

# **SUBMISSION**

To the Local Government Act Review.

On the Consultation Document – Reviewing the Local Government Act 1974: Have your say

## **INTRODUCTION**

1. This submission is from the Alcohol Advisory Council of New Zealand - Te Kaunihera Whakatupato Waipiro O Aotearoa (ALAC), 36 Customhouse Quay, PO Box 5023, Wellington, New Zealand.
2. ALAC is a crown owned entity that operates under the Alcohol Advisory Council Act 1976.
3. ALAC's primary objective is the encouragement and promotion of moderation in the use of liquor, the discouragement and reduction of the misuse of liquor, and the minimisation of the personal, social, and economic harm resulting from the misuse of liquor. ALAC's mission statement is "helping people make healthy choices about alcohol".
4. This document provides ALAC's comments on the issue of regulating the drinking of alcohol in public places.

## **SUBMISSION**

### ***A requirement to regulate the drinking of alcohol in public places.***

5. ALAC is aware that councils have become increasingly concerned about levels of public drinking and the adverse impact public drinking can have on their communities through increased public disorder and vandalism.
6. In the past, a large number of reported out-of-control or problematic public drinking occasions appear to have corresponded with specific public events and specific days of leisure and celebration. In recognition of the link between specific occasions and problematic public drinking, the Local Government Act 1974 was amended in 1999 to include the interpretation provided in section 709B of the Local Government Act 1974. This section defines "specified day" as:  
  
‘any of the following days: Waitangi Day; The seventh of February; A day in the period beginning on Good Friday and ending on the close of the following Easter Monday; A day in the period comprising the Sovereign’s birthday and the Saturday and Sunday immediately before it; A day in the period comprising Labour Day and the Saturday and Sunday immediately before it; The fifth of nov’; the sixth of November; A day in the period beginning on 24 December and ending on the close of 2 January the following year’.
7. For some time, the NZ Police, councils, the media and local businesses have raised concerns about an apparent increase in public drinking not related to specific events. People have gathered at such locations as carparks and beaches to drink publicly for some time. 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.

8. Media and public attention has been paid recently to an apparent increase in 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”.

#### *The effectiveness of bylaws to regulate the drinking of alcohol in public places*

9. According to the Local Government Act 1974, no prohibition of liquor consumption in a public place can have effect for more than 12 hours in any consecutive 24 hour period (section 709A(3) of the Local Government Act 1974). Some councils have attempted to make bylaws that ban alcohol specified public places for longer periods of time in an attempt to stop the negative impacts public drinking has had on their communities.
10. However, Judge PA Moran’s judgment of 15 December 2000, relating to The Gore District Council Control of Drinking in Public Places Bylaw 1995, reminds councils that ban alcohol for longer periods of time are invalid and that people “cannot be prosecuted for an offence against an invalid bylaw.”<sup>1</sup>
11. Judge Moran noted that “By its present bylaw the Gore District Council has effectively ignored the limitations upon the prohibition of consumption of intoxicating liquor in public places that Parliament has prescribed in the Local Government Act. It has introduced a bylaw prohibiting the consumption of alcohol in its streets 24 hours a day, 365 days a year.”<sup>2</sup>
12. Like the Gore District Council, a number of New Zealand councils have 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.
13. Although The Gore District Council Control of Drinking in Public Places Bylaw 1995 did not confer the power of arrest or power to seize alcoholic liquor, 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).’<sup>3</sup> He did not see this as a responsible way to enforce an alcohol ban or to manage the hard core of public drinkers.
14. Another problem raised in the Gore case was that bylaws such as this apply 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”.<sup>4</sup>

#### *The use of regulation as one tool within a comprehensive alcohol policy framework*

15. ALAC is part of a task force working to support local government in preventing problematic public drinking and manage public drinking events and outcomes. Problems related to problematic public

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<sup>1</sup> Police v Michael Douglas Hall, Reserved Judgment of Judge PA Moran, 15 December 2000.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

drinking can include vandalism, negative impacts on businesses, noise, a negative civic image, violence and disorder.

16. 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. 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.
17. ALAC acknowledges the need to regulate the drinking of alcohol in public places. However, regulation should only be part of a comprehensive alcohol policy developed by local government in collaboration with the whole community.
18. 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.
19. 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).

## **RECOMMENDATIONS**

20. ALAC recommends that:
  - a) The sections in the current Local Govt Act (sections 709A–H) relating to council powers to control consumption of alcohol in public places be deleted to allow councils to use the proposed, more general powers to make bylaws that create alcohol bans;
  - b) Councils use bylaws and other forms of regulation as only one part of a comprehensive alcohol policy using multiple tools available to councils and developed in consultation with the whole community.

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**Alcohol Advisory Council**