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BILLS DIGEST

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Sale and Supply of Liquor and Liquor Enforcement Bill 2008

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Portfolio:	Justice
Select Committee:	As at 09 March, 1st Reading not held.
Published: 09 March 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of the Bill is to amend the Sale of Liquor Act 1989, the Summary Offences Act 1991, and the Land Transport Act 1998, to implement recommendations arising from the Review of the Sale and Supply of Liquor to Minors and the Review of the Sale of Liquor and Liquor Enforcement Issues (the Targeted Review). The Bill also introduces into the Sale of Liquor Act 1989 a new system of enforced self-regulation of alcohol advertising arising out of the Review of the Regulation of Alcohol Advertising¹.

Background

In the context of increased consumption of alcohol by minors, the policy objectives of the Bill are to:

¹ Sale and Supply of Liquor and Liquor Enforcement Bill, 2008 No 254-1, Explanatory note, General policy statement, p. 1.

- support a more moderate drinking environment and culture to reduce the normalisation of youth drinking;
- enhance the responsibility of friends and adults who supply alcohol to minors;
- increase youth responsibility and accountability;
- improve compliance and responsibility of industry;
- increase community input into licensing decisions; and
- clarify the types of premises that may hold off-licences².

Main Provisions

Purpose

The general purpose of the Bill is to amend the Sale of Liquor Act 1989, the Summary Offences Act 1981, and the Land Transport Act 1998 to

- " ... reduce the opportunity for society and individuals to be harmed by the misuse or excessive consumption of alcohol"; or
- " ... deter people from undertaking behaviour related to alcohol that is likely to result in the harming of society or individuals by its misuse or excessive consumption"; or
- " ... increase community input into licensing decisions" (*Clause 3*).

Local alcohol plans

The Bill provides for territorial authorities using consultative procedures under the Local Government Act 1974, to adopt, amend, or revoke a plan relating to the sale or consumption of alcohol within its district, or any part or parts of its district to be called "a local alcohol plan". A local alcohol plan may include requirements relating to any or all of the following matters (in relation to outlets for the sale of liquor generally, outlets for the sale of liquor holding a licence of any particular kind, or both):

- the hours during which liquor may be sold;
- where outlets may be located;
- a maximum density for outlets;
- a minimum distance outlets must be from particular community premises or community premises of any particular kind;
- responsible business practices and event management;
- information to be submitted with applications for the granting or renewal of a licence;
- the submission of social impact reports with applications for the granting or renewal of licences;
- the matters to be contained in social impact reports;

² Ibid.

- the persons by whom social impact reports are to be prepared;
- conditions that are to be or may be imposed on licences;
- criteria to be used in assessing applications for the granting or renewal of licences; and
- a policy on how any criteria or conditions in the plan are to be applied to applications for the granting or renewal of licences and which may include a statement of circumstances in which applications for licences are to be granted or refused (*Part 1, Clause 37, inserting New Part 4A (New Sections 84A-84C) into the Sale of Liquor Act 1989*).

On-licences

The Bill requires an applicant for an on-licence (broadly, an on-licence authorises the holder of the licence to sell and supply liquor for consumption on the premises) to notify the District Licensing Agency (i.e. the local authority) of the publications in which the public notice of the application will be given, and the day or days on which the notice will be given. It is also provided that District Licensing Agencies, instead of granting all unopposed applications for on-licences, will have to forward those to the Licensing Authority³ if the Agency thinks them inconsistent with a local alcohol plan, and it is given power to impose conditions on an unopposed application it grants if it is of the opinion that granting the licence without the conditions would be inconsistent with the local alcohol plan (*Part 1, Clauses 6 and 7, amending Sections 9 and 127 of the Sale of Liquor Act 1989*).

Duties with regard to on-licence applications

The Bill provides that when an application for an on-licence is being considered, the Licensing Authority must have regard to any local alcohol plan, and must not grant an on-licence if there is an applicable local alcohol plan, it thinks that granting the licence would be inconsistent with the plan, and the local authority has not notified the Authority that it supports the granting of the licence. The Licensing Authority must impose conditions on any on-licence it grants if there is an applicable local alcohol plan and it thinks that granting the licence without the conditions would be inconsistent with the plan. Consequential amendments are made (*Part 1, Clauses 8-13, amending Sections 13, 14, 16, 18, 21 and 22 of the Sale of Liquor Act 1989*).

Off-licences

The Bill requires an applicant for an off-licence (broadly, an off-licence authorises the holder of the licence to sell or deliver liquor on or from the premises for consumption off the premises) to notify the District Licensing Agency (i.e. the local authority) of the publications in which the public notice of the application will be given, and the day or days on which the notice will be given. It is also provided that applications relating to groceries with an area under 150 square metres will have to be dealt with by the Licensing Authority, even if they are unopposed; and District Licensing Agencies, instead of granting all unopposed applications for off-licences, will have to forward those to the Licensing Authority if the Agency thinks them inconsistent with a local alcohol plan and it may impose conditions on an unopposed application it grants if it is of the opinion that granting the licence without the conditions would be inconsistent with the local alcohol plan (*Part 1, Clauses 14 and 15, amending Sections 31 and 34 of the Sale of Liquor Act 1989*).

³ Section 85 of the Sale of Liquor Act 1989 established the Liquor Licensing Authority which consists of 3 or 4 persons appointed by the Governor-General on the recommendation of the Minister, of whom 1 shall be a District Court Judge who is the chairperson of the Authority.

Section 91 provides that the principal functions of the Licensing Authority are: to consider applications for and renewal of on-licences, off-licences and club licences referred to it by any District Licensing Agency; to consider applications for manager's certificates referred to it by any District Licensing Agency; to consider and determine appeals from decisions of District Licensing Agencies, and other functions conferred by any enactment.

Duties with regard to off-licence applications

The Bill provides that when an application for an off-licence is being considered, the Licensing Authority must have regard to any local alcohol plan, and must not grant an off-licence if there is an applicable local alcohol plan, it is of the opinion that granting the licence would be inconsistent with the plan, and the local authority has not notified the Authority that it supports the granting of the licence. Also, the Licensing Authority must not grant an off-licence in respect of any premises situated within a shop, other than a supermarket or a grocery store, with a floor area of at least 150 square metres. An off-licence in respect of any premises situated within such a shop may be granted but the licensee will be limited to selling wine, fruit wine, mead, and beer. The Licensing Authority must impose conditions on any off-licence it grants if there is an applicable local alcohol plan and it thinks that granting the licence without the conditions would be inconsistent with the plan. Consequential amendments are made (*Part 1, Clauses 16 -22, amending Sections 35-37, 39, 41, 44 and 45 of the Sale of Liquor Act 1989*).

Club licences and special licenses

The Bill provides for similar amendments to those made to the on-licences provisions and described above to the provisions relating to club licences. The Bill also provides that the Licensing Authority must consider applications for a special licence forwarded to it by the District Licensing Agency if the Agency considers them contrary to a local alcohol plan. At present District Licensing Agencies deal with all applications for special licences (*Part 1, Clauses 23-30 and 32-36, amending Sections 55, 58-60, 62, 64, 67, 68, 79, 80 and 82-84 of the Sale of Liquor Act 1989*).

The management of licensed premises and young people

The Bill provides that that three adverse findings relating to people under 18 ("young people") within two years by the Licensing Authority against a person who is a manager of licensed premises will have the effect of preventing that person from being a manager, temporary manager, or acting manager for five years after the third conviction. The Bill provides that a member of the police or an inspector may apply to the Licensing Authority for an order cancelling a manager's certificate if, during the 6 months before the application is made:

- the manager has been convicted of an offence relating to selling or supplying liquor to a young person or allowing a young person to enter a restricted or supervised area on licensed premises; or
- the Licensing Authority has found that the manager has, after the commencement of the section, sold or supplied liquor to a young person or allowed a young person to enter a restricted or supervised area on licensed premises; and
- at least two other similar convictions or findings have been made against the manager (after the commencement of the section) in respect of incidents occurring during the 2 years before the day on which the latest conviction or finding occurred.

If satisfied that those grounds have been established, the Licensing Authority must cancel the certificate. The Bill also provides for the procedural consequences of these provisions (*Part 1, Clause 38, inserting New Sections 135A-135C into the Sale of Liquor Act 1989*).

Advertising and promotions

The Bill provides that liquor advertising and liquor promotion should not be inconsistent with:

- the promotion of responsibility and moderation in the consumption of alcohol;
- the overall exposure of children and people under the age of 18 years to liquor advertising and liquor promotion should be minimised; and
- liquor advertising and liquor promotion should not hold strong appeal to children or young people.

The Bill provides that the Ministers of Justice and Health may recognise any body corporate for the purpose of:

- developing and reviewing codes (for liquor advertising and liquor promotion);
- when reviewing its codes, devising appropriate ways of engaging with the community to elicit a range of views on them;
- administering a complaints process;
- referring to any relevant agency complaints outside its jurisdiction;
- referring serious or persistent breaches of its codes to the Director-General of Health;
- conducting internal process monitoring of its undertaking those matters; and
- arranging independent auditing of its undertaking those matters.

In undertaking those matters, the body must act in accordance with a memorandum of understanding agreed with the Director-General of Health.

New section 136C empowers the Director-General of Health to make cease and desist orders in relation to a liquor advertisement or liquor promotion. An order may be made if the Director-General is satisfied that the advertisement or promotion is contrary to the principles of new Part 6A of the Act, or is likely to have an effect contrary to them. An order made in relation to a liquor advertisement may require a person by or on whose behalf it was published:

- not to publish any similar liquor advertisement in the future; and
- if the advertisement is still being published, to take all reasonably practicable steps to withdraw it; and
- may also order the person to publish corrective advertising described in the notice.

An order made in relation to a liquor promotion may require a person by or on whose behalf it was organised:

- not to organise any similar liquor promotion in the future; and
- if the promotion is still continuing, to take all reasonably practicable steps to discontinue it.

The Bill makes it an offence to fail or refuse to comply with a cease and desist order. The penalties are: a fine of up to \$200,000 in the case of a body corporate or a fine of up to \$60,000 in any other case.

The Bill also provides for a new advisory body, the Liquor Advertising Advisory Board (the LAAB) (*Part 1, Clause 39, inserting New Part 6A (New Sections 136A- 136G) into the Sale of liquor Act 1989*).

Offences and enforcement in relation to young people

The Bill introduces more restrictive defences in relation to offences involving young people as follows:

- in relation to a charge of selling or supplying liquor to a young person on or from the licensed premises, the present defence is that the defendant believed on reasonable grounds that the young person was 18 or older and reasonable grounds included if he or she sighted an evidence of age document indicating that the young person was 18 or older (an evidence of age document is a passport, New Zealand driving licence, or document of some other approved kind, containing a photograph of the person to whom it is issued and information enabling his or her age to be

determined.) The effect of the new defence is that only an evidence of age document (or what seems to be an evidence of age document) will be able to be the basis for having reasonable grounds for believing that a young person is 18 or older (*Clause 40 replacing subsections (4) and (4A) of Section 155 of the Sale of Liquor Act 1989*);

- in relation to an offence to buy or acquire liquor with the intention of supplying it to a young person, it is at present not an offence if the supplier is a parent or guardian of the young person supplied or the young person supplied is attending a private social gathering. The Bill provides that it is not an offence if the supplier is a parent or guardian of the young person supplied or the young person supplied is attending a private social gathering, and the supplier has the consent (express or implied) of a parent or guardian of the young person (*Clause 41 amending Section 160 of the Sale of Liquor Act 1989*);
- in the offence of allowing young people to enter or remain in restricted areas or supervised areas on licensed premises, it is at present a defence if the defendant believed on reasonable grounds that the young person was 18 or older. Reasonable grounds exist if he or she sighted an evidence of age document indicating that the young person was 18 or older, but he or she may prove reasonable grounds in some other way. This Bill provides that it will be a defence only if the defendant proves that what seemed to be an evidence of age document was produced to the defendant or an agent or employee of the defendant, and the defendant, agent, or employee believed on reasonable grounds that the document was in fact an evidence of age document, related to the young person, and that it indicated that the young person was 18 or older (*Clause 42, substituting subsections (2) and (2A) of Section 164 of the Sale of Liquor Act 1989*).

The Bill makes it an offence to present a false evidence of age document on licensed premises and to sell, hire, lend, give, or otherwise dispose of a false prescribed evidence of age document to another person (*Clause 44, inserting New Section 172 into the Sale of liquor Act 1989*).

Consequential amendments to other Acts

Consequential detailed amendments are made to the Summary Offences Act 1981 and the Land Transport Act 1998 (*Part 2 and Part 3, Clauses 49-60*).

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