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Clerk of the Committee
Justice and Electoral Committee
Select Committee Office
Parliament Buildings
Wellington

Submission on the Sale and Supply of Liquor and Liquor Enforcement Bill

The New Zealand Drug Foundation – Te Tūāpapa Tarukino o Aotearoa welcomes the opportunity to comment on the Sale and Supply of Liquor and Liquor Enforcement Bill.

Our comments on this bill are influenced by our guiding principles, including a commitment to evidence-based best practice and policy, and harm minimisation. The Drug Foundation has had a very long interest in ways that the Sale of Liquor Act and other legislation could be strengthened to reduce alcohol-related harm, and to create a healthier drinking culture in New Zealand.

We would value the opportunity to appear before the Committee to speak to this submission – and can be contacted on 04 801 6303. Information about the Drug Foundation is appended to this submission.

General comments

We strongly support the objectives of the Sale and Supply of Liquor and Liquor Enforcement Bill. While we have concerns about the ‘ad hoc’ approach to this bill, we recognize that this stems from its omnibus nature, whereby it seeks to make amendments to 3 separate acts relating to liquor.

Any amendments to existing legislation must be seen in the context of a more comprehensive approach to alcohol related harm and the management of alcohol in New Zealand. We therefore strongly welcome the Law Commission review as an opportunity to address broader alcohol issues, many of which fall outside the parameters of the 3 acts which the proposed bill seeks to amend. For instance, issues relating to pricing, tax and drinking age are not considered in this bill. While the New Zealand Drug Foundation has strong views on these issues, we have not sought to advance these in this submission. This bill tackles what can be done immediately to help limit the harm caused by alcohol and we see definite value in progressing this bill without delay. We believe that it will be complemented by the Law Commission’s first-principles review of the entire regulatory framework for the sale and supply of liquor.

We recommend a small number of changes that we believe will significantly strengthen this bill, which addresses those pressing issues on which there is already a level of consensus. We strongly encourage all members of Parliament to support the bill. We look forward to the opportunity to comment on broader alcohol issues during the Law Commission review.

Specific points on the Sale and Supply of Liquor and Liquor Enforcement bill

Local alcohol plans and amendments relating to licenses

The New Zealand Drug Foundation strongly supports the provision empowering any territorial authority to adopt, amend or revoke a local alcohol plan. We welcome the broad range of requirements that such a plan may contain, including the hours during which liquor may be sold, where outlets may be located, a maximum density for outlets and a minimum distance outlets must be from community premises.

We have long advocated for communities to be given greater local control of liquor licensing. Key issues are sites that are unsuitable locations for licensed premises and over-density of outlets in a saturated alcohol market, contributing to local alcohol-related problems. We have previously called for councils to develop local alcohol strategies and plans, to specifically manage the proliferation, density and location of outlets. We are pleased that the proposed bill empowers local authorities to adopt a local alcohol plan and believe this will be an important step towards giving communities greater control of liquor licensing.

To increase community input of local alcohol issues, the Drug Foundation has recommended amending license granting criteria to allow consideration of neighbouring land use and fuller use of community consultation and council policy and planning powers. We are pleased to see that amendments relating to on-licenses, off-licenses, club licenses and special licenses proposed in this bill require the District Licensing Agency (DLA) and Licensing Authority (LA) to have regard to any local alcohol plan when making their rulings. Specifically, we support the requirement that unopposed applications for licenses will have to be forwarded to the LA if the DLA thinks them inconsistent with a local alcohol plan.

We have some concerns about the licensing process in areas where there is not yet a local alcohol plan. The proposed amendments only allow for a widening of criteria if there is a local alcohol plan in existence. The result is likely to be significant uncertainty and inconsistencies in the way new licenses are treated from one district to the next. To address this, we recommend that the sections dealing with criteria for new licenses (Sections 13 and 35 of the Act) be amended to add “concerns about social impacts” to the list of matters that the DLA and LLA must have regard for. This should give a clear mandate for DLAs and the LLA to take into account evidence from Medical Officers of Health, Police or community objectors regarding any concerns about the social impacts of an additional licensed premise in line with the Object of the Act, in those areas which do not yet have a local alcohol plan.

Types of premises that can have off-licenses

The New Zealand Drug Foundation supports the amendment to restrict the ability of groceries with a floor area of less than 150m² to obtain off-licenses. To avoid retailers creatively circumventing this proposed limit, we recommend that the bill specifies that the stipulated floor area applies specifically to retail floor space.

For current liquor licensing purposes, a ‘supermarket’ must be either 1000m² in area or a ‘main-order grocery store’. License applicants are currently able to define themselves as a ‘main order grocery store’ by stating that they carry a wide range of items, regardless of size of store or stock. The outcome is a proliferation of alcohol outlets that look like any ‘dairy’ but define themselves as convenience stores or superettes or ‘main-order grocery stores’ and now sell beer and wine. We believe that limiting premises that can sell alcohol according to their minimum retail floor space is a fair and reasonable approach to counter the proliferation of grocery stores selling alcohol.

There is considerable international evidence demonstrating that increased numbers and increased density of alcohol outlets is associated with increased alcohol-related harm, particularly at the neighbourhood level.¹⁻⁴ We welcome the intention of the bill to restrict the types of premises that can have off licenses on the basis of their size. We also support the proposed limitation on the types of liquor that can be sold in premises that are within a shop to wine, fruit wine, mead and beer.

‘Three strikes and you’re out’ policy for managers

The New Zealand Drug Foundation supports the move to effect a ‘three strikes are you’re out’ policy for managers who have 3 adverse findings relating to people under 18 made against them within two years. However, responsibility for the sale and supply of liquor to minors should be also borne by the licensee. It will be too easy for unscrupulous licensees to merely seek to replace a manager whose certificate has been cancelled. As such, we recommend extending this provision so that licensees also face increased penalties in such cases, over and above those they may currently expect. It is our view that the existing penalties for licensees who are found to have sold alcohol to minors are too weak and do not provide sufficient deterrence to unscrupulous licensees.

Enforced self regulation for liquor advertising and promotion

While we acknowledge that a shift to enforced self-regulation is better than the current system of voluntary self-regulation, we continue to recommend full government regulation of liquor advertising and the discontinuation of all liquor advertising from broadcast media.

Alcohol marketing is a major public health issue. Continual high exposure of children and young people to alcohol advertising and sponsorship is inconsistent with the government’s policy goals, and is likely to undermine efforts to change our drinking culture. Despite public scrutiny and the recommendations of government ministries, the industries concerned have proved they cannot be relied on to protect the public health, against which their interests are often diametrically opposed. Allowing voluntary industry codes is a policy experiment that has failed.

The current system of voluntary industry-managed codes does not provide adequate consideration and protection of the public health of New Zealand. We consider that voluntary codes do not address the sophisticated ways in which advertising operates to associate products and/or brand logos with desirable lifestyles and the aspirations of the young. The recommendation of the 2002 ASA Liquor Code Review to allow alcohol advertisements to be shown from 8.30pm although 26% of 10-17 years olds are watching at this time demonstrates that industry self-regulation and self-review will not deliver on public health goals.

There is now considerable international and New Zealand evidence to show how alcohol advertising influences young people, including those under the legal age of purchase, and helps recruit generations of drinkers.⁵⁻¹¹ Young children are already receiving and responding to alcohol brand messages. Exposure to alcohol advertising influences the alcohol beliefs, expectations and current and future drinking behaviour of teenagers. Advertising encourages positive perceptions about alcohol, typical drinkers and how much other people drink. It also increases young people's brand awareness. New Zealand research shows that 10-17 years olds who recalled and liked alcohol advertisements most, had more positive attitudes to drunkenness, overestimated drinking by others their age and drank more themselves. International evidence has shown a link between exposure to alcohol advertising and consumption of alcohol. Those who saw more alcohol advertisements on average drank more in a US study.

Voluntary industry control has meant an increase in advertising exposure, not a reduction. The ASA has ignored advice from ALAC and the Ministry of Health and brought forward the television start time for alcohol ads. This situation is unsatisfactory. Industry-self regulation is no regulation at all. The promotion of alcohol is a key public health issue for New Zealand yet the government has lost control over the promotion of alcohol in the broadcast media. Broadcast policy should support - not contradict - the government's health goals and policy directions under the National Drug Policy and related action plans. If the government is committed to reducing exposure to young people, no alcohol advertising should be allowed on broadcast media, including cinema.

While the move to enforced self-regulation is an improvement over voluntary self-regulation, we believe that full government regulation, including a complete ban on all forms of alcohol marketing, will better insulate young people from the increasingly sophisticated attempts by industry to influence their alcohol beliefs, expectations and behaviours.

Offences and enforcement in relation to young people

The New Zealand Drug Foundation supports the legislative amendments to strengthen age verification practices to enforce the drinking age. We believe that the introduction of a new and more restrictive defence for people charged with the offence of selling or supplying liquor to a young person – stipulating that only an evidence of age document will be able to be the basis for having reasonable grounds for believing a young person is 18 or over - is an improvement on the existing legislation in which reasonable grounds may be proved in some other way.

We continue to recommend that age verification should be a required practice of responsible management, alongside other required practices such as not serving intoxicated patrons and the provision of food and low-alcohol beverages. Amendments to the Act to make age verification legally required would provide statutory officers – and licensees – with a preventative tool to reduce the current occurrence level for the offence of sale and supply to minors.

We support the legislative amendment to tighten social supply to minors by other adults. Alcohol is currently being supplied to minors by people over 18 who are not their parents or guardians. Police regularly respond to complaints about out-of-control, inadequately supervised parties where alcohol has been supplied by adults to other people's children. They find it very difficult to investigate or prosecute the supplier of the alcohol under Section 160 as written.

We believe that the proposed requirement for a supplier to have the consent (express or implied) of a parent or guardian of the young person when the young person supplied is attending a private social gathering is an improvement over the existing legislation, which places no obligation on the supplier to have this consent.

We believe that enforceability can be further improved by removing the need to prove 'intention to supply' and the exception for supply to minors 'at private social gatherings.' The New Zealand Drug Foundation recommends amending Section 160 to extend parental responsibility to include supervising safe drinking of alcohol that they supply to their child. Suggested legislative wording is given below.

S.160. Purchasing liquor for minors.

- (1) Every person commits an offence and is liable to a fine not exceeding \$2,000 who supplies liquor to any person who is under the age of 18 years.
- (2) Subsection (1) of this section applies irrespective of any liability that may attach to the licensee or any manager or other person in respect of the sale or supply of the liquor.
- (3) Subsection (1) does not apply to a person who purchases or acquires any liquor and supplies it to any child of whom that person is a parent or guardian for consumption under the supervision of that parent or guardian.
- (4) No person shall be guilty of an offence against subsection (1) of this section by supplying to any person who then supplies it to a third person who is under the age of 18 years, if the defendant satisfied the court that he/she did not know or had no reasonable grounds to believe that the liquor was intended for that other person.

We strongly support making it an offence to present a false evidence of age document on licensed premises and to sell, hire, lend, give or otherwise dispose of a false prescribed evidence of age document to another person. The New Zealand Drug Foundation has long called for a strengthening and improved enforcement of existing laws designed to reduce sale and supply of alcohol to minors.

Amendments to Land Transport Act 1998

The New Zealand Drug Foundation supports the proposed amendment limiting drivers aged under 20 years who do not have a full license to a zero alcohol limit. However, we recommend extending this proposal to cover all drivers under 20 years, regardless of their license status. The evidence is that the risk of crashes is associated with youthfulness far more than inexperience per se. In New Zealand, 15-19 year old drivers at the current legal limit of 30 mg/100ml are 15 times more likely to die in a night-time road crash than a sober driver aged 30 or over.¹² This recommendation will also simplify the law for the public to understand and make it easier for enforcement efforts.

We also recommend lowering the blood alcohol content limit to 0.05gm/100ml for all other drivers. A 0.05gm/100ml BAC limit is standard in most of the industrialised world, and those jurisdictions that have lowered the limit have experienced general reductions in drinking and driving and alcohol-related deaths and injuries.¹³ Twenty-seven countries including Australia and 25 out of 29 European countries have a BAC of 0.05gm/100ml or less for adult drivers. When Sweden lowered its BAC level from 0.05gm/100ml to 0.02gm/100ml in 1990, fatal alcohol-related accidents dropped by 10 percent, similar to the experience of Austria, Belgium and France.¹⁴

Thank you for the opportunity to have input into this process. Please contact me if you have any questions or seek points of clarification on our submission.

Yours sincerely

Ross Bell
Executive Director

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About the New Zealand Drug Foundation

The New Zealand Drug Foundation, established in 1990, is an independent trust with a national focus on minimising drug-related harm. This includes social and health harms caused by legal drugs, such as tobacco and alcohol, as well as illegal drugs, such as cannabis.

The Drug Foundation advocates evidence-based policy on these issues, and provides reliable and credible information to organisations and individuals. We take a lead role in networking and cooperation within the alcohol and drug sector.

The Drug Foundation recognises that drugs, legal and illegal, are a part of everyday life experience. Drugs, and their use, impact on many of us, and on the people we care about. Harms to individuals and families include injury, disease, social, personal and financial problems and a reduced quality of life. Harms to society include unsafe communities, increased need for law enforcement, and high health and economic costs. Worldwide, tobacco and alcohol, not just illicit drugs, are major contributors to the burden of injury and disease.

For these reasons, the Drug Foundation is committed to reducing drug use and its harmful consequences. This commitment to reducing harm includes moderation in the use of alcohol and ensuring that any illicit drugs, if used, are used safely. Our focus is on advocating for policies that build a healthy society where there is the least possible harm from drug use. All efforts to control or reduce the harm from tobacco, alcohol and illicit drugs must be evidence based, socially just and maintain the rights of individuals and the aspirations of communities.

The Drug Foundation provides leadership and representation for our nationwide membership of organisations and individuals working on alcohol and drug issues. The Drug Foundation is a member the Health Promotion Forum, and of the following international organisations: the Global Alcohol Policy Alliance, the International Harm Reduction Association, and the International Drug Policy Consortium.

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