



10 February 2023

Submission on the 'Sale and Supply of Alcohol (Community Participation) Amendment Bill'

To the Justice Select Committee,

This submission is from the Public Health Association of New Zealand (PHANZ), Kāhui Hauora Tūmatanui. It was developed by Alana McCambridge in consultation with Rose Crossin, Matt Hobbs, Bridget Forsyth, and other members and associates of PHANZ.

This submission has been endorsed by the Canterbury/West Coast branch of the PHANZ.

We do not need to speak to this submission. You may contact us via email at Alana@PHA.org.nz.

Signed,

Dr Alana McCambridge, PhD
Senior Policy Analyst
Public Health Association of New Zealand | Kāhui Hauora Tūmatanui

Submission

Thank you for the opportunity to write a submission on the 'Sale and Supply of Alcohol (Community Participation) Amendment Bill'.

The Public Health Association of New Zealand (PHANZ) is a national association with members from the public, private, and voluntary sectors. Our vision is 'Hauora mō te katoa – oranga mō te Ao' or 'Good health for all – health equity in Aotearoa'. To achieve this, we provide a forum for information and debate about public health in Aotearoa New Zealand.

We recognise Te Tiriti o Waitangi as Aotearoa New Zealand's founding document, defining respectful relationships between tāngata whenua and tāngata Tiriti. We actively support Te Tiriti o Waitangi articles in policy and legislation.

Overall, we support the purpose of the 'Sale and Supply of Alcohol (Community Participation) Amendment Bill'. The bill aims to improve the communities' ability to influence alcohol regulation in their area to ensure that the sale, supply, and consumption of alcohol is undertaken safely and responsibly and the harm caused by excessive or inappropriate consumption of alcohol is minimised.

Alcohol is a harmful drug that is a factor in a wide range of health, social, and justice harms. Hazardous drinking carries an elevated risk of harm to individuals, whānau, and communities, and disproportionately impacts Māori and Pacific people relative to Pākehā. Evidence shows that one in five New Zealanders drink hazardously, a rate that has remained relatively stable over the past six years despite multiple efforts to intervene. Alcohol-related harms also fall disproportionately on vulnerable populations, such as our poorest communities, people with disabilities, people with mental health and addiction issues, hapū mama and unborn babies. Better regulation on the sale and supply of alcohol will help to begin to address the environmental injustice of alcohol outlet distribution which again falls most heavily on our poorest communities.

Communities know the harms of alcohol and the effects of hazardous drinking and must be empowered to participate in the alcohol legislation process.

Recommendations and comments:

Crown obligations to Te Tiriti o Waitangi

We strongly recommend that the Bill refers to 'Te Tiriti o Waitangi' and honour the Crown's obligations to Te Tiriti and the articles as stated in the te Reo version. This will reflect *contra proferentem*, which holds Te Tiriti (the te Reo Māori version of the Treaty) as the legal authoritative text. Because of Te Tiriti, the Crown has a responsibility to positively promote equity and protect Māori against alcohol harm, and this must be evident in policy.

Alcohol legislation should explicitly include a Te Tiriti clause so that there is no doubt that the District Licensing Committees (DLCs) and Alcohol Regulatory & Licensing

Authority (ARLA) act in a manner consistent with Te Tiriti when they are making decisions. We recommend that there be a Te Tiriti clause in the Act that requires appropriate engagement with Māori/iwi (e.g., using iwi-Māori partnership boards) in key areas of implementation and an obligation to observe tikanga Māori (e.g., as is written in the Resource Management Act 1991, section 39.2). Other examples of how alcohol legislation can give effect to Te Tiriti are outlined in the report 'Te Tiriti o Waitangi and alcohol law'¹.

Objections to applications

We support the amendment that states 'Any person may object to an application for the grant of a licence, whether as an individual or as a representative of a group or an organisation.' The alcohol industry has used eligibility as a way to stop people from objecting. Individuals or groups may not live or be based near a licenced premise, but they may have other genuine connections to the area and should have the opportunity to object to a licence application if they want to. Allowing anyone to object is particularly important for off-licence applications, as the alcohol is taken and consumed off-site, and can now be delivered to distant suburbs. This means the harm can be felt further away. For example, a particular alcohol store in Christchurch with a 45min delivery option can service nearly all of Christchurch. Therefore, defining a specific radius of where an alcohol store has influence would not likely capture the true breadth of its harm.

Furthermore, we believe that there are many important members of the community that should be permitted to voice the opinions/objections of the community in which they serve e.g., members of Parliament for the Electorate where the licence is proposed; local elected members (such as Councillors) or bodies of local elected members (such as Local Boards) for the area where the licence is proposed; elected members of the District Māori Council or District Māori Councils for the rohe where the licence is proposed; Māori Wardens or Associations of Māori Wardens for the rohe where the licence is proposed; as well as tangata whenua. We do not believe applications will be overrun with objections, as committees already have the power to exclude objections, and many countries overseas already allow anyone to object at an alcohol licensing hearing.

Revoke appeals process from Local Alcohol Policies (LAPs)

We support the removal of an appeals process from provisional Local Alcohol Policies (LAPs) as this will make it easier for councils/territorial authorities to enact LAPs that have the potential to reduce alcohol harm in the community. Removal of the appeals process is also consistent with the wishes of local councils, who in 2018 voted in support of this (95% voted in support).

We would support the development and implementation of strong LAPs all across New Zealand and recommend that this process also include consultation with local iwi/hapū. We believe that greater adoption of LAPs, if developed with a strong community focus, will relieve the burden of individuals/organisations from the community having to provide proof of harm at alcohol licensing hearings and has the

¹ Maynard, K. (2022). Te Tiriti o Waitangi and alcohol law. Wellington, NZ: Te Hiringa Hauora | Health Promotion Agency.

potential to set a strong standard within a community. Therefore we would strengthen section 105 so that DLCs must “give effect” to LAPs, rather than “have regard for”. In addition, we recommend that section 78 of the Act require specific assessment and consideration of the risks associated with the supply of alcohol in communities facing greater socioeconomic deprivation when drafting an LAP. Particularly in relation to addressing health inequities in Aotearoa, the accumulation of alcohol outlets in areas of greater deprivation should be avoided.

We also recommend that when existing licenses come up for review, they are revoked if they are inconsistent with the LAP in that area and advise that minimal conditions be granted to licenses that do not comply (section 133b). We also propose a ‘sinking lid’ policy or a maximum number of alcohol outlets in an area be put in place based on community-supported indicators.

Changes to how licensing hearings are run

We support removing cross-examination from licensing hearings. Many people in the community have described the process as a significant barrier to participation due to how intimidating it would be to be cross-examined by an experienced lawyer. Historically the alcohol industry has used cross-examination as a weapon, together with eligibility for standing, to deter and exclude the community voice from being heard. The DLCs should be trusted to ensure a proper line of questioning as needed, and determine the validity of information being provided by participants at a hearing. Resource Consent Hearings and Tenancy Tribunals do not allow cross-examination, so there is no precedent as to why they should be allowed in District Licensing hearings.

Removing unnecessary formality in how hearings are run will empower the community to have a voice and advocate for their community. Therefore we support licencing committees establishing more appropriate procedures. We have also received feedback that communities need to be better informed about upcoming licensing hearings, including more notification processes (e.g., online community groups/pages, and a local mailbox drop to businesses and residences within a 1-2km distance from the alcohol retailer) and a longer turn-around time so that the community can caucus and prepare their response (e.g., 15 day period has been anecdotally reported as a challenge for the community).

We also support the recommendation that all licensing hearings be equipped with facilities that allow telephone, audiovisual link, or other remote access so as to further reduce barriers to community participation. In addition, the days/times when hearings are run should facilitate community involvement.

Other issues for consideration

We are concerned about DLC membership and recommend reviewing the membership guidelines and application process. As the DLC members play an important role in keeping the community safe from alcohol harm, community members should feel empowered to come forward for positions and adequate training should be given to DLC members. We suggest that DLC members receive formal training on Te Tiriti o Waitangi, public health and alcohol harm, health equity, and tikanga Māori.

The Public Health Association of NZ looks forward to participating in the second tranche of reforms which we currently understand will include RTD tax increases, alcohol marketing exclusion zones around schools, alcohol sponsorship, online alcohol sales/delivery, and new alcohol products. Given the wealth of knowledge held by communities and the lived experience of alcohol harm, we strongly recommend that the second tranche involves significant consultation with affected communities and encourage the government to better facilitate this. Further, we advise that the reforms be guided by evidence-based harm-reduction recommendations such as the WHO “best buys”² and those in the He Ara Oranga report³.

Lastly, we recommend the Sale and Supply of Alcohol Act and any legislative changes to reduce alcohol harm be continuously monitored and evaluated (e.g., using alcohol-related harm outcomes) to identify the need for further reforms.

² WHO. Updated of the WHO Global NCD Action Plan 2013-2020. Geneva: World Health Organization; 2017. <https://apps.who.int/iris/bitstream/handle/10665/259232/WHO-NMH-NVI-17.9-eng.pdf?sequence=1&isAllowed=y>.

³ He Ara Oranga. Report of the Government Inquiry into Mental Health and Addiction; 2018. <https://mentalhealth.inquiry.govt.nz/assets/Summary-reports/He-Ara-Oranga.pdf>