

admin@drugfoundation.org.nz
+64 4 801 6303

4th Floor
265 Wakefield Street

PO Box 3082
Wellington
Aotearoa
New Zealand

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

New Zealand Drug Foundation submission on the Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2) and Supplementary Order Paper No 14

Submitted to Health Committee on **25 April 2018**

Tēnā koe

In this submission we propose recommendations that will strengthen the Bill and offer suggestions for wider alcohol law reform. This combination will help address social and environmental factors that contribute to alcohol-related harm in Aotearoa New Zealand.

The Bill and supplementary order paper propose that Local Alcohol Policies (LAPs) be taken into account when renewing off-licences. Renewal licences may be refused if inconsistent with location and density provisions set out in an existing LAP.

We support the principle of this Bill but believe it does not go far enough. As it stands, it has very limited scope. No major city has an operational LAP and many LAPs are ineffective. This bill will not be applicable until these issues are fixed. This submission proposes how to make the bill immediately more effective and repair LAPs.

Although it might not be within the scope of this bill we also urge the Select Committee to consider wider reforms. This would make a considerable difference to reducing alcohol-related harm.

As such our submission has three parts:

- **PART ONE** This Bill should apply to all licences
- **PART TWO** We need to protect communities from the alcohol industry and fix the LAP process
- **PART THREE** We need wider law reform to protect people from harm

Thank you for considering our submission. We also request the opportunity to make an oral submission.

Ngā mihi,



Ross Bell
Executive Director

The Drug Foundation is a charitable trust. We have been at the forefront of major alcohol and other drug debates for 28 years, promoting healthy approaches to alcohol and other drugs for all New Zealanders.

PART ONE – THIS BILL SHOULD APPLY TO ALL LICENCES

1. We welcome the proposal to align off-licence renewals with existing LAPs. We support the intent of the Bill, which is to make LAPs more effective.
2. However, the supplementary order paper restricts the application of the Bill to off-licences without good justification.
3. We are not doing enough in New Zealand to address the serious harm caused by alcohol in our communities. Research shows that both on-licence and off-licence premises, and density (concentration of premises in a certain area) contribute to alcohol-related harm¹.
4. We support the Bill but not the supplementary order paper. All licences should comply with the provisions in LAPs.

¹ Cameron, M.P., Cochrane, W., Gordon, C., & Livingston, M. (2013). *The locally-specific impacts of alcohol outlet density in the North Island of New Zealand, 2006-2011*. Research report commissioned by the Health Promotion Agency. Wellington: Health Promotion Agency. Retrieved from <https://www.hpa.org.nz/sites/default/files/Alcohol%20Outlet%20Density.pdf>

PART TWO – WE NEED TO PROTECT COMMUNITIES FROM THE ALCOHOL INDUSTRY BY FIXING THE LAP PROCESS

We support this Bill in principle but it doesn't go far enough

5. This amendment is a good start but there are inherent issues with LAPs that need to be urgently addressed. This Bill won't help most communities if the Select Committee does not take this opportunity to get LAPs working properly.
6. LAPs can stipulate harm reduction provisions, such as restricting the concentration of premises in a certain area (density) and placing limits on location (i.e. the proximity to sensitive sites, such as schools)².
7. LAPs should be one of the best tools available to control the availability of alcohol. The original purpose of LAPs was to increase community involvement and voice (through the Territorial Authority) so they could influence how alcohol was supplied in their neighbourhoods.
8. But LAPs aren't working in the way they were meant to, where they exist at all. The process is broken. More than half of Territorial Authorities do not have LAPs, and the alcohol industry is using the appeals process to get LAPs watered down or stopped altogether. Community views are often not represented and many LAPs don't include meaningful harm reduction provisions.
9. Because of these issues, this Bill will make little or no difference in most communities. We offer solutions to strengthen LAPs below.

The appeal provision is harmful and should be scrapped

Only 43% of Territorial Authorities have adopted LAPs to date³.

10. Less than half of the Territorial Authorities and no major cities have operational LAPs.
11. The alcohol industry is primarily responsible for delaying or slowing the adoption of LAPs. All but one provisional LAP has been appealed and almost always by the alcohol industry (supermarkets and bottle stores)⁴.

² <https://www.beehive.govt.nz/sites/default/files/alcohol-law-reform-cabinet-paper-final.pdf>

³ Alcohol Health Watch (2017). *A review of Territorial Authority progress towards Local Alcohol Policy development*. Retrieved from http://www.ahw.org.nz/Portals/5/Resources/Documents-other/2017/LAPReport_2017_FINALWEB%20%2819_1_18%29.pdf

⁴ *ibid*

The alcohol industry uses the appeals process to steam roll LAPs

12. The industry utilises the LAP process to delay or stop LAPs moving forward. Councils often get tied up in litigation that is costly and lengthy. This was never the intention of LAPs.
13. The appeals provision is overwhelmingly weighted in favour of the alcohol industry. 32 of 33 provisional LAPs have been appealed since the policy commenced. The alcohol industry (supermarkets and bottle stores) appealed 94% of these. By contrast, the community, Police and health organisations only appealed 28% of policies⁵.

Proposed LAPs might start off strong but are watered down

14. Local alcohol policies often start out with strong harm reduction provisions in line with community wishes. These are then watered down after appeals made by the alcohol industry. 71% of substantial changes during the appeals process result in less restrictive policies⁶.
15. By way of example, the Far North have some of the highest rates of alcohol-related harm in New Zealand. A LAP was proposed for the area that would have restricted the location of alcohol outlets. The Council discarded the LAP process after spending more than \$180,000 on legal fees over 4 years. One Councillor described the LAP law as “stupid” because the industry can use the courts system to discount the wishes of the community⁷.

Communities cannot compete

16. Communities, councils and other stakeholders simply cannot compete with the legal resource available to the alcohol industry.
17. Māori suffer disproportionate harm from alcohol use⁸. Yet Māori who have submitted on LAPs often feel ignored and silenced because their voice cannot compete with the weight of the alcohol industry.
18. Even some Territorial Authorities with large resources at their disposal have not been successful in implementing LAPs. For example, Auckland Council embarked on the LAP process in 2014 but still hasn't adopted their LAP. The provisional LAP is awaiting judicial review⁹ after a 5 week appeal hearing. This type of litigation is costly and expensive to all parties. Smaller Territorial

⁵ ibid

⁶ ibid

⁷ http://www.nzherald.co.nz/northland-age/news/article.cfm?c_id=1503402&objectid=12026505

⁸ Ministry of Health (2010). *NZ Alcohol and Drug Survey 2007/08*. Retrieved from <https://www.health.govt.nz/publication/2007-08-new-zealand-alcohol-and-drug-use-survey-online-data-tables>

⁹ Alcohol Health Watch (2017). A review of Territorial Authority progress towards Local Alcohol Policy development. Retrieved from http://www.ahw.org.nz/Portals/5/Resources/Documents-other/2017/LAPReport_2017_FINALWEB%20%2819_1_18%29.pdf

Authorities with fewer resources have very little chance of getting a meaningful LAP in place under the current law.

19. Community stakeholders become worn out and become less likely to be involved with future community action as a result. This leaves the alcohol industry unopposed.

We recommend following the model used to license gambling venues

20. The appeals process does not exist in other health-focused policies¹⁰.
21. The Class 4 Gaming Venue Policy Process (under the Gambling Act 2003)¹¹ is a good example. Under this process, each Territorial Authority can set a local policy which may include restrictions on the number of gambling venues or the number of machines. It may also include a sinking lid policy which reduces the number of machines over time¹². These policies go through the normal consultation process (with submission opportunities) but there is no appeals process.
22. It would make sense for alcohol to follow this example. The current appeals process is primarily used to protect the interests of industry at the expense of community say.
23. This part of the Sale and Supply Act is an abject policy failure. We urge the Select Committee to remove the appeals process from the Act.

No major cities have LAPs. They should be mandatory.

24. Auckland, Wellington, Hamilton, Dunedin, Christchurch and several other areas do not have LAPs. We recommend that LAPs become mandatory in every Territorial Authority.
25. Communities want to see controls on alcohol. But LAPs either don't exist, are constantly delayed by legal action or watered down. The Select Committee should use this opportunity to do as the Law Commission¹³ suggested and mandate every Territorial Authority to adopt a local LAP as soon as reasonably possible.

¹⁰ https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Casino-and-Non-Casino-Gaming-Info-for-Territorial-Authorities?OpenDocument

¹¹ *ibid*

¹² [https://www.dia.govt.nz/diawebsite.nsf/Files/Pokie-system-101-untracked/\\$file/Pokie-system-101-untracked.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Pokie-system-101-untracked/$file/Pokie-system-101-untracked.pdf)

¹³ Law Commission (2010). *Alcohol in our lives: Curbing the harm*. Law Commission: Wellington, NZ. Retrieved from <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf>

Fix the LAP process because it is not community-friendly

26. Communities, health organisations and other stakeholders often struggle to participate in the LAP process. The process is hard to engage with, expensive and resource intensive. It requires money, time and resources that communities and other stakeholders often don't have. This is even more problematic when the alcohol industry has seemingly endless resource to continue the fight.
27. There are numerous stories of communities feeling their voice is not heard through the process and seemingly little way to protect their communities from alcohol-related harm. This is the exact opposite of the intention of Local Alcohol Policies.

Government leadership is needed to strengthen the voice of communities

28. Territorial Authorities have tried to increase community participation but this is often met with disinterest and frustration. Communities might start off very passionate but their voice is often not heard, or is ignored. Communities often become disheartened after repeated failure to have their voices make a difference.
29. There is a lot of room for improvement. A report commissioned recently by the Health Promotion Agency recommended making the process more fair and equitable for communities. The top three community stakeholder priorities for improving SSAA participation were:
 - fairness in the process
 - community views and others being given equal weight, and
 - community views being considered when decisions were being made¹⁴.
30. Central government needs to step in and provide guidance on how to strengthen community involvement.

Make sure LAPs have effective harm reduction provisions and represent community views

31. The Bill and supplementary order paper states that off-licence renewal decisions should consider density and location provisions in the LAP. This assumes LAPs have these provisions in the first place, and that these provisions are meaningful. This is simply not the case most of the time.
32. Many LAPs are weak and do not contain meaningful harm reduction provisions regarding density or location of premises. Only 14 of the 21 adopted LAPs

¹⁴ Health Promotion Agency (2018). *Sale and Supply of Alcohol Act 2012: Community Experience Survey*. Retrieved from <https://www.hpa.org.nz/sites/default/files/SSAA%20Community%20Experience%20Survey%20Final%20Report%20-%20March%202018.pdf>

restrict the location of new licenced premises near sensitive sites, and only two of these restrict very close proximity¹⁵. The amendment will not achieve its stated purpose where LAP provisions on density and location are weak or non-existent.

33. Central government should provide specific guidance on how to address density and location within LAPs. Communities need more support and Councils need more guidance on how to ensure these critical provisions are included and are meaningful.

¹⁵ Alcohol Health Watch (2017). *A review of Territorial Authority progress towards Local Alcohol Policy development*. Retrieved from http://www.ahw.org.nz/Portals/5/Resources/Documents-other/2017/LAPReport_2017_FINALWEB%20%2819_1_18%29.pdf

PART THREE - WE NEED WIDER ALCOHOL LAW REFORM TO PROTECT PEOPLE FROM HARM

34. New Zealand needs to consider wider alcohol reform if we really want to reduce harm.
35. We acknowledge wider reform might be outside the scope of the current bill. However we urge the Select Committee to take these recommendations back to Parliament.

Alcohol is a major problem in New Zealand

36. New Zealand has an ‘alcogenic’ environment – a situation which the Law Commission previously characterised as the “unbridled commercialisation of alcohol”¹⁶. Some good changes have occurred since the 2010 Law Commission Review, such as better alcohol drink driving laws. But there is much more to address. The Drug Foundation believes that any interventions will not be fully effective until a range of social and environmental factors are addressed. This means wider alcohol law reform.

Māori, Pacific and low-socioeconomic groups are most at risk

37. Māori, Pacific and those living in deprived neighbourhoods are more likely to experience harm from alcohol¹⁷. Services are over-extended and underfunded so people cannot get help even when they want it.

A comprehensive policy approach is needed

38. Sir Geoffrey Palmer (President of the Law Commission 2010) cautioned that “unless a comprehensive approach is taken to addressing the problems that alcohol poses for New Zealand society, those problems will not be solved”¹⁸.
39. The suite of recommendations were designed to be “mutually reinforcing” and the Law Commission warned that “picking and choosing among the various elements put forward will lessen the power of the package to reduce harm”¹⁹.

¹⁶ Law Commission (2010). *Alcohol in our lives: Curbing the harm*. Law Commission: Wellington, NZ. Retrieved from

<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf>

¹⁷ Ministry of Health (2010). *The 2007/08 New Zealand Alcohol and Drug Use Survey: Online data tables*. Retrieved from <https://www.health.govt.nz/publication/2007-08-new-zealand-alcohol-and-drug-use-survey-online-data-tables>

¹⁸ <http://business.scoop.co.nz/2010/05/06/palmer-alac-conference/>

¹⁹ Law Commission (2010). *Alcohol in our lives: Curbing the harm*. p. 10. Law Commission: Wellington, NZ. Retrieved from

<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf>

Yet this is exactly what happened. We should therefore not be surprised New Zealand has not seen dramatic reductions in alcohol harm.

40. Minimum pricing, excise tax, alcohol marketing and sponsorship were critical policy solutions proposed by the Law Commission to reduce the harm caused by alcohol. The Drug Foundation urges the Committee to take this opportunity to consider these policy solutions to protect communities from alcohol-related harm.

Set minimum pricing and increase the excise tax by 50%

41. The Law Commission and the Ministry of Justice both recognise the value of increasing the price of alcohol to reduce alcohol-related harm²⁰. This could be achieved by introducing minimum pricing, and/or increasing excise tax.
42. The Law Commission Review recommended increasing excise tax by 50% and investigating minimum pricing options for New Zealand²¹.
43. We agree with these recommendations. There is a lot of evidence to support the conclusion that increasing prices would result in a reduction of alcohol-related harms and help offset the societal costs²².

Consider implementing a minimum pricing policy

44. Increasing excise tax alone may not significantly raise the cost of very cheap alcohol. High percentage, low cost alcohol would most likely still be available in alcohol stores.
45. Minimum pricing would set a 'floor price' per standard drink (10 g of alcohol) and would make it illegal to sell alcohol for less than that. This would not raise the price on all alcohol. Many products already cost much more than the minimum price is likely to be, especially if purchased from a bar. However a

²⁰ Law Commission (2010). *Alcohol in our lives: Curbing the harm*. Law Commission: Wellington, NZ. Retrieved from

<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf>;

Ministry of Justice (2014). *The effectiveness of alcohol pricing policies*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/effectiveness-of-alcohol-pricing-policies.pdf>

²¹ Law Commission (2010). *Alcohol in our lives: Curbing the harm*. Law Commission: Wellington, NZ. Retrieved from

<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf>

²² Health Promotion Agency (2018). *Trends in affordability of alcohol in New Zealand*. Wellington: Health Promotion Agency. Retrieved from

<https://www.hpa.org.nz/sites/default/files/Final%20Report%20-%20Trends%20in%20affordability%20of%20alcohol%20in%20New%20Zealand%20April%202018.pdf>

Law Commission (2010). *Alcohol in our lives: Curbing the harm*. Law Commission: Wellington, NZ. Retrieved from

<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf>

minimum price will increase the cost of those drinks that are high in alcohol relative to their cost, such as cheap spirits, cask wine and ready-to-drink beverages. It is unlikely to make much difference to averagely priced wine and spirits.

46. Implementing minimum pricing would achieve health goals that raising alcohol taxes alone cannot. Minimum pricing prevents below-cost selling and the deep discounting of alcohol that some retailers engage in. The key benefits would be raising the retail price of the alcohol products that provide the cheapest forms of absolute alcohol.
47. One key Ministry of Justice argument against minimum pricing was that more money would go into the hands of the alcohol industry²³. This affect could be mitigated by also increasing the excise tax.
48. The government should seriously consider both options to address alcohol pricing:
 - Increasing excise tax by 50% as recommended by the Law Commission
 - Introducing a minimum pricing scheme alongside an increase in excise tax.

Use any revenue increase to fund education and treatment

49. Regardless of whether excise tax is raised, a greater proportion of the revenue from excise tax on alcohol should be used towards prevention, treatment, education and rehabilitation services.

Phase out alcohol advertising and sponsorship

50. There is clear and compelling evidence that alcohol advertising encourages people to start drinking at a younger age²⁴. It also leads young people who already drink to drink more. Advertising also contributes to our drinking culture by brazenly associating alcohol with social, sexual and sporting success.
51. If we are serious about protecting young people and our communities, alcohol advertising needs to come to an end.
52. The Drug Foundation has consistently called for a complete tobacco-style ban of all alcohol advertising across all media and the discontinuation of all alcohol sponsorship of sporting or cultural events.

²³ Ministry of Justice (2014). *The effectiveness of alcohol pricing policies*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/effectiveness-of-alcohol-pricing-policies.pdf>

²⁴ Babor, T., Caetano, R., Casswell, S., Edwards, G., Giesbrecht, N., Graham, K. et al. (2010) *Alcohol: No Ordinary Commodity – Research and Public Policy* (2nd ed.). Oxford, UK: Oxford University Press.

The Ministerial Forum called for these changes

53. The Law Commission recommended a three-stage plan to control alcohol promotions, advertising and sponsorship in 2010²⁵.
54. The Ministerial Forum also recommended significant changes in 2014²⁶. The Forum commented that current levels of alcohol sponsorship and advertising were “unacceptable”, They were particularly concerned about young people.
55. The Forum recommended a suite of changes, including:
- Banning alcohol sponsorship for broadcasted sports events, sports teams and venues
 - Removing alcohol advertising during broadcasted sports events and reducing advertising, particularly where youth are involved
 - Establishing an independent authority to monitor complaints.
56. It is high time these recommendations are addressed, and we urge the Committee to consider this matter.

²⁵ Law Commission (2010). *Alcohol in our lives: Curbing the harm*. Law Commission: Wellington, NZ. Retrieved from

<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf>

²⁶ Ministerial Forum on Alcohol Advertising & Sponsorship (2014). *Recommendations on alcohol advertising and sponsorship*. Retrieved from

<https://www.health.govt.nz/system/files/documents/publications/ministerial-forum-on-alcohol-advertising-and-sponsorship-recommendations-on-alcohol-advertising-and-sponsorship-dec14.pdf>

Final Recommendations

We recommend that the Select Committee

1. Extends the Bill to apply to all alcohol licences, not just off-licences
2. Removes the appeals process from LAPs
3. Makes LAPs mandatory for all Territorial Authorities
4. Provides leadership and guidance to strengthen the voice of communities within the LAP process
5. Provides leadership and guidance to make sure all LAPs have meaningful provisions regarding density and location

We recommend wider changes to the Act to

6. Set minimum pricing and increase the excise tax on alcohol by 50%
7. Phase out alcohol advertising and sponsorship