

Policy: Regulation of the drinking of alcohol in public places

ALAC'S POLICY

Problematic public drinking can lead to vandalism, negative impacts on businesses, noise, violence and disorder. Although some of these problems can be reduced using bylaws, regulating public drinking can sometimes add new problems, including displacement caused by moving drinkers on particularly for young people.

Bylaws and other forms of regulation should not be used alone, but as part of a broader alcohol policy that local authorities can develop in consultation with communities to support them to reduce alcohol-related harm. A fair and open consultative approach to bylaw-making and other regulation by local authorities will help ensure that local authorities are more responsive to wider community concerns.

Local authorities are encouraged to broaden their focus to create a balance between prescriptive regulatory and compliance activities and the meeting of local communities' requirements through appropriate consultation.

Introduction and background

Local authorities have become increasingly concerned about levels of public drinking and the adverse impact public drinking can have on their communities such as public disorder, vandalism, injury, and poor perceptions of public safety.

In the past, a large number of reported out-of-control or problematic public drinking occasions have corresponded with specific public events and specific days of leisure and celebration. In 1999, in recognition of the link between specific occasions and problematic public drinking, the Local Government Act 1974 was amended to include a detailed interpretation of "specified days" in section 709B of the Local Government Act 1974.

Media and public attention has been paid more recently to an apparent increase in people, particularly young people, gathering at carparks, beaches, shopping malls and other public places to consume alcohol at times unrelated to organised public events or "specified days". There is often little ill effect from such gatherings. However, public drinking events can range from peaceful gatherings whereby families picnic on a beach reserve and drink alcohol with their meal, to riots resulting in arrests for assault, disorder and vandalism.

In a recent attempt to address problems related to disorderly public drinking outside specified days, Parliament passed an Amendment Bill under urgency on 19 December 2001 to ban the possession and consumption of alcohol in public places. The Local Government (Prohibition of Liquor in Public Places) Amendment Act has amended section 709 of the Local Government Act 1974, under which no prohibition of alcohol consumption in a public place could have effect for more than 12 hours in any consecutive 24 hour period.

However, as a result of an apparent drafting error, the Amendment Act effectively banned the possession and consumption of any alcohol in any public place controlled by any territorial authority. It also gave the police the powers of search, seizure, and confiscation of alcohol or receptacles used for containing or consuming alcohol. This effectively meant that it became an offence to carry or consume alcohol in any public place, be it a street, carpark, beach or park.

On one hand this legislation gave police the powers to pre-empt alcohol-related disorder on Friday and Saturday nights in urban centres. It also allowed police in summer trouble spots to confiscate alcohol early in the evening to prevent later trouble. On the other hand it also gave police the power to confiscate alcohol being carried from a bottle store to a vehicle or to a BYO restaurant. It also allowed police to confiscate alcohol being consumed at family picnics, on the beach or local park. The powers were, in fact, so loose that police generally found this new legislation impossible to enforce.

These amendments will be superseded by the comprehensive Local Government Bill, which is before Parliament's Local Government and Environment Select Committee for consideration and report back to the House.

The Local Government Bill proposes more general powers to create bylaws, which involve community consultation.

Past use of bylaws to regulate public drinking

Before the introduction of the Local Government (Prohibition of Liquor in Public Places) Amendment Act 2001, some councils attempted to make bylaws that banned alcohol in specified public places for longer periods of time in an attempt to stop the negative impact public drinking had on their communities. However, Judge PA Moran's judgment of 15 December 2000, relating to The Gore District Council Control of Drinking in Public Places Bylaw 1995, reminded councils that alcohol bans for longer than 12 hours were invalid and that people "cannot be prosecuted for an offence against an invalid bylaw."¹

Like the Gore District Council, a number of New Zealand councils had created bylaws banning alcohol in an attempt to address problematic public drinking. Since 1985, the Gore community has experienced problems with young people congregating in the Main Street consuming alcohol, acting in a violent manner and destroying property.

Although The Gore District Council Control of Drinking in Public Places Bylaw 1995 did not confer the power of arrest or power to seize alcohol, the police reported that they had found it useful in overseeing and controlling the conduct of young people who gathered to drink in the Main Street. Judge Moran raised concerns that 'the efficacy of the bylaw depended upon Police confrontation (giving enough rope) leading to the commission of other offences for which arrests might be made (allowing them to hang themselves).'¹ He did not see this as a responsible way to enforce an alcohol ban or to manage the hard core of public drinkers.

Another problem raised in the Gore case was that bylaws such as this applied to everyone who possesses alcohol for consumption in the specified area. In his judgment, Judge Moran discussed infringement of rights versus local benefits. He found that "a bylaw which destroys or unnecessarily abridges or interferes with a public right without producing a corresponding benefit to the inhabitants of the locality must necessarily be unreasonable".¹

The infringement of rights versus local benefits was not addressed by the introduction of the Local Government (Prohibition of Liquor in Public Places) Amendment Act 2001, but the current comprehensive Local Government Bill provides local authorities with consultative requirements that should address this matter.

Regulation within an alcohol policy framework

Problems related to public drinking can include vandalism, negative impacts on businesses, noise, a negative civic image, violence and disorder. Although regulation may address some of these problems, regulation of public drinking can also contribute to further problems, including displacement caused by moving drinkers on particularly for young people.

For example, the use of move-on powers by police in Queensland has been shown to have an effect on young people's use of public space, particularly by indigenous young people. Those powers were granted via the *Police Powers and Responsibilities Act 1997*. The small study into the use of these powers suggests policy-makers and politicians would be better to concentrate on implementing community youth programmes and inclusive planning approaches that have been demonstrated as effective ways of addressing young people's recreational and social needs.²

Inclusive planning approaches are supported by another Australian study, which suggests inviting young people into the design and planning process for public spaces in order to provide benefits for young people and to make neighbourhoods better and safer places for all people who live there.³

In addition, public drinking by young people often raises issues around supply or ease of access to alcohol, boredom or lack of other alcohol-free activities, parental awareness and responsibility, and the health of young

people. These are not issues that can be addressed by regulatory measures.

ALAC acknowledges the need to regulate drinking in public places. However, regulation should only be part of a comprehensive alcohol policy developed by local government in collaboration with the whole community.

It is important that any local government policy surrounding alcohol targets the wider impact of alcohol use and misuse on the community and the issues that lead to misuse in addition to targeting problematic public drinking within a regulatory framework.

A number of councils have adopted a Sale of Liquor Act Policy, but as issues are wider than those related to the Sale of Liquor Act 1989, it is important that councils develop and adopt a wider alcohol policy. If targeted more widely than Sale of Liquor issues, an alcohol policy can use all of the strategies and tools available to local bodies. A local government alcohol policy must be developed with community consultation and all agencies and bodies who will be affected by the policy (eg. the NZ Police and public health services).

References and further reading

1. Police v Michael Douglas Hall, Reserved Judgment of Judge PA Moran, 15 December 2000.
2. Spooner P. 2001. Moving in the Wrong Direction: An analysis of police move-on powers in Queensland. *Youth Studies Australia*, 20(1):27-31.
3. White R. 2001. Youth Participation in Designing Public Spaces. *Youth Studies Australia*, 20(1):18-26.

About ALAC

The Alcohol Advisory Council of New Zealand – Kaunihera Whakatupato Waipiro o Aotearoa (ALAC) was established under and is governed by the Alcohol Advisory Council Act 1976. Since 1992, ALAC has operated as a crown entity under the Public Finance Act 1989.

ALAC is funded by a fixed levy on all alcohol produced for consumption in New Zealand, which ensures that funds are targeted at alcohol-related problems. This reflects the Government's desire to both address the consequences of alcohol misuse and promote safe drinking habits.

ALAC's primary objective is the encouragement and promotion of moderation in the use of alcohol, the discouragement and reduction of the misuse of alcohol, and the minimisation of the personal, social, and economic harm resulting from the misuse of alcohol.

Further information available from ALAC

ALAC's submissions on the Local Government Review and the Local Government Bill are available on ALAC's website: www.alcohol.org.nz