

**ALCOHOL ADVISORY COUNCIL
OF NEW ZEALAND**

SUBMISSION

**TO THE JUSTICE & LAW
REFORM SELECT COMMITTEE**

**ON THE SALE OF LIQUOR
AMENDMENT BILL (NO. 2)**

SUBMISSION

To the Justice and Law Reform Select Committee

on the Sale of Liquor Amendment Bill (No. 2)

Introduction

1. This Submission is from the Alcohol Advisory Council of New Zealand (ALAC).
2. We wish to appear before the Committee to speak to our submission. Dr M G MacAvoy, Chief Executive Officer, Alcohol Advisory Council of New Zealand is the contact person for the Council. He may be contacted at the Council's offices at 119 Featherston St., Wellington, telephone 472 0997 or fax 473 0890.

We wish that the following persons appear in support of this submission:

Judge M J A Brown, Chairman, Alcohol Advisory Council of New Zealand.

Dr M G MacAvoy, Chief Executive Officer, Alcohol Advisory Council of New Zealand.

Ms Jennifer Harris, Manager Communications, Alcohol Advisory Council of New Zealand

3. The Alcohol Advisory Council of New Zealand (ALAC) is a Crown entity established under the Alcoholic Liquor Advisory Council Act 1976. The Council's primary function is:

The promotion of moderation in the use of alcohol and the development and promotion of strategies which will reduce alcohol-related problems for the nation.

The Council comprises six members appointed by the Governor General on advice from the Minister of Health. The makeup of the Council ensures representation from the public health sector, the general public, and Maori and includes a gender balance. The Council's work is delivered by a Secretariat comprising some 19 people, including staff specialising in public health, treatment, information technology, and research.

An important function of ALAC, in performance of its duties as the lead provider of advice to Government on alcohol-related matters, is that it consult widely in the preparation of that advice. ALAC's previous submission to the Liquor Review Advisory Committee appointed to review the Sale of Liquor Act (the Robertson Committee) was published and made public. ALAC has received considerable feedback through its network of organisations and individuals. Consultation has been undertaken on various aspects of the Bill with a number of alcohol industry groups, such as the Hospitality Association of NZ and the Beer Wine and Spirits Council, with Government departments such as the Ministry of Health and the Police, and with statutory bodies such as the Liquor Licensing Authority and with District Licensing Agencies.

However, the opinions expressed in this submission are those of the Alcohol Advisory Council and reflect its purpose and function as set out in statute.

General Summary

The Alcohol Advisory Council supports the intent of this Bill in general terms but wishes to make specific comment on a number of its clauses.

The principles established by the Laking Committee in 1985 on which the existing Act was premised remain valid today. ALAC commends these principles to the Select Committee when considering this Bill. They are:

- Controls on the sale and consumption of liquor should not be seen in isolation but as part of a broader policy on alcohol;
- Liquor laws should be seen as social legislation not as economic regulation;
- Any licensing system should impose the minimum amount of control necessary to achieve the objective of the liquor laws. It should not impose unnecessary restrictions on the drinking of alcohol;
- The primary objective of the Sale of Liquor Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means;
- Liquor laws, while embodying principles to be applied consistently throughout the country should be sufficiently flexible to cope with changing social conditions and with particular requirements of local circumstances;
- The licensing system should be simple to understand and easy to administer;
- The liquor laws should be capable of effective enforcement.

Significant positive changes have occurred in the New Zealand drinking environment since the introduction of the existing Act in 1990. Many of the dire predictions which were suggested with the freeing up of the availability of licences have not occurred. For example, in spite of the increased availability of licences from 6247 in 1988 to over 11,000 in 1996, alcohol consumption has continued to drop, particularly in the beer market. Licensed drinking environments have also changed, with the move away from the old style drinking barns to small intimate drinking venues.

The purpose of this Bill is to continue the progression towards a freer drinking environment in New Zealand, to remove the anomalies and difficulties in interpretation in the current Act, to enhance yet simplify compliance with the provisions of the Act, to draw in many drinking environments which are currently unlicensed, and to encourage greater involvement of local input in decision making regarding the granting and renewal of licences. ALAC applauds these moves.

However, the changes of the past 9 years have not all been in a positive direction. New Zealand has a major problem with underage drinking, and the laws relating to intoxication on licensed premises are still frequently broken. There is a need to recognise that the sale of alcohol is not like other products. Its potential for creating harm and misery in our society requires that there be checks and balances in the system to ensure the primary objective of the Act (reducing alcohol-related harm, as far as is possible by legislative means) remains paramount.

In considering the above points ALAC wishes to bring to the Committee's attention some major areas of concern with the intention of some clauses in the Bill. Detailed reasoning of ALAC's arguments on some clauses of the Bill are included in the clausal analysis and where needed in attached appendices where we have used the Laking principles as a framework for developing ALAC's arguments.

Specifically, the major areas of concern are:

- **The Minimum Legal Drinking Age (refer to Appendix A for detailed argument)**

Ample evidence exists that the current system of complex exceptions to the legal age is very difficult to enforce. To be effective, the Sale of Liquor legislation must be simple to understand and simple to administer. ALAC firmly believes that there is clear international evidence of an increase in alcohol related harm related to decreases in the minimum legal drinking age (MLDA). ALAC is obliged to concern itself with the reduction of alcohol related harm. In this context, **the Council must recommend that the minimum legal drinking age be maintained at 20 years of age with no exceptions.**

Evidence exists that people under the age of twenty are currently consuming alcohol and there is no legislation which prevents them from doing so outside licensed premises, apart from in public places. ALAC also recognises that it is very important to encourage the development of responsible drinking practices under parental supervision and the association of alcohol with food. If the Select Committee does not recommend that the MLDA remain at twenty, then ALAC would recommend that only parents and legal guardians be considered as suitable adults to accompany minors on licensed premises.

- **Identification Cards (refer to Appendix A for detailed argument)**

ALAC considers enforcement to be vital to the effectiveness of the Sale of Liquor Act and as part of this an acceptable, tamper-proof, photographic identification system needs to be available. **The concept of “No Proof, No Purchase” is an essential element in enforcement.**

- **Sale of Liquor from Supermarkets (refer to Appendix B for detailed arguments).**

ALAC **supports** the intention of the Bill to allow sale of a wider range of alcohol products from supermarkets. **However, any legislation to allow this to happen should continue to reflect the controls on off-licences generally.**

ALAC **opposes** the sale of alcohol from small grocery stores and dairies, and other stores such as takeaway bars, video stores, video parlours, or any venue which attracts young people without accompanying adults.

ALAC recommends that in the event Supermarkets are able to sell all forms of alcohol they should be required to have separate areas and tills. These areas be designated as supervised.

- **Licence Dispensation (refer to Appendix C for detailed arguments)**

ALAC considers the proposal to exempt certain premises from the requirement to obtain a licence as likely to undermine the “responsible system of control” that is the object of the Act. There is no precedent in liquor legislation, indeed in any similar legislation, that allows exemption on the basis of good behaviour, but requires a licence in the event of demonstrated breaches of the Act. The licence would thus become a form of sanction rather than a commitment to providing safe and well run drinking environments. Furthermore, such a scheme would be subject to regional and district variations, and would be a recipe for regulatory capture.

The intent of the dispensation proposal is to include organisations whose purpose in selling alcohol is incidental to their main business, and to overcome current barriers of bureaucratic requirements and prohibitive costs involved in obtaining a formal licence. These matters can be dealt with by offering more flexible arrangements and requirements within the licensing system.

ALAC is firmly of the opinion that “all who serve or sell alcohol should have a licence to do so”.

CLAUSAL ANALYSIS

PART 1: Amendments to Principal Act Coming into Force on 1 October 1999

Clause 2. Interpretation

ALAC **supports** the provisions of this clause. Subclause (1) brings a number of previously exempted organisations within the purview of the Act. Subclauses (4) and (5) more properly place responsibility on parents or guardians rather than “spouses”. It should be noted that the reference to the “building code” is not contained in the principal Act under Clause 2.

ALAC **recommends** the inclusion of the term “Host Responsibility policy” in Section 2, and suggests the following text: (refer to Appendix D for detailed argument).

“Host Responsibility policy means a written document which specifies generally accepted practices which will be taken by staff and management of a licensed premise to ensure a safe and responsibly managed environment in and around licensed premises and to minimise alcohol-related harm to their patrons and other members of the public. This policy must include provisions for the ongoing training of staff.”

The term, “Host Responsibility policy”, is used in our suggested amendments to Clause 12. If adopted, the term would appear in Sections 13, 22, 35, 45, 79 and 170 of the Act, and in Sections 59 and 68 if club licences are retained.

Further details are provided under our comments on Clause 12 and 86 and in Appendix D.

Clause 3. Meaning of term “evidence of age document”

ALAC **strongly supports** the provisions of this clause, but **recommends** that the New Zealand driver’s licence be recognised as an additional source of identification.

- ALAC **recommends** that under Clause 3, subclause [2] the words “A New Zealand driver’s licence”, be added.
- ALAC **recommends** that it be an offence to present false evidence of age or evidence of age and **recommends** the inclusion of a new clause under Section 172 of the principal Act with a penalty of \$500; and
- ALAC **recommends** that a further addition to Section 172 be adopted to **allow Police to seize proof of age documents as evidence.**

ALAC, in association with other agencies, developed a national protocol for photographic identification for proof of age cards (ALAC 1998). This was done in response to a plethora of cards set up by licensing agencies, and various groups within the hospitality industry. This protocol included a set of general principles for a proof of age cards, as follows:

- the information provided should prove both identity and age.
- the information provided should be verifiable.
- the card should be able to be used in other areas than the one where it was issued.
- the card should be as tamper-proof as possible.
- the card should include the person's photograph, date of birth and ideally their signature.
- the system should be as simple as possible whilst still achieving the other requirements listed above.
- to be effective a proof-of-age system must have the full support and confidence of the relevant statutory agencies and the hospitality industry. This should be achieved early in the process of establishing a proof of age system in an area.

(ALAC 1998)

If Parliament accepts the need for an "evidence of age" document, ALAC urges Parliamentarians to refer to these general principles (ALAC, 1998) when developing such a card. Further information is contained in Appendix A.

Clause 4. Application of Act

ALAC **strongly supports** the provisions of this clause as it exempts liqueur chocolates from the Act and especially as it brings in previously exempted organisations (such as military, Police and Fire Service bars and canteens) within the purview of the Act. These premises should be subject to the same licensing requirements as any other on-licence premise. Evidence exists that the bars and canteens currently exempt from the Sale of Liquor Act are not conducive to safe and responsible drinking (Lake, 1991; Hunter, 1989).

Allowing these establishments to continue to operate outside of the law governing every other drinking establishment is inconsistent with ALAC's desire for national consistency in the Sale of Liquor Act, nor is such leniency socially responsible. We therefore commend this clause of the Bill and recommend that Parliament adopt it.

ALAC also **recommends** that exemptions relating to Parliament and permanent Club Charters be removed.

Clause 5. Underlying principle of Act

ALAC **opposes** subclause (1) because we are opposed to the dispensation proposal. ALAC's rationale is set out under our comments in Appendix C.

ALAC **recommends** that clause 5 (1) should read: "The sale of liquor to the public or any member of the public requires a licence."

ALAC **supports** subclause (2) **ONLY IF** the Liquor Licensing Authority or the District Licensing Agency has the power to impose conditions on clubs; eg, that liquor is served only to club members, their guests or people with reciprocal visiting rights, and any other conditions it sees fit and appropriate.

A recent ALAC survey of sports clubs (Dowden, 1998) found that these clubs, especially rugby league and rugby union, were more likely to serve underage drinkers and more likely to encourage heavier drinking. Sports clubs, in particular, have not demonstrated sufficient knowledge of and adherence to the Sale of Liquor Act. We consider that it would be a retrograde step to allow sports and other clubs to be given the greater responsibility of serving liquor to the public.

The Liquor Review Advisory Committee noted that the current licensing fee structure was prohibitively expensive for many clubs and advocated the “relatively liberal granting of dispensations” to clubs which “provide drinking environments against which no significant complaint can be levelled.” Granting an on-licence to clubs will actually increase their costs, as trained licence controllers will be required. Many clubs will therefore seek dispensations. Our comments under Appendix C propose some alternatives to dispensations. Further, we urge the committee to consider the joint submission on Dispensations presented by the Hospitality Association of New Zealand (HANZ).

ALAC **supports** subclause (3).

Clause 6. On-licences

ALAC **supports** the provisions of this clause **WITH THE CAVEATS** stated in our comments under clause 5(2).

Clause 7. Who may hold a licence

ALAC **recommends** that the title should be **Who may hold an *on*-licence** (emphasis ours), as the current title in the Bill seems to omit this inadvertently.

ALAC **supports** the provisions of subclauses (1) and (2).

ALAC **supports** the provisions of subclause (3) (which allows clubs to hold on-licences) **WITH THE CAVEATS** stated in our comments under clause 5(2).

Clause 8. Application for on-licences

ALAC **opposes** subclause (1) because we disagree with the repeal of Section 9(1)(e) of the principal Act. Repeal of planning consents will make it more difficult for local authorities and District Licensing Agencies to respond to the needs and wishes of local communities, as it disrupts the link between the liquor licensing process and the district planning process. ALAC’s submission to the Liquor Review Advisory Committee called for a clarification and strengthening of the links between the Resource Management Act and the Sale of Liquor Act, to safeguard a community from the unwelcome establishment of licensed premises in certain areas (ie, near schools, hospitals, places of worship or residential houses). (ALAC, 1996)

ALAC’s informal review of the Sale of Liquor Act (Mitchell-Shand, January and June 1995) found that it was important to make liquor laws accessible to the community to participate in. Similar results have been reported in Australia (Stockwell, 1995).

Many local authorities have not yet specifically addressed alcohol in their district plans. The Liquor Licensing Authority's power is limited by "the very limited and specific criteria ... by subsections 13, 35 and 55 of the Act." The 1996 and 1997 annual reports of the LLA noted this perceived "gap between the Resource Management and Sale of Liquor legislation....Neither the Resource Management Act nor the Sale of Liquor Act gives a local community the opportunity to lodge an effective objection to the grant of a liquor licence in respect of a specific site" (LLA, 1997). The LLA recommended that it should be considered whether the Authority should "have a discretion to refuse a licence on grounds other than the suitability of the applicant. The LLA also proposed consideration of whether their criteria for considering licence applications "specifically include the object of the Act as set out at s. 4(1) ."

The LLA recommendations in their 1996 and 1997 annual reports were not addressed by the Liquor Review Advisory Committee, and appear to have been overlooked in this Bill. ALAC **agrees** with the LLA that their recommendations be considered by the Select Committee or Parliament.

ALAC **supports** the provisions of subclause (2) as it supports the involvement of local communities in the licensing process. Further comments are provided under Clause 39.

The processes used to notify the public of licence applications and renewals could easily be improved. ALAC **recommends** that the LLA should require that notifications include:

- the trading name as well as the address of the premise;
- the date of closure for objections;
- a longer time period for objections to be lodged, to fifteen days; and
- signs of a stated size should also be required outside the proposed site, giving details of the licence application. The LLA has made very similar suggestions in its report to Parliament (LLA, 1996).

Clause 9. Objections

ALAC **supports** the provisions of this clause.

Clause 10. Reports

ALAC **agrees with the general intent** of this clause in order to expedite licensing decisions.

ALAC would **oppose** any proposal which would de-emphasise the role of Medical Officers of Health (MOsH) and other health sector workers in the licensing process.

We note that the Fire Service is no longer required to report under 11(1) (c) of the principal Act, and wonder whether the comments set out above apply to this service as well.

Clause 11. Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Licensing Authority

ALAC **supports** the provisions of this clause, especially as the Bill provides for the increased involvement of local communities in the notifications and objections processes.

Clause 12. Criteria for on-licences

Although we **strongly agree with the general intent** of this clause, we **recommend a modified version of the amendments** drafted by the Alcohol and Public Health Research Unit (APHRU). These amendments were developed after consultation with twelve “expert informants working at all levels of the licensing system” to gauge their response to suggested amendments to the Act (Hill and Stewart, 1998). Informants included a representative of off-licence holders. Other industry representatives were invited to respond but decided not to be involved in the project. (Further detail about this project is included in the Host Responsibility Appendix D of ALAC’s submission.) All new text from APHRU is in **bold**; new text from ALAC is in **bold and underlined**.

“13. *Criteria for on-licences---*”*

- (1) In **granting or refusing** an application for an on-licence, the Licensing Authority, **or District Licensing Agency, as the case may be**, must have regard to the following matters:
 - (a) The suitability of the applicant;
 - (b) The days on which and the hours during which the applicant proposes to sell liquor;
 - (c) The areas of the premises or conveyance, if any, that the applicant proposes should be designated as restricted areas or supervised areas;
 - (d) **The Host Responsibility policy** proposed by the applicant.
 - (e) The applicant’s proposals relating to the sale and supply of non-alcoholic refreshments and food;
 - (f) Whether the applicant is engaged, or proposes to engage, in---
 1. The sale or supply of any other goods besides liquor and food; or
 2. The provision of any services other than those directly related to the sale or supply of liquor and food, and, if so, the nature of those goods or services;
 - (g) Any matters **raised** in any report made under Section 11 of this Act.
 - (h) **Any matter raised under Section 10 or Section 106 of this Act.**
 - (i) **The site of the premises in relation to neighbouring land use.**
- (2) The Licensing Authority, **or District Licensing Agency, as the case may be, must** not take into account any prejudicial effect that the grant of the licence may have on the business conducted pursuant to any other licence.
- (3) **In considering any application or renewal, the Licensing Authority, or District Licensing Agency, as the case may be, must have regard to any policy adopted by the Local Authority in regard to licensed premises.**

**Similar changes would be included in relation to off-licences, Club licences (should these remain) and special licences as appropriate.*

Host Responsibility Policy

As noted in our comments on Clause 2, ALAC **recommends** that the term “Host Responsibility policy” be defined in the Act. ALAC has carefully considered the comments made in the report of the Liquor Review Advisory Committee, as well as the “expert informant” report prepared by APHRU (Hill and Stewart, 1998). ALAC has amended its definition of “Host Responsibility policy” to reflect these recommendations, if Parliament considers that it is necessary to define this phrase in Section 2 of the Act or in the regulations. Further detail is provided in Appendix D.

By including a reference to and/or definition of a “Host Responsibility policy” in the Act, coupled with a genuine commitment to enforcement and sanctions for breaches of the Act, an incentive is created for licensees to implement the Act and give effect to the Liquor Review Advisory Committee’s recommendation for mandatory training for licence controllers.

The key point is that the **concept** of Host Responsibility (HR) and its practices should be enshrined in the Act to help give effect to the object of the Act. Therefore the licensee’s proposed HR policy **must** be included in the licence criteria. The steps to be taken by the licensee with regard to prohibited persons **must** be attached as a condition of the licence.

Sections 22, 45 and 68 could specifically require DLAs to consider whether or not the licensee has adhered to the Host Responsibility policy, rather than a more general requirement to have regard to “the manner in which the licensee has conducted the sale and supply of liquor pursuant to the licence” (Sale of Liquor Act 1989, s.22 [c]).

In addition, host responsibility should be part of the core training material for managers. This recommendation has been accepted by LRAC, which has proposed a new Section 117A of the Act on qualifications. LRAC’s recommendation has been included in the Bill as Clause 117A.

Clause 13. Conditions of on-licences

Although ALAC **strongly agrees with the general intent** of this clause, we **recommend a modified version of the amendments** drafted by the Alcohol and Public Health Research Unit (APHRU). All new text from APHRU is in **bold**; new text from ALAC is in **bold and underlined**.

14 *Conditions of on-licences**

(1) It **is** a condition of every on-licence that the licensee has available for consumption on the premises or conveyance a reasonable range of non-alcoholic refreshments, **and food is provided for consumption on the premises or conveyance at all times that the premise is open for the sale and supply of liquor.**

(2) and (3): As proposed in the Bill.

(4) On granting an application for an on-licence, the Licensing Authority or the District Licensing Agency, as the case may be, **shall** designate the whole or 1 or more parts of each premises as a restricted or supervised area.

(5) On granting an application for an on-licence, the Licensing Authority may impose conditions relating to the following matters:

- (a) The days on which and the hours during which liquor may be sold;
- (b) The provision of food for consumption on the premise or conveyance;
- (c) The designation of the whole or any part or parts of the premises or conveyance as a restricted area or a supervised area:

- (d) The steps to be taken by the licensee to ensure that the provisions of this Act relating to the sale of liquor to prohibited persons are observed,
 - (e) The site of the premises in relationship to the neighbouring land use.
 - (f) Any matter arising from a report or public objection.
- (6) Different conditions may be imposed under subsection (5) (a) in respect of different parts of the premises or conveyance.
- (7) In determining the conditions of the on-licence in respect of any premises, the Licensing Authority or the District Licensing Agency, as the case may be, shall have regard to any policy adopted by the Local Authority in regard to licensed premises.**
- (8) The policies of the licensee submitted under (d) above, including a Host Responsibility policy, as approved by the Licensing Authority or District Licensing Agency, as the case may be, shall be attached as a condition of the licence.**

** Similar changes would be included in relation to off-licences, club licences and special licences as appropriate.*

24 hour trading

If 24 hour trading is retained, ALAC **recommends** that 24 hour trading for on-licences be considered a privilege rather than a right. ALAC would prefer that the LLA restrict the approval of 24 hours trading to licensed premises with a history of safe and responsible operation, and a stronger emphasis on community consultation (ALAC, 1996).

Clause 14. Description of licensed premises

ALAC **supports** the provisions of this clause.

Clause 15. Variation of conditions

ALAC **supports** the provisions of this clause as it encourages public participation in the licensing process. We commend the inclusion of subsection (4). We suggest that it will greatly strengthen the monitoring function, especially if the Select Committee accepts the recommended amendments to Section 13.

Clause 16. Renewal of on-licences

ALAC **supports** the provisions of this clause as it encourages public participation in the licensing process.

Clause 17. Objections to renewal

ALAC **supports** the provisions of this clause as it encourages public participation in the licensing process.

Clause 18. Reports on applications for renewals

ALAC **agrees** with the general intent of this clause. Our comments under Clause 10 apply here.

Clause 19. Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Licensing Authority

ALAC **supports** the provisions of this clause.

Clause 20. Temporary authority

ALAC **recommends** that temporary authorities should only be issued to those who have lodged an application for an on-licence. Only in exceptional circumstances should more than one temporary authority be issued in respect of a premise.

ALAC's comments on Clauses 68 and 70 are also relevant in this regard.

Clause 21. Annual returns

ALAC **supports** the provisions of this clause.

Clause 22. New Part 1a inserted

ALAC **opposes** the provisions of this clause and subsequent clauses which allow for dispensation of licences. (Please refer to Appendix C and the joint submission on dispensations presented by the Hospitality Association of New Zealand.)

Clause 23. Off-licences

ALAC **supports** the provisions of this clause.

Clause 24. Who may hold off-licence

ALAC **supports** the provisions of subclauses (1) and (2).

ALAC **opposes the intent** of subclauses (3) and (4). ALAC opposes the granting of off-licences to sports clubs and would **support** subclause (4) **ONLY IF** the Liquor Licensing Authority or the District Licensing Agency has the power to impose conditions on other clubs; eg, that liquor is served only to club members, their guests or people with reciprocal visiting rights, and any other conditions it sees fit and appropriate.

Clause 25. Application for off-licences

ALAC **opposes** the provisions of subclause (1) because we disagree with the repeal of Section 31(1)(e) of the principal Act. Our reasons for opposition have been set out in comments under Clause 8(1).

ALAC **supports** the provisions of subclause (2) as it supports the involvement of local communities in the licensing process. Further comments are provided under Clause 39.

ALAC **recommends** that additional information should be required in notifications, as described in our comments under Clause 8. If club licences are retained, this information should appear under Section 55 of the Act.

Clause 26. Objections

ALAC **supports** the provisions of this clause and **recommends** subsection 4 of the Act be deleted to allow for the review of all matters associated with an off-licence as set out in Section 35(1) of the Act, rather than the narrow current focus only on the suitability of the applicant.

Clause 27. Reports

ALAC **agrees with the general intent** of this clause. Medical Officers of Health are not currently required to report on off-licence applications. The objections process (clauses 26 and 35) provides an avenue for input, albeit flawed because of the narrow grounds for objections.

ALAC would **recommend** that Medical Officers of Health be given discretionary power to report on off-licence applications (and on applications for renewals, clause 36) to strengthen the public health involvement in the licensing process.

Clause 28. Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Licensing Authority

ALAC **supports** the provisions of this clause, especially as the Bill provides for the increased involvement of local communities in the notifications and objections processes.

Clause 29. Criteria for off-licences

ALAC **agrees with the general intent** of this clause, but we **recommend** the insertion of the additional amendments as proposed in Clause 12.

Clause 30. Off-licence must not be granted in respect of service stations

ALAC **supports** in general the continued prohibition of off-licences being granted to petrol stations. ALAC does recognise that in some rural areas a service station may also offer a variety of services to the community, particularly where it is the single establishment. Some flexibility to allow the sale of liquor in these situations might need to exist. However, the Select Committee needs to be aware that a loophole exists in the current Act. We understand that the LLA was unable to prevent the grant of an off-licence to a large New Lynn establishment located in the same building as a petrol station because it was a separate business (APHRU, 1998d).

ALAC is concerned that this clause undermines the “reasonable system of control” as set out in Section 2 of the Act. This clause repeals Section 36, and therefore appears to allow *any* business except petrol stations to sell alcohol. Businesses wishing to sell alcohol must remain subject to this “reasonable system of control”. ALAC **opposes** the granting of off-licences to small grocery stores {subclause (1)(d)(ii)}, dairies {subclause (3)(b)}, and other stores such as takeaway bars, video stores, video parlours, or any venue which attracts young people without accompanying adults. Specific reasons for our stance are given in Appendix B.

ALAC **recommends**:

1. That liquor sales in dairies or grocery stores continue to be prohibited as currently set out in Section 36 of the Act.
2. That the granting of off-licences be prohibited for other stores such as takeaway bars, video stores, video parlours, or any venue which attracts young people without accompanying adults.
3. If sales in supermarkets, grocery stores and dairies, and other small businesses are allowed, they should be subject to the requirements outlined in the recommended amendments to Clauses 29 and 31 of the Bill. In addition, any training requirements would have to apply equally to these premises.
4. If dispensations are accepted and broadened to include off-licences, ALAC **strongly recommends** that dispensations not be granted to supermarkets, grocery stores, dairies or other stores as described above.

Clause 31. Conditions of off-licences

ALAC **supports** the provisions of subclause (1), **EXCEPT** we oppose off-licence sales (on any day and for any type of liquor) for:

- dairies and
- grocery stores (as defined in Section 36 of the Act); and
- other businesses as elaborated in Clause 30.

ALAC **opposes** the granting of

- off-licence sales by sports clubs;
- off-licence sales to the general public by other clubs. ALAC would **support** off-licence sales **ONLY IF** the Liquor Licensing Authority or the District Licensing Agency has the power to impose conditions on other clubs; eg, that liquor is served only to club members, their guests or people with reciprocal visiting rights, and any other conditions it sees fit and appropriate.

ALAC **supports** the provisions of subclause (2).

ALAC **supports** the provisions of subclause (3), although we **recommend** adoption of the following additional conditions under Section 37(4), in **bold and underlined** type. The Select Committee should note that our recommended (4)(e) would replace the current Section 37(5).

37. Conditions of off-licences

- (4) On granting an application for an off-licence, the Licensing Authority or District Licensing Agency, as the case may be, may impose conditions relating to the following matters:

- (a) The days on which and the hours during which liquor may be sold or delivered:
- (b) The designation of the whole or any part or parts of the premises as a restricted area or a supervised area:
- (c) The steps to be taken by the licensee to ensure that the provisions of this Act relating to the sale of liquor to prohibited persons are observed:
- (d) The persons or types of persons to whom liquor may be sold or supplied:
- (e) **The site of the premises in relation to neighbouring land use:**
- (f) **Any matter arising from a report or public objection.**

ALAC also **recommends** two additional subclauses:

- (7) **In determining the conditions of the off-licence in respect of any premises, the Licensing Authority or the District Licensing Agency, as the case may be, shall have regard to any policy adopted by the Local Authority in regard to licensed premises.**
- (8) **The policies of the licensee submitted under (c) above, including a Host Responsibility policy, as approved by the Licensing Authority or District Licensing Agency, as the case may be, shall be attached as a condition of the licence.**

ALAC **supports** the provisions of subclause (4).

Clause 32. Description of licensed premises

ALAC **supports** the provisions of this clause.

Clause 33. Variation of conditions

ALAC **supports** the provisions of this clause as it encourages public participation in the licensing process. We commend the inclusion of subsection (4). We suggest that it will greatly strengthen the monitoring function, especially if the Select Committee accepts the recommended amendments to Section 35 (as spelled out in our comments under Clause 12).

Clause 34. Renewal of off-licences

ALAC **supports** the provisions of this clause as it encourages public participation in the licensing process.

Clause 35. Objections to renewal

ALAC **supports** the provisions of this clause as it encourages public participation in the licensing process.

Clause 36. Reports on applications for renewals

ALAC **agrees with the general intent** of this clause.

Clause 37. Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Licensing Authority

ALAC **supports** the provisions of this clause.

Clause 38. Temporary authority

ALAC **recommends** that temporary authorities should only be issued to those who have lodged an application for an off-licence. Only in exceptional circumstances should more than one temporary authority be issued in respect of a premise.

ALAC's comments on Clauses 68 and 70 are also relevant in this regard.

Clause 39. Display of signs and licence

ALAC **supports** the provisions of this clause; however, we **recommend** it be strengthened by including the following requirements:

1. Licensees must be required to position a copy of the floor plan near the primary entrance to the premises. This floor plan should clearly indicate where different designations apply; and
2. Licensees must be required to erect clear signs at the entrance to each designated area, informing patrons as to who may or may not be present.

ALAC **recommends** that these requirements also be included under Sections 25, 48 and 83 of the principal Act, and under Section 70 if Club licences are retained.

Clause 40. Annual returns

No comment.

Clause 41. Special provisions relating to caterers

ALAC **supports** the provisions of this clause.

Clause 42. Special provisions relating to auctioneers

ALAC **supports** the provisions of this clause.

Clause 43. Part III repealed

ALAC **supports** this clause **ONLY IF** the Liquor Licensing Authority or the District Licensing Agency has the power to impose conditions on clubs; eg, that liquor is served only to club members, their guests or people with reciprocal visiting rights, and any other conditions it sees fit and appropriate.

Clause 44. Special licences

ALAC **supports** the provisions of this clause **ONLY IF** vendors are authorised to accept orders/sales for later delivery. We understand that the intent of this clause allows for off-licence sales at special events such as wine festivals, etc. ALAC would be concerned if this included sales of large amounts of liquor at the venue (eg, multiple bottle orders), given the possibility that immoderate amounts of alcohol could be consumed.

ALAC's comments on Clause 51 also apply here.

Clause 45. Special licence for social gatherings

ALAC **supports** the provisions of this clause.

Clause 46. Who may hold special licence

ALAC **supports** the provisions of subclauses (1) and (2).

Clause 47. Application for special licences

ALAC **supports** the provisions of this clause as it encourages public participation in the licensing process (ie, by requiring site notices of the application). However, the revised clause omits reference to other forms of "public notice of the application in the prescribed form within such period as the Secretary may specify." ALAC **recommends** that this clause be reinstated so that public notice of special licence applications may appear in newspapers, for example.

ALAC further **recommends** that additional information be provided to the public, as listed in our comments under Clause 8.

Clause 48. Objections

ALAC **supports** the provisions of this clause as it encourages public participation in the licensing process.

Clause 49. Reports

Although ALAC **agrees with the general intent** of this clause, ALAC **recommends** that Medical Officers of Health be granted discretionary reporting requirements. Due to the nature of a special licence we would also **recommend** that the number of working days as specified in 49(3) and (4) be reduced to 5 and 10 days respectively.

Clause 50. Criteria for special licence

Although ALAC **agrees with the general intent** of this clause, ALAC **recommends** that the revised criteria as set out in Clause 12 in the ALAC submission be adopted for special licences. Section 79(1)(a) should remain as it is pertinent to special licences.

Clause 51. Conditions of special licences

ALAC **recommends** the following changes:

Section 80(1) of the principal Act be added to by the words “.. **and food is provided for consumption on the premises or conveyance at all times alcohol is sold or supplied**”

Section 80(2) include a new subsection (c): “**Any matter arising from a report or public objection**”.

New subsections (4) and (5) be included as follows:

- (4) In determining the conditions of the special licence in respect of any premises, the Licensing Authority or the District Licensing Agency, as the case may be, shall have regard to any policy adopted by the Local Authority in regard to licensed premises.**
- (5) The steps of the licensee submitted under (d) above [prohibited persons], including a Host Responsibility policy, as approved by the Licensing Authority or District Licensing Agency, as the case may be, shall be attached as a condition of the licence.**

In both New Zealand and overseas, special licensing occasions create health and enforcement difficulties. ALAC has produced a booklet specifically to address the problems associated with large special licence events (ALAC, 1996a). The difficulty with controlling large public functions has been recognised by the drafting of the Local Government (Liquor Bans in Public Places) Amendment Bill. Newspaper reports state that the Minister of Local Government has asked his department to analyse this Private Member’s Bill (*The Dominion*, 8 January 1999).

Providing licensing agencies with the legislative ability to impose a range of conditions could reduce some of the problems associated with special licence events. ALAC considers that the additional condition (g) in this clause does not provide licensing agencies with sufficient flexibility to impose conditions which meet changing social conditions and local circumstances, and which recognise the situational nature of problem drinking.

The Liquor Review Advisory Committee disagreed with the recommendation that DLAs should have greater discretionary power, and invited readers of the report to make “further representations as to additional criteria which might be considered for inclusion in Section 80(2) of the Act” (Liquor Review Advisory Committee, 1997). ALAC’s recommendations given above are our response to the Liquor Review Advisory Committee’s invitation.

Clause 52. Managers

No comment.

Clause 53. Functions of Authority

The Select Committee might consider widening the powers of the Authority to require licence applicants (new or for renewal) to demonstrate that their premise has appropriate signage concerning

age restrictions and house policies with regard to intoxication, food being available. A good example of this is contained in Practice Directions issued by the Licensing Court in N.S.W Australia.

Clause 54. Licensing Authority may delegate powers, duties and discretions to Secretary

ALAC **supports** the provisions of this clause.

Clause 55. Authority may send statements to Agencies

ALAC **supports** the provisions of this clause as it strengthens the accountability process.

Clause 56. Functions of District Licensing Agency

ALAC **supports** the provisions of this clause.

Clause 57. Procedure

ALAC **supports** the provisions of this clause.

Clause 58. Right of certain persons to appear

ALAC **supports** the provisions of this clause.

Clause 59. Licensing Authority may make order in respect of costs

ALAC wishes to **express its concerns** with the provisions of clause 59(1) as it may discourage the general public from making an objection or from requesting a public hearing. The current costs of appealing to the High Court are already prohibitive to many members of the public. The proposed Clause 57 is an improvement to the Act. It will assist the LLA or the DLA to keep costs down by ruling on whether objections are trivial or vexatious. Serious objections deserve to be heard without fear of the cost of the hearing. If a hearing discourages less responsible operators from imposing unwarranted costs or nuisance on the community, the cost of the hearing is worth it.

ALAC **supports** the provisions of clause 59(2).

Clause 60. New part 5A inserted: Accreditation of District Licensing Agencies

ALAC **supports the general intent** of this clause. However, we have some concerns which are set out under each of the relevant clauses.

An accreditation system for District Licensing Agencies, based on a national framework of clearly defined roles, accountabilities and responsibilities, will enable the licensing process to be more responsive to local needs and be more efficient at addressing abuses of the system. Any changes must not undermine the confidence of the public in the licensing system, and must not be unduly harsh on licensees.

ALAC recognises that other clauses in this Bill allow for increased devolution to District Licensing Agencies eg. the ability to grant unopposed licence applications.

ALAC acknowledges that some risks and costs would be entailed in devolving complete power to District Licensing Agencies. Not all DLAs will meet the accreditation standards which are set. Variations exist in size of workforce, skill levels and other factors such as political and business pressures. An incentive for DLAs to strive to reach the accreditation standard could be the retention of a more favourable percentage of licence fees.

As an additional point, the words “**Accredited District Licensing Agency**” and “**District Licensing Agency**” should be used throughout the Bill where such designations are required so as to avoid any confusion.

Comments on specific subclauses

114A. Accredited District Licensing Agency to exercise certain functions of Licensing Authority

ALAC wishes to point out an inconsistency in Clauses 53 and 114A. Clause 53, subclauses (a) through (c) charges the LLA with the responsibility of considering and determining “such applications...as **may** be referred to it by **any** District Licensing Agency” (emphasis ALAC’s). Section 91(d) gives the LLA similar responsibility with regard to the renewal of manager’s certificates. Clause 114A states that accredited DLAs “**must** exercise the functions of the Licensing Authority under Sections 91(a) to (d), 117 [sic], and 135.” (emphasis ALAC’s).

ALAC **recommends** that accredited DLAs should have the option to refer applications to the LLA if it deems necessary. Situations may arise where an impartial authority is required, even if no objection or report has been lodged.

ALAC **agrees** that the LLA should retain the power to cancel licences other than special licences, and that DLAs should retain the power to cancel special licences.

A small error occurs in the final sentence of Section 114A. It should read **127** and 135.

114B. Application for accreditation

ALAC **supports** the provisions of subclauses (1), (2) and (3).

114C. Criteria for accreditation

ALAC **supports** the provisions of this clause but **recommends** the inclusion of “Medical Officer(s) of Health” under subclause (c).

114D. Grant of accreditation

ALAC **supports** the provisions of this clause.

114E. Declining of application for accreditation

ALAC **supports** the provisions of this clause.

114F. Suspension and revocation of accreditation

ALAC **supports** the provisions of this clause.

114G. Accredited Agencies to report annually

ALAC **supports** the provisions of this clause.

114H. Assessment of Accredited Agencies

ALAC **strongly supports** the provisions of this clause. It will be an important LLA function to audit the performance of accredited DLAs.

Clause 61. Manager to be on duty at all times

ALAC **strongly supports** the provisions of this clause.

Clause 62. Reports

ALAC **supports** the provisions of this clause but **recommends** that Medical Officers of Health should have a discretionary reporting role here.

Clause 63. Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Liquor Licensing Authority

ALAC **supports** the provisions of this clause.

Clause 64. Criteria for managers' certificates

ALAC **supports** the provisions of this clause.

Clause 65. Reports and applications for renewals

ALAC **supports** the provisions of this clause but **recommends** that Medical Officers of Health should have a discretionary reporting role here.

Clause 66. Unopposed applications to be granted, opposed applications to be forwarded to Liquor Licensing Authority

ALAC **supports** the provisions of this clause.

Clause 67. Criteria for renewal

ALAC **supports** the provisions of this clause but **recommends** that:

- adherence to the Host Responsibility policy of the premises be included in the criteria.

Clause 68. Relieving managers

Although ALAC **supports** the general provisions in this clause, there are **concerns** that a number of staff could be consecutively appointed as relieving managers for each four day period. Further, we **recommend** that there should be a requirement to inform the District Licensing Agency and the Police as is suggested in Clause 70 below.

Clause 69. Acting manager

ALAC **supports** the provisions of this clause.

Clause 70. Notice of appointment, etc, of manager, temporary manager, or acting manager

ALAC **opposes** the repeal of Section 130 of the principal Act. Notice should still be given to the relevant authorities in the case of managers, and for relieving managers who are on duty for more than 48 hours.

Clause 71. Suspension of licence for non-compliance with public health or fire precaution requirements

ALAC **supports** the provision in this clause.

Clause 72. Restraining continuing breaches of conditions of licence

ALAC **supports** the provisions of this clause.

Clause 73. Appeals to High Court against decisions of Licensing Authority on grounds of suitability

ALAC **expresses its concern** with the inclusion of this clause as it removes the power of the LLA to accept responsibility for its actions, and allows the DLAs/LLA to pursue each other through the Courts. The LLA is unlikely to remove accreditation for other than serious or continuing breaches of the standards set for accreditation.

Clause 74. Sale or supply of liquor to minors

ALAC **strongly opposes** the provisions of subclause (1). ALAC recommends that the minimum legal drinking age (MLDA) remain at 20 with no exceptions.

Although ALAC **supports the general intent** of subclause (2) (except we recommend an MLDA of 20), ALAC **recommends** that this section could be strengthened by including another clause which states that “**licensees and servers be required to request evidence of age from all young looking people**”. This Bill does not require servers to request evidence, nor does it require young people to provide it.

Clause 75. Exemptions in respect of restricted areas

ALAC **opposes** the provisions of this clause given our opposition to an MLDA of 18 years.

Although ALAC **recommends** an MLDA of 20 years with no exceptions, if Section 156 remains in the Act, we suggest that (b) read:

“Is accompanied by the person’s parent or guardian.”

Clause 76. Exemptions in respect of other parts of licensed premises

ALAC **opposes** the provisions of this clause as we support retention of an MLDA of 20 with no exceptions.

However, if this clause is accepted, ALAC **recommends** that a person under the MLDA (whatever that may be) must be accompanied by their parent or guardian.

Clause 77. Exemptions in respect of supervised areas

Although ALAC **agrees with the general intent** of this clause, which is to reduce the large number of exemptions in the Act, ALAC **opposes** an MLDA of 18 years. ALAC would support this clause if the MLDA remains at 20 years.

If Section 158 remains in the Act, we **suggest** that subclause (a) read:

“Is accompanied by the person’s parent or guardian.”

Clause 78. Further exemptions in respect of licensee’s or manager’s family or lodger’s spouse

ALAC **supports** the repeal of Section 159 of the principal Act.

Clause 79. Purchasing liquor for minors

ALAC **opposes** the provisions of subclauses (1) and (3) as ALAC supports an MLDA of 20 years.

ALAC is concerned that underage drinkers are often supplied with alcohol by older people who are not the parents or legal guardians of the underage drinker. ALAC **strongly recommends** a focus on improved levels of education and enforcement of Section 160 of the Act.

Clause 80. Employment of minors

ALAC **recommends** that:

for off-licences:

- staff employed in off-licences be of legal age (ie, 20 years or older) to sell alcohol; and
- alcohol must be sold only in an area designated as supervised, especially if off-licences such as supermarkets are allowed to sell the full range of alcohol products. This recommendation also is consistent with Clause 32 of the Bill.

for on-licences:

- no change to the provisions currently in the Act.

Clause 81. Purchasing of liquor by minors

ALAC **opposes** the provisions of this clause as ALAC favours an MLDA of 20. However, if the age of 20 is retained, ALAC supports the removal of the term “spouse”.

Clause 82. New sections 162A to 162D inserted

ALAC **supports** the provisions of this clause. Further details of our position are given in Appendix A (Minimum Legal Drinking Age) of this submission.

Clause 83. Minors in restricted areas or supervised areas

ALAC **opposes** the provisions of this clause. It refers to those “under the age of 18” rather than “under the age of 20”. Removal of the word “spouse” is supported.

Clause 84. Permitting minors to be in restricted areas or supervised areas

ALAC **opposes** the provisions of subclause (1). ALAC recommends that the minimum legal drinking age (MLDA) remain at 20 with no exceptions.

Although we **agree with the general intent** of subclause (2) (except we recommend an MLDA of 20), ALAC considers that this section could be strengthened by including another clause which states that “**licensees and servers be required to request evidence of age from all young looking people**”. This Bill does not require servers to request evidence, nor does it require young people to provide it.

Clause 85. Contravention of licence conditions

ALAC **supports** the provisions of this clause.

Clause 86. Being on licensed premises outside licensing hours

ALAC **agrees with the general intent** of this clause, as we believe staff of licensed premises should be able to drink on the premises for up to one hour after closing. However, ALAC considers it important that staff continue to adhere to Host Responsibility principles and practices, from whichever side of the bar they find themselves. The Liquor Review Advisory Committee noted that:

We apprehend that this period was also useful in improving the management of licensed premises because it enabled management and bar staff the opportunity to “swap notes” as to the evening’s events, hopefully thereby ensuring that all staff are better equipped to fulfil their host responsibility functions. (LRAC, 1997).

Therefore ALAC **recommends** that Section 170(2)(e) be amended to read:

“(e) Any employee of the licensee not living on the premises at any time while he or she is employed on the premises or at any time not later than 1 hour after such employment has ceased for the day, provided the Host Responsibility policy of the premises is adhered to.”

Clause 87. Power of Police to seize samples of liquor

ALAC **supports** the provisions of this clause as it will enable the Police to enforce the Act more effectively.

Clause 88. Court may order forfeiture in certain cases

ALAC **supports** the provisions of this clause.

Clause 89. Secretary to set up and maintain register

ALAC **supports** the provisions of this clause **ONLY** regarding the creation and maintenance of a register of licensees and licence controllers. ALAC is **opposed** to licence dispensations.

Clause 90. Record of applications

ALAC **supports** the provisions of this clause **ONLY** regarding the creation and maintenance of a record of applications filed with District Licensing Agencies. ALAC is **opposed** to licence dispensations.

Clause 91. Certain licensees to file annual returns

No comment.

Clause 92. Notification of Licensing Authority by company of changes in company shareholding or name

No comment.

Clause 93. Notification of Licensing Authority by beneficial owner of shares of changes in shareholding

No comment.

Clause 94. Notification of Police

No comment.

Clause 95. Duplicate licence, dispensation, or certificate

ALAC **agrees in principle** but **disagrees** with dispensation as an option.

Clause 96. Surrender of licence or dispensation

ALAC **agrees in principle** but **disagrees** with dispensation as an option.

Clause 97. Regulations

No comment.

Clause 98. Permanent club charters deemed to hold dispensation in respect of on-licence and deemed to hold off-licence

ALAC **opposes** the provisions of this clause as we disagree with dispensations. ALAC's comments under Clause 4 of this submission apply here.

Clause 99. Present conditions of sale to continue

ALAC **supports** the provisions of this clause.

Clause 100. Certain managers' certificates deemed to be club managers' certificates

ALAC **supports** the deletion of this clause.

Clause 101. Parliament buildings

ALAC **opposes** the provisions of this clause and refers the Select Committee to our comments under Clause 4.

Clause 102. Conditions of licences varied

ALAC **supports** the provisions of subclause (1)(a) and (b).

ALAC **supports** the provisions of subclause (2)(a) and (b).

ALAC **opposes** the provisions of subclause (2)(c) with respect to sales of liquor in small grocery stores and other businesses which may be frequented by young people unaccompanied by adults. Please refer also to ALAC's comments on Clauses 30 and 31 and Appendix B of this submission.

Clause 103. Transitional provision for club licences

ALAC **supports** the provisions of this clause with an additional condition; ie, **that alcohol may only be sold to members, guests of members etc** as outlined in Section 53(a)-(c) of the Act. ALAC's comments on Clause 5 of this submission also apply here.

Clause 104. Repeals

No comment.

Clause 105. Amendments to other Acts

ALAC **opposes** this clause as we are opposed to the content of the amendments in Schedule 2.

PART 2: Amendments to Principal Act Coming into Force on Date to be Appointed by Order in Council

Clause 106. Interpretation

ALAC **supports** the provisions of this clause.

Clause 107. Part heading amended

ALAC **supports** the provisions of this clause.

Clause 108. Licence controller to be on duty at all times and responsible for compliance

ALAC **supports** the provisions of this clause.

Clause 109. New heading and sections substituted

ALAC **strongly supports** the provisions of this clause and the new sections proposed. Nationally consistent training requirements for general and limited certificates will greatly enhance the skills of staff and managers in carrying out their responsibilities under the Act.

However, ALAC **strongly recommends** that the training requirements set out under Clauses 117 and 117A apply to those granted dispensations, if the dispensation proposal is enacted.

The Hospitality Standards Institute with funding support from ALAC has developed Unit Standards to meet the envisaged training requirements of License Controllers as provided for in this Bill. This process has included wide consultation with key-stakeholders.

Clause 110. Criteria for licence controllers' certificates

ALAC **agrees with the general intent** of this clause.

Clause 111. Certain managers' certificates deemed to be general managers' certificates

No comment.

Clause 112. Transitional provision for manager's certificates

ALAC **supports** the provisions of this clause.

Clause 113. Regulations

ALAC **supports** the provisions of this clause.

Clause 114. Consequential amendment to Hotel Association of New Zealand Act 1969

No comment.

Additional Recommendations which are not addressed in this Bill**Part 2 of the Bill****Part VIII of the principal Act:****Offences and Enforcement****1. Reintroduction of Vicarious Liability clause**

Section 181 of the current Act states:

Liability of licensee for offences by manager—*The licensee of any licensed premises shall not be responsible for any offence against this Act committed by any manager of those premises except where the licensee is a party to the offence (s. 181, Sale of Liquor Act 1989).*

Those working in the field consider this section to have effectively removed the provision for vicarious liability. ALAC **recommends** that the provision for vicarious liability be reintroduced in an unambiguous manner using the following wording.

“Where the actions of a person employed by a licensee would constitute an offence against this Act, the licensee may be prosecuted for the offence (whether or not the person employed is also prosecuted) as if the licensee had personally performed those actions”.

This would be consistent with similar provisions in the Smoke-free Environments Amendment Bill (No. 2), in Sections 38(2) through 38(4).

2. Sale and supply of liquor to intoxicated persons

Section 166 of the Act is not specifically amended by this Bill, other than terminology referring to licence controllers. The Sale of Liquor Act (1962) included a provision that prohibits licensees from inciting patrons to drink:

246. **Inciting persons to drink**—(1) *Every licensee or manager conducting the business on any licensed premises commits an offence and is liable to a fine not exceeding [\$100] who by any means incites any person to drink.*

(2) *The offering or supply of liquor to any person without charge and by way of reasonable hospitality shall not amount to inciting for the purposes of this section.*

ALAC **recommends** that the Bill and the Act should include a similar provision, the purpose of which would be to discourage pricing and other promotions which encourage excessive or faster drinking. The fine for this offence would clearly need to be reviewed if a similar provision was introduced.

ALAC is concerned only about promotions which encourage excessive consumption. Provisions to address discounts and undesirable promotions are increasingly being enacted in other jurisdictions, such as New South Wales, Canada and Norway (Hill, 1997).

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APPENDIX A: MINIMUM LEGAL DRINKING AGE

BACKGROUND

The minimum legal drinking age (MLDA) is a complex and controversial issue. The current MLDA is 20 years with exceptions that permit 18 year olds to drink in many situations. In some instances, even younger people are able to consume alcohol quite legally (eg in a restaurant with parents).

During 1995, the Alcohol Advisory Council of New Zealand (ALAC) undertook an informal review of the Sale of Liquor Act (1989) among those responsible for the implementation and enforcement of the Act. The review found that drinking age provisions were the cause of greatest concern amongst respondents. The current legislation was described as confusing and frustrating for the public, hospitality industry and enforcement bodies (Mitchell-Shand, January 1995).

The review identified an overall desire to see this section of the Act clarified in order that monitoring and enforcement could be more effective. Strong support was indicated for the introduction of a system of photographic identification for use in licensed premises.

The report of the Liquor Review Advisory Committee (LRAC) had the following major recommendations regarding the MLDA:

- reduce the age to 18, with one exception that a person under 18 may have access to any licensed premises, other than restricted areas, and may be sold or supplied liquor provided he or she is accompanied by a parent or legal guardian;
- rejected calls for a compulsory proof of age card on the grounds of impracticality and discrimination. Rather, LRAC suggested the development of a voluntary “evidence of age document”, the definition of which would need to be introduced. It would be a defence to charges of selling and supplying liquor to minors and permitting minors to be in a restricted or supervised area in licensed premises, if at the time of the offence the defendant had sighted an evidence of age document of the person whose age is material to the offence.
- introduce instant fines of up to \$200 for individuals (currently up to \$1000 through the Courts system) for the Police to use against prohibited minors who purchase any liquor on or from premises subject to the Act.

Each of these proposals is contained within the Sale of Liquor Amendment Bill (No. 2).

ALAC continues to recommend that the MLDA should be 20 years with no exceptions. ALAC’s position on this complex issue is based on public health research within New Zealand and from other jurisdictions about the disproportionate level of alcohol-related harm amongst young people. In preparing this section of its submission, ALAC has used the Laking Committee principles as a point of departure for evaluating LRAC’s recommendations, as outlined below.

After the publication of LRAC’s report, ALAC convened an ad hoc committee to explore issues related to proof of age systems and to develop recommendations for a national protocol. Further information is contained under Laking principles 4 and 6 below.

LAKING PRINCIPLES

1 Controls on the sale and consumption of liquor should not be seen in isolation but as part of a broader policy on alcohol.

Young people are at particular risk of alcohol-related harm because of their greater tendency to take risks of various sorts, their relative inexperience with alcohol and because their drinking patterns differ from older people's. Young people's health and welfare should be considered as part of any broader policy on alcohol, and appropriate controls should be instituted to reduce the risks associated with young people's use of alcohol.

Other pertinent arguments can be found under principle 1 in Appendix C to this submission.

2 Liquor laws should be seen as social legislation and not as economic regulation.

While there is wide agreement on the need for a fixed drinking age, there is less unanimity about what this age should be. A wealth of evidence exists demonstrating the adverse effects that arise when the MLDA is lowered. The age at which minors begin to drink lowers in conjunction with the legal drinking age, and road crashes for young people increase:

The highest age in the world [21 years] has recently been set nation-wide in the USA. These changes have afforded opportunity for a number of studies of decreased and increased age of purchase. These studies have generally found that a lowered age limit produced greater alcohol-involved traffic crashes for the age-groups affected by the change, while increased age limits reduced such crashes (Edwards, et al, 1994:138).

As a result of adverse consequences, other nations have increased their MLDA over the past few years, including Germany (where the MLDA for beer and wine increased from 14 to 16 years), some Canadian provinces (increases from 18 to 19 years), the United States of America (from State variations in the MLDA to a standard MLDA of 21), and Ireland (from 15 to 18 years).

In 1992, two members of the Advisory Committee on Liquor Regulation established to review the liquor laws in Ontario, Canada, reported that:

the drinking age issue was well informed by research. The evidence regarding the likely impact of changing the drinking age on teenage driving injuries and fatalities was virtually irrefutable. It was the major reason why the Committee did not recommend lowering the drinking age, as several members were predisposed (Single and Tocher, 1992).

Research indicates that the risk of injury and death increases when young people are learning both to drink and to drive. Both activities require skill and judgement to perform safely, but many young people both drink and drive without the requisite experience in either, let alone in conjunction. In the United States, the minimum driving age in USA ranges from 14 to 16 years, although many young people do not gain their licences until they are older. Having a clear demarcation between legal driving and drinking ages allows young people to master one skill before attempting another. Of course, many young people drink when they are underage, but US studies estimate that raising the legal drinking age from 18 to 21 results in fewer alcohol-related problems among young people and saves the lives of well over 1,000 young people each year. Notably, the effect of the higher drinking age is occurring with little or no enforcement (Toomey et al. 1996).

In 1995 the US Congress passed legislation that would withhold Federal Highway Funds to states that do not adopt 'zero tolerance' laws (which make it illegal for young persons to drive with any measurable blood alcohol). Research indicates that if all states adopted this legislation, 400 fewer

fatal crashes involving drivers under 21 would occur each year (Hingson et al. 1994, cited in Plant, Single and Stockwell 1997). The National Highway Traffic Safety Administration reported a 56% reduction in alcohol-related traffic fatalities among 15-20 year olds between 1982 and 1994, in part due to the drinking age of 21 and zero tolerance laws. The proportion of alcohol-related fatalities among young people dropped from 63% to 38%, compared with a drop amongst adult drivers from 58% to 43% (Hingson, Berson and Dowley, cited in Plant, Single and Stockwell 1997).

In New Zealand, where the Graduated Drivers Licensing System (GDLS) has been in effect for some years, the percentage of 15-19 year olds with licences is as follows:

Table 1: Percentage of population with licence

Age	Learner	Restricted	Full
15	21%	6%	0%
16	26%	19%	6%
17	25%	23%	21%
18	20%	20%	31%
19	19%	19%	42%
Total	22%	17%	20%

(Source: personal communication, Land Transport Safety Authority, 1998.)

Although the GDLS allows young people to gain driving experience in a staged manner, and links blood alcohol limits accordingly, nevertheless ALAC is concerned that lowering the MLDA to 18 will increase the risk of alcohol-related injuries and deaths. The above table shows that many young people are still moving through the GDLS system even by age 19.

In its submission to LRAC, the Land Transport Safety Authority (LTSA) provided information which predicted the increased number of serious injuries and deaths if the MLDA were to be lowered to 18. This information is summarised below:

- New Zealand has the fifth-worst record for the number of road deaths in the 15-24 year old age group per 100,000 population;
- Lowering the MLDA to 18 years may result in increased alcohol involvement in road traffic crashes (as it would be likely to shift the alcohol involvement rates to lower ages);
- Alcohol involvement in crashes has plateaued by 19 years of age (20% of reported injury crashes from 1990-1995, although it remains at nearly the same percentage until age 24);
- Lowering the MLDA to 18 would result in an estimated 4 extra fatal crashes, 30 extra serious injury crashes and 87 extra minor injury crashes, with a resulting extra social cost of \$28.3 million.

(Land Transport Safety Authority, 1996)

3 Any licensing system should impose the minimum amount of control necessary to achieve the objective of the liquor laws. It should not impose unnecessary restrictions on the drinking of alcohol.

The argument for a drinking age of 18 is based on principles of equity and consistency; ie, that young people already are accorded the privileges and duties of adults in a range of other activities, and it would be unfair to deny them the right to drink alcohol legally.

LRAC based their arguments on the legal drinking age on four criteria (page 20):

- i. "...abuse of alcohol is the factor to be controlled, rather than the age of the person permitted to be present, and consume alcohol in moderation on licensed premises;
- ii. should be sufficiently clear in its expression so that it can be understood by those affected, and enforced by those responsible;
- iii. must have a high degree of public acceptance, if it is to restrict the freedom of the individual, particularly among those affected by the restriction;
- iv. must be fair in regard to other restrictions or rights, which may apply to people of the same age."

LRAC's report (p 19) also states that "...it may be too early yet for the social conscience to accept that a minimum drinking age is a personal choice, and that the law will only intervene for harm minimisation purposes." ALAC considers that LRAC's reasoning here, and in criteria i. and iv., does not fully recognise that young people are often not physiologically or psychologically mature enough to independently cope with the effects of alcohol. Under this logic, why have a minimum drinking age at all?

ALAC agrees that it is important that the drinking environment be made as safe as possible so that young people receive responsible societal messages about drinking. Unfortunately, this is not always the case in licensed premises or elsewhere. Adults can behave less than responsibly when selling or supplying alcohol regardless of the consumer's age, but young people are especially vulnerable to the effects of alcohol for a variety of reasons. Controls such as restricting trading hours and promotions which discourage excessive drinking are important; however, it also is important to manage the environment during trading hours.

As noted in Appendix C of this submission, although most alcohol is consumed outside of licensed premises, 'last drink surveys' and other incident reports both in New Zealand and overseas indicate that most alcohol-related harm occurs in and around licensed premises (Casswell, Zhang and Wyllie 1993; Rydon and Stockwell in Plant, Single & Stockwell 1997). That is, although drinking occurs most *frequently* in people's own homes, research indicates that men drink most *heavily* in other locations, notably pubs/hotels/taverns, other people's homes, night clubs and at sports events. Women drink most *heavily* in nightclubs (Wyllie, Millard and Zhang 1996). These trends are particularly pronounced amongst young people. It is important to monitor all licensed premises, including the off-licences where alcohol is purchased, as underaged people are routinely gaining access to alcohol. If adopted, the Bill's proposed dispensation option will create even more relatively 'uncontrolled' environments if not monitored properly.

Most of the other privileges and duties LRAC cites in page 21 of their report presumably are done when of reasonably sound and sober mind. We already know from health and enforcement statistics that alcohol and/or drug impairment can lead to adverse consequences when undertaking some of these other activities (eg having sex, driving, being a commercial pilot), and that young people are at increased risk when consuming alcohol (refer to the arguments and evidence presented under principle 3 of Appendix C of this submission).

According to Toomey et al:

Different activities have different ages of initiation. These restrictions are based on the requirements of the specific activities (e.g. motor skills, capacity for judgment, and experience) and take into account the risks and benefits of participation at different ages (Fell 1985). For example, research shows that at a given blood alcohol concentration, youth are more likely to be impaired than adults....early legal access to alcohol (i.e., at age 18) is associated with higher rates of drinking later in life. Research shows that when the MLDA is 21, people under 21 drink less and continue to do so through their early twenties. Those who are inclined to drink do not 'make up for lost time' after turning 21 (O'Malley and Wagenaar 1991, cited in Toomey et al 1996).

A recent study from the Duke University Medical Center found that learning and memory skills of 21-24 year olds who had consumed the equivalent of two alcoholic drinks were more impaired than adults at the same blood alcohol concentration. The researchers hypothesised that the effect would be even more pronounced in younger people, but were unable to study this effect given the USA drinking age of 21. (*The Evening Post*, 18 November 1998)

ALAC understands that the arguments to lower the MLDA to 18 may be compelling for some. However, given the undeniable fact that young people both in New Zealand and overseas feature disproportionately in measures of alcohol-related harm (including the flow-on effects to others in society from road crashes, violence, unsafe sexual behaviour, recreational injuries, etc), we consider that it is socially responsible to recommend that the MLDA privilege be conferred at the age of 20. Although this may seem to discriminate against young people in terms of LRAC's criteria iii. and iv., nations have the right to decide the age at which privileges are conferred upon its citizens, based in part on the harm and risks posed to individuals and to society.

4 Liquor laws, while embodying principles to be applied consistently throughout the country, should be sufficiently flexible to cope with changing social conditions and with the particular requirements of local circumstances.

Dispensations

The MLDA would be applied nationally, although the effect of any dispensations regime could serve to undermine this requirement.

Identity cards

Inconsistency and lack of veracity are persistent problems with the present identity cards. The rejection of a national photographic identification system by LRAC surprised and disappointed many. Partly in response to this decision, from early 1997 District Licensing Agencies, often in conjunction with their liquor licensing partners, began introducing local proof of age systems. Subsequently, concerns were raised at a national level about the integrity and compatibility of the various systems being developed. In response, ALAC commissioned a survey of DLAs to ascertain what was happening around the country and to gauge the level of support for the development of a national protocol, to provide assistance to those agencies considering introducing a proof of age system and to help ensure greater national consistency. Of the 85% of DLAs responding to the survey, 87% supported a national proof of age protocol (ALAC, 1998).

An ad hoc national committee comprising representatives from organisations involved in liquor licensing was established to explore issues related to proof of age systems and to develop recommendations for a national protocol (ALAC, 1998). This issue is explored in greater detail under principle 6 below.

Prohibited persons

As noted in Clauses 13, 51 and 72 of this submission, it is important that the LLA and/or DLAs are allowed the flexibility to set conditions on any type of licence with regard to prohibited persons or practices (eg, promotions or practices directed at young people which encourage irresponsible drinking), and to use a range of sanctions to enforce these aspects of the Act.

5 The licensing system should be simple to understand and easy to administer.

Current New Zealand legislation allows people below the MLDA to consume alcohol on licensed premises in many different circumstances. A licensed premise can contain areas that are designated as restricted, supervised and not designated. Designations determine who may be present, and the provisions relating to the MLDA determine who may purchase or consume alcohol.

For example, people below the legal drinking age may consume alcohol if they are:

- 18 years or older, in a restricted area with a parent, guardian or spouse over 20 years of age;
- under 20 and in a supervised area with a parent, guardian or spouse over 20 years of age;
- 18 years or older and in a supervised area eating a meal;
- in an undesignated area, 18 years or older and with a parent, guardian or spouse over 20 years of age;
- under 20, in an undesignated area, with a parent, guardian or spouse over 20 years of age and eating a meal.

This complex system has proven to be difficult to enforce. As Appendix One demonstrates, by international standards the current legislation is also particularly complicated. Few other nations have as many exceptions to the MLDA as New Zealand currently does. ALAC agrees with LRAC that the Act “should be sufficiently clear in its expression so that it can be understood by those affected, and enforced by those responsible”.

In Australia, South Africa and Ireland the MLDA is 18 with no exceptions, and in the United States 21 with no exceptions. In two Canadian provinces there is no MLDA for on-premise consumption if the youth is accompanied by a parent or guardian, but in other provinces the MLDA is either 18 or 19 years with no exceptions. In the United Kingdom the MLDA is 18. Sixteen year olds may consume beer or wine on the premise if they are eating a meal, but only if the premise is not a public bar.

Ample evidence exists that the current system of complex exceptions to the legal drinking age is very difficult to enforce. ALAC agrees that for the Sale of Liquor legislation in order to be effective, it must be simple to understand and simple to administer. ALAC therefore supports a minimum legal drinking age with no exceptions.

Recommendation: A legal minimum drinking age of 20 years with no exceptions.

Designation of bars

ALAC supports the continued use of restricted, supervised, and unsupervised designations for licensed premises. Designations determine who may legally be present in a given area or premise, while the minimum legal drinking age determines who may purchase and consume alcohol. In some establishments it is very difficult for licensees and enforcement officers to control or monitor access to alcohol.

ALAC therefore prefers that the licensing authority retain the right to deny underage patrons access to certain premises, and that licensees retain the right to nominate an appropriate designation for the licensing authority to consider.

The LLA has noted that there are situations where it does not have the jurisdiction to designate a nightclub in the same way it does for hotels and taverns. ALAC is aware that nightclubs have been associated with high alcohol consumption levels (Wyllie, Millard and Zhang, 1996) and higher incidences of alcohol-related harm (Stockwell, Lang and Rydon, 1993).

Recommendation: That on granting an application for an on-licence, or an application to vary the conditions of an on-licence, or an application for renewal of an on-licence, in respect of a nightclub, that the LLA shall designate each bar in the premises as a restricted area or supervised area.

Other issues related to the designation of bars

At present, premises with multiple designations can make enforcement of the provisions in the Sale of Liquor Act regarding service to minors very difficult. The informal review of the Sale of Liquor Act undertaken by ALAC in 1995 showed that enforcement staff are often unsure where designations start and end (Mitchell-Shand, January 1995). If licensees were to position a copy of the floor plan near the primary entrance to the premises, the legislation could be more effectively enforced.

For the benefit of the public, licensees should be required to erect signs identifying the designation in effect in each area of the premise and explaining who may be present. In conjunction with a minimum legal drinking age with no exceptions, these measures would constitute an effective change for both enforcement personnel and the public.

Recommendations: ALAC supports the provisions of Clause 39 of the Bill but recommends it be strengthened by including the following requirements under Sections 25, 48 and 83 of the principal Act (and under Section 70 if Club licences are retained):

- 1. Licensees must be required to position a copy of the floor plan near the primary entrance to the premises. This floor plan should clearly indicate where different designations apply; and**
- 2. Licensees must be required to erect clear signs at the entrance to each designated area, informing patrons as to who may or may not be present.**

In LRAC's report, recommendations for signage are proposed in the new dispensation section 6A(6), (20) and (21) (pp 46 and 48), and on p 103 (11.35) but these do not relate specifically to ALAC's recommendations.

6 The liquor laws should be capable of effective enforcement.

Enforcement and sanctions are critical to the effectiveness of the Sale of Liquor Act (1989). Other authors have also argued that enforcement is vital to the effective harm reduction enabled by liquor legislation (Edwards *et al*, 1994; Lang, Stockwell, Rydon, and Beel, 1996). In ALAC's stakeholder survey, difficulties and delays in removing licences ranked third in the list of concerns cited (ALAC 1995a). As many have expressed, licences have been 'easy to gain' but the 'easy to lose' part of the equation has not eventuated, due primarily to the lack of available sanctions. Although the Act was amended in 1996 to make licence cancellations immediately effective:

"New Zealand's Act provides the most limited powers of sanction of twelve states and countries reviewed (Hill, 1997), and its Authority is least able to respond swiftly and appropriately to small or large infringements of the law by licensees. It is also more restricted in its ability to set licence conditions as part of 'a reasonable system of control' (Hill and Stewart 1998).

Although everyone seems to agree on the need for better enforcement, ALAC's concern is that this may not transpire due to economic constraints or other impediments. The cumulative effect of the package of measures proposed in the LRAC report and in the Sale of Liquor Amendment Bill (No. 2) has potentially grave implications if more effective enforcement is not forthcoming.

For example, LRAC believes that if dispensations are granted for "safe drinking environments", enforcement personnel can focus on the less safe environments. In particular, stronger enforcement (by licensees and enforcement agencies) is needed of the provisions which prohibit admission or serving of underaged or intoxicated patrons in *all* venues. Many young people arrive at licensed premises already impaired by alcohol, and if turned away they will search for any on- or off-licence that will provide alcohol. Regardless of whether the dispensation option is adopted, strong and effective enforcement, backed by a hierarchy of sanctions, is required.

As noted in US research:

Despite the MLDA of 21, minors still have easy access to alcohol from commercial and social sources. The observed benefits of the MLDA have occurred with little or no active enforcement; simply by increasing enforcement levels and deterring adults from selling or providing alcohol to minors, even more injuries and deaths related to alcohol use amongst youth can be prevented each year (Toomey et al 1996).

A crucial point to remember is that alcohol use and harm patterns are inversely related to the MLDA. "[US] studies employing strong research and analytical designs typically observed increases in alcohol use among youth following a lowering of the MLDA. In contrast, when many states raised the MLDA, alcohol use among youth decreased." (Wagenaar 1993, cited in Toomey et al 1996). After the MLDA was raised, "drinking rates in the US were reduced even after young people turned 21" (Toomey et al 1996). Toomey et al noted that this finding showed the benefit of using environmental approaches rather than individual approaches to reducing underaged drinking, which tend to generate only short-term reductions in underaged drinking.

In its submission to LRAC, the LTSA noted that:

The key to the success of minimum legal drinking age laws is their acceptance by society, and effective enforcement and sanction regimes. In the U.S. enforcement of the minimum drinking age laws is often hampered by having the penalties for selling/purchasing alcohol to/by minors apply only to the seller, not to both parties (Sweedler and Quinlan, 1995). This situation does not apply in New Zealand. (Land Transport Safety Authority, 1996).

Second party sales

ALAC also is concerned that underage drinkers are often supplied with alcohol by older people who are not the parents or legal guardians of the underage drinker. This practice, commonly referred to as second party sales, is an offence under Section 160 of the Sale of Liquor Act (1989). Currently a maximum fine of \$1,000 is provided for. Despite this being a relatively common practice, convictions are rare.

ALAC strongly encourages greater levels of education and enforcement in regard to the provision of alcohol to minors. If the MLDA is lowered to 18, the problems with ‘bracket creep’ to younger age groups will be a concern, especially in off-licences.

ALAC urges the Select Committee to consider how it might address this issue.

Recommendation: Focus on greater levels of education and enforcement of Section 160 of the Act.

Identity cards

Enforcement of the minimum legal drinking age is currently very difficult. These difficulties arise partly through the complex array of exceptions to the minimum legal drinking age, and partly because minors can produce a variety of identification forms to ‘verify’ their age. Many of these means of identification are easy to tamper with.

Introducing a nationally recognised and tamper-proof system of age identification would help bar staff identify underage drinkers, assist legal drinkers of youthful appearance to be served, help the Police enforce the Sale of Liquor Act, and assist in the prosecution of licensees and bar staff providing minors with alcohol.

In its report, LRAC rejected identity cards as impractical and improperly discriminatory. The committee felt that if an identity card was introduced, it should have a range of uses, clear social policy objectives and be socially acceptable. The Privacy Commissioner’s view was that an identity card system discriminated against young people. The system had to be ‘fully voluntary’. If licensed premise staff or management was uncertain about the age of a customer, they should refuse service and place the onus of proof of age on the individual.

LRAC recommended that a definition would be needed of what constitutes an “evidence of age document” for purposes of defending a charge of selling liquor to minors, and suggests a new proposed Section 155(4).

The Sale of Liquor Amendment Bill (No. 2) defines the term “evidence of age document” in Clause 3, but it does not make any specific reference to the document being tamper proof, unless these details are to be prescribed in the *Gazette*.. ALAC **recommends** that any document prescribed by Minister of Justice must be tamper proof. LRAC’s report notes that tamper-proof technology is widespread, but unless this provision is specifically written into legislation or regulations it would not be compulsory or would not hold up in court if challenged. This provision will be important especially if multiple forms of identity cards are acceptable.

ALAC further **recommends** that at the time a person applies for an identity card, the age of the person listed on the document should be vetted to discourage misrepresentation, and the penalties for misrepresentation should be clearly stated on the application form.

Even with these safeguards, ALAC foresees some practical problems with some current photographic identity cards, such as passports. Most people will not want to carry their passports (if they have one) with them into a bar, although this may not be a problem for tourists.

Current situation

Educational institutions in New Zealand commonly issue students with photographic identification cards, and some credit cards are now issued with a photograph of the card holder. Photographic identification is already an accepted part of life for many young people.

The protocol developed by the ad hoc committee convened by ALAC developed a set of general principles for a proof of age system (see dot points below), a recommended process and a suggested outline for an application form. The protocol includes penalty for misrepresentation of age in the proposed application form. (ALAC, 1998). The protocol was developed as a ‘stopgap’ measure to facilitate consistency amongst regions until a decision was reached by Parliament on the identity card issue.

The general principles for a proof of age system are:

- the information provided should prove both identity and age.
- the information provided should be verifiable.
- the card should be able to be used in other areas than the one where it was issued.
- the card should be as tamper-proof as possible.
- the card should include the person’s photograph, date of birth and ideally their signature.
- the system should be as simple as possible whilst still achieving the other requirements listed above.
- to be effective a proof-of-age system must have the full support and confidence of the relevant statutory agencies and the hospitality industry. This should be achieved early in the process of establishing a proof of age system in an area.

(ALAC 1998)

The recent LTSA review of the driver licensing system in New Zealand as part of amendments to the Land Transport Act included surveying the public on the use of photographs on driver’s licences. Just over 85% of approximately 41,000 responses to an LTSA questionnaire favoured the introduction of photographic identification on driver’s licences (personal communication, Land Transport Safety Authority). In other countries, including Australia, a driver’s licence with a photograph is an acceptable proof of age document (ALAC, 1998).

The new licensing system commences on 1 May 1999 and includes introduction of photographic driver’s licences. Anecdotal feedback from specific 'get your licence programmes' indicates that cost plays some part in access to driver licensing. This may have some bearing especially for younger people. The LTSA card would pose only one cost rather than having to pay for two cards and would not discriminate against young people. ALAC **recommends** that the New Zealand driver’s licence be included in the list of acceptable “evidence of age documents” under Clause 3 of the Bill.

ALAC continues to recommend an increased commitment by licensees/staff and enforcement agencies to a “**no proof, no purchase**” policy. If this is not done, especially if the MLDA is lowered to 18, it has the potential to undo other useful recommendations from LRAC. If proof of age

documents are not required, a reduction in the drinking age could give underage people carte blanche to purchase alcohol, and for licensees to supply it. As at present, servers will have to make the decision as to whether to refuse service, but their task is harder if “evidence of age documents” are not compulsory. Again, we refer to the USA evidence which indicates that lowering the MLDA has been shown to increase both consumption of alcohol and alcohol-related problems amongst young people (Toomey et al, 1996).

ALAC **strongly supports** the provisions of Clause 3 of the Bill, but **recommends** further that:

- under Clause 3, subclause [2] the words “**A New Zealand driver’s licence**”, be added.
- it be an offence to present false evidence of age or evidence of age and **recommends** the inclusion of a new clause under Section 172 of the principal Act with a penalty of \$500; and
- a further addition to Section 172 be adopted to **allow Police to seize proof of age documents as evidence**.
- that Clause 74(2) could be strengthened by including another clause which states that “**licensees and servers be required to request evidence of age from all young looking people**”. This Bill does not require servers to request evidence, nor does it require young people to provide it.
- If Parliament accepts the need for “evidence of age” document(s), ALAC urges Parliamentarians to refer to the general principles in the ALAC protocol (ALAC, 1998) when developing such a card.

Instant fines

ALAC considers that instant fines should be used as part of a hierarchy of sanctions, as discussed in the section on sanctions below. ALAC agrees that instant fines would encourage people to carry a proper proof of age document, and would give enforcement agencies the opportunity to target premises which might be more likely to attract or serve prohibited persons. ALAC agrees with the provision of Clause 82 of the Bill regarding instant fines. However, we suggest that the onus of proof would be more equitably shared between the licensed premise and the individual if proof of age cards were compulsory for access to licensed premises. The instant fine proposed is less than the current maximum fine of \$1,000. This provision would need to be clarified; ie, to ensure that violators would still be charged under Section 172 and be liable for a fine up to \$1,000 through the Courts system.

In canvassing opinion amongst ‘expert informants’ on this issue, Hill and Stewart found “strong support for a spot fine for licensees, but a number of practicalities were raised”, relating primarily to the powers of the LLA and District Court. Short suspensions were suggested “as a way of imposing a financial sanction on licensees that did not [require] a system of collection” (Hill and Stewart 1998).

ALAC would also want to be assured that licensees who did not comply with the proof of age provisions would still be charged with supplying liquor to minors and would be liable to the existing penalties under Section 155 of the Act (cf ALAC’s comments on Clause 74). Instant fines might also be applied to licensees. The LRAC report recommendations (instant fines and seizure of samples) focus primarily on the underage purchaser rather than the seller of alcohol. As Hill and Stewart point out, these recommendations “utilise the powers of the police and the criminal court system under the Act, not the powers of the [LLA] premised on granting and removing licences” (Hill and Stewart 1998).

Hill and Stewart further note that:

Most recent amendments to licensing systems in countries comparable to New Zealand focus on host responsibility in ways which not only require more of licensees and managers but strengthen the power of licensees to require age identification from young patrons. In Victoria, Australia, licensees as well as minors are now given instant fines for penal offences. Targeting the seller is also the direction of drinking age enforcement in other jurisdictions, using a range of instruments which include demerit points, short suspensions and, in California, [automatic] loss of licence for three underage drinking offences in three years” (Hill 1997, cited in Hill and Stewart 1998).

Sanctions

Hill and Stewart’s survey found that informants supported giving a more prominent place in the Act to a hierarchy of formal sanctions and that the range of possible sanctions be given greater visibility at both the informal and formal level. This would be in line with Ayres and Braithwaite’s theory that sanctions should be flexible in their range, and be swift and visible. The key concern amongst informants was that responsive sanctions should be swift (Hill and Stewart 1998).

Some felt that the threat of sanctions “speeded the learning process”. “There wouldn’t be very many licensees that have a totally intimate knowledge of the Act ...but there are lots of things that they should know that they don’t...” (Hill and Stewart 1998).

Penalties in other jurisdictions (New South Wales, South Australia and Ontario, Canada) have recently been increased or expanded. Sanctions are already being used informally in New Zealand. Including a flexible range of sanctions in legislation would formalise the Authority’s powers and would increase flexibility. Short licence suspensions became more prevalent after the Act was amended in 1996, and respondents believed that the upcoming amendments to the ‘unworkable provisions’ on the MLDA would improve enforcement further. Two informants considered that more effective enforcement would be acceptable to the majority of licensees and the industry, as “well over 95% are responsible, law abiding.” (Hill and Stewart 1998).

Recommendations: ALAC supports the provisions of Clause 72 of the Bill.

CONCLUSION

Clear international evidence exists that alcohol-related harm is increased when the minimum legal drinking age is decreased. ALAC’s organisational purpose obliges it to concern itself with the reduction of alcohol-related harm. In this context, ALAC must heed both international and New Zealand research, and recommend that the MLDA be maintained at 20 years of age.

ALAC is aware that a MLDA of 20 years with no exceptions will be opposed by parties involved in the liquor industry and many others. ALAC recognises that people well under 20 years of age are currently consuming alcohol, and that there is a danger that stringent legislation could make underage drinking less visible and therefore more difficult to address.

While a MLDA with no exceptions is the easiest to enforce, it is equally important to encourage the development of responsible and safe drinking practices under parental supervision and the association of alcohol with food.

If the Select Committee will not recommend a MLDA of 20 with no exceptions, for the purposes of effective enforcement ALAC would prefer the legislation to only deem parents and legal guardians suitable adults for accompanying minors on licensed premises¹.

ALAC would therefore recommend that persons under 20 only be permitted to drink liquor in other than restricted areas of licensed premises as part of a meal while accompanied by a parent or legal guardian.

Section 160 of the Act (relating to prohibition of second party sales) needs greater levels of education and enforcement.

ALAC continues to recommend that an increased commitment by licensees/staff and enforcement agencies to a “no proof, no purchase” policy, be pursued.

ALAC has no objection to the imposition of instant fines, as long as penalties also target the seller of alcohol. Instant fines are used in other jurisdictions but could have practical difficulties. Hill and Stewart report that short suspensions were suggested “as a way of imposing a financial sanction on licensees that did not [require] a system of collection”.

ALAC considers that a flexible range of sanctions for breaches of the Act is the best means of consolidating gains made to date and would meet with the approval of most licensees.

¹ ALAC agrees with the Clauses of the Bill which omit references to ‘spouse’ in the Sale of Liquor Act. These references are outdated, as legislation must not discriminate on the basis of marital status; de facto relationships are impossible for Police to easily verify; and the age at first marriage has changed sufficiently for a bride or groom under 20 years of age to be less common.

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APPENDIX B: SUPERMARKET AND OTHER OFF-LICENCE SALES

BACKGROUND

At present, the Sale of Liquor Act (1989) restricts supermarkets to the sale of wine and sparkling wine. The Sale of Liquor (Off-licence) Amendment Bill sought to remove this restriction and allow supermarkets to sell the same range of alcoholic beverages as other off-licence premises. That Bill was not proceeded with pending a larger review of the Sale of Liquor Act 1989.

Section 161 of the Act was amended in 1989 to allow persons under the age of 20 years to sell alcohol. The only restrictions on minors to sell alcohol are “those sections of the Act dealing with the presence of minors in designated areas. Many hotel and tavern bottleshops are designated, but most former wholesale premises and wine shops, and all new retail off-licences are entirely undesignated.” (Liquor Review Advisory Committee, 1997).

The Liquor Review Advisory Committee (LRAC) recommended that the “present restrictions which confine supermarkets to selling wine only be removed, and that section 37(3) of the Act be repealed.” In addition, the LRAC recommended repeal of Section 36 of the Act, which would allow anyone who can fulfil the requirements of the Act to be eligible for a licence. LRAC recommends retaining the prohibition upon the granting of off-licences to service stations, by amending Section 36 of the Act to specifically prohibit the issuing of licences to such businesses (LRAC, 1997).

The Alcohol Advisory Council of New Zealand (ALAC) **supports** the intention of the Bill to allow sale of a wider range of alcohol products from supermarkets. **However, any legislation to allow this to happen should continue to reflect the controls on off-licences generally, as set out in ALAC’s comments on Clauses 29 and 31 of this Bill.** We have set out some cautionary information (under principle 1 below) about the possible effects of allowing supermarkets to sell the full range of alcoholic beverages.

ALAC **supports** the continued prohibition of sales of alcohol from petrol stations.

ALAC **opposes** the granting of off-licences to small grocery stores {subclause (1)(d)(ii)}, dairies {subclause (3)(b)}, and other stores such as takeaway bars, video stores, video parlours, or any venue which attracts young people without accompanying adults. ALAC also is concerned that the repeal of Section 36 for all businesses except petrol stations will contribute to increased levels of alcohol-related harm.

We have categorised our arguments by referring to the principles outlined in the Laking report.

1 Controls on the sale and consumption of liquor should not be seen in isolation but as part of a broader policy on alcohol.

ALAC has already made reference in other areas of this submission to the National Drug Policy and the draft National Alcohol Strategy. ALAC’s primary concern for recommending careful consideration of these aspects of the Act is to reduce levels of alcohol-related harm, through a range of controls and strategies outlined earlier.

LRAC's proposals to allow the full range of alcohol to be sold in supermarkets, grocery stores and dairies, if accepted, would increase the number of outlets which would be able to sell the full range of alcoholic beverages for the first time. ALAC is concerned about the effect of these proposals when taken in conjunction with the Bill's other proposals regarding the Minimum Legal Drinking Age (MLDA), identity cards, dispensations, changes to District Licensing Agencies' functions, etc.

Although the LRAC report did not give much credence to the 'availability theory', some evidence exists to show that wine consumption in New Zealand has increased as a result of the availability of wine in supermarkets (Wyllie, Millard and Zhang, 1996; Wagenaar and Langley, 1995). The results of these studies are consistent with overseas trends. Although these studies may demonstrate a case for a modest increase in wine consumption among some drinkers, there is no evidence that alcohol-related harm has increased in conjunction with consumption of wine.

A review of overseas legislation found that off-licence sales in supermarkets began in England and Wales in 1966. Sales increased substantially thereafter, as did convictions for drunkenness for underage persons and women under 30. Wine consumption increased following the licensing of supermarkets in Virginia, Washington, Idaho and Maine, but not in Quebec (Smith, 1988, cited in Hill, 1997).

Sales of beer and spirits from supermarkets, however, may have a more pronounced effect on alcohol-related harm levels. The advent of the new category of alcoholic sodas with relatively high alcoholic content (e.g. 5.5% alc. vol.) is also cause for concern due to their appeal to younger drinkers. Beer and spirits are more commonly consumed by men, who still comprise 83% of the country's top 10% of drinkers (Wyllie, Millard and Zhang, 1996). Young men are also still over-represented in alcohol-related harm statistics. The Alcohol and Public Health Research Unit survey revealed that:

18 to 29 year old men who had increased their drinking often mentioned reasons relating to increased availability of alcohol: the availability of so many places where it is enjoyable to drink, the range of places selling takeaway alcohol making it easier to buy, takeaway alcohol being more available when supplies run out, and longer opening hours of places selling alcohol (Wyllie, Millard and Zhang, 1996).

The Youth Benchmark Survey of 14 to 18 year olds commissioned by ALAC (Kalafatelis and Edgar 1997) found that none of the respondents reported buying their own alcohol from a supermarket on their last drinking occasion; however, 84% did not personally purchase any alcohol on their last drinking occasion. It is worth noting that most survey respondents reported that the most popular types of alcohol drunk on their last drinking occasion were ordinary strength beer (72% of heavier drinkers and 55% of lighter drinkers) or spirits mixed or straight (41% of heavier drinkers and 15% of lighter drinkers). None of these beverages are currently available in supermarkets.

Only 14% of heavier drinkers and 20% of lighter drinkers in this survey reported drinking wine or sparkling wine on their last drinking occasion, which may account in part for the low purchase rate in supermarkets. It is more likely, however, that these figures are low because most respondents did not purchase their own alcohol on their last drinking occasion. If beer and spirits are sold in supermarkets, these will be popular choices for young people, especially heavier drinkers. However, the fact remains that, at least from this survey, bottle shops are the most likely off-licence premise from which young people buy their own alcohol, but second party sales/supply is a much more likely source when considering 'off-licence' sales.

New Zealand statistics on alcohol available for consumption indicate a rise in spirits consumption in the past year which is almost exclusively attributable to alcoholic sodas, lemonades and similar beverages which are included in the ‘spirits’ category. ALAC currently is working with the alcohol industry to encourage greater voluntary controls on the promotion of ‘alcopops’. These sorts of controls should apply to *all* premises, regardless of whether the dispensation option is accepted.

2 Liquor laws should be seen as social legislation and not as economic regulation.

ALAC agrees with this principle; indeed, the point is often made that “alcohol is not just another consumer good”, and therefore should be subject to controls consistent with the object of the Act. ALAC’s arguments regarding dispensations (if this proposal is accepted and broadened to include off-licences) and MLDA also are relevant and should be considered when considering any further broadening of sales outlets.

ALAC would be concerned, however, if the greater availability of alcohol in supermarkets and grocery stores led to ‘price wars’ and other competitive promotional practices which encourage immoderate consumption. The recent advent of parallel importing, especially amongst the independent marketers of alcohol, is another worrying trend if it works against excise and other price controls which are important controls on demand for alcohol.

Although ALAC does not wish to make recommendations which would interfere with the economic viability of dairies and small grocery stores, we would be concerned if these outlets were to change the nature of their business so that alcohol sales featured prominently. **ALAC recommends that dairies and small grocery stores (as defined in Section 36, subclauses (1)(d)(ii) and (3)(b) respectively) not be eligible to hold an off-licence.** ALAC also **opposes** the granting of off-licences to other stores such as takeaway bars, video stores, video parlours, or any venue which attracts young people without accompanying adults. Such a move would have major enforcement implications and would contribute to increased levels of alcohol-related harm.

Given their relatively small size, we would be surprised if dairies and smaller grocery stores, and other stores were able to compete on price terms with larger alcohol outlets, especially if Sunday trading is allowed in other off-licensed premises. Many dairies, small grocery stores and other stores may consider that alcohol sales would increase their security risks, and may choose not to avail themselves of the option to hold an off-licence.

However, some of these businesses, especially in rural areas, might benefit from the ability to sell alcohol, especially to heavier drinkers who already mention that they welcome the increased availability of takeaway outlets (Wyllie, Millard and Zhang 1996). Consumer convenience may outweigh some of the perceived drawbacks for dairies, small grocery stores and other stores. Sales to underaged people are a particular concern, given the proximity of many of these businesses to schools. (Some outlets have already come to the attention of health authorities for tobacco sales to underaged people.) Young people are not restricted from these premises as for other off-licensed premises. Sales from dairies, small grocery stores and other businesses, coupled with the ability of supermarkets to sell beer and spirits, also could lead to an increase in the already-high proportion of alcohol-related road crashes in rural areas.

The Act already empowers the Liquor Licensing Authority (LLA) to designate supervised or restricted areas, which enables the LLA to require liquor to be sold only in dedicated areas. Although the LLA was invited by a supermarket to impose conditions regarding age of staff, dedicated areas and limiting access to that area to adults, the LLA declined to do so in any instance then or since (LRAC, 1997). LRAC mentions (p 33) that “Should our confidence be misplaced, then the position could perhaps be reviewed by the LLA making it a general practice to impose additional conditions

on particular types of off-licences (for example supermarkets), or early changes to the law, but certainly we see no need to depart from the status quo at the present time.” (LRAC, 1997).

If sales in supermarkets, grocery stores and dairies, and other small businesses are allowed, ALAC **strongly recommends** additional controls on licence criteria and conditions, as set out in our comments on Clauses 12, 13, 29, 31, 50 and 51 of this submission (and to Sections 59-60 of the Act if Club licences are retained). These additional controls would make it a condition of the licence that “the steps to be taken by the licensee to ensure that the provision of this Act relating to the sale of liquor to prohibited persons are observed”, and a Host Responsibility policy would be required. In addition, LLA would have the ability to impose conditions relating to the site of the premises in relation to neighbouring land use, and any matter arising from a report or public objection. The LLA could also take Local Authority policies into account when determining licence conditions. Finally, any training requirements must apply equally to these premises.

Further information is provided under Principle 3 of this appendix, under the section “Premises not to be licensed”.

Recommendations:

1. That liquor sales in dairies or grocery stores continue to be prohibited as currently set out in Section 36 of the Act.
2. That the granting of off-licences be prohibited for other stores such as takeaway bars, video stores, video parlours, or any venue which attracts young people without accompanying adults.
3. If sales in supermarkets, grocery stores and dairies, and other small businesses are allowed, they should be subject to the requirements outlined in the recommended amendments to Clauses 29 and 31 of the Bill. In addition, any training requirements would have to apply equally to these premises.
4. If dispensations are accepted and broadened to include off-licences, ALAC **strongly recommends** that dispensations not be granted to supermarkets, grocery stores, dairies or other stores as described above.

3 Any licensing system should impose the minimum amount of control necessary to achieve the objective of the liquor laws. It should not impose unnecessary restrictions on the drinking of alcohol.

As well as the recommendations made under principle 2 above, the following points are pertinent.

Age of staff

The LRAC report noted that supermarkets are already subject to the same controls as other off-licensed premises in this regard: “The fact that few have done so is more likely due to a misunderstanding as to the state of the law than any concerns as to the employment of younger staff.” (LRAC 1997).

LRAC concluded that supermarkets should not be subject to additional controls regarding age of staff:

“If such a rule were to be introduced, there would be no justification for it to be limited to supermarkets only. Instead, it would surely have to be of equal application to all licensees. Thus, for example, it will have to apply to restaurants as well. This would

have serious impact both in employment opportunities and restaurants' costs, particularly if the drinking age were to be set at 20 years." (LRAC 1997).

With regard to the sale of liquor in cafes and supermarkets, however, some enforcement officers interviewed in 1995 expressed concern that younger people would not have the knowledge of the law, skill or authority to refuse underage or intoxicated customers (Hill and Stewart 1996a&b, cited in Hill 1997). ALAC shares this concern and notes that it also applies to dairies and small grocery stores, where there is also the possibility that very young people (sometimes lower than the usual employment age) could sell alcohol to prohibited persons.

Although employment opportunities and restaurants' costs are a factor to be considered in setting the legal age of staff, overseas legislation also provides some assistance. Hill's report, *Regulating the Sale of Liquor: International Perspectives*, is useful in this regard (Hill, 1997). The following paragraphs summarise this section of Hill's report.

In *Australia*, the MLDA is 18. Legislation in New South Wales, Victoria and South Australia explicitly states that those under 18 may not sell, supply or serve alcohol. NSW allows exceptions with evidence of consent by the Licensing Board, and South Australia allows underage children of the licensee or manager to be employed. In Western Australia, juveniles are allowed on the premises 'only for the purpose of carrying out lawful business' and without consuming liquor, or for a training course or when employed other than for selling liquor. WA also allows juveniles to pass to and from other undesignated parts of licensed premises. In Queensland, amendments made in 1994 'allowed employed minors who are genuinely performing duties', including the serving of alcohol, to be on licensed premises but not to consume alcohol.

In *Britain*, people below the legal drinking age of 18 cannot be employed in on-licensed premises but can work in off-licensed premises if the licensee or deputy approves the sale. However, an amendment is being considered which would allow 16-17 year olds to work on approved apprenticeships.

In Ontario, *Canada*, where the MLDA is 19, employees on licensed premises need only be over 18.

In *Norway*, the legal age for purchasing spirits (age 20) also applies to employment in selling or serving alcohol, under the under-20 year old is certified as a trained cook or waiter.

ALAC **recommends** the following regarding age of staff (Clause 80 of the Bill):

for off-licences:

- staff employed in off-licences be of legal age (ie, 20 years or older) to sell alcohol; and
- alcohol must be sold only in an area designated as supervised, especially if off-licences are allowed to sell the full range of alcohol products. This recommendation also is consistent with Clause 32 of the Bill.

for on-licences:

- no change to the provisions currently in the Act.

Vicarious liability

Young people, whether the sellers or purchasers of alcohol, need to be protected from alcohol-related harm. Adequate supervision from a suitably trained adult is an important means of ensuring that the provisions of the Act are observed. **ALAC urges the reintroduction of the vicarious liability clause which previously appeared in the 1962 Act**, so that the manager is responsible for any staff who sell to minors. ALAC's recommendations about a proof of age card and the "no proof, no purchase" axiom also are relevant in this regard. This recommendation would apply to *all* licensed premises.

Recommendation:

That the vicarious liability clause be reintroduced from the 1962 Act so that managers are liable for the actions of their staff.

Dedicated areas

The LRAC report considers it unnecessary to dedicate specific checkout lanes; rather, they suggest that "restricting sales to those checkout lanes where an adult worker is on duty would meet the objective without the need to permanently designate particular lanes" (LRAC, 1997).

ALAC recommends that supermarkets be required to have a separate area and till for alcohol sales, as currently exists in Western Australia (Stockwell, personal communication). ALAC agrees with LRAC that it would be a "nonsense" to have dedicated lanes in smaller stores with only one till. These areas should be designated as supervised.

Recommendation: Refer to ALAC's recommendations above regarding age of staff.

Premises not to be licensed

Hill reports that in Tasmania, the Board is expressly precluded from granting licences to supermarkets. The Victorian legislation is closest to New Zealand's in addressing liquor sales at both petrol stations and small neighbourhood stores. Victoria expressly prohibits the licensing of petrol stations, as well as cinemas or drive-ins, milkbars, convenience stores or mixed businesses, although exceptions may be made in tourist areas. BYO licences may be granted but the consumption of liquor is prohibited in...

...any premises where light refreshment and non-alcoholic drink are sold to the public for consumption on the premises, but where meals are not ordinarily sold to the public for consumption on the premises. (Hill, 1997)

New Zealand's prohibition against alcohol sales by petrol stations also exists in Hawaii, and in England and Wales, which also includes prohibition in restaurants and service areas on motorways and similar roads, fast food and take-away food outlets, and restaurants which attract groups of young people without accompanying adults. (Hill, 1997)

In the United States, California appears to allow sales of petrol, wine and beer if sold on separate sites. Colorado, Kansas, Mississippi and New York allow sales of only low alcohol beverages and/or wine coolers from grocery stores or petrol stations, and in North Dakota these must be in separate parts of the premises (Jobson 1993, quoted in Hill, p 24).

Given the proliferation of outlets that may transpire if grocery stores, dairies, and other small businesses are allowed to sell alcohol, ALAC is less convinced that LRAC's suggestion regarding supermarkets ("restricting sales to those checkout lanes where an adult worker is on duty would meet the objective without the need to permanently designate particular lanes") can be implemented in

these outlets, or that proper enforcement will occur. ALAC reiterates its **recommendation** that dairies and grocery stores as set out in Section 36 of the Act, and other businesses which attract unsupervised underage people, be prohibited from obtaining off-licences.

Recommendations:

ALAC recommends that the Sale of Liquor Act should continue to deny petrol stations the ability to obtain an off-licence. The basic premise that alcohol is not just another consumer good should be retained.

Refer also to ALAC's recommendations under Principle 2 of this appendix.

Dispensations

ALAC is opposed to dispensations generally, and would be greatly concerned if dispensations were broadened to include off-licences including supermarkets, grocery stores, dairies and other small businesses which have not yet had experience with the full range of alcohol products available for sale. Given the costs of the licensing system, we suspect that many small grocery stores, dairies and other small businesses would apply for dispensations if these were made available to off-licences.

Recommendation:

If dispensations are accepted and broadened to include off-licences, that dispensations not be granted to supermarkets, grocery stores, dairies or other stores as described above.

4 Liquor laws, while embodying principles to be applied consistently throughout the country, should be sufficiently flexible to cope with changing social conditions and with the particular requirements of local circumstances.

ALAC's comments under principles 2 and 3 above also apply here. In addition, if the recommended amendments to the Bill are adopted as described under Clauses 12, 13, 29, 31, 50 and 51 of this submission (and to Sections 59-60 of the Act if Club licences are retained), it would allow flexibility for the licensee, the LLA, District Licensing Agencies (DLAs) and the community to have input into and to monitor the licensing process.

Recommendations: See recommendations under principle 2 above.

5 The licensing system should be simple to understand and easy to administer.

ALAC agrees with this principle but considers that the dispensation proposal, if accepted and broadened to include off-licences, would serve to undermine both the licensing and enforcement provisions of the Act. Again, ALAC would be very concerned if supermarkets, grocery stores and dairies, and other small businesses seek dispensations. Some of ALAC's recommendations regarding supermarkets, grocery stores and dairies are currently contained within the Act. We consider that any new recommendations would be relatively easy to incorporate in the Act and should be able to be understood and administered.

6 The liquor laws should be capable of effective enforcement.

ALAC has no objection to alcohol sales in supermarkets which are handled by appropriately trained adults, with a manager on duty at all times and the reintroduction of the vicarious liability clause. We suspect the level of enforcement of supermarkets is low and in part because such premises are difficult to monitor. We believe the problem will only increase if supermarkets are able to sell a wider range of alcoholic products.

Enforcement would be easier if supermarket were required to designate an area.

Again, ALAC urges the implementation of some form of photographic proof of age system which is tamper-proof, to assist licensees and managers to carry out their obligations under the Act.

As noted above, ALAC has major concerns about the ability of enforcement and monitoring officials to enforce the provisions of the Act in the thousands of grocery stores and dairies which proliferate in New Zealand. Dairies already have been prosecuted under the Smoke-free Environments Act 1990 for tobacco sales to underage persons. Although most grocery stores and dairy owners are responsible people, we suspect that it would be more difficult for them to comply with the costs (including training) and enforcement provisions of the Act. If these small businesses decided to apply for an off-licence, they also might be more likely to apply for a dispensation to seek some relief from licensing costs. As we have made abundantly clear elsewhere in this submission, ALAC considers that dispensations are not a sensible solution to this problem.

Recommendations:

Please refer to recommendations under age of staff/dedicated areas and vicarious liability above, and also to recommendations under Appendix A (Identity cards) and Appendix C (Principle 6) of this submission.

References

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APPENDIX C: LICENCE DISPENSATION

BACKGROUND

Late in 1996 the Liquor Review Advisory Committee (LRAC) asked the Alcohol Advisory Council of New Zealand (ALAC) to comment on a proposal which would free some licensees from the obligation of holding a licence under certain circumstances. ALAC wrote to LRAC in January 1997 to suggest that hospitals and purveyors of liqueur chocolates were among two possible categories for *exemptions* (not dispensations) from the requirement to hold a licence.

ALAC provided a series of pros and cons in response to LRAC's proposal and suggested an alternative licensing system. Class A licence holders would be those whose primary function was the sale of alcohol. Certificated managers would be required to be on the premises at all times. Class B licence holders would be exempt from the latter requirement and would have a lower fee scale. ALAC's proposal for two classes of licence was partly implemented in LRAC's report, which suggested that all licensed premises (ie, both on- and off-licences) which do not hold a dispensation would be required to have a certificated manager on duty at all times when liquor is being sold or supplied.

Clause 109 of the Sale of Liquor Amendment Bill (No. 2) proposes two forms of licence controller's certificate: a general certificate (for any licensed premises), and a limited certificate (off-licences only).

ALAC has carefully considered the LRAC's proposal for licence dispensation as outlined in their report (LRAC 1997) and as subsequently included in Clause 22 (new Part 1A) of the Bill. ALAC **objects strongly** on health and equity grounds. ALAC has used the Laking Committee principles as a benchmark for evaluating this proposal, as outlined below.

1 Controls on the sale and consumption of liquor should not be seen in isolation but as part of a broader policy on alcohol.

The New Zealand Government now has produced a National Drug Policy which provides a blueprint for action, cooperation and monitoring by a large number of agencies. Part 1 of the policy covers tobacco and alcohol, and refers to the Sale of Liquor Act 1989 as one component of a broader strategy to reduce alcohol-related harm. ALAC has released a draft *National Alcohol Strategy: Minimising the Harm, 1999-2003* (Alcohol Advisory Council, August 1998) which identifies strategies to achieve the alcohol-related goals identified in the *National Drug Policy Part 1* (Ministry of Health, 1998).

Like LRAC, ALAC also views the Sale of Liquor Act 1989 and related pieces of legislation as important components of the "package" of initiatives to reduce alcohol-related harm. As set out in the draft National Alcohol Strategy, this package includes, but is not limited to:

- harm reduction in high-risk and other drinking environments, including licensed and unlicensed venues, workplaces and public places
- supply control
- demand reduction
- responsible marketing of alcohol products
- development of targeted health promotion strategies
- treatment of those affected by alcohol-related harm and
- pricing and taxation of alcoholic beverages.

Support for these strategies lies in the ongoing development of research and information systems to monitor indicators of alcohol-related harm, and commitment to workforce development. The success of the National Drug Policy and National Alcohol Strategy will rely on strong linkages with other government and non-government agencies, a strong and genuine commitment to enforcement of relevant legislation, and continuing to forge effective partnerships with the hospitality industry and the community.

ALAC considers that the dispensation proposal, which has implications throughout the Sale of Liquor Amendment Bill (No. 2), provides ample room for exceptions and therefore threatens the integrity of the package of initiatives to attain the object of the Act. The proposal also could undermine action to be taken under the National Drug Policy and National Alcohol Strategy. As outlined below, dispensations would be difficult to administer and enforce. The dispensation option, when paired with other proposals in the LRAC report and this Bill regarding the functions of monitoring agencies, could lead to adverse health outcomes and exacerbate claims of an inequitable playing field.

ALAC also is concerned that the dispensation proposal could lead to only a moral obligation to obey the Act (eg not serving intoxicated people and minors). The LRAC report says that dispensations will not be granted unless the applicant can demonstrate compliance with the Act, but we have serious doubts about how well the proposal would work in practice.

The APHRU report on responsible regulation notes that LRAC's recommendation "is in contradiction with regulatory theories based on experiences elsewhere. Dispensation would give away the power on [which] the regulatory system is based; that is, the power to grant or remove the privilege of a licence to sell alcohol" (Hill and Stewart 1998). APHRU notes that LRAC's recommendation may stem from the exemption provisions in the Food Amendment Act 1997. The authors conclude (p 116) that "It would be wise to allow time for such a radically different regulatory strategy to be assessed before extending it to other fields...Certainly the licence dispensation strategy was not canvassed in the Ministry of Justice's *Discussion Paper* (1996a) or included in the Review committee's terms of reference on which submissions were invited."

2 Liquor laws should be seen as social legislation and not as economic regulation.

In responding to LRAC's initial suggestion, ALAC agreed that "bureaucracy/legislation should not interfere unduly with the economic viability of well-run organisations and that proven good management should be rewarded." Dispensations could be more efficient, reduce law-breaking where alcohol is currently sold illegally, increase licensing and enforcement in premises which are more likely to be associated with alcohol-related harm, and encourage greater self responsibility in the hospitality industry.

ALAC also presented a list of countervailing arguments (most of which are outlined below) which we believe are more salient. In this submission, ALAC also has attempted to present some alternatives which may prove more workable for those who sell alcohol and for health and enforcement agencies.

LRAC's proposal to grant dispensations is based partly on the "rigours and cost" of the present licensing regime, which the committee considers disadvantageous to small clubs and other organisations which cannot afford the licensing fees. LRAC was advised that "many small clubs which sold liquor to club members on their premises did so illegally without the required licences" (p 41).

Although LRAC has recommended a review of the District Licensing Agency (DLA) fee structure, they expect the "fee structure and advertising costs for a dispensation application to be much smaller. The dispensation process, plus smaller fees on a "one-off" basis gives these smaller clubs no excuse for not placing themselves within the resulting light touch of the Act...." These comments are cause for concern as:

- APHRU notes that “In three different studies of licensed premises, clubs, particularly sports clubs, have been reported as slow to implement host responsibility practices, least likely to be visited by health promotion officers, or monitored by licensing inspectors or police, yet were associated with underage drinking.” (Abel et al. 1993; Wyllie et al 1995; Hill & Stewart 1996, 1997; cited in Hill and Stewart 1998.) ALAC’s commissioned survey of sports clubs also found evidence of underage and excessive drinking (Dowden 1998).
- unlike regular licences, dispensations would be granted indefinitely (unless they bring themselves to the attention of the authorities), and there seems to be no legal mechanism for reversing them (Hill and Stewart 1998);
- the “light touch of the Act” might apply to those who have already traded illegally in the past. Are these clubs different in other ways to those who are licensed; ie, are there other provisions of the Act which they are flouting or are simply unaware? It is unwise to assume that these clubs are better operators if they may never have been exposed to the provisions of the Act. Decreasing the fee and giving an organisation an indefinite dispensation does not increase safety, especially if this results in less money and incentive for DLAs and other enforcement agencies to monitor them.
- ALAC pointed out in its letter to LRAC that “while some small clubs and businesses which sell alcohol might seek dispensation it is difficult to envisage this being universally accepted. Why should a workplace bar, for example, seek exemption for a licence they do not currently hold and which has not presented the organisation with any problems in the past”?
- APHRU points out that “dispensations undermine the funding of the licensing system. Some District Licensing Agencies report that licensing matters cost their Council more than the proportion of fees returned to them by the Authority, and that present resources place limits of the level of monitoring and on initiatives they would otherwise wish to take....At present...the fees of well-run premises help pay the enforcement costs incurred in keeping less satisfactory premises in line, but also receive benefit in that enforcement maintains a ‘level playing field for local business. Dispensation suggests a cost logic based on paying for enforcement which doesn’t recognise collective benefits.” (Hill and Stewart 1998).
- The wording of LRAC’s rationale iii (page 41) is unclear, but they appear to be concerned about the training costs to bring at-risk premises up to professional managerial standards. ALAC would be concerned about granting a dispensation to a premise considered to be “at-risk”, especially if training obligations are de-emphasised.
- It is unclear how dispensations will affect training for certificated managers, especially if it obviates the need for a certificated manager to be present. LRAC’s report (p 42 and p 61, 8.5) says that the granting of dispensations does not remove the applicant from observing other sections of the Act, but the benefits of training seem to be undermined, especially as LRAC contends (p 57) that “there was no clear evidence to indicate that [the personal responsibility of certificated managers for the way in which licensed premises are operated and the liquor laws observed] occurs in a consistent manner.”
- LRAC recommends that Section 115 should provide for a certificated manager/licence controller to be on duty at all times when liquor is sold or supplied (pp 61-62). Clause 108 of the Bill accepts this proposal. If a person applying for a liquor controllers’ certificate must hold a national formal qualification, anyone with a dispensation would have to hold such a certificate. However, if controllers in premises with a dispensation are relieved of the responsibility to be on duty at all times that liquor is for sale, an inequitable, and possibly unsafe situation results. LRAC comments (pp 61-62) that licensees without manager’s certificates “may be singularly unqualified to professionally control the operation to meet the requirements of the licence or the Act. That in

our view puts at risk the object of the Act and should be avoided.” These comments amply illustrate why dispensations should not be granted; and, if they are, why a certificated licence controller should be on duty at all times in on-licensed premises.

If the point of dispensations is to increase equity, we suggest that it is a flawed solution and is likely to create more difficulties than it would solve. Equity does not mean that everyone has to pay the same amount to be a member of the club. We endorse LRAC’s suggestion that a review of the fee structure be undertaken. Although ALAC does not wish to pre-empt this review, we suggest that LRAC’s concerns about the “rigours and cost” of the present licensing regime for small clubs, etc. might be allayed by considering these and other options:

1. introduce a sliding fee scale for regular licences, based on the size of the club, the volume of alcohol sold, or other methods. In New Zealand, most DLAs say the proportion of the fee they retain is enough to cover their costs. However, staff don’t have the resources to do routine inspections; they merely keep an eye on trouble spots and inspect when premises apply for or renew licences. (Hill, 1997). Fees collected need to be sufficient for DLAs and the Liquor Licensing Authority (LLA) to cover their costs, especially given the proposed new powers for DLAs. Any diminution of fees will make effective monitoring difficult;
2. reconsider ALAC’s recommendation for an alternative licensing system. Class A licence holders would be those whose primary function was the sale of alcohol. Certificated managers would be required to be on the premises at all times. Class B licence holders would be exempt from the latter requirement and would have a lower fee scale.
3. return a certain amount of the fee to the licensee if monitoring shows that the licensee is operating a safe drinking environment.

We consider that the above suggestions would provide more positive inducements to the creation of safer drinking environments, rather than granting dispensations—especially to groups which have already chosen to sell alcohol illegally.

3 Any licensing system should impose the minimum amount of control necessary to achieve the objective of the liquor laws. It should not impose unnecessary restrictions on the drinking of alcohol.

Although total alcohol consumption continues to drop in New Zealand and in most westernised nations, alcohol-related harm is better measured by researching *patterns* of drinking rather than referring to total consumption figures. This is especially the case when looking at young people’s drinking.

Young people’s drinking patterns differ from most older people’s (eg, they are more inclined to engage in binge drinking behaviour) and therefore contribute disproportionately to incidents of alcohol-related harm. LRAC refers to problem drinking within a “minority” but it is a significant one, and is occasion-dependent.

In 1997, ALAC commissioned a Youth Benchmark Survey which found that 34% of 14-18 year olds could be classified as heavier drinkers (defined as drinking 5 or more glasses of alcohol in their last drinking occasion). This group accounted for “80% of the alcohol drunk in an average year by this age group”. Consistent with the results of other surveys worldwide, “heavier drinkers are more likely to engage in a significant number of other risk-related behaviours”, such as smoking tobacco or cannabis or driving a car or motorbike. Heavier drinkers were less confident about their ability to control their drinking behaviour, yet 47% of this group considered themselves to be light drinkers. (Kalafatellis & Edgar 1997)

Moreover, 16% of 14-18 year olds classified as lighter drinkers (drank 1-4 glasses on last drinking occasion) reported that they had “drunk 5 or more glasses in a row sometime in the last two weeks”, and “40% of lighter drinkers claim to be drinking more now than they did in the past.” (Kalafatelis & Edgar 1997)

Although ALAC agrees with LRAC that safe drinking environments are becoming increasingly accepted and encouraged by consumers, it is important to grasp the point that such environments are situational, especially where young people are concerned. A “safe drinking environment” can be a moving target depending on the circumstances and patterns in which people drink. For example, although most alcohol is consumed outside of licensed premises, ‘last drink surveys’ and other incident reports both in New Zealand and overseas indicate that most alcohol-related harm occurs in and around licensed premises (Casswell, Zhang and Wyllie 1993; Rydon and Stockwell in Plant, Single & Stockwell 1997). That is, although drinking occurs most *frequently* in people’s own homes, research indicates that men drink most *heavily* in other locations, notably pubs/hotels/taverns, other people’s homes, night clubs and at sports events. Women drink most *heavily* in nightclubs (Wyllie, Millard and Zhang 1996).

Even a well-run premise can have its problems if circumstances get out of hand. Dispensations merely create an additional element of risk, especially if the presence of a certificated manager is not mandatory.

For the reasons already outlined above, ALAC contends that the “light touch of the Act” that dispensations would provide is minimalist, but would not achieve the objective of the liquor laws because it is unlikely that venues with dispensations would be able to be properly enforced and monitored.

4 Liquor laws, while embodying principles to be applied consistently throughout the country, should be sufficiently flexible to cope with changing social conditions and with the particular requirements of local circumstances.

LRAC’s proposal allows for flexibility (especially with regard to rationales ii and iv, pp 41-42), but opens a large, complicated Pandora’s Box. As noted above, dispensations are inherently inequitable. The proposal could undermine the principle of the Act that anyone selling alcohol must have a licence; ie, is it likely to cause dissension between the haves and the have nots. The proposal would create a three-tiered system of (1) venues with dispensations, (2) those requiring licences (either due to previous track record or emerging LLA/DLA interpretation and experience with the new concept); and (3) those remaining outside of the Act regardless of the dispensation option (see dot point 3 under principle 2 above). How would these latter venues be identified, monitored and educated?

The dispensation proposal is inconsistent with other LRAC recommendations. LRAC recommends that less flexibility be extended in other areas of the Act (eg, they suggest that although special licences should be available for “any lawful purpose”, additional conditions for special licences should be stipulated within the Act, rather than grant DLAs greater discretion to impose conditions based on local circumstances).

On the related subject of exemptions from the Act, ALAC agrees that under certain circumstances, it is appropriate for some organisations to be *exempted* from the requirement to hold a licence. ALAC has no objection to exemptions being granted to hospitals (where a drink may be provided as part of a meal if the patient is well enough and wishes to have it) and to purveyors of liqueur chocolates, in addition to the categories already included under Section 5(3)(a) to (c) of the Act. ALAC endorses the LRAC’s recommendation that the Police, the Corrections Department and Fire Service canteens, naval vessels, the Armed Forces Canteen Council and the House of Representatives should lose their exemptions under Section 5(3). However, we disagree with the suggestion that any of these

organisations should qualify for dispensations from the Act (cf. ALAC's comments under Clauses 4, 98 and 101 of the main submission).

5 The licensing system should be simple to understand and easy to administer.

Although LRAC considers that dispensations will contribute to safer drinking environments, dispensations would create a major potential for "exceptions". The APHRU report on responsive regulation notes that dispensations would create a "split level playing field of regulation for some and not for others, [which] would introduce new potential for regulatory capture or corruption" (Hill and Stewart, 1998).

Dispensations could lead to legal challenges, and would be difficult to administer and enforce. The examples stated in LRAC's report could, ironically, apply to some of the more problematic environments, as well as to those whose integrity has not been tested. (For example, LRAC suggests a relatively liberal approach to granting dispensations to small clubs, including sports clubs.)

As noted above, ALAC foresees difficulties with implementing LRAC's circumstances and criteria in identifying premises to be exempted and the method of doing so. ALAC has suggested other options (under the social vs economic regulation principle above) for encouraging safer drinking environments.

6 The liquor laws should be capable of effective enforcement.

A genuine commitment to effective enforcement, monitoring and sanctions should apply to **all** licensees. If all or most of the recommendations in LRAC's report and this Bill regarding DLAs are implemented, DLAs' enforcement and monitoring resources (especially for accredited DLAs) would need to be beefed up significantly. Police, health and other monitoring organisations' resources would also need to be increased. Although ALAC has no objection to this result, an influx of dispensation applications from organisations not previously in possession of a licence (and from existing licensees) would result in a huge resource drain. ALAC is concerned that many DLAs (even accredited ones) might not be ready for such a large change to their workload and responsibilities. Even if the DLAs' workload decreases after an initial flurry, this is not necessarily desirable if DLAs (especially non-accredited ones) de-emphasise the monitoring function for those premises which are granted dispensations.

As already mentioned, at present DLAs have sufficient resources to inspect premises only when problems have been identified or when they receive applications for new licences or renewals (Hill, 1997). Resource constraints exist for health, police and local authorities, especially in smaller localities (Hood, 1996).

Given these practical difficulties, ALAC is not convinced of the merit of LRAC's argument that DLAs would be freed up to focus on problem premises. ALAC's January 1996 letter to LRAC pointed out that "there is nothing in existing practice to prevent a focus on licensing and enforcement of those premises which are more likely to be associated with alcohol-related harm."

If Parliament accepts LRAC's criteria for granting dispensations, ALAC has grave doubts about the ability of DLAs to rapidly deal with problems which may arise. Under LRAC's proposal, DLAs would have the power to revoke dispensations under Section 133 of the current Act and the proposed new Section 133(3)(a) and (b). (Variation, cancellation and suspensions of dispensations are covered in the Bill under Clause 22, 28I.) If the premise lodges an appeal under Section 137, the LLA and the Court system would need to intervene, further adding to the workload and timeframe for decisions.

The APHRU report on responsive regulation (Hill and Stewart 1998) notes that some informants expressed concerns about the DLAs' ability to "handle any increase in discretionary power under a more devolved system." Moreover, informants expressed "fears of 'regulatory capture and co-option by local business or political interests....if DLAs have the responsibility of recommending worthy recipients. [These fears were] also raised in the 1995 research (Hill & Stewart 1996) and expressed to the 1986 Working Party (Laking 1986)."

The combined effect of three new proposals in the Bill would be problematic for authorities and the general public regardless of the number of applications:

1. Clause 22 (28F) would give potential objectors only 10 working days to object;
2. Relevant section(s) of the Act would be amended so that the Police and Medical Officers of Health (MOsH) would not be obligated to report on applications (of any sort). (Refer to LRAC p 98, 11.23). ALAC recommends that MoSH be granted discretion to report on **all** types of licence applications. If public health reporting is optional, cash-strapped health, police and local authorities may be unable to participate in the monitoring function; and
3. Temporary authorities (the LRAC report is not clear as to whether dispensations are likely to be granted in lieu of Temporary Authorities, especially for new owners/applicants).

In her survey of the role of Medical Officers of Health in liquor licensing, Dr Dell Hood reports that two specific problems associated with the current Act were the "lack of clear criteria for granting of managers' certificates, and the exemption of licences from the requirement to hold a manager's certificate." Hood suggests the development of national guidelines to describe the "minimum input and responsibilities of both local authority district licensing agencies and public health staff [to define] the minimum acceptable level of resourcing. Systems to share information and develop best practice guidelines for the medical officer of health reporting responsibility would also contribute to improved performance, and the possibility of better health outcomes for small extra costs" (Hood 1996).

ALAC also is concerned about the implications for unlicensed environments, which are likely to be many and varied (eg, employee social clubs). It is unlikely that the dispensation option will bring these organisations out into the open. ALAC's Manaaki Tangata programme has developed initiatives directed at Maori unlicensed drinking environments, and further strategies are included in the draft National Alcohol Strategy. It will be important to continue to develop host responsibility strategies for these and other environments.

CONCLUSION AND RECOMMENDATIONS

ALAC **objects strongly** to the dispensation proposal on health and equity grounds, and because it would jeopardise the "package" of initiatives to attain the object of the Act, as ALAC would define it. Dispensations would be difficult to administer and enforce. ALAC has presented some alternative mechanisms to address the issues of licensing costs for small organisations under point 2 above.

ALAC urges the Select Committee and Parliament to reject this proposal. If the House chooses to accept the dispensation proposal in part or entirely, ALAC has considered some alternatives which would meet the object of the Act and the LRAC criteria listed at the bottom of page 42 of the LRAC report. For example:

- require a probationary system as a condition for every dispensation granted;

- using sanctions for the LLA to take, ranging from taking no action to disqualifying the licensee for up to three years. These sanctions would apply regardless of whether Parliament accepts the dispensation proposal;
- require a Host Responsibility policy as for all other licensees (see ALAC's comments on Clause 2 and Appendix D of this submission) and ensure effective monitoring and enforcement (LRAC agrees that applicants for dispensation would have to show their willingness to discharge their host responsibility obligations); and
- consider positive inducements such as sliding fee scales (as outlined earlier).

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APPENDIX D: HOST RESPONSIBILITY

BACKGROUND

Informal review of the Sale of Liquor Act 1989 and the report of the Liquor Review Advisory Committee

The Alcohol Advisory Council of New Zealand's (ALAC) informal review of New Zealand's Sale of Liquor Act during 1995 found strong support from those working to implement and enforce the Sale of Liquor Act for the specific inclusion of Host Responsibility in the Act (ALAC 1995 a&b). In its submission to the Liquor Review Advisory Committee (LRAC), ALAC proposed "That a clear definition of Host Responsibility and its principles and practices be explicitly incorporated into the Act."

LRAC concluded that Host Responsibility (HR) principles and practices should not be specifically referred to in the Act, but endorsed the adoption of HR practices and the continued development or evolution of the concept and strongly encouraged its incorporation into training programmes.

LRAC based its decision on these factors:

- HR is an evolving concept which is static neither in its content or application;
- As such, LRAC was "loath to set in concrete today's version of it [as] to ossify a helpful concept in the early stages of its evolution would be to perform a grave public disservice."
- Four of the five current HR strategies are the subject of current legislative recognition and LRAC did not regard the fifth (promoting alternative transport options) as being appropriately within the ambit of the Act.

LRAC considered three alternative mechanisms, none of which they found "particularly attractive":

1. Include a "clear definition of host responsibility" as requested by ALAC (which LRAC rejected as would "ossify");
2. Merely include reference to HR as a relevant factor for consideration in such sections of the Act as may be thought appropriate. LRAC was reluctant to recommend this as HR can be interpreted differently by various parties; therefore they preferred that explicit grounds for offences/cancellations of licences be delineated in plain English;
3. Licence applicants be required to submit a "host responsibility policy" statement as part of their application. LRAC considered that ALAC's suggestion had more merit to provide some support to promote HR, but believed that providing support is not a proper basis for the passage of legislation. LRAC concluded that such a policy would be "quickly side-stepped as a tool of any practical value", as mass-produced standard HR policies would be circulated and would "cheapen and denigrate the concept to the overall detriment of the cause."

(Liquor Review Advisory Committee 1997)

Report from the Alcohol and Public Health Research Unit

Soon after the release of LRAC's report, the Alcohol and Public Health Research Unit (APHRU) at the University of Auckland began a project which aimed to apply the concept of 'responsive regulation' (as developed by Ayres and Braithwaite) to liquor licensing in New Zealand. Ayres and

Braithwaite postulate that the key ingredients to cost-effective regulation strategies that can respond to the needs of both state and industry are:

- firm-specific agreements with negotiated but enforceable conditions,
 - a hierarchy of sanctions, to match the degree of infringement,
 - a role for the community in regulatory decisions and in ongoing monitoring.
- (Hill and Stewart, 1998)

Hill and Stewart suggest that these strategies could relate to sections of the Sale of Liquor Act 1989 on:

- the criteria and conditions under which each licence is granted,
- the right of objection by members of [the] public to the grant to renewal of a licence, and
- the Liquor Licensing Authority's powers of sanction.

Hill and Stewart interviewed twelve "expert informants working at all levels of the licensing system" to gauge their response to suggested amendments to the Act (Hill and Stewart, 1998). Informants included a representative of off-licence holders. Other industry representatives were invited to respond but decided not to be involved in the project.

The report recommended that the criteria for on-licences (Section 13) refer specifically to the *applicant's proposed Host Responsibility policy* with regard to "(i) the requirements of the Act in relation to the sale of liquor to prohibited persons, [and] (ii) other matters related to the responsible management of the premises." These new proposed amendments would be in addition to existing requirements under Section 13. Additional recommended amendments include licensing criteria regarding objections and the site of the premises in relation to neighbouring land use, and Local Authority policies with regard to licensed premises. Similar changes would be included for off-licences, club licences and special licences as appropriate.

Proposed new amendments under Section 14(5) would allow the LLA to impose a new licence condition "(e) Other policies of the licensee for the responsible management of the premises." Neighbouring land use and matters arising from a report or public objection are also proposed as items to be considered by the Liquor Licensing Authority (LLA), as are Local Authority policies with regard to licensed premises. A new proposed Section 14(8) states that "The steps and policies submitted under 5(d) and (e) above as approved by the Licensing Authority shall be attached as a condition of the license." Section 5(d) refers to prohibition of liquor sales to prohibited persons. A new section on sanctions which would replace Section 132(6) is also included in the proposed amendments.

Consistent with 'responsive regulation' theory, these proposals are meant to increase compliance with and ownership of the Act by "allowing subsections 13(d) (i) and (ii) to state broadly what is expected by regulators, while applicants themselves propose how such expectations would best be implemented on their own premises. Providing a Host Responsibility policy would be a standard part of the application procedure, as at present, but could include a licensee-proposed non-standard licence condition. ALAC promotional material or management training may well be reflected in standard aspects of the policy, but the policy remains the licensee's own proposal" (Hill and Stewart, 1998).

The report also noted that:

There was "full support for requiring a written policy on 'other matters related to the responsible management of the premises' and nearly all informants thought this should also be attached to the licence as an enforceable condition... There was clear support amongst informants for host responsibility as a practice to be required of licensees... Because of debate around defining host responsibility, the suggested

amendments presented to the informants had included alternative wording linking criteria or conditions to the object of the Act. These were well received by a number of informants. An important point made, however, was that a link in law between criteria or conditions and ‘reducing alcohol abuse’ might discourage or prevent licensees from addressing matters other than intoxication, which might be a concern to objectors. Most examples from informants of situations in which a non-standard condition would be helpful related to the impact of the premises on the neighbouring community.” (Hill and Stewart, 1998, pp 131-132)

The report mentioned the debate around defining host responsibility in law, and noted that submissions to LRAC on intoxication preferred to leave it undefined, and that this has not led to any problems in law. ALAC addresses the differences we perceive between defining Host Responsibility and intoxication under the section ‘Mechanism 2’ below.

ALAC considers this report to be a valuable contribution to the review of the Sale of Liquor Act 1989, and has included many of its recommendations into our comments on Clauses 12 and 13 of the Bill.

RESPONSE TO LRAC PROPOSALS

ALAC’s response to LRAC’s proposals is detailed below (cf. LRAC’s three alternative mechanisms”, pp 55-56), supplemented by additional material from the APHRU report.

Mechanism 1: ALAC is unconvinced by the “ossification” argument and considers that the **concept** of HR should be included in the legislation, even if an explicit **definition** is not included in the Act. Liquor legislation, like all social legislation, is an “evolving concept”. The 1989 Act is widely agreed to be in need of an overhaul to reflect current conditions. HR is not “new”; it began the same year that the Act came into effect. Therefore it seems logical to include an explicit reference to HR in the Act and amend the Act as HR (and other concepts) evolve.

Terms such as harm minimisation, safer drinking environments, server intervention and host responsibility refer to reducing the risk of alcohol-related harm. Other jurisdictions have included similar references within their liquor legislation. For example, NSW has included a definition of ‘harm minimisation’ within the object of its Liquor and Registered Clubs Legislation Amendment Act 1996 (similar to the Sale of Liquor Act):

A primary object of this Act is harm minimisation, that is, the minimisation of harm associated with misuse and abuse of liquor (such as harm arising from violence and other anti-social behaviour). The court, the Board, the Director, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for harm minimisation when exercising functions under this Act. In particular, due regard is to be had to the need for harm minimisation when considering for the purposes of this Act what is or is not in the public interest (Liquor and Registered Clubs Legislation Amendment Act 1995).

‘Responsible service standards’ are a precondition of licensing or extended hours, and is included in reference to regulations. Queensland’s regulations provide principles and examples of responsible service practices. (Hill, 1997).

ALAC realises that HR practices also apply to private gatherings. It would be impractical to assume that NZ can legislate for these situations. It is interesting to note that in Manitoba, where drinking in public places is not permitted, “host responsibility obligations of licensees not to serve intoxicated persons also applies [sic] to private hosts as well” (Hill 1997).

Mechanism 2: LRAC opined that HR “may mean different things to different people” (p 55). Although it may not be necessary to include an explicit definition of host responsibility in the Act, HR principles and practices are less contentious than attempting to define ‘intoxication’. As noted elsewhere in this submission, intoxication is a subjective, variable point of impairment. Host responsibility is a *concept* which has been developed during nearly a decade of co-operative endeavour between ALAC, the industry and other stakeholders. Indeed, LRAC’s report (p 42) recommended that dispensation decisions should be based in part on “the applicant’s proposals to discharge host responsibility obligations”. LRAC recommended (p 60) that the Grade 1 qualification for ‘Licence Controllers’ must require host responsibility knowledge. The Grade 2 qualification must have some emphasis on HR. If HR is to be part of a nationally accredited training course, agreed standards will have to be set. The NZQA unit standards already include HR. If we teach it, surely it makes sense to include a commitment to HR principles within the Act.

Mechanism 3: LRAC expressed concerns about the mass production of standard host responsibility policies, but ALAC and the Hospitality Association already produce these documents. Section 5 of the Smoke-free Environments Act 1990 provides a precedent for written policies to be provided by employers. Many of these policies are standard documents, which provides an element of consistency. Standard policies in themselves are not the problem; rather, difficulties arise when the elements of these policies are not monitored or enforced. As a public health officer noted:

Essentially those conditions that are listed there about supplying food and all that sort of stuff are the principles of host responsibility...it’s already there—in a sense. But it’s not being applied in a way that licensees are being forced to outline how they actually proposed to implement that ...There’s no pressure on them...to comply with those things—they don’t have to.” (Hill and Stewart 1998).

Hill and Stewart’s report addresses LRAC’s concern and suggests that:

...the present legislation already provides a suitable framework and would take very little amendment to fully allow the kind of negotiated firm-specific contract that Ayres and Braithwaite argue increases commitment to compliance...in-house host responsibility policies, developed by the licensee or adapted from a model provided by public health officers, the Alcohol Advisory Council or the Hospitality Association...could be required to be negotiated with local statutory officers, and attached as a condition to the licence...if licensees propose their ‘steps’ as part of the application process and the Authority is granted the flexibility to include additional conditions as appropriate, in-house policies need not [be] restricted to a standard formula. In Ayres and Braithwaite’s schema, such a response from the industry would be seen as a responsible step in the direction of industry self-regulation, contributing to the legitimisation of the strategy and to a climate of compliance” (Hill and Stewart 1998, p 61).

Besides being a regulatory tool to promote the object of the Act, HR policies are also good business. A local officer who reported success with licensees using a commercial HR model said: *“The most successful premises are all ones that go to great lengths to get their staff host responsibility training because they see it as being customer orientated...and they’ll subscribe to the host responsibility policies not only for their premises but also collectively—they have a host responsibility policy for the Central Business District.” (Hill and Stewart 1998)*

A genuine commitment to enforcement of HR strategies and other good management practices is crucial to ensure the effectiveness of HR principles, training and practices for managers/staff.

Police informants thought that requiring licence applicants to develop a written HR policy for their premises would be useful in helping to assess ‘suitability’:

“It would require licensees to direct their minds to the problems that need to be addressed rather than to enter into the business with the blind naiveté that many do... If the reporting agencies aren’t happy with what’s in there, it gives us an indicator as to where training might be needed or where the people may be inappropriate”. (Hill and Stewart, 1998, p 66).

A DLA inspector thought that a written HR policy “could then become an audit process at renewal time...if a host responsibility policy was required in the legislation as part of the process, then the success rate will be higher than it is now.” (Hill and Stewart 1998)

Precedent already exists in New Zealand for written policies. Such a requirement would be comparable with the employer’s requirement to provide a written policy on smoking under Section 5 of the Smoke-free Environments Act 1990. The policy would be displayed prominently on the premises, available on request and implemented, similar to the provisions in Section 7 of the Smoke-free Environments Act 1990. The recommendations with regard to Sections 13 and 14 in the APHRU report notes that similar provisions would be included for off-licences, club licences and special licences (Hill and Stewart 1998).

Comprehensive reviews of local and national approaches worldwide have concluded:

Research shows that “There is scant evidence that self-regulatory approaches alone (e.g. training of bar staff) are more than good public relations exercises for the retail alcohol industry.” (Stockwell, cited in Plant, Single & Stockwell, 1997) *“Servers are most likely to implement the techniques learned in training programmes if management, peers and customers support such intervention.”* (Russ & Geller 1987, Stockwell 1992, cited in Hill, 1997). *“Strict enforcement of the liquor laws, mandatory training requirements and the placing of conditions on licences which prohibit easily monitored irresponsible trading practices are...the most effective approaches to minimising alcohol-related harm....”* (Plant, Single & Stockwell, 1997).

In the absence of strong community concern over alcohol-related problems, there is often a lack of political will to ensure effective regulation of licensed premises...Regulation of some of the existing legislation which provides a strong deterrent to some key components of irresponsible practice is long overdue. (Plant, Single & Stockwell, 1997)

RESPONSE TO APHRU PROPOSALS

ALAC believes that the recommended amendments in the APHRU report (Hill and Stewart 1998, pp 7 and 8) are sensible and workable. These amendments would provide a means of incorporating the concept of Host Responsibility and its principles and practices into the Act, in order to lend further legitimacy to the progress which has been made since 1990.

ALAC agrees with the importance of allowing the licensee to specify the policies and ‘steps’ toward the creation and maintenance of a responsibly managed premise. This process would encourage ownership of (and therefore increase the chances of compliance with) the concept, and it would allow flexibility for the inclusion of non-standard conditions which are consistent with the object of the Sale of Liquor Act, the Local Government Act, and other acts and policies aimed at promoting safe communities. By including a reference to and/or definition of a “Host Responsibility policy” in the Act, coupled with a genuine commitment to enforcement and sanctions for breaches of the Act, an incentive is created for licensees to implement the Act and give effect to LRAC’s recommendation for mandatory training for licence controllers.

As already mentioned, the suggested new Section 13(1)(d) in the APHRU report refers specifically to a “Host Responsibility policy”. ALAC has amended its definition of “Host Responsibility policy” to

reflect these recommendations, if Parliament considers that it is necessary to define this phrase in Section 2 of the Act or in the regulations. Again, the key point is that the **concept** of HR and its practices should be enshrined in the Act to help give effect to the object of the Act. Therefore the licensee's proposed HR policy must be included in the licence criteria. The steps to be taken by the licensee with regard to prohibited persons also must be attached as a condition of the licence.

RECOMMENDED DEFINITION AND IMPLEMENTATION OF 'HOST RESPONSIBILITY POLICY'

After considering the LRAC and APHRU reports, ALAC has amended its definition of "Host Responsibility policy" as follows:

"Host Responsibility policy means a written document which specifies generally accepted practices which will be taken by staff and management of a licensed premise to ensure a safe and responsibly managed environment in and around licensed premises and to minimise alcohol-related harm to their patrons and other members of the public. This policy must include provisions for the ongoing training of staff."

Other jurisdictions (in New Zealand and overseas) have provided prototypes for the development of a definition. If the Select Committee agrees with the recommendation to define "Host Responsibility policy" in Section 2 of the Act or in the regulations, ALAC would be pleased to continue to work with other stakeholders to craft a clear definition of HR principles and practices to increase the chances of acceptance by Parliamentarians.

ALAC **recommends** that the term "Host Responsibility Policy" be included in Sections 2, 13, 22, 35, 45, 79, 86 and 170 of the Act, and in Sections 59 and 68 if club licences are retained.

Sections 22, 45 and 68 could specifically require DLAs to consider whether or not the licensee has adhered to the Host Responsibility policy, rather than a more general requirement to have regard to "the manner in which the licensee has conducted the sale and supply of liquor pursuant to the licence" (Sale of Liquor Act 1989, s.22 [c]).

In addition, host responsibility should be part of the core training material for managers. This recommendation has been accepted by LRAC, which has proposed a new Section 117A of the Act on qualifications. LRAC's recommendation has been included in the Bill as Clause 117A.

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