarised at Appendix 1.

A staged review of the Act could bring about impactful change quickly

4. Any decision on alcohol policy reform requires a trade-off between undertaking the fundamental reform called for by some stakeholders, which is complex and controversial, and delivering practical change in the short term.
5. I propose a staged review of the Act, including an immediate reform, and seek Cabinet's agreement to this approach. The stages are to:
 - Introduce a bill this calendar year to remove the ability for parties to appeal provisional local alcohol policies (LAPs) to the Alcohol and Regulatory Licensing Authority (ARLA) – with the intent of passing the bill this term
 - Report back to Cabinet **Section (9)(2)(f)(iv)** on:

- **Section (9)(2)(f)(iv)**
[Redacted]
- [Redacted]

- [Redacted]
- [Redacted]

■ **Section (9)(2)(f)(iv)**
[Redacted]

Section 9(2)(f)(iv)

Local Alcohol Policies

9. The ability to appeal against LAPs is persistently raised by stakeholders as a problematic aspect of the Act. Local councils can develop a LAP, in consultation with their community, about licensing of the sale and supply of alcohol in the area. The LAP can cover the location of licensed premises, maximum trading hours, conditions for sale, and licence density.
10. The intention is to empower communities to have their say about alcohol decisions that impact them, but, in practice, the ability to appeal means many LAPs get tied up in long costly court processes and are never adopted, thereby undermining communities' voices. At present, LAPs cover 35% of the population. Following appeal, LAPs have been abandoned in Christchurch, the Far North and Hamilton, and halted in Wellington. Auckland's LAP has been held up in the appeals process for 7 years. Removing the mechanism would enhance community involvement in local decision-making.

Section 9 (2)(g)(i)

Plan and timeline for introducing a bill on local alcohol policies

13. The Ministry of Justice would lead this work, working closely with the Ministry of Health, and including NZ Police and other agencies with a responsibility and/or interest in the regulation of alcohol.

14. Section 9 (2)(g)(i)

- Section 9 (2)(g)(i)

Action	Date
Ministerial briefing with draft SWC paper to Minister	23 September
Agency and Ministerial consultation on SWC paper	26 – 30 September (1 week)
SWC	12 October
Announcement/ PR	17 October [?]
PCO drafting	2 October – 4 November (just under 4 weeks)
LEG paper to Minister	4 November
Agency and Ministerial consultation on LEG paper	7 – 11 November (1 week)
LEG	24 November
CAB and introduction	28 November
First reading	8 December
Select committee	Section (9)(2)(f)(iv)
Second reading	Section (9)(2)(f)
COWH	Section (9)(2)(f)
Third reading	Section (9)(2)(f)

Recommendations

- **Agree** to introduce a bill this calendar year to remove the ability for parties to appeal provisional local alcohol policies (LAPs) to the Alcohol and Regulatory Licensing Authority (ARLA), with the intent of passing the bill this term
- **Invite** the Minister of Justice to report back to Cabinet in Section (9)(2)(f)(iv) on:

- Section (9)(2)(f)(iv)

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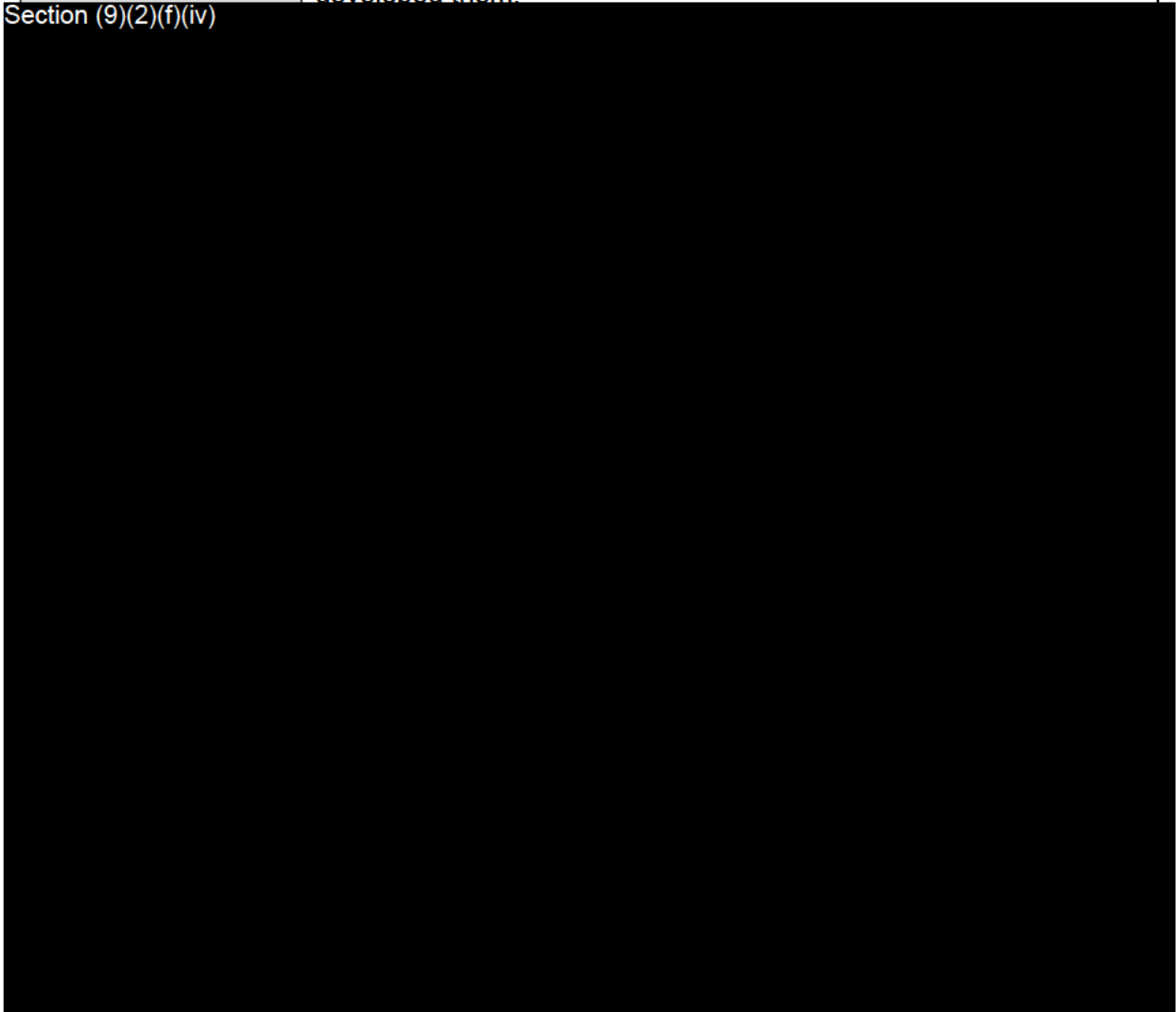
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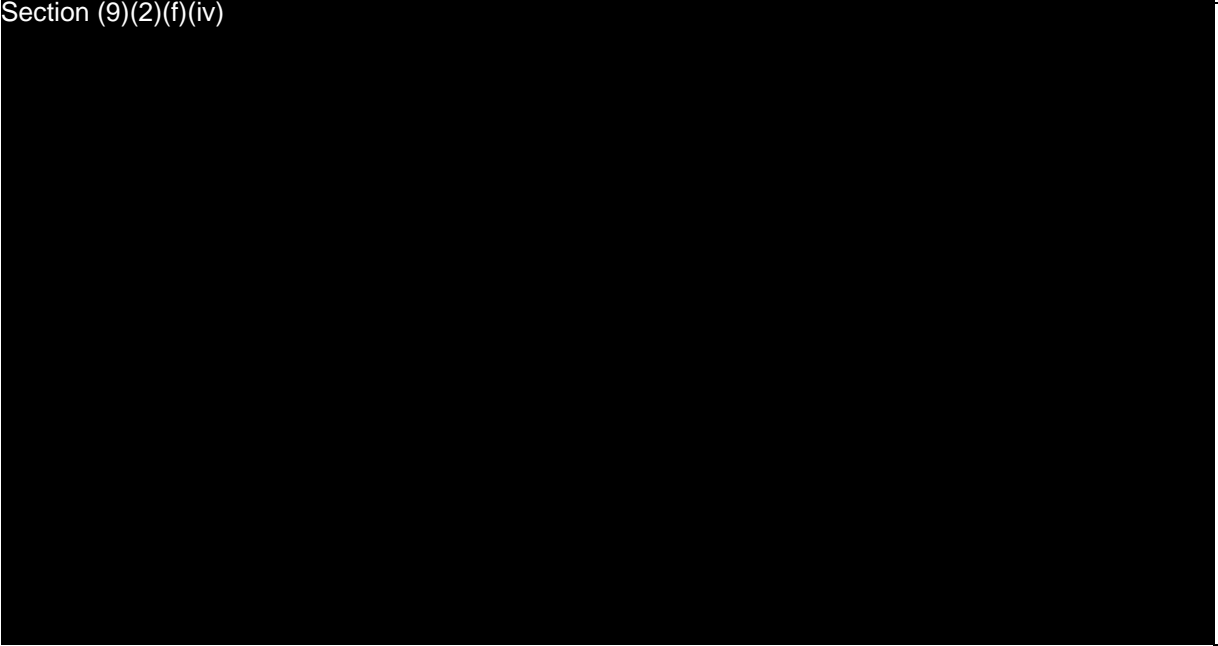
Appendix 1: Summary of significant known issues with the Sale and Supply of Alcohol Act 2012*

Policy area	Problem definition
Community participation in alcohol licensing processes	The Act is intended to provide for community participation in licensing decisions. However, the Act is not empowering communities to the extent originally envisioned. Engaging in the licensing process is legalistic and can be adversarial and expensive. This can stifle the views of the community in favour of the alcohol industry interests. The appeals process may also be systematically favouring the interests of the alcohol industry. This has meant that there have been alcohol outlets increasing in communities who do not want them (often the most vulnerable and deprived communities). This in turn could lead to an increase in alcohol-related harm.
Implementing local alcohol policies	The Sale and Supply of Alcohol Act 2012 provides for councils to create local alcohol policies in consultation with affected communities. Industry stakeholders often appeal provisional local alcohol policies and councils do not have the resources to endure the appeals process. Consequently, the three largest territorial authorities in New Zealand (Auckland, Christchurch and Wellington) do not have local alcohol policies despite having developed them.

Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



*We note that these issues only represent the most significant with the legislation – we are aware of many more issues with the regulatory settings.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Additional Item: Proposed Approach to Policy Work on the Sale and Supply of Alcohol Act: Update

Portfolio Justice

On 12 September 2022, Cabinet:

- 1 **noted** the briefing by the Minister of Justice on the proposed approach to policy work on the Sale and Supply of Alcohol Act 2012;
- 2 **agreed** to introduce a bill this calendar year to remove the ability for parties to appeal provisional local alcohol policies (LAPs) to the Alcohol and Regulatory Licencing Authority, with the intent of the passing the bill this term;
- 3 **invited** the Minister of Justice to report back to Cabinet in **Section (9)(2)(f)(iv)**:

Section

Section (9)(2)(f)(iv)

Section

[Redacted]

Rachel Hayward
Acting Secretary of the Cabinet

In Confidence

Office of the Minister of Justice

Cabinet Committee

Reforms to the Sale and Supply of Alcohol Act 2012

Proposal

- 1 This paper seeks Cabinet agreement to reform of the Sale and Supply of Alcohol Act 2012 (the Act) in two phases:
 - 1.1 immediate reforms to remove appeals on local alcohol policies (LAPs) and improve alcohol licensing hearings and conditions, and
 - 1.2 Section (9)(2)(f)(iv) .

Relation to government priorities

- 2 Two reports recommend stronger regulation of alcohol:
 - 2.1 *He Ara Oranga: Report on Government Inquiry into Mental Health and Addiction*, and
 - 2.2 *Turuki! Turuki!* – the second report of Te Uepū Hāpai i Te Ora - Safe and Effective Justice Advisory Group.
- 3 The Labour Party 2020 manifesto sets out that the Government will respond to the recommendations.
- 4 Alcohol harms impede progress on several of the Government's current priorities, including reducing family violence and addressing inequity and poor health outcomes.

Executive Summary

- 5 On 12 September 2022, Cabinet agreed to introduce a bill this year to remove the ability for parties to appeal provisional LAPs. Cabinet also invited me to report back by March 2023 on a second phase of policy work [CAB-22-MIN-0385].
- 6 I have heard directly from stakeholders that there are multiple issues with the Act. In particular, communities that experience high levels of alcohol-related harm are struggling to influence the way alcohol is regulated. Particular issues raised include challenges with the appeals mechanism against LAPs, participating in licensing hearings, Section (9)(2)(f)(iv)
- 7 I recommend a first phase of immediate reforms to licensing procedures. This will include removing the ability for parties to appeal against LAPs, and changes to licensing hearings, related to who can participate and the

complexity and formality of the hearings themselves. Section (9)(2)(f)(iv)

8 Removing the ability for parties to appeal LAPs will minimise the barriers to adopting LAPs, enhance the intended role of territorial authorities to make decisions on behalf of communities, and mean communities can better influence the development of LAPs through consultation. It will thereby strengthen the ability of LAPs to reduce harm in the community.

9 Related to this, I also recommend an additional change to the Act – to give licensing committees the ability to decline to renew a licence when the licence would be inconsistent with the relevant LAP. Currently, licensing committees must not decline a renewal application if the licence will be inconsistent with the LAP. The change will improve the effectiveness of LAPs as it will mean that renewal decisions are more likely to reflect communities' intentions for alcohol licensing.

10 I will return to Cabinet to seek further policy approvals related to licensing procedures for hearings Section (9)(2)(f)(iv). These will focus on making licensing hearings less adversarial and more accessible. Section (9)(2)(f)(iv)

I will report back to the Cabinet Legislation Committee with a bill no later than 24 November 2022.

11 My report-back to Cabinet in Section (9)(2)(f)(iv) will include advice on forward work options Section (9)(2)(f)(iv)

Background

13 On 12 September 2022, Cabinet considered an approach to policy work on the Act and:

IN CONFIDENCE

- 13.1 agreed to introduce a bill this calendar year to remove the ability for parties to appeal provisional LAPs to the Alcohol Regulatory and Licensing Authority (ARLA), with the intent of passing the bill this parliamentary term;
- 13.2 invited me to report back to Cabinet in **Section (9)(2)(f)(iv)**:
 - 13.2.1 **Section (9)(2)(f)(iv)**
 - 13.2.2 **Section (9)(2)(f)(iv)**
- 14 After that meeting I visited South Auckland and heard more from stakeholders about the challenges they face taking part in alcohol licensing processes. These include issues around who can appear in proceedings before licensing committees, **Section (9)(2)(f)(iv)**
- 15 Some of these procedural issues can be addressed quickly and bring about a positive impact on alcohol regulation. I therefore propose a first phase of reforms that would both:
 - 15.1 remove the ability to appeal LAPs, and
 - 15.2 improve local alcohol licensing processes.
- 16 This paper advises on Cabinet's agreement to remove the ability for parties to appeal provisional LAPs. Further policy work is currently underway to address issues with licensing processes. It includes making hearings less adversarial (for example by removing the right to cross examine submitters), and more accessible for communities (for example by extending who has standing in hearings).
- 17 **Section (9)(2)(f)(iv)**
- 18 I propose to return to Cabinet to seek approval for this work within the next few weeks, with the intention of then reporting back to the Cabinet Legislation Committee with a bill for its meeting on 24 November 2022.
- 19 I recognise that many stakeholders call for more comprehensive reform of the Act. I will report back to Cabinet in **Section (9)(2)(f)(iv)** with advice on a second phase of work **Section (9)(2)(f)(iv)**

- 20 I also note that there are currently four members' bills in the House covering a range of alcohol regulation issues. These bills are listed in Appendix One, together with an analysis of where they overlap with my proposed work.

There are multiple issues with the Act

- 21 The overarching object of the Act is that:
- 21.1 the sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and
 - 21.2 the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.¹
- 22 To this end, the Act includes a range of settings to enable communities to influence the way alcohol is regulated in their own neighbourhood, according to its particular character and circumstances. However, issues with the regulatory settings in the Act mean communities continue to find it challenging to influence the way alcohol is regulated.

The purpose of local alcohol policies is to empower communities

- 23 Territorial authorities can develop and adopt LAPs relating to the sale, supply and consumption of alcohol in their area. These set policies over-and-above the national provisions in the Act. When making licensing decisions, licensing committees must have regard to a relevant LAP.
- 24 The objective of LAPs is to empower communities to address local issues concerning alcohol, so that licensing decisions can be tailored to the local area. LAPs can set conditions about the location of licensed premises, licence density, maximum trading hours, conditions on licences, and one-way door restrictions.² Trading hours in LAPs can be more or less restrictive than the default national maximum trading hours set out in the Act.
- 25 LAPs can have a harm reduction role, particularly as evidence shows the harmful effects of high alcohol outlet densities and long trading hours³ – all matters that can form part of LAPs.

¹ 'Harm caused by the excessive or inappropriate consumption of alcohol' is defined in section 4 of the Act as: (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol, and (b) any harm to society generally or in the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

² A one-way door restriction is a requirement that during stated hours no persons is to be admitted (or re-admitted) into the licensed premises unless they are exempt (an exempt persons includes, for example, the licensee or an employee) and no person who has been admitted or re-admitted while the restriction applies is to be sold or supplied with alcohol.

³ Campbell, C.A., et al. (2009). "The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms." *American Journal of Preventative Medicine*, 37(6): p. 556-569.; Babor, T., et al. (2010). *Alcohol: No ordinary commodity: Research and public policy*. Oxford: Oxford University Press; Hahn, R.A., et al. (2010). "Effectiveness of policies restricting hours of alcohol sales in preventing excessive alcohol consumption and related harms", *American Journal of Preventative Medicine*. 39(6): p. 590-604.

- 26 In developing their LAPs, territorial authorities must consult publicly using the special consultative procedure set out in the Local Government Act 2002. Territorial authorities that want LAPs must draft one by considering matters such as the number of alcohol licences in the area, the location and opening hours of licensed premises, the demography of the area, local health indicators and the nature and severity of alcohol-related problems arising in the area. The authority must also consult with Alcohol Licensing Inspectors (police officers) and Medical Officers of Health in the process.
- 27 Licensing committees (appointed by territorial authorities to decide applications for licences) must have regard to a relevant LAP in licence application decisions. However, LAPs are not binding – licensing committees can issue licences even if they would be inconsistent with LAPs.

Parties can appeal against the provisional LAP, preventing it coming into force

- 28 The Act provides the ability to appeal any element of a provisional LAP on the grounds the element is unreasonable in light of the object of the Act. The appeal is heard by ARLA, the independent tribunal established by the Act. This is intended to provide a mechanism by which LAPs may be moderated to ensure they support the object of the Act.
- 29 No part of the LAP can come into effect until all appeals have been decided.
- 30 In practice, appeals are used frequently by parties with strong interests in alcohol regulation, including commercial and financial interests. These parties have substantial resources and skills to endure long and potentially costly appeals processes. This undermines the devolved nature of LAPs and reduces the community's influence in the process. A flow on effect is that the appeals process is lessening the harm reduction potential of LAPs.

Many territorial authorities have developed LAPs, but some have not been able to adopt them

LAPs cover 35% of the population

- 31 Since 2013, many territorial authorities have worked to adopt LAPs for their area. Currently, of the 67 territorial authorities, 41 have LAPs (accounting for 35% of the population) and 26 do not.⁴
- 32 As at May 2022, 86% of provisional LAPs had been appealed by supermarkets and 72% by bottle stores.⁵ Data collected up to 2017 showed that 28% of provisional LAPs were appealed by Police, health agencies, and/or community members.⁶ The latter may appeal where the provisional LAP is more permissive around trading hours than the default national trading hours.

⁴ In December 2013, regulations pertaining to the appeals process and public notification requirements came into effect. These allowed territorial authorities to progress LAPs beyond the drafting and consultation stage.

⁵ Alcohol Healthwatch. (2022). *The Sale and Supply of Alcohol (Harm Minimisation) Bill*.

⁶ Alcohol Healthwatch. (2017). *A Review of Territorial Authority Progress Towards Local Alcohol Policy Development*, 2nd edition.

- 33 I understand that the vast majority of appeals are about off-licence trading hours and on-licence hours. Parties also appeal off-licence discretionary conditions, off-licence density, and restrictions relating to location of outlets near sensitive areas (such as schools or churches).

Appeals are delaying and preventing adoption of LAPs, and thereby, community influence

- 34 Of the 26 territorial authorities that do not currently have an LAP:
- 34.1 15 have not developed LAPs to draft or provisional stage
 - 34.2 6 have developed LAPs to draft or provisional stage, and
 - 34.3 5 have developed LAPs to provisional stage, but have halted or abandoned them following appeals.
- 35 The authorities that have halted or abandoned LAPs following appeals include the four largest territorial authorities, accounting for 50% of the total population.
- 35.1 **Auckland:** Provisional LAP has been in the appeals process for seven years, at a reported cost to the Council of over \$1 million in legal fees. The matter is currently before the Supreme Court, which has reserved its decision.
 - 35.2 **Christchurch:** Has abandoned its provisional LAP, having reportedly spent five years and around \$1.1 million.
 - 35.3 **Wellington:** Halted efforts to adopt its provisional LAP, having been appealed by eight parties and been found against by ARLA.
 - 35.4 **Far North:** Has abandoned its provisional LAP, having reportedly cost the Council around \$200,000.
 - 35.5 **Hamilton:** Abandoned its provisional LAP in 2018. The Council reportedly spent more than \$200,000 on the appeals process.
- 36 These examples show that, in practice, the appeals process is slow and costly. In many cases territorial authorities are unable to adopt LAPs, meaning communities are unable to influence alcohol regulation in their area.
- 37 The ability to appeal LAPs is undermining key features of the regime. I hear strong and persistent calls for the removal of the ability to appeal LAPs, including from public health experts and local government.

Removing appeals will improve the effectiveness of LAPs

- 38 I recommend removing the ability to appeal elements of LAPs to ARLA. This would be a relatively discrete but impactful amendment enabling more LAPs to be adopted and improving community influence. There are a number of factors in support of this recommendation.

Appeals are not appropriate for LAPs as appeals are intended for decisions affecting particular people

- 39 The Legislation Design and Advisory Committee (LDAC) guidance advises that an appeals process is appropriate where the rights and interests of a particular person are affected by a decision.⁷
- 40 LAPs are not decisions that directly affect the rights and interests of any particular person. Rather, they are frameworks, which licensing committees must have regard to when making licensing decisions. LDAC guidance advises that the appropriate mechanism for disputing such a process or product is judicial review.

Appeals may cut across local democratic processes

- 41 The ability to appeal LAPs could be seen as cutting across the intended role of territorial authorities to make decisions on behalf of communities, and the opportunity for communities to influence the development of LAPs through consultation. LDAC guidance advises that the appropriate mechanism for disputing the process or product of a territorial authority is through local democratic processes, such as local elections.

The Gambling Act 2003 does not include an ability to appeal its venue policies

- 42 The Gambling Act 2003 provides a useful comparator. Its purpose includes preventing and minimising harm from gambling and facilitating responsible gambling.
- 43 The Act requires policies to be developed for class 4 venues (i.e. pubs, clubs, and TABs). These policies specify matters such as whether and where class 4 venues may be established, and restrictions on the maximum number of pokie machines in any venue. Class 4 venue policies are developed using the same special consultative procedure as LAPs, but cannot be appealed.
- 44 Stakeholders have drawn this comparison and suggested the ability to appeal in the Sale and Supply of Alcohol Act 2012 is 'anomalous'.

While communities would also lose the right to appeal LAP, on balance they would be better off

- 45 I note that removing the ability to appeal LAPs would remove the ability for all parties to do so, including community members and others who advocate for harm reduction.

⁷ The Act provides for this ability to appeal at the point individual licensing decisions are made. Parties can appeal against licensing decisions including, for example, when a licensing committee has rejected a licence application. These appeals are heard by ARLA.

- 46 However, I consider that on balance, communities would be better served by removing the ability to appeal. Appeals create an inequality of access that favours well-resourced parties. The costs, delays, and lack of finality takes power away from communities, meaning that the harm reduction potential of LAPs is weakened. Research shows LAPs tend to be weaker at reducing the harm caused by alcohol after an appeal than they were prior.⁸

Other safeguards provide checks and balances

- 47 The Act provides for a range of other mechanisms that allow parties to moderate LAPs, including:
- 47.1 requiring use the special consultative procedure to develop LAPs, ensuring that parties have a chance to provide input
 - 47.2 enabling licences to be granted even where an application is inconsistent with a relevant LAP, and
 - 47.3 providing for objections, hearings, and appeals of individual licensing decisions to ARLA.
- 48 Judicial review is also available to address any errors in process and to ensure that the territorial authorities act within their powers.
- 49 I consider these provide sufficient and appropriate mechanisms for parties to moderate LAPs. However, I note that there are aspects of each of these provisions that have limitations and/or are not working as intended. For example, the special consultative procedure may not provide an effective opportunity for all types of community voices. Some of these mechanisms sit in the Act and could be looked at as part of a future reform.

This proposal will not affect existing appeals

- 50 I note that when amendments to remove appeals are enacted, there may be appeals in the process of being heard. These will continue to be heard until they are complete, which may delay some provisional LAPs from being adopted until the appeals are concluded. However, the Act provides that an LAP may be discontinued by the territorial authority at any point up until they are adopted.
- 51 This respects the separation of powers and parties' legitimate expectations at the time notice of appeal is made.

I also propose changing the way LAPs affect applications for licence renewals

- 52 I recommend an additional change to the Act that is closely related to appeals. That is, amending the Act so that LAPs are taken into account when existing businesses apply to have their licences renewed.

⁸ Alcohol Healthwatch. (2017). A Review of Territorial Authority Progress Towards Local Alcohol Policy Development.


53 Currently, a licensing committee *must not* take any inconsistency between an LAP and a licence into account when deciding whether to renew that licence.⁹ In other words, a renewal cannot be declined simply because issuing it would be inconsistent with the contents of an LAP.

54 This means new LAPs have less impact on licensing decisions than they might otherwise do. This undermines the objective of LAPs to enable communities to influence alcohol regulation in their area.

55 I recommend amending the Act so that licensing committees have the ability to decline to renew a licence if the renewal would be inconsistent with policies on location or licence density in the relevant LAP. The licensing committee will retain discretion in these decisions – they could decide to renew the licence even if it is inconsistent with the LAP – and they will also retain the ability to impose conditions on the licence.

56 This amendment will improve the effectiveness of LAPs, as it will mean that renewal application decisions are more likely to reflect communities' intentions for alcohol licensing. The flow on consequences could be fewer bottle shops in the area and around sensitive areas.¹⁰

57 Section 9 (2)(g)(i)



58 I note that it is difficult to estimate the impact this change will have. Evidence from territorial authorities that have adopted LAPs indicates that very few licences have been issued or renewed that are inconsistent with an existing LAP. This suggests that this change may only impact a small number of businesses.

59 On balance, I consider the benefits outweigh the costs. This change will better align the settings with the purpose of the Act and the objective of LAPs to enable communities to influence alcohol regulation in their area. Licensing committees will have ultimate discretion in these decisions and applicants can appeal licensing decisions of the licensing committee to ARLA if they consider the decision unfair.

Impacts of these proposals on competition

60 Without the delays and costs associated with appeals, more territorial authorities are likely to adopt LAPs. This, as well as changing the way that LAPs apply in renewal of licence application decisions, may result in more

⁹ Licensing committees may however impose conditions on the licence being renewed (e.g. around trading hours) to make it more consistent with an LAP.

¹⁰ In existing LAPs, sensitive areas are defined as educational facilities (institutions delivering educational services for vulnerable grounds such as unemployed, youth or disabled groups), alcohol treatment centres, spiritual facilities, marae, and recreational facilities (parks, reserves, skate parks, youth centres and libraries).

applications being considered in light of LAPs. The impact on competition depends on the content of the relevant LAP and decisions of licensing committees in individual applications.

- 61 The impact of these changes could result in a restriction on the number of businesses licensed to sell alcohol and how they are permitted to operate. For other businesses, LAPs may increase the trading hours they are permitted to operate. Some may lose their licences and others may be operating in an environment with fewer competitors, with resulting impacts on consumers.
- 62 These impacts have to be balanced with the reasons for restricting alcohol supply and sales, mostly notably to reduce the extent of alcohol-related harm.

Next steps

- 63 I will return to Cabinet within the next few weeks to seek further policy approvals related to the challenges communities experience taking part in licensing procedures.
- 64 I will then present a bill to the Cabinet Legislation Committee for its meeting on 24 November 2022. The bill will cover:

64.1 removing appeals on LAPs and the exception for renewals, and

64.2 changes to licensing hearings Section (9)(2)(f)(iv)

- 65 In line with Cabinet's direction, I will also report back to Cabinet in Section (9)(2)(f)(iv)
[REDACTED] The report-back will include Section (9)(2)(f)(iv)

[REDACTED]

[REDACTED]

- 66 Appendix 2 provides further detail about what will be included.

Financial Implications

- 67 There are no direct financial costs arising from the proposals in this paper. There may be financial implications at the implementation stage, particularly for local government and ARLA, which will be analysed.

Legislative Implications

- 68 Legislation is required to implement the proposals in the paper. This is a new bill, which is not on the 2022 Legislative Programme. I propose to introduce an amendment bill by the end of 2022. I consider this bill will be small in size and low in complexity. The Ministry of Justice has informed the Parliamentary Council Office of these proposals. The amendments are to an existing Act that binds the Crown.

Regulatory Impact Statement

- 69 Regulatory Impact Analysis requirements apply to the proposal to amend the Act. A Regulatory Impact Assessment (RIA) is attached.
- 70 A panel within the Ministry of Justice has reviewed the Regulatory Impact Statement. The panel considers that the information and analysis summarised in the Regulatory Impact Statement **partially meets** the Quality Assurance criteria.
- 71 The paper is clear, concise and generally convincing. The panel noted that the Regulatory Impact Statement meets the requirement to be complete and convincing within the constraints outlined in the Statement. These include limiting options to the removal of appeals without considering systematic changes to local decision making the licensing process or judicial recourse. The paper presents convincing evidence that appeals are leading to less restrictive outcomes, create significant delays implementing LAPs, and that communities face barriers to participating.
- 72 However, evidence that appeals are leading to perverse outcomes (i.e. not in line with the purpose of the Act) appears to be largely anecdotal. Finally, the paper does not meet the consultation requirements because the proposals in the paper have not been the subject of any substantial consultation with relevant stakeholders.

Population Implications


- 73 The proposals in this paper enhance local decision-making to better protect communities from alcohol-related harm.
- 74 Alcohol-related harms fall disproportionality on Māori, Pacific peoples, New Zealanders living in the poorest neighbourhoods, people with disabilities, people with mental health and addiction issues, people who identify as gay, lesbian, bisexual or other non-heterosexual, pregnant people (and their fetuses), breastfeeding people (and their children), and rangatahi. Further information on the alcohol harms experienced by these different groups is detailed in Appendix 3.

Section 9(2)(h)

[Redacted]

[Redacted]

Section 9(2)(h)



Human Rights

77 The proposal in this paper does not limit any rights or freedoms provided in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.


Consultation

78 The following agencies have been consulted on this paper: Ministry of Health, NZ Police, Te Puni Kōkiri, Ministry of Business, Innovation and Employment, Accident Compensation Corporation, Ministry of Social Development, Ministry for Primary Industries, Department of Internal Affairs, the Treasury, Oranga Tamariki, Ministry for Pacific Peoples, and Sport NZ.

Communications

79 I intend to announce this work in October, following Cabinet decisions.

80 Section (9)(2)(f)(iv)



Proactive Release

81 This Cabinet paper will be proactively released within 30 business days of decisions being confirmed by Cabinet. Redactions may be made in line with the provisions of the Official Information Act 1982.

Recommendations

The Minister of Justice recommends that the Committee:

- 1 **note** that on 12 September 2022, Cabinet agreed to introduce a bill this calendar year to remove the ability for parties to appeal provisional local alcohol policies (LAPs) to the Alcohol Regulatory and Licensing Authority (ARLA), with the intent of passing the bill this term [CAB-22-MIN-0385];
- 2 **note** that a first phase of reforms to the Act will also consider changes to Section (9)(2)(f)(iv) hearings to improve local alcohol licensing procedures. This includes work to make hearings less adversarial and more

accessible for communities. Section (9)(2)(f)(iv)

- 3 **note** that the Minister of Justice will return to Cabinet to seek further policy approvals related to licensing procedures for hearings Section (9)(2)(f)(iv) before reporting back to the Cabinet Legislation Committee with a bill;
- 4 **note** that the ability to appeal was intended to provide a mechanism by which LAPs may be moderated to ensure they support the object of the Act. In practice, appeals are used frequently by parties with strong interests in alcohol regulation, including commercial and financial interests. This undermines the devolved nature of LAPs and reduces the community's influence in the process. A flow on effect is that the appeals process is lessening the harm reduction potential of LAPs;
- 5 **agree** to amend the Sale and Supply of Alcohol Act 2012 to remove the ability for parties to appeal against provisional LAPs to ARLA;
- 6 **agree** to amend the Sale and Supply of Alcohol Act 2012 so that licensing committees can decline to renew a licence if the licence would be inconsistent with policies on location or licence density in the relevant LAP;
- 7 **invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals, including any consequential amendments;
- 8 **authorise** the Minister of Justice to resolve any minor policy issues in relation to this drafting of legislation, consistent with the contents of this paper, without reference to Cabinet and following consultation with the Prime Minister, and other Ministers as necessary;
- 9 **invite** the Minister of Justice to report back to the Cabinet Legislation Committee no later than 24 November 2022 with a bill enacting changes agreed to in recommendations 5 and 6 above;
- 10 **note** that the Bill is not on the 2022 Legislative Programme;
- 11 **approve** the inclusion of the Bill in the 2022 Legislative Programme, with a priority 4 (to be referred to select committee in the year);
- 12 **note** the Minister of Justice will report back to the Social Wellbeing Committee by the Section (9)(2)(f)(iv)

[Redacted]

[Redacted]

Section (9)(2)(f)(iv)

13 **invite** the Minister of Justice to announce this work, following Cabinet decisions;


14 Section (9)(2)(f)(iv)

Authorised for lodgement

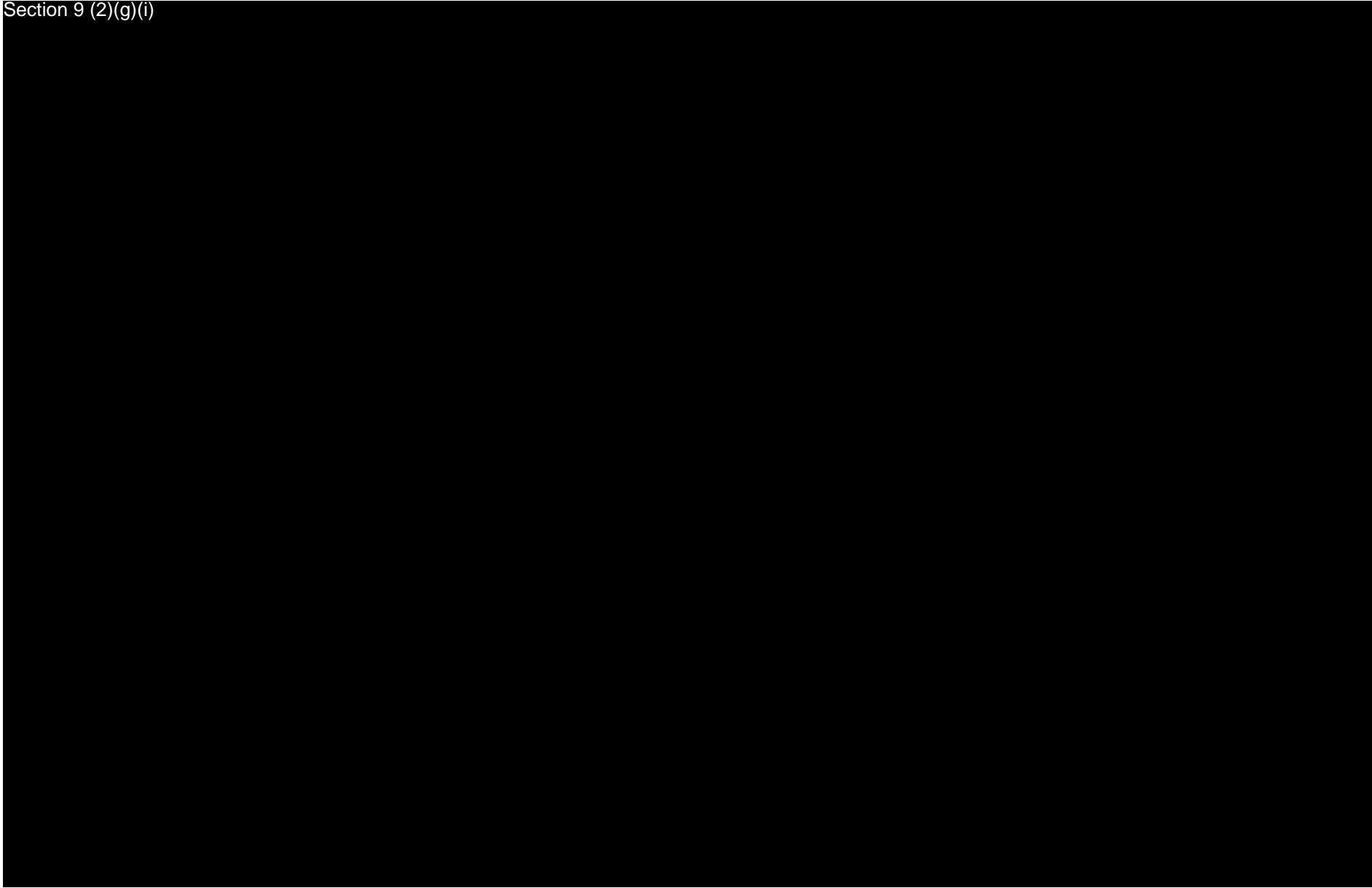
Hon Kiri Allan

Minister of Justice


Section 9 (2)(g)(i)



Section 9 (2)(g)(i)



Section 9 (2)(g)(i)



Appendix 3 – further information about population implications

- 1 Hazardous drinking carries an elevated risk of harm to individuals, whānau, community, future generations, and society. Approximately four out of five adults in New Zealand consume alcohol (meaning they had a drink in the last year).¹⁵ 25% of adults who consume alcohol do so hazardously (meaning they have an established pattern of drinking that carries a high risk of future damage to physical or mental health). Men are twice as likely to report hazardous drinking as women.¹⁶
- 2 The proportion of Māori who drink is roughly the same as the general population. However, 50% of Māori men who drank alcohol in the past year, and 32% of Māori women who drank alcohol in the past year, report drinking hazardously (compared to 34% of European men and 16% of European women).¹⁷
- 3 Pacific peoples are less likely to drink than other ethnic groups but are more likely to drink hazardously if they do drink (compared to European men and women). 75% of Pacific men and 55% of Pacific women reported drinking alcohol in the past year. Of those who drink, 53% of Pacific men, and 29% of Pacific, report drinking hazardously, compared to European men and women.¹⁸
- 4 Population groups that already have disproportionately higher suicide rates, including young New Zealanders and Māori, have a higher proportion of suicide deaths involving alcohol.¹⁹ A 2018 report commissioned by the Health Promotion Agency identified that many of the factors related to Māori alcohol consumption are symptomatic of broader social issues related to inequity and colonisation.²⁰
- 5 Alcohol-related harms fall disproportionately on New Zealanders living in the poorest neighbourhoods, who are 1.3 times more likely to report drinking hazardously than those living in the wealthiest.²¹ Research shows that there is a greater concentration of alcohol outlets in the poorest neighbourhoods compared to the wealthiest neighbourhoods.²²

¹⁵ Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey. <https://www.health.govt.nz/publication/annual-update-key-results-2020-21-new-zealand-health-survey>.

¹⁶ Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey.

¹⁷ Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey.

¹⁸ Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey.

¹⁹ Crossin, et al. (2022). "Acute alcohol use and suicide deaths: an analysis of New Zealand coronial data from 2007–2020," *New Zealand Medical Journal*; 135(1558).

²⁰ SHORE & Whāriki Research Centre. (September 2018). "Māori Attitudes and Behaviours Towards Alcohol".

²¹ Ministry of Health. (2021). Annual Update of Key Results 2020/21: New Zealand Health Survey.

²² Hay, G.C. et al., (2009). "Neighbourhood deprivation and access to alcohol outlets: a national study." *Health Place*; 15: 1086–93; Connor, J.L. et al., (2011). "Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study". *Journal of Epidemiol Community Health*. Oct;65(10):841-6.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Reforms to the Sale and Supply of Alcohol Act 2012

Portfolio Justice

On 25 October 2022, following reference from the Cabinet Social Wellbeing Committee, Cabinet:

- 1 **noted** that in September 2022, Cabinet noted the proposed approach to policy work on the Sale and Supply of Alcohol Act 2012 (the Act) and agreed to introduce a bill this calendar year to remove the ability for parties to appeal provisional local alcohol policies (LAPs) to the Alcohol Regulatory and Licensing Authority (ARLA), with the intent of passing the bill this term [CAB-22-MIN-0385];
- 2 **noted** that a first phase of reforms to the Act will also consider changes to licensing hearings to improve local alcohol licensing procedures, including work to make hearings less adversarial and more accessible for communities;
- 3 **noted** that the Minister of Justice will return to Cabinet to seek further policy approvals related to licensing procedures for hearings **Section (9)(2)(f)(iv)** before reporting back to the Cabinet Legislation Committee with a bill;
- 4 **noted** that:
 - 4.1 the ability to appeal was intended to provide a mechanism by which LAPs may be moderated to ensure they support the objectives of the Act;
 - 4.2 in practice, appeals are used frequently by parties with strong interests in alcohol regulation, including commercial and financial interests, which undermines the devolved nature of LAPs and reduces the community's influence in the process;
 - 4.3 a flow on effect is that the appeals process is undermining the harm reduction potential of LAPs;
- 5 **agreed** to amend the Act to remove the ability for parties to appeal against provisional LAPs to ARLA;
- 6 **agreed** to amend the Act so that licensing committees can decline to renew a licence if the licence would be inconsistent with policies on location or licence density in the relevant LAP;
- 7 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions, including any consequential amendments;

In Confidence

Office of the Minister of Justice

Social Wellbeing Committee

Reforms to the Sale and Supply of Alcohol Act 2012: Licensing procedures

Proposal

- 1 This paper seeks Cabinet agreement to changes to the Sale and Supply of Alcohol Act 2012 (the Act) related to alcohol licensing procedures for inclusion in the Sale and Supply of Alcohol Amendment Bill, to be introduced in November. The changes will make hearings more accessible and fairer; and improve communities' ability to influence alcohol regulation.

Relation to government priorities

- 2 Two reports recommend stronger regulation of alcohol:
 - 2.1 *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*, and
 - 2.2 *Turuki! Turuki!* – the second report of Te Uepū Hāpai i Te Ora, the Safe and Effective Justice Advisory Group.
- 3 The Labour Party 2020 manifesto sets out that the Government will respond to the recommendations.
- 4 Alcohol harms impede progress on several of the Government's current priorities, including reducing family violence, addressing inequity and poor health outcomes, and promoting mental wellbeing for all.

Executive Summary

- 5 This paper sets out targeted changes to alcohol licensing procedures that will improve communities' ability to participate and influence alcohol regulation at the local level.
- 6 Communities are currently unable to participate in alcohol licensing decisions in the way that was intended. Only a small number of those who want to object to a licence application are permitted to do so because of the way the provisions for who may object have been interpreted. The licensing hearings themselves are often legalistic and adversarial and participants report the experience can be intimidating and disempowering.
- 7 Data shows that only a fraction of applications for licences are refused, suggesting communities are struggling to impact decision-making.
- 8 I recommend amending the Act so anyone can object and be heard at a licensing hearing. I also recommend amending the Act to change the way

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licensing hearings are run, so they are not unnecessarily formal, and do not include cross-examination.

- 9 These changes will better align licensing procedures with the intent of the legislation – to acknowledge communities’ interest in licensing decisions and enable them to participate and influence them. These changes are consistent with the Law Commission’s recommendations for regulating alcohol.¹

Background

- 10 On 19 October 2022, Cabinet considered the paper *Reforms to the Sale and Supply of Alcohol Act 2012* [SWC-22-MIN-0179 refers]. The paper recognised that there are a range of issues with the current regulatory regime, and many stakeholders are calling for comprehensive reform. Cabinet agreed to progress work in two phases:
- 10.1 an immediate phase to improve community participation in alcohol licensing procedures with a Bill introduced this year, and
 - 10.2 a longer-term phase of broader, and more systematic, reform with a report back in March 2023 to confirm the approach.
- 11 Cabinet agreed that this year’s Bill would remove the ability for parties to appeal provisional local alcohol policies (LAPs) and amend the way they apply to applications for renewal of existing licences. Cabinet also noted I would bring further proposals on licensing procedures to make objecting to licence applications and participating in hearings more accessible and fairer; and improve communities’ ability to influence alcohol regulation.
- 12 This paper sets out these targeted changes to licensing procedures that can be implemented quickly and have a positive impact.

Communities are not able to participate in licensing decisions as intended

- 13 Alcohol licensing has a direct effect on the community, including on health, wellbeing, amenity and good order, as well as economic impacts. The range of stakeholder interests means that community involvement in decisions about licence applications is important.
- 14 The licensing application process is intended to enable community participation and influence. In practice, only a small number of those who want to object to a licence or renewal application are permitted to do so, and licensing hearings are legalistic and adversarial. Communities struggle to participate and thereby influence licensing decisions.

The Act sets out who can object to applications and how hearings are run

- 15 Under the Act, applications for alcohol licences are considered by district licensing committees (DLCs) appointed by territorial authorities to deal with

¹ Law Commission, *Alcohol in our lives: Curbing the harm* (NZLC R114, 2010).

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licensing matters for the district. DLCs may also refer licence applications up to the Alcohol and Regulatory Licensing Authority (ARLA) for decision.

- 16 A person may object to a licence application if he or she can show *greater interest in the application than the public generally* (s102). The same test applies for an objection to a licence renewal (s128). A person who can demonstrate such an interest is said to have 'standing' or 'status'.
- 17 If an objection is filed by a person with standing, the DLC (or ARLA) may convene a public licencing hearing, rather than deciding the licence application on the paperwork alone (s202).
- 18 At a hearing, the applicant, objectors, an inspector, a constable, and a Medical Officer of Health may appear and be heard, and call, examine, or cross-examine witnesses (s204). The parties may be represented by counsel.

Data shows communities struggle to influence licensing decisions

- 19 Available data from local authorities shows very few licence applications are declined. For example, over the last five years:
 - 19.1 **Auckland** has granted 5704 new licences and declined 10
 - 19.2 **Wellington** has granted 431 new licences and declined 5
 - 19.3 **Christchurch** has granted 663 new licences and declined 7
 - 19.4 **Invercargill** has granted 54 new licences and declined 0, and
 - 19.5 **Porirua** has granted 78 new licences and declined 1.
- 20 The reasons for refusals are not readily available, but the data shows that only a fraction of licence applications are declined, suggesting that objectors struggle to influence these decisions. Appendix One provides more detailed data on licence application processes and outcomes.

I propose changes to who can object to applications and how hearings are run

- 21 I have heard from stakeholders, and the data confirms, that two aspects of the licensing procedure would benefit from immediate change to improve community participation and influence:
 - 21.1 **who can object to applications (standing):** This has been interpreted narrowly, meaning only a small number of those who want to object are permitted to do so, and
 - 21.2 **how DLC hearings are run:** Hearings are legalistic and adversarial, meaning non-professional, often poorly resourced, participants are disempowered and disadvantaged.
- 22 I outline my proposals for each of these below.

People who want to object are often excluded from the process

A narrow interpretation of 'a greater interest than the public generally' has led to exclusions

- 23 Objections by individuals and organisations concerned about alcohol harm in their communities are often dismissed because they do not meet the test for 'standing' that has been established by the courts. This severely reduces community input, enabling licences to proliferate where communities do not want them, including poorer communities that already have a high density of outlets, late opening hours, and outlets situated close to sensitive areas.
- 24 Many objections are dismissed because an objector:
- 24.1 does not live or operate a business within one or two kilometres of the proposed site - a test that is difficult to fulfil, particularly in rural areas,² and/or
- 24.2 cannot show they will be *personally* affected in some way by the licence application.³ (DLCs have often concluded it is not enough to show an objector is concerned generally about the adverse effects of alcohol on the community, nor that they have a specialist interest in addressing such harm.)
- 25 ARLA has recognised the standing of objectors by virtue of an 'enhanced interest' regardless of geographical boundaries⁴ – but this interest has been interpreted narrowly, to include primarily organisations that have a statutory obligation, such as territorial authorities and elected councillors.⁵
- 26 Under existing case law, even community organisations that take an interest in alcohol harm reduction in the area, and regularly work in the area, may be excluded, because they cannot show they will be affected by the grant of the application.⁶ Appendix Two provides relevant examples from case law.

A narrow interpretation of 'person' has led to exclusion of community groups

² For example, of 538 objectors to a proposed bottle store in Khandallah in 2019, about 370 objections were automatically excluded, most because they lived more than one kilometre from the proposed store. <https://www.stuff.co.nz/dominion-post/news/wellington/115112133/good-folk-of-khandallah-arent-wowsers--theyre-good-citizens-with-a-fair-point>. See also *GTD Trading Limited - Liquorland Papatoetoe v Communities Against Alcohol Harm Inc* [2019] NZARLA 222; *General Distributors Ltd t/a Countdown Cable Car Lane* [2018] NZDLCWN 907.

³ *GTD Trading Limited - Liquorland Papatoetoe v Communities Against Alcohol Harm Inc* [2019] NZARLA 222; *General Distributors Ltd t/a Countdown Cable Car Lane* [2018] NZDLCWN 907; Sherriff, A. 2019 *Updating Alcohol Licensing*. Paper delivered at the New Zealand Institute of Liquor Licensing Inspectors Inc (NZILLI), Annual Conference 2019, Wellington, 30 August 2019.

⁴ *Flaxmere Liquor (2008) Limited* [2019] NZARLA 94; *Utikere v I S Dhillon & Sons Limited* [2014] NZHC 270.

⁵ *Utikere v I S Dhillon & Sons Limited* [2014] NZHC 270.

⁶ *General Distributors Ltd t/a Countdown Cable Car Lane* [2018] NZDLCWN 907; *GTD Trading Limited - Liquorland Papatoetoe v Communities Against Alcohol Harm Inc* [2019] NZARLA 222; *Gisborne Liquormart Limited v Ka Pai Kaiti Trust* [2018] NZARLA 316; *A One Limited 'Taupiri Wine Shop' v Waikato District Licensing Committee* [2021] 10/2021.

- 27 Some DLCs have interpreted the use of the words ‘he or she’ to mean that only natural persons have standing to object to licence applications. Iwi representatives, school principals and addiction clinicians have had to object in their personal capacity.⁷ As a result, their objection may carry less weight than it may otherwise do.
- 28 The Wai 2624 claim has highlighted the impact of these exclusions for Māori. It claims that the Act breaches the principles of Te Tiriti o Waitangi in a number of ways, including around who has standing to object to applications. The Act fails to guarantee that Māori have standing, even though the alcohol-related harm experienced by Māori is greater than that of the general public.⁸ In a recent case, a Māori public health organisation was denied standing to object to a licence as its ‘interest’ was seen to be no greater than that of the public.⁹

I propose amendments so anyone can object and be heard at a hearing

- 29 I propose amending the Act so that any person can object to an application for a licence or renewal of licence, as an individual or representative of a group or organisation. However, I propose restricting the ability for trade competitors to object – they can object if they are directly affected by the application in a way that does not relate to trade competition.
- 30 My proposals will bring the Act better into line with the clear intent of the legislation that communities have an interest in licensing decisions. The proposals also align with the Resource Management Act 1991 (RMA), under which submissions on applications for publicly notified resource consents can be made by any interested party, except trade competitors of the applicant.¹⁰
- 31 I understand that this element of the RMA process works well, and the relevant provisions remain the same in the Natural Built Environments Bill, which is expected to replace the RMA. I see no clear justification for the Act to require a higher test for standing.
- 32 Changing the Act in this way will eliminate the administrative work and proceedings required to determine standing. However, it is likely to increase the number of licence application hearings run and the number of objectors appearing at each hearing. I propose to provide for DLCs and ARLA to manage this through, for example, limiting the circumstances in which objectors with the same or similar interests may speak or call evidence in support, directing the order of business, taking evidence and submissions as read, directing that evidence and submissions be presented within time limits.¹¹

⁷ Sherriff, A. 2019. *Updating Alcohol Licensing*.

⁸ David Ratu, Wai 2624, number 1.1.1(c).

⁹ *A One Limited ‘Taupiri Wine Shop’ v Waikato District Licensing Committee* [2021] 10/2021.

¹⁰ Sections 96 and 308B of the RMA. A trade competitor of the applicant may still make a submission if affected by the activities proposed in the application, provided the submission does not relate to trade competition (s 308B).

¹¹ Like case management tools available to resource consent panels under sections 40, 41A – 41D of the RMA.

Hearings are formal and adversarial, which acts as a barrier to participation and impacts outcomes

- 33 I have heard DLC licensing hearings are often formal and adversarial. They involve the presentation of evidence and cross-examination, and lawyers are often present. The nature of the hearings has been cited as a key barrier to community participation.¹²
- 34 Many community objectors do not have legal representation at hearings. In contrast, other parties are often represented by lawyers or professionals with experience in DLC hearings. This causes disadvantage, particularly if the objectors also do not have experience in DLC hearings. This disadvantage is felt most by community objectors in the poorest areas, who seldom have legal representation.¹³
- 35 The evidence that objectors give at hearings can be personal – for example, about their experiences of alcohol-related harms. People have described cross-examination in hearings as aggressive, traumatic, intimidating, disempowering, and culturally unsafe. Some fear they are being ‘tricked’ under cross-examination to say something they did not intend to say.¹⁴

I propose amendments so that hearings are less formal and adversarial

- 36 I propose changing the procedure of DLC hearings so that they:
- 36.1 are conducted without unnecessary formality – for example, by ensuring the venue is not intimidating and is easily accessible, including for people with disabilities,
 - 36.2 do not permit those who appear at hearings to question any party or witness – this would mean that DLC members could ask questions and parties who have points of clarification for other parties, could direct these to the chair, to be asked by them at their discretion,
 - 36.3 do not permit cross-examination, and
 - 36.4 can be conducted by telephone, audio-visual link, or other remote access facility where this is appropriate, and the facilities are available. This should facilitate participation, particularly hearings during work hours.
- 37 These changes will make the hearings more like resource consent hearings under the RMA¹⁵ and are in line with the Law Commission’s recommendation for alcohol licensing hearings.¹⁶

¹² Maynard, K. 2022. *The place of Te Tiriti o Waitangi in alcohol law*: 32.

¹³ Allen + Clarke, Te Hiringa Hauora, Health Promotion Agency. 2021. *Community Law Alcohol Harm Reduction Project: A formative evaluation*: 16.

¹⁴ Allen + Clarke, Te Hiringa Hauora, Health Promotion Agency. 2021: 16.

¹⁵ Section 39 of the RMA.

¹⁶ Law Commission, *Alcohol in our lives: Curbing the harm* (NZLC R114, 2010) at [10.15].

38 For the avoidance of doubt, I do not propose changing the procedures for those few licensing application hearings run by ARLA. DLCs are committees of territorial authorities, whereas ARLA is a tribunal tasked with hearing appeal cases from DLC decisions. Section 9(2)(h)

39 This would mirror the way the RMA works. Hearings for resource consents are heard at the council level. They are informal and cross-examination is not allowed. Appeals of those decisions are heard by the Environment Court, which has a formal process and cross-examination is allowed.¹⁷

40 I understand that Police and Medical Officers of Health who take part in licensing hearings consider cross-examination an effective way to test the suitability or otherwise of applicants to hold a licence. However, I consider this can be achieved through the more inquisitorial approach proposed above.

41 It is difficult to anticipate the impact this proposal will have on volumes and administrative burden. It may lead to more objections and hearings taking place. However, less formal proceedings without cross-examination may be shorter and more efficient.

42 However, I consider this approach strikes the best balance between improving accessibility, fairness, the effectiveness of decision-makers, and consistency with the purpose of the Act. The changes will make hearings less adversarial and more inclusive, helping parties present their best case. This will bring the settings more in line with the intention for communities to be involved in licensing decisions. We understand that RMA hearing panels are generally able to question evidence sufficiently to make decisions without cross-examination.

43 I considered keeping the current procedure but removing the ability for parties to have legal representation at hearings. At this stage, I do not recommend this, as this may perversely advantage participants experienced in licensing hearings (even if they are not lawyers), and disadvantage those who are not.

44 To support DLCs to adapt to the change in procedure, the existing training and guidance DLC members receive from local councils will need to be updated, including to ensure that they are trained in questioning.¹⁸

Financial Implications

45 There are no direct financial costs arising from the proposals in this paper. There may be costs at the implementation stage, particularly for local government.

¹⁷ Section 120 of the RMA.

¹⁸ Where training is provided, this is organised by local councils. A website run by a legal company also provides some best practice information and training to DLCs: www.districtlicensing.org.

Legislative Implications

- 46 Legislation is required to implement the proposals in the paper. The amendments are to an existing Act that binds the Crown. This Bill is on the Legislative Programme with a category 4 priority (to be referred to select committee in the year). I intend to present the Bill to Cabinet on 21 November 2022, aiming for introduction immediately after Cabinet approval. The Ministry of Justice has informed the Parliamentary Council Office of these proposals.

Regulatory Impact Statement

- 47 A regulatory impact statement (RIS) was prepared to accompany the earlier Cabinet paper outlining the overarching reform initiative in relation to the Sale and Supply of Alcohol Act 2012 and proposing to remove the ability for parties to appeal to the tribunal [SWC-22-MIN-0179 refers].
- 48 Cabinet's impact analysis requirements apply to the additional proposals in this paper relating to alcohol licensing procedures. However, there is no accompanying RIS and therefore the paper does not meet impact analysis requirements.
- 49 On behalf of respective Ministers, the Treasury's Regulatory Impact Analysis team and the Ministry of Justice have agreed that the earlier RIS will be expanded to include analysis of the proposals in this paper, and the updated RIS will be provided when the complete Bill is taken to Cabinet on 21 November 2022.

Population Implications

- 50 The proposals in this paper enhance local decision-making to better protect communities from alcohol-related harms, which fall disproportionately on: Māori; Pacific peoples; New Zealanders living in the poorest neighbourhoods; people with disabilities; people with mental health and addiction issues; people who identify as gay, lesbian, bisexual or other non-heterosexual; pregnant people (and their foetuses); breastfeeding people (and their children); and rangatahi. Further information about the alcohol harms experienced by these groups is set out in the paper *Reforms to the Sale and Supply of Alcohol Act 2012* considered by Cabinet on 19 October 2022.

Human Rights

- 51 The proposals in this paper preserve the right for parties to be heard and for DLCs to ask questions of parties during hearings. As such, we consider that the proposals do not limit any rights of freedoms provided in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 52 The following agencies have been consulted on this paper: the Treasury, Ministry of Pacific Peoples, Ministry of Primary Industries, Department of Internal Affairs, Accident Compensation Corporation, Ministry of Health/Public

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Health Agency, Ministry for the Environment, Ministry of Social Development, Ministry of Business, Innovation & Employment, Te Puni Kōkiri, New Zealand Police.

Proactive Release

- 53 This Cabinet paper will be proactively released within 30 business days of decisions being confirmed by Cabinet. Redactions may be made in line with the provisions of the Official Information Act 1982.

Recommendations

The Minister of Justice recommends that the Committee:

- 1 **note** that on 19 October 2022, Cabinet considered the paper *Reforms to the Sale and Supply of Alcohol Act 2012* and
 - 1.1 agreed to introduce a bill this calendar year to amend the Sale and Supply of Alcohol Act 2012 with changes relating to local alcohol policies
 - 1.2 invited the Minister of Justice to report back by 24 November seeking agreement to a bill for these changes
 - 1.3 noted that the Minister of Justice would return to Cabinet to seek further policy approvals related to licensing procedures before reporting back[SWC-22-MIN-0179];
- 2 **note** that community involvement in alcohol licensing is important, and the Act includes a range of settings intended to enable communities to influence local alcohol regulation, but that only a small number of those who want to object to licence applications can do so, and licensing hearings are legalistic and adversarial, disadvantaging and disempowering non-professional and often poorly resourced participants;
- 3 **agree** to amend the Act so that:
 - 3.1 any person may object to the grant of a licence or a renewal application, whether as an individual or representative of a group or organisation, except that;
 - 3.2 trade competitors may only object to a licence application if they are directly affected by the application in a way that does not relate to trade competition;
 - 3.3 DLCs and ARLA have provisions available to manage volume of objections and appearances at licensing hearings;
 - 3.4 DLC hearings:
 - 3.4.1 are conducted without unnecessary formality;

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- 3.4.2 do not permit those who appear at hearings to question any party or witness;
 - 3.4.3 do not permit cross-examination; and
 - 3.4.4 can be conducted by telephone, audio-visual link, or other remote access facility where appropriate and facilities are available;
- 4 **invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions, including any consequential amendments;
 - 5 **authorise** the Minister of Justice to resolve any minor policy issues that may arise in drafting consistent with the contents of this paper, without further reference to Cabinet and following consultation with the Prime Minister, and other Ministers as necessary;
 - 6 **invite** the Minister of Justice to report back to Cabinet by 21 November 2022 seeking agreement to a Bill for the changes in paragraph 3 above, in addition to the changes agreed to by Cabinet on 19 October 2022 [SWC-22-MIN-0179];
 - 7 **note** that this Bill is the first phase of reforms to the Act and the Minister of Justice will report back to the Social Wellbeing Committee by Section (9)(2)(f)
(iv)

Authorised for lodgement

Hon Kiri Allan

Minister of Justice

I N C O N F I D E N C E

Appendix One: Sample of data from local authorities

Wellington			
2020-21	Applied for	Granted	Refused
On-licence	62	62	0
Off-Licence	15	15	0
Club Licence	0	0	0
Licence Renewals	224	224	0
2019-20	Applied for	Granted	Refused
On-licence	65	65	0
Off-Licence	17	16	1
Club Licence	2	2	0
Licence Renewals	191	190	1
2018-19	Applied for	Granted	Refused
On-licence	78	78	0
Off-Licence	10	10	0
Club Licence	0	0	0
Licence Renewals	254	254	0
2017-18	Applied for	Granted	Refused
On-licence	66	66	0
Off-Licence	22	19	3
Club Licence	1	1	0
Licence Renewals	Not reported		
2016-17	Applied for	Granted	Refused
On-licence	82	82	0
Off-Licence	16	16	0
Club Licence	0	0	0
Licence Renewals	Not reported		

Auckland			
2020-21	Applied for	Granted	Refused
On-licence	1093	1109	3
Off-Licence	442	440	2
Club Licence	206	206	0
Licence Renewals	1258	1254	4
2019-20	Applied for	Granted	Refused
On-licence	410	410	0
Off-Licence	155	153	2
Club Licence	6	6	0
Licence Renewals	1243	1242	1
2018-19	Applied for	Granted	Refused
On-licence	838	836	2
Off-Licence	317	317	0
Club Licence	31	31	0
Licence Renewals	1173	1169	4
2017-18	Applied for	Granted	Refused
On-licence	485	484	1

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Off-Licence	138	137	1
Club Licence	7	7	0
Licence Renewals	1296	1294	2
2016-17	Applied for	Granted	Refused
On-licence	1223	1223	0
Off-Licence	441	441	0
Club Licence	110	110	0
Licence Renewals	985	985	0

Christchurch			
2020-21	Applied for	Granted	Refused
On-licence	Not reported		
Off-Licence			
Club Licence			
Licence Renewals			
2019-20	Applied for	Granted	Refused
On-licence	105	105	0
Off-Licence	32	32	0
Club Licence	0	0	0
Licence Renewals	314	314	0
2018-19	Applied for	Granted	Refused
On-licence	146	146	0
Off-Licence	33	33	0
Club Licence	1	1	0
Licence Renewals	391	390	1
2017-18	Applied for	Granted	Refused
On-licence	145	145	0
Off-Licence	35	31	4
Club Licence	4	4	0
Licence Renewals			
2016-17	Applied for	Granted	Refused
On-licence	128	127	1
Off-Licence	40	38	2
Club Licence	5	5	0
Licence Renewals			

Invercargill			
2020-21	Applied for	Granted	Refused
On-licence	5	5	0
Off-Licence	2	2	0
Club Licence	1	1	0
Licence Renewals	34	34	0
2019-20	Applied for	Granted	Refused
On-licence	13	13	0
Off-Licence	1	1	0
Club Licence	3	3	0
Licence Renewals	34	34	0

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2018-19	Applied for	Granted	Refused
On-licence	6	6	0
Off-Licence	7	7	0
Club Licence	0	0	0
Licence Renewals	50	50	0
2017-18	Applied for	Granted	Refused
On-licence	7	7	0
Off-Licence	0	0	0
Club Licence	1	1	0
Licence Renewals	34	34	0
2016-17	Applied for	Granted	Refused
On-licence	8	8	0
Off-Licence	0	0	0
Club Licence	0	0	0
Licence Renewals	36	36	0

Porirua			
2020-21	Applied for	Granted	Refused
On-licence	3	3	0
Off-Licence	3	2	1
Club Licence	1	1	0
Licence Renewals	22	22	0
2019-20	Applied for	Granted	Refused
On-licence	4	4	0
Off-Licence	7	7	0
Club Licence	5	5	0
Licence Renewals	29	29	0
2018-19	Applied for	Granted	Refused
On-licence	4	4	0
Off-Licence	3	3	0
Club Licence	1	1	0
Licence Renewals	28	28	0
2017-18	Applied for	Granted	Refused
On-licence	74	4	0
Off-Licence	2	2	0
Club Licence	0	0	0
Licence Renewals	34	34	0
2016-17	Applied for	Granted	Refused
On-licence	3	3	0
Off-Licence	10	10	0
Club Licence	5	5	0
Licence Renewals	21	21	0

Appendix Two: Additional information on the cases referenced in this paper

	The objector was concerned about the proximity of the licensed premise in respect of the objector's house. Although the
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I N C O N F I D E N C E

<p><i>Janhurst Holdings Limited</i> [2013] NZARLA 826</p>	<p>objector lived closer to the licensed premise than the 1 kilometre 'rule of thumb', ARLA concluded standing was not established. An arterial road served as an "effective barrier" between the premises and the home of the objector, who also had no line of sight to the premises. The objector therefore did not have an interest greater than any other member of the public. The objection was dismissed.</p>
<p><i>Utikere v I S Dhillon and Sons Ltd</i> [2014] NZHC 270</p>	<p>The matter was appealed after the respondent was granted an off-licence by ARLA to operate a liquor store in Palmerston North. The Court found that the objector, who was a city councillor, met the 'enhanced interest' requirement and thus had standing to object, regardless of where he lived.</p> <p>Objectors to the licence were concerned a new off-licence would lead to increased alcohol abuse and related crimes, and that there were too many off-licences in the area already. The High Court found ARLA had correctly dismissed the objections, concluding that the number of off-licences already granted could not be a basis for an objection.</p> <p>The appeal was dismissed.</p>
<p><i>General Distributors Ltd t/a Countdown Cable Car Lane</i> [2018] NZDLCWN 907</p>	<p>The applicant sought to renew an existing off-licence within supermarket premises. Objectors believed the existence of the off-licence was leading to 'crime and disorder'. Although the objectors lived 1.2 kilometres from the site, they were not found to have status to object because they could not show the issue of the licence would affect them personally. The Wellington licencing committee found that to establish standing to object, they would have to show "... <i>an increase in drunken behaviour, vandalism or litter on his or her property or [that] he or she [would] be personally affected by noise from the premises.</i>"</p> <p>The committee noted that it did "<i>not appear to be enough for an objector to be concerned generally about the adverse effects of alcohol on his or her community, nor for a person to demonstrate that they have a specialist interest in addressing such harm.</i>"</p> <p>The case was dismissed.</p>
<p><i>GRD Trading Limited - Liquorland Papatoetoe v Communities Against Alcohol Harm Inc</i> [2019] NZARLA 222</p>	<p>In this case, Liquorland Papatoetoe was declined an application for the renewal of an off-licence by the Auckland DLC. Communities against Alcohol Harm (CAAH) objected to the renewal of the licence as the premises could be reached directly from a petrol station. The matter was appealed to ARLA, which held it was not sufficient for CAAH to be a responsible public interest group operating nearby - their offices were situated outside the 1-2 km radius of the licensed premises. Though CAAH had members living in the area and regularly carried out work in the area, this was not considered to provide them with</p>

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	<p>standing to object. ARLA noted that “<i>the interest of the [CAAH] must not only be greater than that of the public generally, but [CAAH] must have interest greater than that of the public in respect of this particular application</i>”. The appeal by Liquorland was allowed.</p>
<p><i>Gisborne Liquormart Ltd v Ka Pai Kaiti Trust</i> [2018] NZARLA 316</p>	<p>In this case, the Gisborne DLC declined an application by Gisborne Liquormart Limited for a new off-license (they owned 18 other off-license bottle stores at the time of this application). The DLC received 21 objections to the application. Of those, only a spokesperson for Ka Pai Kaiti Trust appeared before the DLC. Ka Pai Kaiti held concerns that the area was already saturated with enough liquor outlets and worried that alcohol price competition would have a detrimental effect on whānau and community. The matter was appealed to ARLA.</p> <p>ARLA held Ka Pai Kaiti Trust did not have standing simply because it was a responsible public interest group representing a relevant aspect of the community. The question of status was a matter of judgment, and the burden of establishing status was to be discharged by the person or body asserting it. The appeal by Gisborne Liquormart Limited was allowed.</p>
<p><i>A One Limited ‘Taupiri Wine Shop’ v Waikato District Licensing Committee</i> [2021] 10/2021</p>	<p>In this case, an application was made by A One Limited to open an off-licence in Gordonton. One objection was received by Hāpai Te Hauora, a Māori public health service that advocates for Māori health rights. The DLC did not agree that the public health service would be affected by the granting of the application and therefore the organisation could not show any greater interest than the public in respect of this application. The Committee concluded Hāpai Te Hauora did not have standing to object under s102 of the Act. The licence was declined and is currently being appealed to ARLA.</p>



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Reforms to the Sale and Supply of Alcohol Act 2012: Licensing procedures

Portfolio **Justice**

On 9 November 2022, the Cabinet Social Wellbeing Committee:

- 1 **noted** that in October 2022, Cabinet agreed amendments to the Sale and Supply of Alcohol Act 2012 (the Act), approved the inclusion of a Bill in the 2022 Legislative Programme with a category 4 priority (to be referred to select committee in the year), and noted that further policy approvals related to licensing procedures would be sought before the Minister sought agreement to introduce a bill [CAB-22-MIN-0457.02];
- 2 **noted** that community involvement in alcohol licensing is important, and the Act includes a range of settings intended to enable communities to influence local alcohol regulation, but that only a small number of those who want to object to licence applications can do so, and licensing hearings are legalistic and adversarial, disadvantaging and disempowering non-professional and often poorly resourced participants;
- 3 **agreed** to amend the Act so that:
 - 3.1 any person may object to the grant of a licence or a renewal application, whether as an individual or representative of a group or organisation; except that
 - 3.2 trade competitors may only object to a licence application if they are directly affected by the application in a way that does not relate to trade competition;
 - 3.3 District Licensing Committees (DLCs) and the Alcohol and Regulatory Licensing Authority have provisions available to manage volume of objections and appearances at licensing hearings;
 - 3.4 DLC hearings:
 - 3.4.1 are conducted without unnecessary formality;
 - 3.4.2 do not permit those who appear at hearings to question any party or witness;
 - 3.4.3 do not permit cross-examination; and
 - 3.4.4 can be conducted by telephone, audio-visual link, or other remote access facility where appropriate and facilities are available;

- 4 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions, including any consequential amendments;
- 5 **authorised** the Minister of Justice to resolve any minor policy issues that may arise in drafting, consistent with the contents of the submission under SWC-22-SUB-0199, without further reference to Cabinet and following consultation with the Prime Minister, and other Ministers as necessary;
- 6 **invited** the Minister of Justice to report back to the Cabinet Legislation Committee by 21 November 2022 seeking agreement to a Bill for the changes in paragraph 3 above, in addition to the changes previously agreed under SWC-22-MIN-0179;
- 7 **noted** that the above is the first phase of reforms to the Act and the Minister of Justice intends to report back to the Cabinet Social Wellbeing Committee **Section (9)(2)(f)(iv)**

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Peeni Henare
Hon Willie Jackson
Hon Jan Tinetti
Hon Michael Wood
Hon Kiri Allan
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan
Hon Aupito William Sio

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

In Confidence

Office of the Minister of Justice

Cabinet Legislation Committee

Sale and Supply of Alcohol (Community Participation) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Sale and Supply of Alcohol (Community Participation) Amendment Bill (the Bill).

Current policy approvals for first phase of reforms

- 2 On 25 October 2022 and 14 November 2022, Cabinet agreed to amend the Sale and Supply of Alcohol Act 2012 (the Act) [CAB-22-MIN-0457.02, SWC-22-MIN-0179, CAB-22-MIN-0498 and SWC-22-MIN-0199 refers] to:
 - 2.1 remove the ability for parties to appeal provisional local alcohol policies (LAPs) to the Alcohol Regulatory and Licensing Authority (ARLA);
 - 2.2 amend the Act so that district licensing committees (DLCs) can decline to renew a licence if the licence would be inconsistent with policies on location or licence density in the relevant LAP; and so that
 - 2.3 any person may object to the grant of a licence or a renewal application, whether as an individual or representative of a group or organisation; except that
 - 2.4 trade competitors may only object to a licence application if they are directly affected by the application in a way that does not relate to trade competition;
 - 2.5 ensure DLCs and ARLA have provisions available to manage volume of objections and appearances at licensing hearings;
 - 2.6 require that DLC hearings:
 - 2.6.1 are conducted without unnecessary formality;
 - 2.6.2 do not permit those who appear at hearings to question any party or witness;
 - 2.6.3 do not permit cross-examination; and

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- 2.6.4 can be conducted by telephone, audio-visual link, or other remote access facility where appropriate and the facilities are available.
- 3 These policy decisions are being progressed in the Bill. Communities are currently unable to participate in alcohol licensing decisions in the way the Act intended. These amendments will improve communities' ability to influence alcohol regulation in their area, and thereby better meet the object of the Act, to ensure that:
- 3.1 the sale, supply, and consumption of alcohol is undertaken safely and responsibly; and
- 3.2 the harm caused by excessive or inappropriate consumption of alcohol is minimised.¹
- 4 Removing the ability for parties to appeal LAPs will minimise the barriers to adopting LAPs, enhance the intended role of territorial authorities to make decisions on behalf of communities, and mean communities can better influence the development of LAPs through consultation.
- 5 The change allowing DLCs to decline a licence renewal application if the licence would be inconsistent with the relevant LAP will improve the effectiveness of LAPs, as it means that renewal decisions are more likely to reflect communities' intentions for alcohol licensing.
- 6 The changes to licence objections and DLC hearings will bring the Act better into line with the clear intent of the legislation that communities have an interest in licensing decisions. The Bill makes alcohol licensing hearings more accessible for those who wish to participate and fairer. This will have a positive impact for communities who have found it difficult to influence alcohol decisions. The approach is similar to that in the Resource Management Act 1991 (RMA). I understand this element of the RMA works well, and the relevant provisions remain the same in the Natural Built Environments Bill, which is expected to replace the RMA.

Impact analysis

- 7 A regulatory impact statement (RIS) was prepared to accompany the first Cabinet paper outlining the overarching reform initiative in relation to the Sale and Supply of Alcohol Act 2012 and proposing to remove the ability for parties to appeal provisional LAPs to ARLA [SWC-22-MIN-0179 refers].
- 8 Cabinet's impact analysis requirements applied to the additional proposals in the second Cabinet policy paper relating to alcohol licensing procedures [SWC-22-MIN-0199 refers]. However, there was no accompanying RIS and therefore the paper did not meet the impact analysis requirements. Supplementary analysis that expands the earlier RIS to include analysis of the additional proposals has been prepared and is attached to this paper.

¹ *The Sale and Supply of Alcohol Act 2012*, s 4.

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- 9 A Quality Assurance panel within the Ministry of Justice has reviewed the Supplementary Analysis Report. The panel considers that the information and analysis summarised in the Supplementary Analysis Report meets the Quality Assurance criteria.
- 10 In reaching this conclusion, the panel noted that the paper would be more convincing if there were stronger evidence of the link between the objectives of the Act and the proposed changes to how hearings are run. The panel concluded that there was sufficient information about the current experience of submitters to meet the requirement to be convincing.

Compliance

- 11 The Bill complies with:
- 11.1 the principles of the Treaty of Waitangi;
 - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 11.3 the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached);
 - 11.4 the principles and guidelines set out in the Privacy Act 2020;
 - 11.5 relevant international standards and obligations;
 - 11.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 12 The following agencies were consulted: Ministry of Health, New Zealand Police, Te Puni Kōkiri, Ministry of Business Innovation and Employment, Accident Compensation Corporation, Ministry of Social Development, Ministry for Primary Industries, Department of Internal Affairs, the Treasury and the Ministry for Pacific Peoples.
- 13 The Ministry of Justice maintains active relationships with stakeholders that have an interest in alcohol regulation, including organisations delivering the licensing regime, public health professionals, academics, businesses, and professional bodies.
- 14 Officials have explored concerns and tested a range of proposals. I am confident the Bill responds to persistent issues with the Act and implements the policy intent.
- 15 There will be the opportunity for stakeholders and the wider public to provide feedback and recommendations through the Select Committee stage.
- 16 The government caucus will be consulted prior to the Bill being introduced.

Binding on the Crown

- 17 Cabinet Circular (02) 4: Acts Binding the Crown: Procedures for Cabinet Decision notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Sale and Supply of Alcohol Act 2012 binds the Crown and it is proposed that this Bill will follow that position. The Bill will therefore bind the Crown.

Creating new agencies or amending law relating to existing agencies.

- 18 The Bill does not create any new agencies.

Allocation of decision-making powers

- 19 The Bill does not allocate decision-making powers between the executive and judiciary.

Associated regulations

- 20 The Bill makes minor and consequential amendments to the Sale and Supply of Alcohol Regulations 2013.

Other instruments

- 21 The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

- 22 The Bill does not contain a definition of Minister, department or Chief Executive of a department.

Commencement of legislation

- 23 The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

- 24 The Bill should be introduced on or after 29 November 2022 and passed by 30 June 2023.
- 25 I propose that the Bill be referred to the Justice Committee for consideration, and that the Committee be asked to report back by 13 June 2023.

Publicity

- 26 On 30 October 2022, I issued a media release to announce the policy changes in this Bill.
- 27 I will issue an additional media release following Cabinet approvals to announce the first reading of the Bill with further detail on policy changes.

Proactive Release

- 28 I propose proactively releasing this paper and any relevant materials following the introduction of the Bill, with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4.

Recommendations

- 29 The Minister of Justice recommends that the Cabinet Legislation Committee:
- 1 **note** that the Sale and Supply of Alcohol (Community Participation) Amendment Bill holds a category 4 priority on the 2022 Legislation Programme (to be referred to select committee in the year);
 - 2 **note** that the Bill makes targeted changes to alcohol licensing procedures, which will improve communities' ability to influence alcohol regulation in their area, and thereby better meet the object of the Act;
 - 3 **approve** the Sale and Supply of Alcohol (Community Participation) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
 - 4 **agree** that the Bill will be introduced on or after 29 November 2022 immediately following confirmation by Cabinet;
 - 5 **agree** that the government propose that the Bill be:
 - 5.1 referred to the Justice Committee for consideration;
 - 5.2 Section (9)(2)(f)(iv) [REDACTED]
[REDACTED]

Authorised for lodgement

Hon Kiri Allan

Minister of Justice



Cabinet Legislation Committee

Minute of Decision

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Sale and Supply of Alcohol (Community Participation) Amendment Bill: Approval for introduction

Portfolio Justice

On 24 November 2022, the Cabinet Legislation Committee:

- 1 **noted** that the Sale and Supply of Alcohol (Community Participation) Amendment Bill holds a category 4 priority on the 2022 Legislation Programme (to be referred to select committee in 2022);
- 2 **noted** that the Bill makes targeted changes to alcohol licensing procedures, which will improve communities' ability to influence alcohol regulation in their area, and thereby better meet the object of the Act;
- 3 **approved** the Sale and Supply of Alcohol (Community Participation) Amendment Bill [PCO 24505/11.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agreed** that the Bill will be introduced on or after 29 November 2022 following confirmation by Cabinet;
- 5 **agreed** that the government propose that the Bill be:
 - 5.1 referred to the Justice Committee for consideration;
 - 5.2 Section (9)(2)(f)(iv) [REDACTED]

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Poto Williams
Hon Dr David Clark
Hon Kieran McAnulty
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

