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Rōpū Apārangi Waipiro chair
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**Health Coalition Aotearoa – Rōpū Apārangi Waipiro
(Expert Alcohol Panel)
Submission on Sale and Supply of Alcohol (Community
Participation) Amendment Bill**

Tēnā koe Committee Secretariat,

Thank you for the opportunity to provide a submission on the Community Participation Amendment Bill. The following submission represents the collective views of the Health Coalition Aotearoa Rōpū Apārangi Waipiro and individual member's views may vary somewhat which they may communicate separately to you.

We would like the opportunity of presenting our views orally, preferably in Auckland.

Health Coalition Aotearoa (HCA) is a rōpū of varied expertise that aims to improve Māori health, eliminate inequities, enhance people's wellbeing, and reduce the risks associated with alcohol consumption.

More information on the Rōpū Apārangi Waipiro (Expert Alcohol Panel) and our priorities can be found here: <https://www.healthcoalition.org.nz/health-issues/alcohol/>.

Rōpū Apārangi Waipiro members

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Introduction

Alcohol harm remains high in Aotearoa and there is a strong public mandate for change:

1. Alcohol causes more harm in Aotearoa than any other drug, impacting the drinker, those around them, community life and our wider society. It is a cause and consequence of unacceptable inequities in health outcomes for Māori. It is a factor in more than 200 diseases and conditions, including poor mental health, fetal alcohol spectrum disorder and several cancers.^{1,2}
2. This wide spectrum of harm poses significant ongoing costs to the health, social, and justice sectors among others. National survey data show **1 in 5** of the population aged 15 and older continue to drink hazardously, a pattern which carries a high risk of future damage to their physical or mental health.³
3. The Sale and Supply of Alcohol (Community Participation) Amendment Bill (the Bill) has the potential to make it easier to introduce cost-effective interventions that reduce alcohol harm. Namely, controls on times, locations and density of alcohol availability in Local Alcohol Policies (LAPs).⁴ However, it doesn't substantively address the deep-seated power imbalance within the current Act that favours applicants for licences to sell alcohol and the alcohol industry over communities. Therefore, while there are aspects of the Bill that we support, we find the piecemeal approach is problematic.
4. Greater community control on where and when alcohol is sold was a key intention of the Sale and Supply of Alcohol Act (the Act). This has been widely supported by the public and experts in several consultations, dating from the New Zealand Law Commission review in 2010⁵ to the recent government inquiries into mental health and addiction (2018)⁶ and criminal justice (2019)⁷.
5. Support for health-enhancing alcohol policy reform is also strong among Māori.^{8,9} We support calls for urgent action to eliminate the substantial inequities in harm to Māori, who are twice as likely to die prematurely from alcohol-attributable causes compared with non-Māori,¹⁰ and the institutional racism occurring in the regulatory system.^{9,11}
6. We are very concerned by the complete invisibility of Te Tiriti o Waitangi (the te reo Māori version of the Treaty of Waitangi) in alcohol law, and the lack of any reference to Te Tiriti in this Bill.

Summary of main recommendations

7. We support the aim of the Bill to enhance community participation and strengthen Local Alcohol Policies (LAPs) as these measures have potential to impact the significant ongoing inequities in the supply of alcohol and alcohol harm.
8. We strongly support the removal of LAP appeals and recommend amendments to the development and effect of LAPs (paragraphs 15-23) to better protect communities most impacted by alcohol.
9. We recommend that the Sale and Supply of Alcohol Act should give effect to Te Tiriti o Waitangi through a guiding clause and relevant provisions throughout the Bill. Consistent with Te Tiriti, Māori must be meaningfully engaged in the development of these provisions. These provisions must at the very least:
 - 9.1. empower Māori to meaningfully and effectively participate in decisions about alcohol in their communities, including as co-designers of policy and decision-makers; and
 - 9.2. enable the achievement of equitable health and social outcomes for Māori.
10. The proposed tweaks to the licensing regime are welcome but inadequate to achieve the aim of the Bill, and we recommend further substantial enhancements (paragraphs 29-34) that must be made if the Bill is to engage and uphold the voice of the community – including ending (or preventing) oversupply of alcohol in vulnerable locations.
11. S.205 (b) (c) and (d), and S.204(5) undermine the aim and title of the Bill and should be deleted.
12. We further emphasise that in addition to this Bill, the elimination of alcohol related health inequities and meaningful reductions in harm will require a considerably more comprehensive approach. Local and international evidence, guidance from the World Health Organisation and a number of high-profile reviews in Aotearoa continue to emphasise the need for:
 - 12.1. full restriction of alcohol product marketing in all formats
 - 12.2. an increase in the purchase age to 20
 - 12.3. a reduction in legislated maximum trading hours (we recommend 9am to 9pm for off licences, 9am to 2am for on licences and 9am to 12am for club licences)

- 12.4. increases to excise taxes to reverse the increasing affordability of alcohol products
13. We also support proper regulation of remote sales by requiring all remote sellers (including bottle-stores) to have a remote licence for alcohol delivery, bring online delivery in line with legislated and LAP trading hours, require age ID on delivery, and mandatory training, especially for immediate delivery services.

Proposed enhancements to the Bill

14. Substantial additions to the Community Participation Bill are needed to ensure the value of community input is properly recognised, community views are upheld, and that effect is given to Te Tiriti in decision-making about alcohol in Aotearoa.

At present, there are profound power imbalances to overcome in the preparation of LAPs and licensing decisions. In both cases, lay people seeking to protect or improve wellbeing in their neighbourhoods are pitted against a highly-resourced opposition including expert legal counsel. The Act and its implementation are also plainly out of step with current health and planning legislation in their lack of reference to and respect for Te Tiriti.^{9, 11}

This Bill is a vital opportunity to ensure the development of LAPs is strengthened so that they address the inequitable burdens of alcohol supply and the licensing system itself on communities most at risk of harm from alcohol, and to ensure meaningful participation in decision making for Māori.

To achieve these aspirations, we identify a number of pro-equity amendments in the Bill that we support and make several recommendations for substantial change.

Strengthening Local Alcohol Policies:

15. **We strongly support removal of the special appeals process for LAPs.**

Removing the special appeals process for LAPs will enable Territorial Authorities (TA) to introduce sensible restrictions on trading hours, location and concentration of alcohol outlets, which are known to reduce alcohol harm.^{4,12} However, to ensure LAPs succeed, the wider provisions of the Act must also require all licensing decisions to be consistent with LAPs.

16. Alcohol outlets in Aotearoa are concentrated in communities at greater risk of alcohol harm,¹³ so controls on availability of alcohol will help to address health inequities.

“It was a time and financial burden’ where communities never got what they were asking for”

Hone Fowler, The Spinoff
8.11.22

17. Capping outlet numbers via LAPs can also reduce the burden¹⁴ on communities to successfully oppose the new licence applications being made in inappropriate or high-risk locations.

18. Contrary to recent claims from some suppliers of alcohol products, LAP appeals have weakened the democratic nature of the special consultative procedure used to develop LAPs, which is open to input from any party:

18.1. After public consultation ended, appeals have been overwhelmingly made by alcohol industry actors, and in the main these have weakened the policy restrictions in provisional LAPs.¹⁵

18.2. Some elements of provisional LAPs were dropped through private negotiation between alcohol industry appellants and territorial authorities via seeking a consent order from the Alcohol Regulatory and Licensing Authority (ARLA). Until March 2015, these changes were settled without public notification or oversight.¹⁵

19. We believe the appeals process has resoundingly defeated the original intentions for the Act to improve community voice around where and when alcohol is sold. There is no countervailing objective regarding impacts on industry, yet recent reviews¹⁵ show their influence has prevailed in many locations:

19.1. The prospect of costly appeals deterred Councils from starting a LAP or including bolder policy measures (e.g. Selwyn Council’s restriction of outlets in neighbourhood centres was dropped from its LAP after negotiation with appellants¹⁵). This limits the ability of the Act to minimise alcohol harm; for instance, stronger trading hour restrictions produce larger reductions in harm.

19.2. Provisional LAPs have been held up in appeals (Auckland’s LAP for 7 years) or abandoned.

19.3. 10 years after the Sale and Supply of Alcohol Act (SSAA) was passed, less than 35% of the population lived in an area where an LAP was in force.¹⁵ This leaves poorly-resourced communities

(for example, in Auckland) without much needed protection from the burden of having to oppose alcohol licence applications one by one.

20. We note the development and application of LAPs is much in need of strengthening to have a greater impact on alcohol harm.

20.1. The proactive risk assessment, active consultation and mitigation planning involved in constructing LAPs provides a considerably more robust process than the reactive process involved in licence applications for individual outlets.

20.2. Not all Councils have attempted to develop a LAP.

20.3. Maximum trading hour restrictions in LAPs have not been especially strong, and stricter maximum hours would have more potential to reduce actual trading hours and related harms to a greater extent. In 2017, the maximum trading hours for off-premises in adopted LAPs were on average only 1 hour shorter than the default national limits.¹⁵

20.4. Only a minority of LAPs contain density restrictions, and few of these are fixed. Limits on proximity to sensitive sites have been small (e.g. next door, or 40 or 100 metres) and often soft (could be mitigated).¹⁵

20.5. These issues significantly reduce the potential impact of LAPs on the high and inequitable levels of alcohol harm in Aotearoa.

21. We recommend the following changes must be made to improve the effectiveness of LAPs

21.1. At S.75 stipulate that all TAs *must* (not may) develop a LAP

21.2. Require partnership with mana whenua when developing LAPs – some LAPs have been poorly consulted on and Māori have found the consultation by Councils insufficient.¹⁶ The development process must include true partnership and shared decision making with mana whenua.

21.3. At S.78(2) require specific assessment and consideration of risks and inequities in supply and harm, including but not limited to:

- i. risks associated with accumulation of alcohol outlets
- ii. risks associated with alcohol supply in areas of high socioeconomic deprivation

- iii. community sentiment as to whether more or fewer licences of each type are desirable, balanced by a need for consistency with evidence-based assessment of risk of harm
- iv. any matters mana whenua consider relevant to wellbeing in relation to alcohol.

21.4. **Amend S.108: Amend so that District Licensing Committee (DLC) *must* (not may) refuse to issue a licence if in its opinion, the issue of the licence, or the consequences of the issue of the licence, would be inconsistent with the LAP.** Presently DLCs may ignore LAP restrictions, as occurred when an off-licence in central Whanganui was granted a licence which broke the cap in the LAP.

22. **We strongly support that DLC decisions on licence renewals should be consistent with LAPs and recommend that the new S.133 proposed in the Bill be strengthened from 'may' to 'must':**

"A licensing committee or the licensing authority **must** -

- (a) decline to renew a licence if it considers that renewing the licence would be inconsistent with any policy set out in the relevant local alcohol policy relating to a matter specified in section 77(1)(a) to d):
- (b) impose conditions on any licence it renews if it considers that the renewal of the licence, or the consequences of the renewal of the licence, without those conditions would be inconsistent with the relevant local alcohol policy."

We note the following reasons:

- 22.1. If LAPs are to be more effective and mandatory, it must be possible to reduce the number of alcohol outlets in locations where LAPs identify an excess of premises or risk of harm; this will be necessary to meet the object of the Act i.e. to minimise harm.
- 22.2. Communities with greater numbers of outlets more often face higher socioeconomic disadvantage and have less capacity to engage in tackling licences one at a time. It is currently very rare for licence renewal applications to be declined.¹¹

22.3. ARLA rulings in licence appeal hearings reinforce that density issues are best dealt with via LAPs.¹⁷

22.4. Although an alcohol licence is not a permanent right (the 3-yearly licence renewal process means licences are always at risk of removal), transition processes and timeframes for existing business owners to exit the alcohol sector could assist reductions in outlet numbers over time. This would be necessary as a sinking lid would be very slow – most alcohol store owners transfer their licence to new owners when they sell.

23. We further recommend the following to assist harm reduction through reducing outlet numbers:

23.1. Guidance should be provided to local authorities on appropriate processes for reducing licence numbers in ways that will minimise harm to the greatest extent; premises in locations at greatest risk of alcohol harm, and premises with high-risk licence types should be considered first.

23.2. Guidance could be given to local authorities on ways to support licence holders where an LAP has identified licences must be removed. For example:

- A pragmatic approach would be to allow a transitional time frame and support for affected businesses, which will largely be off-licence holders, as they supply alcohol at the cheapest prices and in the greatest amounts (75% of all alcohol sold in Aotearoa).
- Affected bottle store licence holders could be given a two-year period with access to business mentoring services to transform their premises to another type of business.
- Other off-licence types such as supermarkets primarily sell non-alcohol products and could have a one-year time period to reconfigure their premises.

Licensing procedure

24. We support introduction of the minor improvements to licensing as suggested in the Bill (with the notable exception of s.204(5) and s.205(b)(c) and (d)) as follows:

- Removal of requirement to show standing
- Hearings to be conducted without unnecessary formality
- Do not permit those who appear at hearings to question any party or witness; and

- Do not permit cross-examination; and
 - We note S.202(5) already enables hearings to be conducted by phone, audiovisual link, or other remote access facility if that is appropriate and the facilities are available. We note that online hearings should not be the default or sole option (see paragraph 33).
25. **We emphasise that the above changes are entirely inadequate on their own to improve community voice and engagement, or to meaningfully involve Māori in decisions affecting Māori communities.**
26. The barriers to community input in hearings go considerably deeper than the formality of the hearing process. A recent research report into licence hearings and alcohol harms in 8 locations identified:¹¹
- Māori submitters and viewpoints are excluded through the institutional racism in the present system; the process is inappropriate for engaging with Māori and failed to meet Crown responsibilities under Te Tiriti o Waitangi
 - the process is often invisible to most local people; public notification systems are poor
 - the 3-week objection timeframe is hard to meet
 - hearings are held at inaccessible times and locations
 - community input is heavily critiqued and rarely holds weight with decision-makers unless the reporting agencies also object (reinforcing the point that decision-makers see community input as less valuable)
 - Reporting agencies can lack knowledge of local harm or access to relevant local data
 - The burden of gathering evidence and the specialised knowledge required to make a convincing objection is very high
 - a lack of representativeness and local knowledge among DLC members can make it more difficult for residents to make a compelling case.
27. These barriers **impact the safety and accuracy of DLCs decisions** as they reduce its ability to assess local harm. The research found community members who did not know about or attend DLC hearings held vital information about alcohol-related risks in their community that were never raised in the hearings.¹¹
28. In addition, **these barriers maintain inequities.** The time, resourcing, legal support, and specialised knowledge needed to mount a

successful objection in the current process are likely contributors to the oversupply of alcohol in less well-off neighbourhoods.¹¹

29. **We therefore strongly recommend the following changes to (1) facilitate community input, (2) provide for appropriate authority and involvement of Māori in decision making, that gives effect to Te Tiriti, and (3) achieve more accurate and safer decision-making.**

30. **There is considerable inconsistency in DLC and ARLA decision making and understanding of health risk.**

Some inconsistencies reflect practices established under preceding alcohol legislation. For instance, public health agency appeals to the High Court, such as the Lion Liquor Retail case in Wellington, were necessary to reset ARLA's lack of recognition of public health risk and what constitutes valid evidence of risk.¹¹

As noted, the decision-making bodies' lack of understanding of tikanga can exclude Māori and evidence from Māori communities from the licensing process. Likewise, there is evidence of objectors' evidence and knowledge being disregarded following acceptance of legal arguments from industry counsel, suggesting chairs may sometimes be led by skilled and well-resourced advocates.

31. **Therefore, ARLA and DLC appointment processes must be reviewed to ensure members' skills and values are consistent with the Act:**

31.1. **Te Tiriti must be given effect in the appointment process;** for example, local authorities could be required to involve local iwi and hapū in appointments made to DLCs. Discussions could be held with iwi representatives nationally to establish an appropriate pathway for making appointments to ARLA.

31.2. **Criteria for the appointment and make up of a DLC should be reviewed and updated.** These should reflect the object of the Act, the values encapsulated in Te Tiriti and the original purpose of the Act, namely 'the benefit of the community as a whole'.

Representatives should have appropriate skills and knowledge relating to:

- Licensing law
- Tikanga
- Public health risks of alcohol supply

- At least one member who can demonstrate an understanding of the aspirations and challenges in the community in which the decision is being made.

31.3. The Act should require that DLC members and chairs have **no commercial conflict of interest, or any actual or appearance of bias** in the licensing process from the community's point of view.

32. **Systems for notifying applications have failed and must be improved.** The study noted above found 83% of the 155 residents interviewed (in 8 neighbourhoods around Aotearoa) were unaware of a recent licence application in their neighbourhood, despite living within 500m of the premises. We suggest the Bill should:

- 32.1. Require local mailbox drops to notify new licence applications to all properties within 1km of the premises.
- 32.2. Require all local authorities to place application notices on their websites, and to identify appropriate networks popular in their constituent communities where applications should be notified (e.g. a facebook group for the suburb or local area).
- 32.3. Require local authorities to have a system for notification of mana whenua.

33. **Enhanced licence criteria are needed to address the burden placed on community -**

- 33.1. Introduce new licence criteria that remove the burden on community to prove harm and affirm community need and preference for new licences.
- 33.2. Include a rebuttable presumption that increasing availability will generally increase harm in its broadest sense, as defined in the purpose of the Act.
- 33.3. Place the onus of proof on the applicant to show new premises are necessary and desirable in the eyes of the community, including mana whenua, and have a low risk of increasing alcohol related harms and inequities.

34. **Barriers that prevent the public attending licence hearings must be removed**

- 34.1. Increase time limit for objections to 5 weeks after public notification.

- 34.2. A timetable should be provided to community members to support them to attend hearings.
- 34.3. At least one portion of a DLC hearing involving objections from local community members should be held in person in the community concerned, at a time outside work hours e.g. one evening or weekend session.

35. The powers proposed in Section 205 (b) (c) and (d), and S.204 (5) of the Bill undermine community voice and should be removed entirely.

We suggest the need is, therefore, the opposite to s.205 – the Act should note that community knowledge is to be respected and explicitly afforded equivalence to information held by the reporting agencies.

- 35.1. Our primary concern is that these elements defeat the intent of the Bill to listen to community members and improve local decision-making.
- 35.2. Second, they introduce a significant problem by increasing the opportunity for litigation to dismiss community submissions and whether evidence gathered from the local area is reliable.
- 35.3. Third, these powers are unnecessary - section 88 of the Act confers to a DLC “all powers as may be reasonably necessary to enable it to carry out its functions”. As a commission of inquiry it has sufficient capacity to evaluate the reliability of evidence and submissions and call for additional information.
- 35.4. We note: This section appears based on ill-founded concerns that allowing anyone to object will result in a flood of objectors. There are several jurisdictions including UK, Scotland, Ireland, and several Australian states where anyone can object to a licence and little evidence this has caused any problem.
- 35.5. Section 205 promotes the idea that community input is not informed or expert, may be unreliable or vexatious, and that DLCs will need special powers in law to control the input given. Community input is already often ignored or considered anecdotal unless supported by agency data.¹¹
- 35.6. The potential dismissal and further denigration of community input may further reduce the appropriateness of licensing decisions.

References

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- ¹ Hutt M. 1999. Te Iwi Māori me te Inu Waipiro: He Tuhituhinga Hitori: Māori & Alcohol: A History. Wellington: Health Services Research Centre.
- ² World Health Organisation. 2018. Alcohol Fact Sheet 5 February 2018. Retrieved from <http://www.who.int/news-room/fact-sheets/detail/alcohol>
- ³ Ministry of Health. 2022. New Zealand Health Survey: Annual Data Explorer. Online at: <https://minhealthnz.shinyapps.io/nz-health-survey-2021-22-annual-data-explorer>. (accessed: 16 January 2022)
- ⁴ Babor T, Casswell S, Graham K, et al. 2022. Alcohol: No Ordinary Commodity, Research and public policy (3rd edition). Oxford; Oxford University Press.
- ⁵ New Zealand Law Commission. Alcohol in our lives: curbing the harm. 2010. Online at: <http://www.lawcom.govt.nz/>
- ⁶ He Ara Oranga. Report of the Government Inquiry into Mental Health and Addiction. 2018. Online at: <https://mentalhealth.inquiry.govt.nz/inquiry-report/>
- ⁷ Ministry of Justice. Turuki! Turuki! Move together! 2019. Transforming our criminal justice system. The second report of Te Uepū Hāpai i Te Ora Safe and Effective Justice Advisory Group. Wellington. Online at: <https://www.justice.govt.nz/assets/Documents/Publications/turuki-turuki.pdf>
- ⁸ 11. Rātū D. Wai 2624, #1.1.1, 13. 2017. [Internet] 2017 Feb (accessed 2 Feb; 2023). Online at: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_122228675/Wai%202624%2C%201.1.1.pdf
- ⁹ Maynard, K. Te Tiriti o Waitangi and alcohol law. Wellington: Te Hiringa Hauora | Health Promotion Agency; 2022. Available from: <https://www.hpa.org.nz/news/the-place-of-te-tiriti-owaitangi-in-alcohol-law>
- ¹⁰ Connor J, Kydd R, Rehm J, et al. Alcohol-attributable burden of disease and injury in New Zealand: 2004 and 2007. Wellington (NZ): Health Promotion Agency; 2013.
- ¹¹ Randerson S, Gordon L, Casswell S, et al. 2022 “I feel it’s unsafe to walk”: Impacts of alcohol supply on public space in eight neighbourhoods, and residents’ input to alcohol licensing decisions. Wellington: Te Whatu Ora.
- ¹² Connor J, Maclennan B, Huckle T, et al. Changes in the incidence of assault after restrictions on late-night alcohol sales in New Zealand: evaluation of a natural experiment using hospitalization and police data. *Addiction*. 2020; 116, 788–798.
- ¹³ Cameron M, Cochrane W, McNeill K, et al. The impacts of liquor outlets in Manukau City summary report – Revised. Wellington (NZ): Alcohol Advisory Council of New Zealand; 2012.
- ¹⁴ Mathias, S. The alcohol licensing process is broken. Who bears the harm? 2022. The Spinoff. Online at: <https://thespinoff.co.nz/partner/08-11-2022/the-call-to-fix-a-broken-alcohol-licensing-process>
- ¹⁵ Jackson, N. and Robertson, H. 2017. A review of Territorial Authority progress towards Local Alcohol Policy development (2nd edition). Auckland: Alcohol Healthwatch.
- ¹⁶ Kypri K, Maclennan B, Brausch S, et al. Did New Zealand’s new alcohol legislation achieve its object of facilitating public input? Qualitative study of Māori communities. *Drug Alcohol Rev*. 2019;38:331–8.
- ¹⁷ Alcohol Regulatory Licensing Authority. LA. Townill Ltd v Alcohol Wise Hurunui & Ors NZARLA 2021 50. 2021. Online at: https://forms.justice.govt.nz/search/Documents/ARLA/arla_DECN_171597724/ARLA_FULL.pdf