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**AT THE HEART
OF THE MATTER,
NZ DRUG
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Te Tūāpapa Tarukino o Aotearoa

New Zealand Drug Foundation submission on the Sale and Supply of Alcohol (Community Participation) Amendment Bill

Submitted to the Justice Select Committee on 10 February 2023.

Tēnā koutou

Thank you for the opportunity to contribute to the work of the Justice Committee with our submission on the Sale and Supply of Alcohol (Community Participation) Amendment Bill.

In our view, the substantial health and social harms of alcohol use lend themselves to tighter regulation than in the current system and we eagerly await the next phases of the alcohol reform. In particular, we urge Parliament to take steps to implement the recommendations from the 2010 Law Commission review of our alcohol laws.

We support the intentions behind this Bill, to let communities have their say on alcohol regulation in the areas they live or work in. We ask that this be extended to include the ability to input in areas where someone may have a whakapapa connection or similar.

Local government has a key role to play in regulating the sale and supply of alcohol, however under the current regime, their hands are often tied. It is concerning that a significant part of our population, including people in our four biggest cities, live in areas without a working Local Area Policy.

We believe that opening up the hearing process to the communities who are affected by alcohol will lead to a reduction in harm. Relaxing barriers to participation in hearings provides an opportunity to strengthen guidance and training for District Licensing Committee Chairs and Members. In particular, we want to see the right to participation enshrined in Te Tiriti o Waitangi upheld, by ensuring whānau, iwi and hapū can take part easily, and in a supportive environment.

We welcome the opportunity this Bill presents to allow communities to have their say in a more accessible environment. We believe this will increase the health and wellbeing of communities where alcohol is sold and supplied.

Thank you for considering our submission.



Sarah Helm
Executive Director

The Drug Foundation is a charitable trust. We have been at the forefront of major alcohol and other drug debates for over 30 years, promoting healthy approaches to alcohol and other drugs for all New Zealanders.

We support the objectives of the Bill

1. The Drug Foundation **welcomes** the intent to enhance the ability of communities to influence alcohol regulation in their local areas.
2. Alcohol is a legal and widely available drug, yet it continues to cause significant social and medical harm to communities in Aotearoa.
3. We believe it is essential that substances are regulated through a fit-for-purpose system, which is proportional to the risks posed by the given substance.
4. It is well-recognised that harms caused by legal and illegal substances are at their highest when the policies governing access to them are on the extreme ends of the regulatory spectrum (Figure 1.).

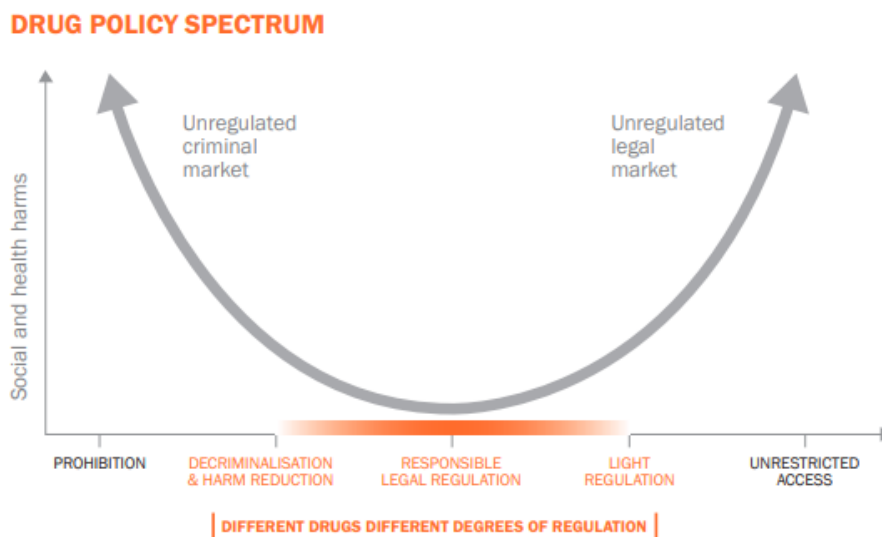


Figure 1. Adapted from Marks, J. (1987). *The Paradox of Prohibition*. Mersey Drugs Journal 1(1):6-7

5. In our view, the regulatory framework governing the sale and supply of alcohol is currently overly permissive and is not proportionate to the social harms of alcohol.
6. A number of recommendations from the 2010 Law Commission review of alcohol laws have not yet been implemented into the legal framework of alcohol regulations.

Alcohol causes harm

7. We know that alcohol is the most widely consumed drug in Aotearoa, more than a quarter of adults drink in a way that is likely to cause them harm.¹

¹ Ministry of Health (2021). Annual Data Explorer 2020/21: New Zealand Health Survey [data file]. Retrieved from <https://minhealthnz.shinyapps.io/nz-health-survey-2020-21-annualdata-explorer/>

8. Ministry of Health data shows that Māori drink at similar rates to non-Māori but are more likely to drink hazardously. At the same time, even though Pacific individuals tend to drink less on average, when they do drink, they are more likely to consume alcohol in a way that could cause future damage to their physical or mental health.²
9. Alcohol use is attributed to 5.4% of all deaths, and 7.2% of deaths among Māori.³
10. Alcohol harms include short-term harms such as alcohol poisoning, injuries and accidents, vehicle crashes and violence. For example, alcohol and drugs were a factor in 14% of minor injury crashes, 11% of serious injury crashes, and in 43% of fatal crashes between 2019-2021.⁴
11. In family violence incidents, the proportion of offenders affected by alcohol was recorded as 34%. At the same time, victims of sexual assault reported drinking by the perpetrator in 57% of incidents.⁵
12. Furthermore, between January 1999 and June 2008, 44% of offenders committing homicide were under the influence of alcohol.⁶ Māori are more likely than non-Māori to experience violence by someone under the influence of alcohol or drugs.⁷
13. Alcohol is a Group 1 carcinogen.⁸ We know that alcohol use can lead to long-term harms including liver disease, alcohol use disorder, dementia, and other diseases.⁹
14. Understanding the substantial harms of alcohol, we would like to see more robust regulation of alcohol availability and promotion that is proportionate to social and medical harms. We encourage the Committee to prioritise such regulation.

² Ibid.

³ Connor J, Kydd R, Shield K, Rehm J. The burden of disease and injury attributable to alcohol in New Zealanders under 80 years of age: Marked disparities by ethnicity and sex. *N Z Med J* 2015; 128: 15–28.

⁴ Te Manatū Waka. *Safety – Annual Statistics. Alcohol and drugs*. Available from: <https://www.transport.govt.nz/statistics-and-insights/safety-annual-statistics/sheet/alcohol-and-drugs>

⁵ Connor J, Casswell S. Alcohol-related harm to others in New Zealand: evidence of the burden and gaps in knowledge. *N Z Med J* 2012; 125: 11–27.

⁶ Connor J, You R, Casswell S. Alcohol-related harm to others: a survey of physical and sexual assault in New Zealand. *N Z Med J* 2009; 122: 10–20.

⁷ Ministry of Health. *Alcohol Use in New Zealand: Key results of the 2007/08 New Zealand Alcohol and Drug Use Survey*. 2009.

⁸ WHO. International Agency for Research on Cancer. *List of Classifications Agents classified by the IARC Monographs*, Volumes 1–132. Available from: <https://monographs.iarc.who.int/list-of-classifications>

⁹ Te Aho o Te Kahu – Cancer Control Agency. (2022). *Cancer Prevention Report*.

We support the Bill's key provisions, and believe they can be strengthened

Removal of the appeals provisions

15. We **support** the removal of the ability to appeal the provisional Local Alcohol Policies (LAPs).
16. We note that a large proportion of Territorial Licensing Authorities (TLAs) have not adopted an LAP, including Aotearoa's largest cities (Auckland, Wellington, Christchurch, and Hamilton). We understand that appeals exacerbate this situation by burdening TLAs with significant legal and administrative costs. The appeals are also delaying implementing LAPs in areas that actively work to develop them.
17. In 2017, Alcohol Healthwatch analysis showed that the appeals process is not balanced. It leads to the adoption of less restrictive policies, which increase overall alcohol availability. In the report, 201 substantive changes in policies in development were identified - 71% less restrictive and 29% more restrictive. Importantly, all changes following appeals resulted in less restrictive policies, and all changes providing tighter restrictions occurred following public submissions.¹⁰
18. The proposed provisions are consistent with the aspirations of the local government. In 2018, Local Government NZ (LGNZ) issued a statement urging the Government to amend the Sale and Supply of Alcohol Act by facilitating the development and implementation of effective community-driven LAPs.¹¹

Anyone may object to an alcohol licence application or renewal

19. We **support** the replacement of sections 102(1) and 128(1) with the provision that any person may object to an alcohol licence application or renewal.
20. Currently, narrowly understood eligibility to object restricts community participation. Individuals who have family members, work engagements or cultural links with the area may struggle to participate.
21. Allowing any applicant to object without needing to justify one's standing removes a barrier to engagement. It reduces the risk that the applicants or their representatives will dismiss valid objections.
22. We note that allowing anyone to participate will remove doubt that mana whenua and those with whakapapa links to the area will be able to object,

¹⁰ Jackson, N. and Robertson, H. (2017). A review of Territorial Authority progress towards Local Alcohol Policy development (2nd edition). Auckland: Alcohol Healthwatch.

¹¹ LGNZ. *Local government debates key issues at annual conference*. Accessed 25 January 2023 from: <https://www.lgnz.co.nz/news-and-media/2018-media-releases/local-government-debates-key-issues-at-annual-conference/>

regardless of the current place of residence. Failure to ensure that right may constitute a breach of Te Tiriti o Waitangi.

Removal of cross-examination and facilitating access to DLC hearings

23. We **support** the replacement of section 202(5) with a new section 202 providing for the ability of licencing bodies to conduct hearings by teleconference or other remote access facility.
24. We **support** licencing committees establishing appropriate procedures, including avoiding unnecessary formalities (203A; 203A(2)(a)).
25. We **support** parties or their representatives being unable to question other parties, or witnesses of other parties (203A(2)(c)).
26. We **support** the removal of cross-examination at the District Licensing Committees (DLC) (203A (2)(C)).
27. We have heard multiple times that these hearings can be perceived as stressful, overly technical, and even intimidating, especially when lay community members are cross-examined by professional lawyers.
28. We recognise that, under current regulations, it is often challenging for community members to participate in the licensing process.
29. The cost and inconvenience of having to arrange transport and time off work, study, or family commitments likely disproportionately burdens those in the community who may be vulnerable to alcohol harms. These groups may include people on low incomes, with precarious employment or caring for family members.
30. Community members are unlikely to have legal representation in the hearings and must receive appropriate support to participate in the licensing process. This means that ensuring informal process and supportive environment will likely increase the confidence of community members to participate.

Ensuring community voices are heard

31. We encourage opening hearings to all concerned persons or groups. Therefore, we want to encourage the best use of the DLCs' time by ensuring appropriate and smooth process and prioritising groups who are appearing in good faith.
32. We note that best practice guidance for DLCs is available¹² however its use continues to be voluntary. We **recommend** that provisions are made to ensure that DLC Chairs are well-equipped to lead the hearings and appropriately developed processes are mandatory.
33. We have heard concerning reports that local iwi and hapū groups have been in the past deemed not relevant to local hearings. We want to ensure that

¹² LGNZ, SOLGM, Te Hiringa Hauora. *Selecting and appointing district licensing committees: A guide for councils*. Accessed 25 January 2023 from: <https://resources.alcohol.org.nz/resources-research/alcohol-resources/research-and-publications/selecting-and-appointing-district-licensing-committees/>

objections based on matauranga Māori or indigenous connections are not disregarded using the provisions in this Bill. We **recommend** that training is provided to Chairs and Members to facilitate full participation by iwi or hapū.

Other recommendations

34. We **recommend** adopting provisions that mandate TLAs to develop LAPs.
35. In the absence of effective regulation of alcohol advertising, we **recommend** the inclusion of provisions enabling TLAs to restrict outdoor advertising of alcohol by licensed premises in their local areas. This can be achieved through allowing appropriate bylaws.
36. We **recommend** provisions that ensure consultation with mana whenua is a mandatory part of the development of LAPs. This would match the requirement to consult with Police, licensing inspectors and Medical Officers of Health (currently in section 78(4)). Such provisions would give effect to the principle of participation in Te Tiriti o Waitangi.
37. Finally, we **strongly encourage** the Government to continue alcohol law reform to give effect to the recommendations of the 2010 Law Commission review of New Zealand’s alcohol regulatory framework.
38. We hope that the next steps of the reform respond to new local and global evidence on effectively reducing alcohol harm. We expect these changes to address the three key factors that mediate alcohol harm: price, availability and advertising (including in online spaces and through sponsorships).
39. It is also our expectation that in the next phase of the reform, disparities in alcohol harm experienced by Māori are front and centre. In particular, we recommend that the recommendations from the recent “Te Tiriti o Waitangi and Alcohol Law” report¹³ are implemented. Among others, these include incorporating Te Tiriti o Waitangi clauses, appropriate consultation with mana whenua at all stages of regulation, and facilitating the use of te reo Māori.

¹³ Maynard, K. (2022). Te Tiriti o Waitangi and alcohol law. Wellington, NZ: Te Hiringa Hauora | Health Promotion Agency.

Summary of recommendations

1. The Drug Foundation **welcomes** the intent to enhance the ability of communities to influence alcohol regulation in their local areas.
2. We **support** the removal of the ability to appeal the provisional Local Alcohol Policies (LAPs).
3. We **support** the replacement of sections 102(1) and 128(1) with the provision that any person may object to an alcohol licence application or renewal.
4. We **support** the replacement of section 202(5) with a new section 202 providing for the ability of licencing bodies to conduct hearings by teleconference or other remote access facility.
5. We **support** licencing committees establishing appropriate procedures, including avoiding unnecessary formalities (203A; 203A(2)(a)).
6. We **support** parties or their representatives being unable to question other parties, or witnesses of other parties (203A(2)(c)).
7. We **support** the removal of cross-examination at the District Licensing Committees (DLC) (203A (2)(C)).
8. We **recommend** the development of national guidance for DLCs. We also **recommend** appropriately resourcing training for DLC Chairs and members that includes cultural safety.
9. We **recommend** adopting the provisions that mandate TLAs to develop LAPs.
10. In the absence of effective regulation of alcohol advertising, we **recommend** the inclusion of provisions enabling TLAs to restrict outdoor advertising of alcohol by licensed premises in their local areas.
11. We **recommend** provisions that ensure consultation with mana whenua is a mandatory part of the development of LAPs, similarly to the requirement to consult with Police, licensing inspectors and Medical Officers of Health (currently in section 78(4)). This would give effect to the principle of participation of Te Tiriti o Waitangi.
12. We **strongly encourage** the Government to continue alcohol law reform to give effect to the recommendations of 2010 Law Commission review of alcohol laws and respond to new local and global evidence on effectively reducing alcohol harm. The next step of the reform should strengthen the regulations around price, availability, and advertising of alcohol.