

# **Alcohol Reform Bill**

Government Bill

As reported from the Justice and Electoral  
Committee

## **Commentary**

### **Recommendation**

The Justice and Electoral Committee has examined the Alcohol Reform Bill and recommends that it be passed with the amendments shown.

### **Introduction**

This bill seeks to implement the Government's response to the Law Commission's 2010 report, *Alcohol in Our Lives: Curbing the Harm*. Alcohol has been recognised as the cause of significant social and health-related harm, and is implicated in 30 percent of all police-recorded offences, 34 percent of recorded family violence, and 50 percent of all homicides. ACC estimates that almost a quarter of all claims are alcohol-related, as are up to 70 percent of emergency department presentations for injury.

This bill has five policy objectives:

- to reduce excessive drinking by adults and young people
- to reduce the harm caused by alcohol use, including crime, disorder, public nuisance, and negative public health outcomes

- to support the safe and responsible sale, supply and consumption of alcohol
- to improve community input into local alcohol licensing decisions
- to improve the operation of the alcohol licensing system.

The bill is intended to repeal and replace the Sale of Liquor Act 1989, and amend the Summary Offences Act 1981, the Children, Young Persons, and Their Families Act 1989, and the Local Government Act 2002.

The key measures proposed in the bill would affect the licensing system, the legal alcohol purchase age, the supply of alcohol to under 18-year-olds by parents or guardians, the promotion of alcohol, the consumption of alcohol in public places, the controls on alcoholic products, and the way alcohol-related offences are enforced.

### **Our consideration and the structure of this commentary**

We understand that the provisions relating to the age of purchase will be subject to a conscience vote for members. We begin by setting out only the major issues raised during the hearings of evidence on that particular issue. We then discuss the amendments we have recommended to the bill with the view to making it an effective piece of legislation.

This commentary addresses the significant changes we recommend to the bill; changes of a minor or technical nature have not been included.

### **Minimum age of purchase**

The bill proposes to introduce a split minimum age of purchase, which would allow people aged 18 years and older to purchase alcohol for consumption on licensed premises, but restrict the sale of alcohol from off-licenses to people aged 20 and older.

### **Arguments in favour of the split age provision**

Support for the split age provision is generally based on concern about the way young people drink, and a belief that the lowering of the purchase age to 18 in 1999 has allowed young people to drink

large amounts of alcohol more readily in unsafe and uncontrolled environments.

We heard that since the lowering of the purchase age the number of alcohol-related traffic crashes involving young adults has increased, along with prosecutions of teenagers for disorder offences. We heard that hospital departments were treating more young people, particularly young women, for intoxication. We heard claims that drinking by 14–18-year-olds in general has increased since the lowering of the purchase age. It was argued that preventing older teenagers from purchasing alcohol at off-licenses would make it harder for them to supply younger friends or family members with alcohol.

We also heard accounts of young people “preloading”—drinking large amounts of alcohol at home or at a party—and turning up at bars in an already intoxicated state. It was argued that this practice could be lessened by preventing 18- and 19-year-olds from buying alcohol at off-licenses, while still allowing them to drink in a more controlled environment, such as a bar or a night club.

### **Arguments against the split age provision**

We also heard arguments for the age of purchase to be raised to 20 across the board, in line with the Law Commission’s recommendation.

It was suggested that the split-age provision would be confusing for the public and do little to address alcohol-related harm; that it would incur compliance issues, for example in on-licensed premises which also have off-licenses on site; and that it would create confusion for staff and customers.

The argument was also advanced that most adult privileges and responsibilities, such as the rights to vote, marry without parental consent, and stand in elections, are gained upon reaching the age of 18; that it was illogical to permit 18-year-olds to do all these things, but not allow them to buy alcohol at off-licensed premises.

It was argued that raising the purchase age was an arbitrary measure for which there was no evidence, and that there was no comparative evidence relating the age of purchase to the degree of associated harm. And it was pointed out that 18 was the most common alcohol purchase age in OECD nations.

Finally, we heard it argued that the issue is that the current law is not being properly enforced.

## **Supermarkets and grocery stores**

### **Definitions**

We recommend amending the definitions in clause 5 of food retailers eligible to obtain an off-licence. We believe that the use of the terms “supermarket”, “grocery shop”, and “grocery store” is confusing and complicates the legislation. Therefore we recommend that the term “grocery shop” be removed from clause 5 and replaced with the term “grocery store”.

We recommend inserting new clause 35A in order to redefine a “grocery store” as premises which sell various food products and other household items but whose primary business is the sale of food products.

New clause 35A(1) would define food product to exclude alcohol, confectionary, beverages sold in volumes of one litre or less (excluding milk), snack food, and ready-to-eat prepared food. This definition of food products would make the “main order household foodstuff requirements” definition redundant, and we recommend that it be deleted from clause 5.

We recommend that the definition of supermarket be separated out from that of grocery store in clause 5, in order to differentiate more clearly between the two types of retailers. We recommend that the same separation be effected in clause 35(1). New clause 35A(1) would also provide a definition of grocery stores.

### **Regulation of stores**

We recommend inserting new clause 105A which would require supermarkets and grocery stores to display alcohol in only one area of the store. This clause also stipulates that the alcohol display area must not be in a prominent area of the store, and would restrict alcohol advertising and promotions to that designated area.

We also recommend that the term “convenience store” be added to the list of businesses in clause 38 which are ineligible for an off-licence. This would ensure that the bill properly captured all the kinds of store intended to be ineligible for an off-licence.

We also recommend deleting clause 6(2) from the bill as we believe that the provisions of this clause, which sets a test for determining whether a store should be considered a grocery store, are too complex and would not have the intended effect. To ensure the bill is easy to use we recommend that the rest of clause 6 be incorporated into subclause 2 of new clause 35A, placing it near other clauses which deal with eligibility for off-licences.

### **Pricing information**

We recommend inserting new clauses 382(1)(ba), 382(1)(bb) and 382(2) into the bill to ensure that information essential to work on the possibility of a minimum pricing regime continues to be available. Clause 382(1)(ba) would require the alcohol industry to provide the Government, free of charge, with specified information on the price and quantity of alcohol sold. New clause 382(1)(bb) would also allow the prescribed information to be set out in regulations made by Order in Council on the recommendation of the Minister of Justice. Clause 382(2) would create an offence of failing to provide the stated information, punishable with a fine not exceeding \$20,000.

### **Irresponsible promotion of alcohol**

We recommend amending clause 220, which regulates the irresponsible promotion of alcohol, in order to ensure it captures correctly the intended types of promotion. We recommend that the definition of irresponsible promotion in subclause (1)(a) be amended to include the words “or is likely to encourage”. This would ensure that the bill did not weaken the current provisions governing the irresponsible promotion of alcohol.

We also recommend inserting replacement subclauses (1)(b) and (ba) in order to make it clear that the offence of advertising or promoting discounts on alcohol of 25 percent or more below the ordinary price would apply to all types of licensed premises. New subclause (1)(ba)(ii) would stipulate that any discount captured by this provision which was on display within licensed premises must not be visible from outside the premises concerned. Replacement subclause (1)(b) would also make it clear that the advertising provisions did not apply to businesses which operated through a remote sales channel, such as mail order catalogues or websites, provided that the remote

sale channel was the primary point of contact for the customer, and that contact was initiated by the customer.

We recommend that subclause (1)(c) be amended to clarify that advertising complimentary samples of alcohol which are to be consumed on the premises concerned would not be considered an offence under this subclause, and that a licensed business would be permitted to advertise or promote free alcohol on its premises.

We also recommend inserting new clause 220(1A) to clarify that subclause (1)(d) would not apply to loyalty programmes that offer reward points or discounts, unless those points or discounts could be claimed only on alcohol.

### **Local alcohol policies**

We recommend that clause 77(3) be amended so that no matters other than licensing matters could be included in a Local Alcohol Policy (LAP). Clause 77(3) as introduced would allow non-licensing matters to be included in an LAP. Such matters in an LAP would not be enforceable; and without the clause territorial authorities would still be able to deal with such matters through other legislation, for example the by-law making powers in the Local Government Act 2002 (LGA). However we recommend amending clause 77(1) to ensure that local communities could set recommended discretionary conditions for licensed premises in their region.

We recommend that clause 79(1)(c) be deleted, as we do not believe considering an area's socio-economic status to be necessary to assess the impact of alcohol on a local community when developing an LAP.

We recommend inserting new clause 86B to clarify that the regulations disallowance process would apply only to the trading hours and one-way-door aspects of an LAP. We are aware of concern that LAP provisions are likely to be considered to have significant legislative effect and could be subject to the Regulations (Disallowance) Act 1989. This could result in LAPs being overturned by Parliament, and would undermine the ability of local government to make provisions relevant to their communities. Therefore we recommend that only the trading hours and one-way-door elements of LAPs be subject to the disallowance process, as they override the default provisions of the bill.

We also recommend inserting new clause 77A, which would require a territorial authority to have regard to the objectives and policies of their district plan when developing an LAP. In the bill as introduced clause 88 would allow an LAP to be more restrictive than the relevant district plan. We do not believe it necessary for LAPs to be entirely consistent with district plans, as they deal with different areas of concern. However, we do not consider it desirable for territorial authorities to have clashing policies. We therefore recommend requiring that where a conflict arises it be taken into consideration in drafting an LAP.

We recommend amending clause 85 to allow the Alcohol Regulatory and Licensing Authority to reach a decision on an amended LAP without having to hold further public hearings. This change would ensure the LAP approval process was not subject to continual appeals against resubmitted LAPs. The licensing authority would still retain the discretion to hold a public hearing if it considered this necessary, and would be required to have regard to the issues raised in the initial appeal when coming to a decision on an amended LAP.

We also recommend amending clause 87, which sets out when an LAP comes into force, to include provisions relating to the commencement of one-way door policies. This change would ensure that one-way door policies imposed by an LAP were applied evenly to all licensed premises at the same time. We recommend further changes to clause 87(2) to remove the three-month transition period for opening hours or one-way-door conditions if they are the same as those in the previous LAP, to ensure continuity of operating conditions. We also recommend inserting new clause 50A to require licensees to comply with a one-way-door condition imposed either through an LAP or as a condition of a licence. This subclause would also make it clear that a more restrictive one-way-door policy imposed as a licence condition would take precedence over such a condition imposed by an LAP.

We recommend inserting new subclause (4) into clause 87, to require a territorial authority to give all licensees notice of changes to opening hours or the introduction of a one-way-door policy introduced by an LAP. Notice of these changes and the date on which the changes came into force would have to be provided to the licensees as soon as practicable.

We recommend inserting replacement clause 92, which would require a territorial authority to undertake a consultative review of an LAP every six years. We believe regular reviews would be a sensible measure to ensure that an LAP meets the needs of a community; however we do not believe it necessary for an LAP to expire every six years as proposed in the bill as introduced.

We also recommend inserting new clause 91(2) to ensure that any revocation and replacement of an LAP would be carried out using the process set out in the bill, and in a way consistent with the LAP adoption process.

### **Liquor bans**

We recommend amending clause 402, which would amend the LGA, to remove the criteria in proposed new section 147A(2) for continuing an alcohol control bylaw. Instead we recommend that new section 147A(2) be replaced with new section 147A(3) to require territorial authorities to be satisfied that the high levels of disorder or crime that justified making the bylaw in the first place will arise if the bylaw were lifted.

We also recommend that new section 147A(1), also in clause 402, be amended to state with greater clarity that a territorial authority must be satisfied that the criteria set out in section 147A(1) have been met before a bylaw can be applied to any specified public place or period of time.

We are aware that territorial authorities have from time to time made bylaws for one-off events such as concerts to avoid a high risk of harm from the excessive consumption of alcohol. As it is unlikely the criteria in 147A(1)(b) would be met we recommend that new section 147A(1) require that a territorial authority intending to apply temporary liquor bans for one-off events be satisfied only that the bylaw could be justified as a reasonable limitation on people's rights and freedoms.

We recommend deleting clause 404 in the bill as introduced and moving new section 169A of the LGA into clause 403. We also recommend that new section 169A be amended to make it consistent with the New Zealand Bill of Rights Act 1990. As introduced, this clause would create a reverse onus of proof by requiring people contesting an allegation of a liquor ban breach to prove that the liquor seized

was not alcohol. This clause was criticised as unjustifiable by the Attorney-General, and we recommend amending it so that section 169A(3) would not apply if the defendant gave at least 20 working days written notice of their intention to contest the allegation that the substance in their possession was alcohol. This would require the police to prove, beyond reasonable doubt, that the liquid was alcohol, in order to prove the guilt of the accused.

We also recommend amending clause 408, which would insert new section 245A into the LGA. As introduced this clause would allow enforcement officers to require a person suspected of breaching a liquor ban to provide their name and address and those of any other people connected with the alleged offence. We consider that this provision may breach the Bill of Rights Act, and therefore recommend that new section 245A(b) be deleted. We also recommend that new section 245A(a) be amended to allow police to obtain the date of birth of a person suspected of breaching a liquor ban, in the interests of helping police to identify people accurately.

### **Exemptions for Police, Defence Force, and Fire Service canteens**

We recommend amending clause 14 of the bill, which provides an exemption for Police, Defence Force, and Fire Service messes and canteens to hold a licence to sell and supply alcohol. We recommend inserting new subclause 14(2) which would require the Commissioner of Police, the Chief of Defence Force, and the Chief Executive of the New Zealand Fire Service to ensure that canteens operated by their respective services were run under guidelines and codes of practice following as closely as possible the rules and restrictions which apply to clubs under the bill. For the purposes of clarity new clause 14(3) defines the types of premises that would fall under the jurisdiction of the various service heads.

### **Regulation making powers**

The Regulations Review Committee expressed concern that the reasons and justifications for the exemption-making powers in clauses 385(1)(d) and (g) were not clear. We considered this matter carefully and are satisfied that the provisions, which would grant licensing fee waivers in certain circumstances, are justified. However we recom-

mend that these subclauses be amended to state more precisely the circumstances in which the regulations might permit a waiver or refund of fees.

We also recommend amending clause 385(1)(a)(i) to state that territorial authorities may recover the costs of inspectors and enforcement activities through fees, and amending 385(1)(b)(v) to clarify that the previous conduct to be considered when setting fees would include the conduct of a licensee at both the premises that the application relates to and any previous premises where they have operated.

We recommend inserting new clause 272A to allow licences to be suspended if payment of the relevant licensing fee is more than 30 days late, and to allow the suspension to continue until all fees and penalties have been paid.

### **Provision of low-alcohol beverages and water**

We recommend amending clause 52 to make provision for exempting the holder of an on-licence from the requirement to sell low-alcohol beverages if the licence application is for premises that sell only the licensee's own range of alcoholic beverages, which does not include low-alcohol products. This change would ensure that wineries that run restaurants selling their own ranges of wine could continue operating without having to stock low-alcohol beverages, unless they produce such products themselves.

We recommend deleting clause 56 to remove the requirement that free drinking water be made available in every room and outdoor area of on-licensed premises. We were concerned that this requirement could increase the risk of contamination or drink spiking. Instead we recommend inserting new clause 106(1)A(c), to require the District Licensing Committee or the Alcohol Regulatory and Licensing Authority to specify, as a licence condition, where water must be freely available on the premises. We also recommend inserting a definition of *freely available to customers* in relation to water into clause 5.

### **District Licensing Committees**

We recommend amending clause 177 to specify more precisely that a territorial authority member on a District Licensing Committee must be an elected member of that authority. This amendment would also

ensure that Auckland Council local board members were eligible for appointment to District Licensing Committees.

We recommend amending clause 179 by deleting subclause 6 and stating more precisely in replacement subclause 5 the classes of people who would be ineligible for membership of such a committee. Under the bill as introduced a family relationship with a person in the alcohol industry would render a person ineligible for membership. We believe that this could be considered discriminatory, and recommend amending the clause to exclude a person who “could not perform his or her duties without actual bias or the appearance of bias”.

We recommend amending clause 194 to require all decisions on liquor licence applications to state what reports were received on the suitability of the application and the view taken by the decision-maker on each of the reports regarding the application. This would ensure that the evidence and advice considered by the decision-maker were in the public domain.

### **Licensing application criteria**

We recommend inserting new clause 100(2) in order to carry over a provision from the Sale of Liquor Act which prohibits the licensing decision-maker from considering the potential effect of a licence on the business of another licence holder. We do not believe that businesses should be able to use the licensing process to block potential competitors.

### **Licensing considerations**

We recommend deleting clause 7 and replacing it with new clause 100A, which deals with the consideration of the effect on the amenity and good order of a locality of issuing or renewing a liquor licence. Clause 100A(1)(b) would require the decision-maker on an application for a new liquor licence to consider the impact of the proposed licensed premises on neighbouring land and the compatibility of such premises with the use of that land.

To protect existing licence holders, we recommend including clause 100A(2), which would require the decision-maker to have regard to current and possible noise, and nuisance and vandalism in determining whether to renew a licence. Decision-makers would not have to

consider the purposes for which the land near the premises was used. This would ensure that existing licence holders were not penalised as a result of changes to land use in the area which occurred during the term of their licence.

New clause 100A would remove clauses 7(2)(a),(b), and (e), and thus the requirement to consider the availability of car-parking facilities, the current and possible density and movements of traffic, and the harmony of the environment from the decision-making process. However clause 100A(1) would require the decision-maker to assess the current and possible noise in the area, and the current and possible incidence of nuisance and vandalism when deciding a liquor licence application. We consider that these criteria would reflect the intent of the bill more accurately; and that issues such as car parking would be dealt with more appropriately under the Resource Management Act 1991.

### **Trading hours**

We recommend amending clause 238 to allow people to be on licensed premises outside of the licensed hours in order to allow the premises to open for breakfast service. This change would permit the sale only of food and non-alcoholic beverages, and no alcohol could be served until the premises' licensed trading hours began. To ensure a reasonable period between the last sales of alcohol and premises opening for breakfast service, we recommend that this provision apply from 6 am, ensuring a gap of two hours from the default national closing time of 4 am.

We also recommend amending clause 135(o) to allow any reasonable condition not inconsistent with the Act to be placed on special licences. A special licence would be available only for a particular event or series of events, such as international sports events or champagne breakfast functions, and is not intended to be a means of allowing licensees to operate regularly outside of the maximum hours.

### **Manager's certificates**

We recommend amending clause 200, to require the holder of a manager's certificate to be aged at least 20 years. Current practise by the Liquor Licensing Authority is to require an applicant for a manager's certificate to be aged at least 18 years. We consider 20 to be an appro-

appropriate minimum age for manager's certificate holders and this change would ensure consistency across the country.

However we recommend inserting new clause 200(2) so that holders of manager's certificates who are aged under 20 when the bill is passed can continue to hold and work under the terms of their certificates. This would ensure that no one was unfairly penalised by the change to the law.

We recommend amending clause 393 so that a general manager's certificate issued under the Sale of Liquor Act would remain in force until its stated expiry date, at which point it could be renewed in accordance with the bill's provisions. This change would ensure that general manager's certificate holders were subject to the same transitional provisions as club manager's certificate holders.

### **Penalties for repeated non-compliance**

We recommend that clause 273 be deleted and replaced, as we believe the clause as introduced could create an undesirable blurring of the distinction between criminal and civil processes. We recommend inserting replacement clause 273, which specifically describes the types of behaviour that would be considered holdings giving rise to cancellation of a licence or a manager's certificate under clauses 274 and 275.

### **Remote sales**

We recommend amending clause 35(1) by inserting new subclause (ba) so that businesses which only sell alcohol remotely, for example over the internet or by mail order, could obtain an off-licence without being required to have a physical retail premises.

We also recommend that the signage requirements for licensed premises and the licence display requirements in clause 58(1) be amended to accommodate remote sales businesses.

### **Types of alcohol to be sold**

Replacement clause 59 would align the definitions of beer, wine, and mead with those applicable under the Food Act 1981. This would ensure consistency between the various areas of the law which regulate alcoholic beverages, and clarify which products supermarkets could

stock. As the food standard differentiates between wines made from grapes and those made from fruit or vegetables, we also recommend inserting the food standard definition of fruit and vegetable wine into clause 59, to ensure the bill captures all types of wines. We also recommend inserting a definition of wine into clause 5 to align it with new clause 59.

### **Labour Party minority view**

The most in-depth inquiry into New Zealand's alcohol laws was instigated by Labour. Labour referred the task of examining and evaluating the current laws and policies relating to the sale and consumption of liquor in New Zealand and formulating a revised policy framework to the Law Commission. It had been 24 years since the last full review of New Zealand's alcohol laws, so broad terms of reference for the inquiry were adopted.

Given the former Labour Government's role in pursuing comprehensive alcohol reform, the current Labour members of the committee are disappointed that this bill fails to address the evidence that the Law Commission presented to the Government in its report, *Alcohol in Our Lives: Curbing the Harm*. As part of the process of pulling together this report, three thousand New Zealanders made their views known to the commission, resulting in one of the most extensive inquiries undertaken by any New Zealand Government. It is therefore concerning that so much of the evidence and so many of the recommendations have been ignored.

Despite our reservations, we supported sending the bill to the Justice and Electoral Committee, so that submissions from the interested communities, organisations, and individuals can be heard. Many of the submitters articulated a concern that this bill fails to take advantage of the once-in-a-generation opportunity to address the excessive drinking in our society and the subsequent impact this can have on our families, justice system, health system, and even our productivity levels.

Labour members of the committee will be supporting this bill despite having major reservations about the bill's failures to address key issues. We will be seeking to raise our concerns during the com-

mittee stages of the bill with particular reference to the following areas:

- lack of minimum pricing leading to availability of extremely inexpensive alcohol
- commercialisation of alcohol as an ordinary commodity making it readily accessible
- lack of restrictions regarding advertising and marketing
- failure to lower the blood alcohol level allowable when driving
- focus on the purchase age of alcohol
- failure to address foetal alcohol syndrome
- failure to address treatment options.

Each of the areas of concern is discussed in more detail throughout this report.

### **Minimum pricing**

Labour members of the committee agree that those who drink responsibly should not be penalised because of those who engage in unsafe and irresponsible drinking. However Labour members of the committee agree with the Law Commission that there is a relationship between the price of alcohol and the consumption of it.

Extensive research shows that affordability of certain types of alcohol has improved over the years and in some cases the prices have not increased over a period of 20 years despite inflation. Concern was expressed by numerous submitters about the extremely low-priced drinks and the way in which these would appeal to young people and heavy drinkers. The establishment of minimum prices for alcohol products is a mechanism to stop heavy discounting, possibly to below cost.

Labour members of the committee believe that the introduction of minimum pricing per standard drink would have a very limited impact on those who do drink safely and responsibly.

Minimum pricing implemented at the point of sale by the retailer (not the producer) is the preference of the Labour members of this committee. Minimum pricing is preferred because it ensures an increase to the retail price of extremely cheap alcohol, whereas the cost of increasing excise tax can be absorbed by either the retailer or producer without increasing the retail price.

**Availability**

The bill does address some of the issues that communities face with regard to licensing of premises and trading hours. However, Labour members of the committee would have liked to have seen the national default trading hours of off-license premises be reduced further.

The evidence has shown that people purchasing alcohol later in the evening are more likely to have been drinking beforehand and may not have the judgment and self-control required to make cogent decisions. This would warrant an earlier default closing hour than the proposed 11 pm.

We agree with the many submitters who wanted a later opening hour than 7 am for off-licences. We also agreed with submitters who recommended that off-licences should not open prior to school commencement.

While Labour members of the committee agree that communities should have a greater say with regard to sale of alcohol, we have some concerns about the inconsistencies in trading hours and therefore availability between neighbouring communities. This could lead to pockets of alcohol-related activity burdening certain communities more than others.

**Advertising and sponsorship**

Ninety four percent of the submitters to the select committee wanted greater restrictions on advertising. Of those that commented on sponsorship, 79 percent advocated a complete ban on sponsorship. While there is considerable lobbying against the Health Sponsorship Council model, Labour members of the committee believe that the three-stage plan proposed by the Law Commission is something that the Committee should have considered.

The purpose of advertising is to present the product in an attractive light and increase the consumption of that product. The select committee has chosen to adopt the views of those who have a vested interest that increase rather than of those who have an interest in promoting our public health and reducing crime and harm to the community. Despite the growing evidence that alcohol advertising increases the likelihood that young people will start drinking or that they will drink more if they already drink, the Government has decided as with

minimum pricing and the legal alcohol level for driving to kick this issue into touch and refer it to an “expert forum”.

### **Legal alcohol limit–driving**

While the Government considered the problem of drink driving in another select committee, and despite all the evidence showing that the blood alcohol level needs to be reduced to at least 50mg per 100ml of blood, they have failed to deal with this issue. There is broad public support for this change and the failure of this bill to address the role of alcohol in one-third of New Zealand’s death tolls on the roads is a disgrace. Drivers in New Zealand are able to drive on our roads while having one of the highest blood alcohol levels in the western world. The Government’s response of undertaking further research is merely a device to disguise inaction.

### **Purchasing age**

Much of the media focus on the Alcohol Reform Bill has been on the purchasing age for alcohol. Labour members of the committee do not believe it is the most effective medium to address the problems with alcohol consumption. The Bill proposes a split purchase age–18 years for licensed premises and 20 years for off-license premises. We were impressed by evidence from the medical profession about the harm to brain development caused by alcohol from the impact on the developing foetus through to young adults, with some evidence saying that this harm continues through to the early twenties while the brain is still developing. It seems clear that the earlier a young person starts drinking the greater the harm. Given our legislation relates to a purchase age rather than a drinking age there are changes that are needed to improve understanding of this harm to young people through better information to parents and through schools.

### **Other matters**

The Alcohol Reform Bill does not pick up all of the recommendations of the Law Commission report. Submitters however submitted in significant numbers on matters outside the bill but of significance in dealing with alcohol harm.

One such issue was Foetal Alcohol Spectrum Disorder (FASD) where many moving submissions were made about what has been described

as the leading cause of non-genetic intellectual disability in the western world. The true extent of the problem in New Zealand is unknown but a conservative estimate is given by Alcohol Healthwatch as an incidence of 3 per 1,000 live births. What is clear is that FASD is associated with irreversible damage to neural development and leads to lifelong consequences for the individual, their family, and society. Using a prevalence rate of 3 cases per 1,000 live births, these cases would conservatively be costing New Zealand taxpayers an extra \$3.46 million per annum. Labour members of the committee believe that the issue of FASD is a serious one warranting greater focus of health officials, perhaps in conjunction with general practitioners, midwives, Plunket nurses, and others providing contraceptive advice. Furthermore we consider that there is a need to develop national definitions and diagnostic criteria.

Although delivery of treatment for alcohol addiction falls outside the scope of this bill, Labour members of the committee believe it is important to recognise that improving and increasing access to treatment opportunities is vital if the measures introduced in this legislation are to be successful. Waiting times for treatment must be reduced. The very nature of addiction means people seeking treatment are more likely to turn down treatment if it is not immediately available.

### **Labelling**

Labour members of the committee note the submitters who raised the issue of warning labels and nutritional information panels. We believe the appropriate way to progress this issue is on a Trans-Tasman basis following the outcome of work on the Food Labelling Review. Health warnings about FASD need to be considered as part of this work.

### **Conclusion**

It is asserted that alcohol may contribute to the 22 percent of the ACC claims and alcohol was involved in 30 percent of all recorded offences. The volume of alcohol available to New Zealanders is increasing with an increase of 5.5 percent in the last year alone. Alcohol harm is significant not only in terms of the harm to the drinker but also harm caused to others as a result of their drinking. This bill

does not take into consideration the myriad of factors that have resulted in the need for reform in alcohol laws. This bill makes minor improvements in the current regime and Labour will support the bill because the changes are small but a necessary step towards reform. However, Labour believes strongly that a historic opportunity to address the problems that alcohol contributes has been lost.

### **Green Party minority view**

The Green Party is disappointed that the bill fails to address the issues of price and the advertising and sponsorship of alcohol, even though these are widely acknowledged to be the underlying drivers of our entrenched drinking culture.

Submitter after submitter told us that price is the single most important issue in reducing our binge drinking culture. Many pointed out that alcohol is sold so cheaply in supermarkets that bars, and even liquor outlets, can buy alcohol more cheaply from a supermarket than they can from a wholesaler.

Regrettably the bill does nothing to stop supermarkets from engaging in the predatory practice of selling alcohol at ridiculously cheap, below-cost prices, to lure customers, especially young customers, into their stores.

Cheap alcohol encourages people to drink more often and in large amounts. In our view we will never reduce our binge drinking culture if we allow alcohol to be sold so cheaply that young people can load up on alcohol for binge drinking sessions every weekend.

The Government has acknowledged that increasing the price of tobacco has been an effective strategy in reducing the number of smokers. We cannot understand why we would not extend the same effective strategy to reduce the numbers of heavy drinkers.

While we welcome the proposed amendment that will require the alcohol industry to provide the Government, free of charge, with information on the price and quantity of alcohol sold, we believe the bill should go further and introduce a minimum price per standard drink of alcohol, as a way of preventing the heavy discounting of alcohol, especially by supermarkets.

Most submitters wanted the legislation to address advertising and sponsorship of alcohol. In our view it is extraordinary that we have allowed a legalised drug to be heavily marketed and advertised, in-

cluding to teenagers and young people. Alcohol advertising glamorises and normalises alcohol and acts as a powerful recruiter of young drinkers. It also links the rites of passage for young people to the consumption of alcohol and creates enormous peer pressure to drink. It is so prevalent that 90 percent of children are exposed to alcohol advertising on television every week, so it is hardly surprising that there is intense peer-group pressure on teenagers to drink.

We do not believe we will reduce our binge drinking culture if we allow the saturation advertising and sponsorship of alcohol to continue unabated. We were told that the alcohol industry is second only to the gambling industry in its spend on advertising. That is why we want to see a tobacco-style prohibition of all alcohol advertising across all media, and a phasing out of alcohol advertising or sponsorship of sporting and cultural events.

We have no confidence, either, in the self-regulatory system for alcohol advertising.

We believe the failure to address the issues of alcohol advertising seriously weakens this bill, and the impact it will have. We assume the failure of the bill to address the issue of advertising and price is because of the pressure from vested interests in the hospitality, food, liquor and advertising industries.

In our view this bill targets young people in a politically expedient way, when 92 percent of heavy drinkers are 20 and above. We believe it is very easy to divert the issue into a debate about the drinking age when the problems of binge drinking affect every age group in New Zealand.

We are also concerned that the bill does nothing to address the very serious public health issue that 500 babies are born every year with foetal alcohol syndrome. In our view, it would be utterly irresponsible not to introduce mandatory labels that warn that alcohol can cause foetal alcohol syndrome, as part of a wider campaign to warn women, and especially young women, of the risks of drinking while pregnant.

We strongly favour generic warning labels on alcohol, and nutritional information panels on alcohol. We note that all non-alcoholic drinks are required to have nutrition labels, and cannot see any good reason why the same rules should not apply to alcoholic drinks.

We find it almost incomprehensible that the legislation does not propose lowering the drink-driving limit, but rather allows people to drive around intoxicated.

Finally we are concerned at the heavy-handed provisions that give the police excessive powers to arrest people without a warrant—provisions that infringe on the basic civil and political rights of our democracy such as the right against arbitrary arrest and the right to a presumption of innocence.

We will, nevertheless, support this bill because we support many of its provisions, such as local alcohol plans, requiring supermarkets to display alcohol in only one section of their stores. Our concern is that the bill does not go far enough, and fails to include many of the key recommendations of the Law Commission in its report *Alcohol in Our Lives: Curbing the Harm*.

We will be seeking to amend it at the committee stages of its consideration in the House.

## **Appendix**

### **Committee process**

The Alcohol Reform Bill was referred to the committee on 11 November 2010. The closing date for submissions was 18 February 2011. We received and considered 1,647 submissions and 7,175 form submissions from interested groups and individuals. We heard 352 submissions, which included holding hearings in Auckland and Dunedin. We also held three public forums on the bill in Auckland, Wellington and Dunedin.

We received advice from the Ministry of Justice, the New Zealand Police, the Ministry of Health, and the Department of Internal Affairs. The Regulations Review Committee reported to the committee on the powers contained in clause 385.

### **Committee membership**

Chester Borrowes (Chairperson)

Amy Adams

Kanwaljit Singh Bakshi

Carol Beaumont

Simon Bridges

Charles Chauvel

Dr Kennedy Graham

Paul Quinn

Carmel Sepuloni

Sue Kedgley replaced Dr Kennedy Graham for this item of business.

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Simon Power*

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Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Alcohol Reform Act **2010**.
- 2 Commencement**
  - (1) **Sections 3, 4, 6, 7, 100, 120, 130, 389, 390, and 399(2)** come into force on the day 6 months after the date on which this Act receives the Royal assent. 5
  - (2) **Sections 9 to 59, 60 (except subsection (3)), 61 to 99, 101 to 119, 121 to 129, 131 to 157, 174 to 398, 399(3), and 400 to 416, and the Schedules,** come into force on

the day 12 months after the date on which this Act receives the Royal assent.

(2A) **Section 60(3)** comes into force on a date appointed by the Governor-General by Order in Council.

(3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 5

## Part 1 Preliminary matters

### 3 Purpose

(1) The purpose of **Parts 1 to 8 and the Schedules of** this Act is, for the benefit of the community as a whole,— 10

(a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in **subsection (2)**; and

(b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act. 15

(2) The characteristics of the new system are that—

(a) it is reasonable; and

(b) its administration helps to achieve the object of this Act. 20

### 4 Object

(1) The object of this Act is that—

(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised. 25

(2) For the purposes of **subsection (1)**, the harm caused by the excessive or inappropriate consumption of alcohol includes—

(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and 30

(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, dis- 35

orderly behaviour, illness, or injury of a kind described in **paragraph (a)**.

## 5 Interpretation

(1) In this Act, unless the context otherwise requires,—

**airport bar** means premises that— 5

- (a) are within or attached to an airport; and
- (b) are used or intended to be used in the course of business principally for selling or supplying alcohol to air travellers arriving at or departing from the airport

**alcohol**— 10

- (a) means a fermented, distilled, or spirituous liquor that at 20°C is found on analysis to contain 1.15% or more ethanol by volume; and
- (b) includes a frozen liquid, or a mixture of a frozen liquid and another substance or substances, that is alcohol when completely thawed to 20°C 15

**alcohol-inclusive matter** means any of the following:

- (a) entry into any premises where alcohol is or is to be supplied free:
- (b) participation in or presence at or during any event, activity, or function held or to be held on any premises where alcohol is or is to be supplied free: 20
- (c) carriage on, or participation in or presence at or during any event, activity, or function held or to be held on, a conveyance where alcohol is or is to be supplied free 25

**alcohol-related harm**—

(a) means the harm caused by the excessive or inappropriate consumption of alcohol; and

(b) includes—

(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and 30

(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, 35

death, disease, disorderly behaviour, illness, or injury of a kind described in **paragraph (a)**

**amenity and good order of the locality**, in relation to an application for or for the renewal of a licence, means the extent to which, and ways in which, the locality in which the premises concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable 5

**any relevant local alcohol policy**, in relation to any premises, a licence for any premises, or an application for a licence for any premises, at any time, means those elements (if any) of any local alcohol policy then in force that relate to the part of the district where the premises are 10

**approved evidence of age document—**

(a) means a document of a kind approved by regulations made under this Act for the purposes of this definition; and 15

(b) in relation to a person, means an evidence of age document relating to the person

**approved evidence of age system** means a system of a kind approved by regulations made under this Act for the purposes of this definition; and **using an approved evidence of age system in the approved manner** means using an approved evidence of age system in the manner approved for it by the regulations that approved the system 20 25

**approved financial reporting standard** has the meaning given by section 2(1) of the Financial Reporting Act 1993

**banned alcohol product** means a product—

- (a) declared by regulations made under this Act to be a banned product; or 30
- (b) of a kind declared by regulations made under this Act to be banned products

**bar**, in relation to a hotel or tavern, means a part of the hotel or tavern used principally or exclusively for ~~consuming, selling, or supplying~~, the sale or consumption of alcohol 35

**beer—**

- (a) ~~means the product, characterised by the presence of hops or preparations of hops, prepared by the complete~~

- or partial yeast fermentation of an aqueous extract of malted or unmalted cereals, or both; and
- (b) includes ale, lager, pilsener, porter, and stout
- building code** has the meaning given by section 7 of the Building Act 2004 5
- chief executive** means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- club** means a body that—
- (a) is a body corporate having as its object (or as one of its objects) participating in or promoting a sport or other recreational activity, otherwise than for gain; or 10
- (b) ~~is some other voluntary association of people (whether incorporated or not) combined for a purpose other than gain; or~~ 15
- (b) is a body corporate whose object is not (or none of whose objects is) gain; or
- (c) holds permanent club charter
- community trust** means a trust—
- (a) established under **section 342** of this Act or section 20 219G of the Sale of Liquor Act 1989; or
- (b) resulting from the amalgamation of 2 or more community trusts under **section 336(2)** of this Act or section 219Z of the Sale of Liquor Act 1989
- company** has the meaning given by section 2(1) of the Companies Act 1993 25
- company** means a body corporate—
- (a) registered under Part 2 or Part 18 of the Companies Act 1993; or
- (b) reregistered under that Act in accordance with the Companies Reregistration Act 1993 30
- condition**, in relation to a licence, includes the designation (under this Act or a former licensing Act) of an area of the premises as—
- (a) an area to which minors must not be admitted; 35
- (b) an area to which minors must not be admitted unless accompanied by a parent or guardian

**conveyance—**

- (a) means an aircraft, coach, ferry, hovercraft, ship, train, or other vehicle, used to transport people; and
- (b) includes part of a conveyance

**deliver**, in relation to any alcohol, includes arrange for it to be delivered 5

**distil** includes produce by fractional thawing

**district**, in relation to a territorial authority, has the meaning given by section 5(1) of the Local Government Act 2002

**elector** has the same meaning as in section 5(1) of the Local Electoral Act 2001 10

**electoral officer** has the same meaning as in section 5(1) of the Local Electoral Act 2001

**event** includes an occasion and a gathering, and any of a series of events 15

**evidence of age document—**

- (a) means a document of a kind described by regulations made under this Act for the purposes of this definition; and
- (b) in relation to a person, means an evidence of age document relating to the person 20

**exempt person**, in relation to licensed premises to whose licence a one-way door restriction applies,—

- (a) means a person who—
  - (i) is the licensee; or 25
  - (ii) is the licensee's spouse, civil union partner, or de facto partner; or
  - (iii) is a manager; or
  - (iv) is a manager's spouse, civil union partner, or de facto partner; or 30
  - (v) is a member of the immediate family of the licensee or a manager; or
  - (vi) during the hours he or she is employed to work on the premises, and for 60 minutes after those hours have ended, is an employee of the licensee who does not live on the premises; or 35
  - (vii) is an agent of the licensee, or acting under a contract with the licensee or a manager, and has the

- authority of the licensee or a manager to enter the premises at that time—
- (A) to clean, repair, or restock the premises (or any equipment in them); or
- (B) to check or remove cash; or 5
- (viii) is a person who has the authority of the licensee or a manager to enter the premises to remove equipment (for example, band equipment); or
- (ix) is an employee of the licensee who lives on the premises; or 10
- (x) is a person who—
- (A) lives or lodges in the building in which licensed premises are situated; and
- (B) is a tenant, lodger, or employee of the licensee; or 15
- (xi) is a genuine guest of a person who—
- (A) is a person of a kind described in **subparagraph (x)**; and
- (B) is on the premises; and
- (b) at any particular time, includes a person who,— 20
- (i) at that time, is authorised by an enactment other than this Act to enter the premises; or
- (ii) enters the premises to deal with an emergency occurring at that time
- fire service** means the New Zealand Fire Service established by section 3 of the Fire Service Act 1975 25
- former licensing Act** means an enactment—
- (a) that is the Sale of Liquor Act 1989; or
- (b) that was repealed by a former licensing Act
- freely available to customers**, in relation to water, means— 30
- (a) supplied free in clean drinking vessels on request; or
- (b) available free in larger containers from which it may easily be poured or drawn by customers, together with clean drinking vessels that are also available free nearby; or 35
- (c) available free from a tap to which customers have easy access, together with clean drinking vessels that are also available free nearby

**generally accepted accounting practice**, in relation to a community trust or a licensing trust,—

- (a) means approved financial reporting standards (so far as they apply to community trusts or licensing trusts (as the case requires)); and 5
- (b) in relation to matters that are not provided for in approved financial reporting standards and are not subject to any applicable rule of law, includes accounting policies that—
  - (i) are appropriate to the community trust or a licensing trust; and 10
  - (ii) have authoritative support within the accounting profession in New Zealand

**grocery shop** means a shop where the principal business carried on is or will be the sale of main order household foodstuff requirements 15

**grocery store** means premises that are—

- (a) a grocery shop; or
- (b) a supermarket with a floor area of at least 1 000 m<sup>2</sup> (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items) 20

**grocery store** has the meaning given by **section 35A(1)**

**guardian** means guardian in accordance with **section 229**

**hotel** means premises used or intended to be used in the course of business principally for providing to the public— 25

- (a) lodging; and
- (b) alcohol, meals, and refreshments for consumption on the premises

**ingredient**, in relation to a product, means any substance forming part of the product, whether added to the product or inherent in it 30

**inspector** means an inspector appointed under **section 184(1)**

**inspector** means an inspector appointed under **section 184(1)**; and,— 35

- (a) in relation to premises that are not a conveyance, means an inspector appointed by the chief executive of the ter-

- territorial authority in whose district the premises are situated; and
- (b) in relation to a conveyance, means an inspector appointed by the chief executive of the territorial authority in whose district the principal place of business in New Zealand of the applicant or licensee (as the case may be) is situated. 5
- intoxicated** means observably affected by alcohol, other drugs, or other substances (or a combination of 2 or all of those things) to such a degree that speech, balance, co-ordination, or behaviour is clearly impaired 10
- licence**—
- (a) means a licence issued under this Act that is in force; and
- (b) in relation to any licensed premises, means the licence issued for them (or, in the case of premises that 2 licences have been issued for, either of the licences) 15
- licensed premises** means any premises for which a licence is held
- licensee**— 20
- (a) means a person who holds a licence; and
- (b) in relation to any licensed premises, means the person who holds the licence concerned
- licensee's alcohol** means alcohol of which the licensee is the manufacturer or a distributor, importer, or wholesaler 25
- licensing authority** means the Alcohol Regulatory and Licensing Authority continued in existence by **section 158(1)**
- licensing committee**—
- (a) means a licensing committee appointed under **section 174**; and 30
- (b) in relation to any premises, or any application relating to any premises, means the licensing committee for the district in which the premises are situated; and
- (c) in relation to a licence or manager's certificate, means the licensing committee that issued it 35
- licensing trust** means an entity established under **section 285(1)**

**liqueur** means a substance, produced by flavouring or mixing spirit with other foods, that contains more than 15% ethanol by volume measured at 20°C

**local alcohol policy** means a policy, in force under **section 87**, relating to the sale and consumption of alcohol within the district of a territorial authority 5

**local alcohol policy**—

(a) means a policy, in force under **section 87**, relating to the sale, supply, or consumption of alcohol (or to 2 or all of those matters) within the district of a territorial authority or the districts of 2 or more territorial authorities; and 10

(b) in relation to a territorial authority, means a policy, in force under **section 87**, relating to the sale, supply, or consumption of alcohol (or to 2 or all of those matters) within its district or the districts of 2 or more territorial authorities that include it 15

**main order household foodstuff requirements**—

(a) ~~means food items of a kind normally bought for preparation and consumption at home; and~~ 20

(b) ~~does not include alcohol~~

**manager**—

(a) means a manager of licensed premises appointed under this Act; and

(b) in relation to any licensed premises, means a manager of those premises 25

**mead** means the product prepared by the complete or partial fermentation of honey

**Medical Officer of Health** has the meaning given by section 2(1) of the Health Act 1956 30

**member**, in **Part 6**, means a member of a licensing trust

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

**objector**— 35

(a) means a person who has filed an objection under this Act; and

(b) in relation to an application made under this Act, means a person who has filed an objection to it under this Act  
**one-way door restriction**, in relation to a licence, is a requirement that, during the hours stated in the restriction,—

- (a) no person is to be admitted (or re-admitted) into the premises unless he or she is an exempt person; and 5  
 (b) no person who has been admitted (or re-admitted) into the premises while the restriction applies to the licence is to be sold or supplied with alcohol

**permanent club charter** means a charter, granted under section 260(3) of the Licensing Act 1908 (or a corresponding provision of any earlier former licensing Act), that was in force immediately before the commencement of this section 10

~~**permitted trading hours**, in relation to any licensed premises, means the trading hours permitted for the premises that are stated in **section 41 or 42**~~ 15

**permitted trading hours**, in relation to any licensed premises,—

- (a) while a special licence applies to the premises, means the hours stated in the licence; and 20  
 (b) in any other case, means the trading hours permitted for the premises that are stated in **section 45 or 46**

**Police** means the New Zealand Police

**premises**—

- (a) includes a conveyance; and 25  
 (b) includes part of any premises; and  
 (c) in relation to a licence, means the premises it was issued for

**principal entrance**, in relation to licensed premises, means an entrance to the premises designated as the principal entrance by the licensing authority or licensing committee concerned when the licence was issued 30

**product** includes a substance that is not manufactured, but arises naturally

**public notice**, in a provision of this Act, means a notice published as required for the purposes of the provision (or of several provisions including it) by regulations made under this Act 35

**remote sale of alcohol**, in relation to alcohol, means a sale of alcohol pursuant to a contract that—

- (a) has been entered into (using the Internet, by telephone or mail order, or in any other way) between—
  - (i) a seller who holds an off-licence; and 5
  - (ii) a person (whether the buyer or a person acting on the buyer's behalf) who is at a distance from the premises for which the licence is held where the seller entered into the contract; and
- (b) contains a term providing for the alcohol to be delivered to the buyer (or to a person or place nominated by the buyer) by or on behalf of the seller 10

**restaurant** means premises that—

- (a) ~~that~~ are not a conveyance; and
- (b) ~~in which meals are regularly supplied on sale to the public for eating on the premises~~ 15
- (b) are used or intended to be used in the course of business principally for supplying meals to the public for eating on the premises

**restricted alcohol product** means a product— 20

- (a) declared by regulations made under this Act to be a restricted product; or
- (b) of a kind declared by regulations made under this Act to be restricted products

**restricted area**, ~~in relation to any licensed premises, means an area that, when the licence was issued, was designated an area to which people under the buying age must not be admitted—~~ 25

- (a) ~~under section 109; or~~
- (b) ~~in the case of a special licence, by a condition imposed under section 135(l)~~ 30

**restricted area**—

- (a) means an area that is designated (under this Act or a former licensing Act) as an area to which minors must not be admitted; and
- (b) in relation to any licensed premises or the licensee or a manager of any licensed premises, means an area of those premises that is designated (under this Act or a former licensing Act) as an area to which minors must not be admitted 35

**secretary**, in relation to a licensing trust or a community trust, means the secretary of the trust

**sell**, in relation to alcohol, includes—

- (a) charge a fee (however described, and whether an entry fee, a ticket price, or a payment of any other kind) for an alcohol-inclusive matter; and 5
- (b) require, ask for, or (expressly or by implication) suggest the making of a koha or other donation (whether to be made before, after, or during the entry event, activity, or function concerned) in relation to an alcohol-inclusive matter 10

**special consultative procedure** has the meaning given by section 5(1) of the Local Government Act 2002

**spirit** means a potable alcoholic distillate, including whisky, brandy, rum, gin, vodka, and tequila, that contains at least ~~37%~~ 23% ethanol by volume measured at 20°C, produced by distillation of fermented liquor derived from food sources, so as to have the taste, aroma, and other characteristics generally attributable to that particular spirit 15

~~**supervised area**, in relation to any licensed premises, an area that, when the licence was issued, was designated an area to which people under the buying age must not be admitted unless accompanied by a parent or guardian—~~ 20

- ~~(a) under **section 109**; or~~
- ~~(b) in the case of a special licence, by a condition imposed under **section 135(t)**~~ 25

**supervised area**—

- (a) means an area that is designated (under this Act or a former licensing Act) as an area to which minors must not be admitted unless accompanied by a parent or guardian; and 30
- (b) in relation to any licensed premises or the licensee or a manager of any licensed premises, means an area of those premises that is designated (under this Act or a former licensing Act) as an area to which minors must not be admitted unless accompanied by a parent or guardian 35

**tavern—**

- (a) means premises used or intended to be used in the course of business principally for providing alcohol and other refreshments to the public; but
- (b) does not include an airport bar 5

**temporary authority** means a temporary authority order issued and in force under this Act

**territorial authority—**

- (a) has the meaning given by section 5(1) of the Local Government Act 2002; and 10
- (b) in relation to any premises, means the territorial authority within whose district the premises are situated

**restricted alcohol product** means a product—

- (a) ~~declared by regulations made under this Act to be a restricted product; or~~ 15
- (b) ~~of a kind declared by regulations made under this Act to be restricted products~~

**verified the customer's age** means, in a manner of a kind described by regulations made under this Act for the purposes of this definition, ascertained that the customer appears to be of or over the buying purchase age 20

**wine** means the product prepared by the complete or partial fermentation of any or all of the following: ~~fruit, vegetables, grains, cereals, and preparations of fruit, vegetables, grains, or cereals~~ 25

**wine, except in section 59(3), means a product that is grape wine or fruit or vegetable wine within the meaning of section 59(3)**

**working day** means a day that is not—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, or Labour Day; or 30
- (b) a day in the period commencing on 20 December in one year and ending with 15 January in the next year.

(2) **Paragraph (b) of the definition in subsection (1) of main order household foodstuff requirements—** 35

- (a) ~~is for the avoidance of doubt only; and~~

- (b) does not limit, extend, or otherwise affect the generality of **paragraph (a)** of the definition.
- (3) Any term or expression that is defined in the Local Electoral Act 2001 and used in **Part 6** (licensing trusts) or **Part 7** (community trusts) any of **sections 285 to 381** (which relate to licensing trusts and community trusts), but not defined in this Act, has the same meaning as in the Local Electoral Act 2001. Compare: 1989 No 63 s 2 5
- 6 Determining whether principal business of shop sale of main order household foodstuff requirements** 10
- (1) In forming an opinion on whether the principal business carried on (or to be carried on) on any premises is or will be the sale of main order household foodstuff requirements, the licensing authority or a licensing committee—
- (a) must have regard to— 15
- (i) a statement of the annual sales revenues (or projected annual sales revenues) of the premises, produced in accordance with any regulations in force under this Act prescribing what information such statements must contain and how it must be set out; and 20
- (ii) the number and range of items on sale (or expected to be on sale) on the premises; and
- (iii) the size, layout, and appearance of the premises; and 25
- (b) may have regard to any other matter it thinks relevant.
- (2) The licensing authority or a licensing committee must form the opinion that the principal business carried on (or to be carried on) on any premises is or will be the sale of main order household foodstuff requirements if— 30
- (a) it is of the opinion that it is likely that at least half of the annual sales revenues of the premises are (or are likely to be) derived from the sale of main order household foodstuff requirements; and
- (b) it is not persuaded that the premises do not (or will not), nevertheless, have the characteristics normally associated with a grocery shop (whether by virtue of charac- 35

teristics that it lacks or will lack; characteristics that it has or will have; or both).

- 7 Considering effects of issue or renewal of licence on amenity and good order of locality** 5
- (1) The licensing authority or a licensing committee—
- (a) must have regard to the matters stated in **subsection (2)** in forming for the purposes of **section 100(h)** an opinion on whether the amenity and good order of a locality would be likely to be reduced; by more than a minor extent, by the effects of the issue of a licence; and 10
- (b) must have regard to the matters stated in **subsection (2)** (other than the matter stated in **paragraph (g)**) in forming for the purposes of **section 120** an opinion on whether the amenity and good order of a locality would be likely to be increased; by more than a minor extent, by the effects of a refusal to renew a licence. 15
- (2) The matters, as they relate to the locality concerned, are—
- (a) the presence or absence of car-parking facilities; and
- (b) current, and possible future, traffic movement and density; and 20
- (c) current, and possible future, noise levels; and
- (d) current, and possible future, levels of nuisance and vandalism; and
- (e) the harmony of the environment; and 25
- (f) the purposes for which land near the premises concerned is used; and
- (g) the number of premises for which licences of the kind concerned are already held.
- 8 Act binds the Crown** 30
- This Act binds the Crown.

## Part 2

### Ages for sale and purchase of alcohol on licensed premises

- 9** **Age at which people may lawfully buy alcohol for consumption off licensed premises** 5  
 The age at which people may lawfully buy alcohol on licensed premises for consumption off those premises is the age of 20 years.
- 10** **Age at which people may lawfully buy alcohol for consumption on licensed premises** 10  
 The age at which people may lawfully buy alcohol on licensed premises for consumption on those premises is the age of 18 years.
- 9** **Purchase age for alcohol to be consumed off licensed premises** 15  
The age at which alcohol may lawfully be sold to and purchased by people on licensed premises for consumption somewhere else is the age of 20 years.
- 10** **Purchase age for alcohol to be consumed on licensed premises** 20  
The age at which alcohol may lawfully be sold to and purchased by people on licensed premises for consumption there is the age of 18 years.
- 11** **Certain terms relating to age defined** 25  
 In this Act, unless the context otherwise requires,—  
**minor** means a person who is under the age of 18 years  
**under the buying age**,—
- (a) in relation to buying alcohol on licensed premises for consumption off those premises, means under the age stated in **section 9**; 30
- (b) in relation to buying alcohol on licensed premises for consumption on those premises, means under the age stated in **section 10**.

**under the purchase age,—**

- (a) in relation to the sale or purchase of alcohol on licensed premises for consumption somewhere else, means under the age stated in **section 9**;
- (b) in relation to the sale or purchase of alcohol on licensed premises for consumption on those premises, means under the age stated in **section 10**. 5

**Part 3****Licensing Sale and supply of alcohol generally** 10Subpart 1—Licensing generally,  
requirements on licensees, and conditions*Exemptions*

- 12 Certain sales by makers, importers, distributors, and wholesalers exempted** 15
- Nothing in this Act applies to the sale or supply of alcohol by a person, in the course of the person's business as a maker, importer, distributor, or wholesaler of alcohol, to—
- (a) a person in business as a maker, importer, distributor, or wholesaler of alcohol; or 20
- (b) the holder of a licence; or
- (c) the holder of a permanent club charter.
- Compare: 1989 No 63 s 5(2)
- 13 Exemption for certain alcohol not intended for drinking**
- (1) Nothing in this Act applies to— 25
- (a) the sale or supply as a perfume of spirituous or distilled alcohol; or
- (b) the sale or supply of alcohol by a pharmacist for medicinal purposes; or
- (c) the sale or supply of alcohol to a pharmacist for the purpose of sale or supply for medicinal purposes by the pharmacist; or 30
- (d) the sale or supply of a product (~~for example, cake, biscuits, and liqueur chocolates~~) intended to be eaten, and containing alcohol in such a quantity that the product 35

- is unlikely to cause intoxication, even if consumed in large quantities; or
- (e) the sale or supply of alcohol that has been made unsuitable to drink, or a product containing alcohol that has been made unsuitable to drink; or 5
- (f) the sale or supply of a product that—
- (i) contains alcohol; but
- (ii) is unsuitable to drink or eat.
- (2) In **subsection (1), pharmacist** means a health practitioner who is, or is deemed to be, registered as a practitioner of the profession of pharmacy with the Pharmacy Council established by section 114(5) of the Health Practitioners Competence Assurance Act 2003. 10  
Compare: 1989 No 63 s 5(3)
- 14 Certain messes and canteens exempted, but codes of practice required instead** 15
- (1) Nothing in this Act applies to the sale, supply, or keeping for sale or supply, of alcohol in—
- (a) a canteen or mess, or any other place in a naval ship or defence area (within the meaning of section 2(1) of the Defence Act 1990), where the consumption and possession of alcohol is authorised by or under the Defence Act 1990 or by the Chief of Defence Force: 20
- (b) an amenity set up and conducted by the Armed Forces Canteen Council constituted by section 3(1) of the Armed Forces Canteens Act 1948: 25
- (c) a Police canteen established with the authority of the Commissioner of Police:
- (d) a canteen established with the authority of the New Zealand Fire Service Commission constituted by section 4(1) of the Fire Service Act 1975. 30
- (2) The competent authority must put in place and (so far as is reasonably practicable) ensure that there is implemented on premises of a kind described in **subsection (1)** a code of practice, following as closely as is reasonably possible the requirements of this Act relating to the sale, supply, or keeping for sale or supply, of alcohol on premises for which a club licence is held. 35

- (3) For the purposes of **subsection (2), the competent authority,**—
- (a) for a canteen or mess, or any other place in a naval ship or defence area (within the meaning of section 2(1) of the Defence Act 1990), where the consumption and possession of alcohol is authorised by or under the Defence Act 1990 or by the Chief of Defence Force, means the Chief of Defence Force: 5
- (b) for an amenity set up and conducted by the Armed Forces Canteen Council constituted by section 3(1) of the Armed Forces Canteens Act 1948, means the Chief of Defence Force: 10
- (c) for a Police canteen established with the authority of the Commissioner of Police, means the Commissioner of Police: 15
- (d) for a canteen established with the authority of the New Zealand Fire Service Commission constituted by section 4(1) of the Fire Service Act 1975, means the chief executive appointed under section 17A or section 17I(3) of that Act. 20

Compare: 1989 No 63 s 5(3)

## 15 **Authorised sales of alcohol at international airports exempted**

This Act is subject to section 96 of the Civil Aviation Act 1990.

## 16 **Homestays exempted**

- (1) This subsection applies to an individual person who— 25
- (a) occupies premises that are used exclusively or principally as his or her home or residence (or the home or residence of him or her and his or her family); and
- (b) for reward, from time to time lets guests stay on the premises or other premises nearby. 30
- (2) Even if he or she does not hold a licence (or a licence of the appropriate kind) for the premises concerned, a person to whom **subsection (1)** applies may, in the course of or incidental to the stay of not more than 10 guests in the premises, sell or 35

supply alcohol to some or all of them for consumption on the premises.

Compare: 1989 No 63 s 5A

*Kinds of licence and their effect*

- 17 Kinds of licence** 5  
There are 4 kinds of licence: on-licences, off-licences, club licences, and special licences.
- 18 On-licences generally**  
On premises an on-licence (other than an on-licence endorsed under **section 39**) is held for, the licensee— 10  
(a) can sell and supply alcohol for consumption there; and  
(b) can let people consume alcohol.  
Compare: 1989 No 63 s 7
- 19 On-licences: BYO restaurants and caterers**
- (1) On any premises an on-licence endorsed under **section 39** is held for (the **restaurant**), the licensee— 15  
(a) can—  
(i) ~~allow~~ let any person who is in the restaurant to dine to consume any alcohol brought there by that person or by any other person who is there to dine with him or her; and 20  
(ii) ~~allow~~ let the person who brought the alcohol there to remove any of it from the restaurant if the container it is in is sealed or resealed; and  
(b) can sell and supply, for consumption in the restaurant by any person who is there to dine, any food or hot ~~beverage~~ drink containing not more than 14.33% alcohol by volume; and 25  
(c) can let people consume alcohol in the restaurant.
- (2) In addition to doing the things stated in **section 18**, the holder of an on-licence endorsed under **section 40** can deliver alcohol from the premises the licence is issued for and sell it on any other premises for consumption there by people attending 30

~~a reception, function, or other social gathering promoted by a person or association of people other than the holder.~~

Compare: 1989 No 63 ss 28; 51(2)

**19A On-licences: caterers**

In addition to doing the things stated in **section 18**, the holder of an on-licence endorsed under **section 40** can deliver alcohol from the premises the licence is issued for and sell it on any other premises for consumption there by people attending a reception, function, or other social gathering promoted by a person or association of people other than the holder.

Compare: 1989 No 63 s 51(2)

**20 Off-licences: sale and supply on licensed premises**

(1) On the premises an off-licence is held for, the licensee can sell alcohol for consumption somewhere else.

(2) While the premises an off-licence is held for are open for the sale of alcohol for consumption somewhere else, the licensee can also supply alcohol free, as a sample, for consumption on the premises.

Compare: 1989 No 63 s 29(1), (3)

**21 Off-licences: sale for delivery and sales at a distance**

(1) The holder of an off-licence not endorsed under **section 41A** can sell alcohol on or from the premises the licence is issued for and deliver it somewhere else.

(2) The holder of an off-licence endorsed under **section 41A** can sell alcohol from the premises the licence is issued for and deliver it somewhere else.

Compare: 1989 No 63 s 29(1)

**22 Off-licences: direct delivery of alcohol, by arrangement with holder, by distributor, importer, manufacturer, or wholesaler**

(1) The distributor, importer, manufacturer, or wholesaler of any alcohol can; ~~by arrangement with the holder of an off-licence;~~ deliver the alcohol from its own premises by arrangement with the holder of an off-licence.

- (2) Any alcohol that, ~~by arrangement with the holder of an off-licence,~~ is delivered from the premises of its distributor, importer, manufacturer, or wholesaler by arrangement with the holder of an off-licence must for the purposes of this Act be treated as having been delivered by the holder from the premises the licence is issued for. 5

Compare: 1989 No 63 s 29(2)

### 23 Off-licences: auctioneers

The holder of an off-licence endorsed under **section 41** can sell alcohol by auction in the course of his or her business as an auctioneer. 10

Compare: 1989 No 63 s 52(3)

### 24 Club licences

On the premises a club licence is held for, the licensee can sell and supply alcohol to authorised customers (within the meaning of **section 61(3)**), for consumption there. 15

- (2) In this section,—

**authorised customer**, in relation to premises a club licence is held for, means—

- (a) a person who is a member of the club concerned; or 20
- (b) a person who is on the premises at the invitation of a member of the club concerned who is also on the premises; or
- (c) a person who is an authorised visitor; or
- (d) in the case only of a licence issued subject to a condition allowing alcohol to be sold or supplied to people of that kind, a person who is on the premises at the invitation of an authorised visitor who is also on the premises 25

**authorised visitor**, in relation to premises a club licence is held for, means a member of some other club with which the club concerned has an arrangement for reciprocal visiting rights for members 30

**member**, in relation to a club, means a person who—

- (a) has expressly agreed in writing to comply with the club's rules; and 35
- (b) is recognised as a member of the club by those rules.

Compare: 1989 No 63 s 53

**25 Special licences**

- (1) There are 2 kinds of special licence: on-site special licences and off-site special licences.
- (2) On the premises a special licence designated as an on-site special licence is held for, the licensee can sell or supply alcohol, for consumption there, to people attending an event described in it. 5
- (3) Where the holder of an on-licence or a club licence for any premises also holds a special licence designated as an on-site special licence for the premises, the holder can at a time when the sale of alcohol on the premises would otherwise be unlawful (whether by virtue of a provision of this Act relating to licensed premises or licensed premises of any kind, or by virtue of any condition subject to which the on-licence or club licence was issued) sell or supply alcohol, for consumption there, if it is sold or supplied— 10
- (a) to people attending an event ~~or social gathering~~ described in the special licence; and
- (b) in accordance with the special licence. 15
- (4) **Subsection (3)** does not limit or affect the generality of **subsection (2)**. 20
- (5) On the premises a special licence designated as an off-site special licence is held for, the licensee can sell the licensee's alcohol, for consumption somewhere else, to people attending an event described in it. 25
- (6) While the premises a special licence designated as an off-site special licence is held for are open for the sale of the licensee's alcohol for consumption somewhere else, the licensee can also supply alcohol free, as a sample, for consumption on the premises. 30

Compare: 1989 No 63 ss 73, 74

**26 Limitation on effect of sections 18 to 25**

Nothing in any of **sections 18 to 25** authorises a person to do a thing forbidden by some other provision of this Act, or to fail to do a thing required ~~some~~ by some other provision of this Act. 35

**27 No obligation to serve**

- (1) A licence does not oblige its holder—
- (a) to deliver, sell, or supply alcohol at any time or to any person; or
  - (b) to let any person consume alcohol at any time on the premises the licence is issued for. 5
- (2) **Subsection (1)** is subject to the Human Rights Act 1993.  
Compare: 1989 No 63 ss 15, 38, 61, 81

**28 Issue of second licence for premises already licensed**

- A licence of one kind can be issued— 10
- (a) for premises for which a licence of another kind is (or licences of other kinds are) already held; or
  - (b) for premises for a part of which a licence of another kind is (or licences of other kinds are) already held; or
  - (c) for a part of any premises for the whole of which a licence of another kind is (or licences of another kinds are) already held. 15
- Compare: 1989 No 63 s 6(3)

*Who can hold licences***29 Licences not to be held without express authority of this Act** 20

- (1) A person cannot hold an on-licence, an off-licence, or a special licence unless,—
- (a) by virtue of **section 31**, the person can hold a licence of that kind; and 25
  - (b) the person is not a club unable to hold a licence of that kind by virtue of **section 32(1) or (2)**.
- (2) A person cannot hold a club licence unless empowered by **section 33** to hold a club licence.

**30 Licences not to be issued to persons not empowered to hold them** 30

A licence of a particular kind cannot be issued to a person who is not empowered to hold a licence of that kind.

**31 Who can hold on-licences, off-licences, and special licences**

- (1) An on-licence, an off-licence, or a special licence (or licences of 2 or all of those kinds) can be held by—
- (a) a natural person who has attained the age of 20 years; or
  - (b) a company incorporated in New Zealand that is not prevented from selling alcohol; or from holding a licence (or a licence of the kind or kinds concerned); by a restriction in its constitution; or 5
  - (c) a company that—
    - (i) is incorporated outside New Zealand in a state whose laws are to the effect that a company can do a lawful thing unless it is prevented from doing that thing by a restriction in its constitution (or equivalent document); and 10
    - (ii) is not prevented from selling alcohol; or from holding a licence (or a licence of the kind or kinds concerned); by a restriction in its constitution (or equivalent document); or 15
  - (d) a company that—
    - (i) is incorporated outside New Zealand in a state whose laws are to the effect that a company cannot do a thing of any kind unless it is authorised to do that thing (or things of that kind) by its constitution (or equivalent document); and 20
    - (ii) is authorised to sell alcohol; or to hold a licence (or a licence of the kind or kinds concerned); by its constitution (or equivalent document); or 25
  - (e) a body corporate other than a company that is authorised to sell alcohol; or hold a licence (or a licence of the kind or kinds concerned); or 30
  - (b) any body corporate; or
  - (f) a board, organisation, or other body, that is authorised by an enactment other than this Act to sell alcohol or hold a licence (or a licence of the kind or kinds concerned); or 35
  - (g) a licensing trust or community trust; or
  - (h) a limited partnership registered under section 51 of the Limited Partnerships Act 2008 whose partnership agreement does not contain a restriction preventing it

- from selling alcohol, or from holding a licence (or a licence of the kind or kinds concerned); or
- (i) a partnership each member of which is a person, company, body corporate, board, organisation, body, trust, or partnership, of a kind referred to in any of **paragraphs (a) to (h)**; or 5
- (j) a department of State or other instrument of the Crown; or
- (k) a territorial authority (whether or not expressly authorised by an enactment other than this Act to hold a licence); or 10
- (l) a trustee within the meaning of the Trustee Act 1956.
- (2) A manager acting for a person pursuant to a property order made under the Protection of Personal and Property Rights Act 1988 can hold an on-licence, an off-licence, a special licence, or licences of 2 or all of those kinds, if the order authorises the manager to do so. 15
- (3) A club can hold a special licence.
- (4) A club can hold an off-licence if it has continuously held an off-licence since before the commencement of this section. 20
- (5) **Subsection (1)** is subject to **section 349** (which relates to the interpretation of documents constituting certain bodies corporate incorporated before the commencement of this section).
- (6) Nothing in **subsection (1)** limits or affects—
- (a) any provision of the constitution of a company incorporated in New Zealand; or 25
- (b) any provision of the constitution or equivalent governing document of any other body corporate.

Compare: 1989 No 63 ss 8, 30, 75

### **32 Limitations on holding of on-licences and off-licences by clubs** 30

- (1) A club cannot hold an on-licence.
- (2) Except as provided in **section 31(4)**, a club cannot hold an off-licence.
- (3) **Subsections (1) and (2)** override **section 31(4) sections 28 and 31(1)**. 35

Compare: 1989 No 63 ss 8(2), 30(2)

**33 Who can hold club licences**

Any club can hold a club licence.

Compare: 1989 No 63 s 54

**34 Limitation on effect of sections 31 and 33**

**Sections 31 and 33** are subject to **Part 4 subpart 7 of this Part.** 5

*Restrictions on issue of off-licences*

**35 Kinds of premises for which off-licences may be issued**

(1) An off-licence may be issued only—

(a) to the holder of an on-licence issued for a hotel or tavern, for the premises (or part of the premises) for which the on-licence is held; or 10

(b) for retail premises where (in the opinion of the licensing authority or licensing committee concerned) at least 85% of the annual sales revenue is expected to be earned from the sale of alcohol for consumption ~~off the premises~~ somewhere else; or 15

(ba) if—

(i) the premises for which it is issued are not retail premises; and 20

(ii) at least 85% of the annual income of the person to whom it is issued is (in the opinion of the licensing authority or licensing committee concerned) expected to be earned from the remote sale of alcohol; or 25

(c) for premises where (in the opinion of the licensing authority or licensing committee concerned) the principal business carried on is the manufacture of alcohol; or

(ca) for premises that (in the opinion of the licensing authority or licensing committee concerned) are a super-market with a floor area of at least 1 000 m<sup>2</sup> (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items); or 30

(d) for premises that (in the opinion of the licensing authority or licensing committee concerned) are a grocery store. 35

- (1A) Premises for which (by virtue of **section 335(b)(i)**) an off-licence must not be issued except to a licensing trust can still be premises for which (by virtue of **subsection (1)**) an off-licence may be issued.
- (2) **Subsection (1)** is subject to **sections 36, 37, and 40.** 5
- (2) **Section 38** overrides **subsection (1).**  
Compare: 1989 No 63 s 36(1)
- 35A Determining whether premises are grocery store**
- (1) In this section,—
- food product—** 10
- (a) does not include—
- (i) alcohol, confectionery, ready-to-eat prepared food, or snack food; or
- (ii) a drink (other than milk) sold in a container with a capacity of 1 litre or less; but 15
- (b) includes delicatessen items that are not ready-to-eat prepared food or snack food
- grocery store** means a shop that—
- (a) has the characteristics normally associated with shops of the kind commonly thought of as grocery shops; and 20
- (b) comprises premises where—
- (i) a range of food products and other household items is sold; but
- (ii) the principal business carried on is or will be the sale of food products. 25
- (2) In forming for the purposes of this Act an opinion on whether any premises are a grocery store, the licensing authority or a licensing committee—
- (a) must have regard to—
- (i) the size, layout, and appearance of the premises; and 30
- (ii) a statement of the annual sales revenues (or projected annual sales revenues) of the premises, produced in accordance with any regulations in force under this Act prescribing what information such statements must contain and how it must be set out; and 35

- (iii) the number, range, and kinds of items on sale (or expected to be on sale) on the premises; and
- (b) may have regard to any other matters it thinks relevant; and
- (c) may determine that the premises do not have the characteristics normally associated with a shop of the kind commonly thought of as a grocery shop by virtue of characteristics that the premises and the items on sale there lack or will lack, characteristics that the premises and the items on sale there have or will have, or a combination of both. 5 10
- (3) **Paragraph (a) of the definition in subsection (1) of food product is for the avoidance of doubt only, and does not extend the generality of the term.**
- 36 Exception for certain areas where some licensed premises not economic** 15
- (1) The licensing authority or licensing committee concerned may issue an off-licence for premises not of a kind described in **section 35(1)** if satisfied—
- (a) that, in the area where they are situated, the sale of alcohol in premises of a kind described in **section 35(1)(b), (c), or (d)** would not be economic; and 20
- (b) that the granting of the licence would not cause any significant increase in alcohol-related harm.
- (2) **Subsection (1) overrides section 35(1) but is overridden by section 38.** 25
- Compare: 1989 No 63 s 36(2)(a)
- 37 Exception for certain complementary sales**
- (1) The licensing authority or licensing committee concerned may issue an off-licence for premises not of a kind described in **section 35(1)** if it is satisfied that— 30
- (a) the premises are a shop (but not a grocery store), but not a shop where the principal business carried on is the sale of food (whether food of a particular kind or kinds, or a range of food); and 35

- (b) alcohol would be an appropriate complement to goods of the kind sold on the premises (or to be sold) in the shop.

(2) **Subsection (1)** overrides **section 35(1)** but is overridden by **section 38**.

5

Compare: 1989 No 63 s 36(2)(b)

**38** **No off-licences for petrol stations, dairies, conveyances, or certain shops within shops**

(1) The licensing authority or licensing committee concerned must not issue an off-licence for any premises that (in its opinion) are— 10

- (a) a petrol station, a service station, or other premises where the principal business carried on is the sale of petrol or other automotive fuels; or

(b) a shop of the kind commonly known as a dairy; or 15

(c) a conveyance.

(2) The licensing authority or licensing committee concerned must not issue an off-licence for any premises if (in its opinion)—

(a) the premises— 20

- (i) are situated (wholly or partially) within a shop; or

(ii) can be reached from a shop without leaving it; and

(b) the shop does not comprise premises for which (by virtue of **section 35(1)**) an off-licence may be issued. 25

(3) **Subsections (1) and (2)** override **sections 35 to 37**.

Compare: 1989 No 63 s 36(3)

**38** **No off-licences for petrol stations, certain garages, dairies, convenience stores, conveyances, or shops within shops** 30

The licensing authority or licensing committee concerned must not issue an off-licence for any premises if (in its opinion)—

(a) the principal business carried on there is—

(i) the sale of automotive fuels; or 35

(ii) the repair and servicing of motor vehicles and the sale of automotive fuels; or

- (b) they are a shop of the kind commonly thought of as a dairy; or
- (c) they are a shop of the kind commonly thought of as a convenience store; or
- (d) they are a conveyance; or 5
- (e) they are situated (wholly or partially) within a shop; or
- (f) the public can reach them from a shop without leaving it.

Compare: 1989 No 63 s 36(3)

*Endorsed licences for BYO restaurants,  
auctioneers, and caterers* 10

### **39 On-licences for BYO restaurants**

- (1) The licensing authority or licensing committee concerned must, when issuing an on-licence, endorse it to indicate that this section applies to it if— 15
  - (a) when applying for it, the holder asked for it to be endorsed under this section; and
  - (b) the authority or committee is satisfied that holder carries on the business of a restaurateur on the premises for which it is issued. 20
- (2) An on-licence endorsed under this section may be issued subject to either or both of the following conditions:
  - (a) a condition requiring the appointment of 1 or more managers in accordance with **Part 3**:
  - (b) a condition requiring a manager to be on duty on specified days and times. 25

Compare: 1989 No 63 s 28

### **40 On-licences for caterers**

- (1) The licensing authority or licensing committee concerned must, when issuing an on-licence, endorse it to indicate that this section applies to it if,— 30
  - (a) when applying for it, the holder asked for it to be endorsed under this section; and
  - (b) the authority or committee is satisfied that the holder carries on the business of a caterer. 35

- (2) **Sections 57 and 58** do not apply to any premises for which no licence is held while the holder of an on-licence endorsed under this section sells, for consumption there by people attending a reception, function, or other social gathering promoted by a person or association of people other than the holder, alcohol delivered from the premises the licence is issued for. 5

Compare: 1989 No 63 s 51

#### **41 Off-licences for auctioneers**

- (1) The licensing authority or licensing committee concerned must, when issuing an off-licence, endorse it to indicate that this section applies to it if,— 10

(a) when applying for it, the holder asked for it to be endorsed under this section; and

(b) the authority or committee is satisfied that the holder holds an auctioneer's licence under the Auctioneers Act 1928. 15

- (2) **Sections 96 to 98** do not apply to an application for an off-licence if, when applying for it, the applicant asked for it to be endorsed under this section. 20

- (3) **Sections 57, 58, and 428 195** do not apply to an off-licence endorsed under this section.

- (4) The licensing authority or licensing committee concerned must not issue an off-licence to an applicant if,—

(a) when applying for it, the applicant asked for it to be endorsed under this section; and 25

(b) the authority or committee is not satisfied that the applicant holds an auctioneer's licence under the Auctioneers Act 1928.

Compare: 1989 No 63 s 52 30

#### **41A Off-licences for remote sellers of alcohol**

- (1) The licensing authority or licensing committee concerned must, when issuing an off-licence, endorse it to indicate that this section applies to it if, when applying for it, the holder asked for it to be endorsed under this section. 35

- (2) **Sections 57 and 58** do not apply to an off-licence endorsed under this section.

*Restrictions on issue of special licences*

**42 No special licence where permanent licence or variation of permanent licence more appropriate** 5

A special licence must not be issued in circumstances where (in the opinion of the licensing committee concerned) it would have been more appropriate for the applicant to apply for—

- (a) an on-licence, off-licence, or club licence; or  
 (b) the variation of an existing on-licence, off-licence, or club licence. 10

**43 Restrictions on issue of special licences for consumption off-premises**

- (1) A special licence designated as an off-site special licence may be issued only to a person who (in the opinion of the licensing committee concerned) is a manufacturer, distributor, importer, or wholesaler of alcohol. 15
- (2) A special licence designated as an off-site special licence must not be issued for a conveyance.
- (3) **Subsection (1)** overrides **section 31(1)**. 20

*Permitted trading hours*

**44 Default national maximum trading hours**

- (1) The default maximum national trading hours—
- (a) are the hours between 8 am on any day and 4 am on the next day for the sale and supply of alcohol for consumption on ~~licensed~~ premises for which an on-licence or a club licence is held: 25
- (b) are the hours between 7 am and 11 pm on any day for the sale of alcohol ~~for consumption off licensed premises~~ on premises for which an off-licence is held. 30
- (2) **Subsection (1)** is subject to **sections 48 and 49** (which impose restrictions on ~~sales~~ the sale and supply of alcohol on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day).

**45 Permitted trading hours for premises without relevant local alcohol policy**

- (1) The trading hours permitted for any licensed premises are the default maximum national trading hours stated by **section 44** for the premises if— 5
- (a) the premises are situated in a district where there is not in force a local alcohol policy containing an element that has the effect of stating maximum trading hours for the premises; and
  - (b) the licence has not been issued subject to a condition or conditions to the effect that some more restrictive maximum trading hours must be observed. 10
- (2) The trading hours permitted for any licensed premises are the more restrictive maximum trading hours concerned if—
- (a) the premises are situated in a district where there is in not force a local alcohol policy containing an element that has the effect of stating maximum trading hours for the premises; but 15
  - (b) the licence has been issued subject to a condition or conditions to the effect that some more restrictive maximum trading hours must be observed. 20

**46 Permitted trading hours for premises with relevant local alcohol policy**

- (1) The trading hours permitted for any licensed premises are the applicable maximum trading hours stated for the premises in the local alcohol policy concerned if— 25
- (a) the premises are situated in a district where there is in force a local alcohol policy containing an element that has the effect of stating maximum trading hours for the premises; and 30
  - (b) the licence has not been issued subject to a condition or conditions to the effect that some more restrictive maximum trading hours must be observed.
- (2) The trading hours permitted for any licensed premises are the more restrictive maximum trading hours concerned if— 35
- (a) the premises are situated in a district where there is in force a local alcohol policy containing an element that

- has the effect of stating maximum trading hours for the premises; but
- (b) the licence has been issued subject to a condition or conditions to the effect that some more restrictive maximum trading hours must be observed. 5

*Restrictions relating to trading hours*

- 47 No sale or supply outside permitted trading hours: all licences**
- (1) The holder of a licence must ensure that no alcohol is sold or supplied on the premises outside the permitted trading hours. 10
- (2) **Subsection (1)** does not apply to the sale or supply of alcohol on any premises at or after 6 am on any Anzac Day if—
- (a) a special licence has been issued for an event to be held on those premises on that day in connection with the commemoration of Anzac Day; and 15
- (b) the sale or supply of alcohol is in accordance with the licence.
- (3) **Subsection (1)** is subject to **subsection (2)**; and to section 173 of the Gambling Act 2003.
- 48 Sale and supply on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day restricted: on-licences** 20
- (1) The holder of an on-licence must ensure that no alcohol is sold or supplied on the premises on Good Friday, Easter Sunday, or Christmas Day, or before 1 pm on Anzac Day, unless—
- (a) it is sold or supplied while the holder also holds a special licence for the premises; or 25
- (b) the buyer is a person of a kind described in **subsection (2)**.
- (2) The kinds of person referred to in **subsection (1)** are—
- (a) people residing or lodging on the premises: 30
- (b) people who are present on the premises to dine.
- (3) For the purposes of **subsection (2)**,—
- (a) a person residing or lodging in the building in which licensed premises are situated resides or lodges on the premises: 35

- (a) a person resides or lodges on licensed premises if he or she resides or lodges in the building in which the premises are situated as the guest, lodger, tenant, or employee of the licensee:
- (b) a person is not present on licensed premises to dine if he or she is there at a time—
- (i) more than an hour before he or she starts (or is due to start) eating a meal; or
- (ii) more than an hour after he or she finishes eating a meal.
- (4) **Subsection (1)** is subject to section 173 of the Gambling Act 2003.
- 49 Sale and supply on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day restricted: off-licences**
- The holder of an off-licence must ensure that—
- (a) no alcohol is sold on or delivered from the premises on Good Friday, ~~Easter Sunday~~, or Christmas Day, or before 1 pm on Anzac Day; and
- (b) no alcohol is sold on or delivered from the premises at any time on Easter Sunday unless it is wine made—
- (i) on the premises; or
- (ii) from ~~fruit~~ produce harvested from land on which the premises are situated.
- Compare: 1989 No 63 s 37(1)
- 50 Remote sales exempted from trading hours restrictions**
- (1) A remote sale of alcohol may be made at any time on any day.
- (2) **Subsection (1)**—
- (a) overrides the restrictions on sales imposed by **sections 47 and 49**; but
- (b) is subject to the restrictions on delivery imposed by **sections 49 and 60(1)**.

*Requirements on holders of on-licences and club licences*

**50A One-way door restrictions in local alcohol policies to be complied with**

- (1) The holder of an on-licence or club licence must ensure that every applicable one-way door restriction in any relevant local alcohol policy is complied with. 5
- (2) The fact that elements of a one-way door restriction imposed on the licence are less restrictive than the equivalent elements of an applicable one-way door restriction in a relevant local alcohol policy does not limit or affect the holder's obligation to comply with **subsection (1)**. 10

**51 Non-alcoholic drinks to be available**

The holder of an on-licence or club licence must ensure that, at all times when the premises are open for the sale and supply of alcohol, there is available for sale and consumption on the premises, at reasonable prices, a reasonable range of non-alcoholic drinks. 15

**52 Low-alcohol drinks to be available**

- (1) The holder of an on-licence or club licence must ensure that there is available for sale and consumption on the premises alcohol containing ~~less~~ not more than 2.5% ethanol by volume at 20°C. 20
- (2) The requirements of **subsection (1)** do not apply to the premises if— 25
- (a) they are premises whose licensee—
- (i) sells on those premises only alcohol manufactured by the licensee; and
- (ii) does not manufacture (whether on those premises or somewhere else) alcohol of the kind described in **subsection (1)**; and 30
- (b) the licence was issued or last renewed (whichever occurred more recently), subject to a condition exempting the holder from those requirements.

**53 Food to be available**

The holder of an on-licence or club licence must ensure that, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of food is available for sale and consumption on the premises, in portions suitable for a single customer,—

- (a) at reasonable prices; and
- (b) within a reasonable time of being ordered.

**54 Help with and information about transport to be available**

The holder of an on-licence or club licence must ensure that, at any time customers are lawfully on the premises,—

- (a) there is readily available to the customers, free, comprehensive, and accurate information about the forms of transport from the premises that are available at that time; and
- (b) there are on the premises, and readily accessible to the customers, staff able to give them comprehensive and accurate information about the forms of transport from the premises that are available at that time; and
- (c) those staff will on demand give any customer appropriate advice free.

*Requirements on holders of special licences***55 Requirements relating to special licences for consumption off-premises**

The holder of a special licence designated as an off-site special licence must ensure that, while it is in force,—

- (a) only the licensee's alcohol is to be sold or supplied on the premises; and
- (b) alcohol is not supplied free, as a sample, for consumption on the premises, at a time when the premises are not open for the sale of the licensee's alcohol for consumption somewhere else; and
- (c) alcohol is not sold for consumption on the premises at any time when the licensee does not also hold for the premises a special licence designated as an on-site special licence.

*Other restrictions and requirements***56 Water to be available free: all licences**

(1) This subsection—

- (a) applies to an on-licence or club licence while the premises are open for business: 5
- (b) applies to a special licence while the occasion or event (or any of the occasions or events) described in it is taking place:
- (c) applies to an off-licence only while alcohol is being supplied free as a sample on the premises: 10

(2) The holder of an on-licence, off-licence, or club licence must ensure that, while **subsection (1)** applies to it, drinking water is freely available to customers in every room and outdoor area on the premises where alcohol is sold or supplied.

(3) The holder of a special licence must ensure that, while **subsection (1)** applies to it, drinking water is freely available to customers— 15

- (a) in every room on the premises where alcohol is sold or supplied; and
- (b) if all or part of the premises is outdoors; at or near the places outdoors on the premises where alcohol is sold or supplied. 20

(4) For the purposes of this section, water is not freely available to customers unless—

- (a) it is supplied free in clean drinking vessels on request; 25  
or
- (b) it is available free in larger containers from which it may easily be poured or drawn by customers; and clean drinking vessels are available free with it; or
- (c) it is available free from a tap to which customers have easy access; and clean drinking vessels are available free with it. 30

**57 Display of signs: on-licences, off-licences**

The holder of an on-licence issued for premises or an off-licence (other than an off-licence issued for premises for which a club licence is held) must ensure that there is displayed at all times a sign attached to the outside of the premises, so as 35

to be easily read by people immediately outside each principal entrance, stating the ordinary hours of business during which the premises are open for the sale of alcohol (or, in the case of an on-licence endorsed under **section 39**, open for the consumption of alcohol).

5

Compare: 1989 No 63 ss 25(1), 48(2)

### **58 Display of licence: all licences**

(1) The holder of an on-licence or an off-licence (other than an off-licence issued for premises for which a club licence is held or a remote-sale off-licence) must ensure that at all times a copy of the licence, together with a statement of all conditions subject to which it is issued, is displayed—

10

- (a) attached to the inside of the premises concerned; and
- (b) so as to be easily read by people entering each principal entrance.

15

(2) The holder of a club licence must ensure that at all times a copy of the licence, together with a statement of all conditions subject to which it is issued (and, if it is issued for premises for which an off-licence is held, a copy of that licence, together with a statement of all conditions subject to which it is issued), is displayed—

20

- (a) attached to the inside of the premises; and
- (b) so as to be easily read by people using the premises.

(3) When issuing a special licence, the licensing committee may give any directions relating to its display, and the display of a statement of any conditions subject to which it is issued, as the committee thinks necessary or desirable.

25

(4) The holder of a special licence must ensure that all directions under **subsection (3)** given when it was issued are complied with.

30

Compare: 1989 No 63 ss 25(2), 48(2), (3), 83

### **59 Restriction on kinds of alcohol sold in grocery stores and premises accessible from grocery stores**

(1) The holder of an off-licence issued for premises of a kind described in **subsection (2)** must ensure that no alcohol is sold on the premises unless it is—

35

- (a) beer or mead; or

- (b) ~~wine containing no more than 15% ethanol by volume measured at 20°C; or~~
- (c) ~~a food flavouring, prepared for culinary purposes, that is unsuitable for drinking undiluted.~~
- (2) The kinds of premises referred to in **subsection (1)** are— 5
- (a) ~~premises that are or form part of a grocery store; and~~
- (b) ~~premises that can be reached from a grocery store without leaving it.~~
- 59** **Restriction on kinds of alcohol sold in supermarkets and grocery shops, and premises directly accessible from supermarket or grocery shop** 10
- (1) The holder of an off-licence issued for premises of a kind described in **subsection (2)** must ensure that no alcohol is sold on the premises unless it contains no more than 15% ethanol by volume measured at 20°C and is— 15
- (a) beer that complies with the appropriate New Zealand food standard for beer; or
- (b) mead that complies with the appropriate New Zealand food standard for mead; or
- (c) fruit or vegetable wine that complies with the appropriate New Zealand food standard for fruit or vegetable wine (however that product may be described in the standard); or 20
- (d) grape wine that complies with the appropriate New Zealand food standard for grape wine (however that product may be described in the standard); or 25
- (e) a food flavouring, prepared for culinary purposes, that is unsuitable for drinking undiluted.
- (2) The kinds of premises referred to in **subsection (1)** are— 30
- (a) premises that are or form part of a supermarket or grocery shop; and
- (b) premises that can be reached from a supermarket or grocery shop without leaving it.
- (3) In **subsection (1)**,— 35
- appropriate New Zealand food standard**, in relation to any kind of alcohol, means the standard for alcohol of that kind that is for the time being in force under section 11C of the Food Act 1981

beer means the product, characterised by the presence of hops or preparations of hops, prepared by the yeast fermentation of an aqueous extract of malted or unmalted cereals, or both

fruit or vegetable wine—

(a) means the product prepared from the complete or partial fermentation of any or all of the following: 5

(i) fruit, vegetables, grains, and cereals:

(ii) preparations of fruit, vegetables, grains, and cereals; but

(b) does not include grape wine 10

grape wine means the product of the complete or partial fermentation of fresh grapes, or a mixture of that product and products derived solely from grapes

mead means the product prepared from the complete or partial fermentation of honey. 15

Compare: 1989 No 63 s 37(3)

## 60 Requirements relating to remote sales by holders of off-licences

(1) The holder of an off-licence must ensure that any alcohol sold by remote sale ~~of alcohol~~ is not delivered to the buyer (or to any other person on the buyer's behalf) at any time after 11 pm on any day and before 6 am on the next day. 20

(2) **Subsection (1)** applies whether the alcohol is delivered by the seller or by some other person.

(3) The holder of an off-licence must take reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale ~~of alcohol~~ (and, if a person other than the buyer is to receive it, to verify that the receiver) is not under the ~~buying~~ purchase age. 25

(4) The holder of an off-licence takes reasonable steps to verify that the buyer of any alcohol that the holder sells by remote sale ~~of alcohol~~ is not under the ~~buying~~ purchase age if he or she complies with a procedure declared by regulations made under this Act to be a reasonable procedure for the purposes of complying with **subsection (3)**. 30 35

(5) The holder of an off-licence who sells alcohol by remote sale ~~of alcohol~~ via the Internet must comply with any regulations

made under this Act requiring information to be visible on the holder's website when people browse, enter, or otherwise access it.

- (6) The holder of an off-licence who sells alcohol by remote sale ~~of alcohol~~ by mail order must comply with any regulations made under this Act requiring information to be published in the holder's catalogues. 5
- (7) The holder of an off-licence who sells alcohol by remote sale ~~of alcohol~~ by telephone must comply with any regulations made under this Act requiring information to be given to callers. 10

#### **61 Sale and supply in clubs to members and guests only**

- (1) The holder of a club licence must ensure that no alcohol is sold or supplied to any person for consumption on the premises unless the person is— 15
- (a) an authorised customer; or
  - (b) if the licence issued subject to a condition allowing alcohol to be sold or supplied to people of that kind, a person who is on the premises at the invitation of an authorised visitor who is also on the premises. 20
- (2) If a club licence and an off-licence are held for the same premises, the holder must ensure that no alcohol is sold or supplied to any person for consumption off the premises unless the person is an authorised customer.
- (3) In this section,— 25
- authorised customer**, in relation to premises a club licence is held for, means a person who—
- (a) is a member of the club concerned; or
  - (b) is on the premises at the invitation of, and is accompanied by, a member of the club concerned ~~who is also on the premises~~; or 30
  - (c) is an authorised visitor
- authorised visitor**, in relation to premises a club licence is held for, means a member of some other club with which the club concerned has an arrangement for reciprocal visiting rights for members 35

**member**, in relation to a club, means a person who—

- (a) has expressly agreed in writing to comply with the club's rules; and
- (b) is recognised as a member of the club by those rules.

**62 Administrative requirements for club licences** 5

The holder of a club licence must take all practicable steps to ensure that—

- (a) there is at all times a secretary of the club; and
- (b) within 10 working days of the appointment of a new secretary, the secretary of the ~~licensing authority~~ or licensing committee that issued the licence is told the name of the new secretary; and
- (c) all proceeds from the sale of alcohol belong to the club.

Compare: 1989 No 63 s 60(1)

**63 No bring-your-own alcohol in clubs** 15

The holder of a club licence must ensure that, while the premises are open for the sale or supply of alcohol, no person consumes on the premises any alcohol not sold or supplied on the premises by the licensee.

*Requirements imposed as  
discretionary conditions* 20

**64 Requirements and restrictions imposed as discretionary conditions**

The holder of a licence must comply with every condition subject to which it is ~~held~~ has been issued (or renewed).

- (2) A person who fails or refuses to comply with **subsection (1)** commits an offence.
- (3) A person who commits an offence against **subsection (2)** is liable to a fine of not more than \$5,000.

*Miscellaneous licensing provisions* 30

**65 Secretary to set up and maintain register**

- (1) The secretary of the licensing authority must set up and maintain a register recording all particulars relating to licences and

~~manager's certificates, and to applications for or in respect of such licences and certificates, as may be prescribed.~~

- (1) The secretary of the licensing authority must set up and maintain a register recording all prescribed particulars relating to licences and managers' certificates, or to applications for or in respect of them. 5
- (2) Any member of the public may, on payment of the prescribed fee, obtain from the secretary of the licensing authority an extract from the register. 10  
Compare: 1989 No 63 s 220

#### **66 Record of applications**

- (1) The secretary of each licensing committee must keep—
- (a) a record of every application filed with the licensing committee and the decision on the application; and
  - (b) a register of licensees to whom special licences have been issued by the committee, recording all prescribed particulars relating to those licences. 15
- (2) Any member of the public may, on payment of the prescribed fee, obtain from the secretary of the licensing committee an extract from any record or register kept under this section. 20
- (3) The secretary of each licensing committee must send to the secretary of the licensing authority a copy of every application made to the committee, and a copy of every decision made by it. 25  
Compare: 1989 No 63 s 221

#### **67 Certified extracts to be evidence**

An extract of any register or record kept by the secretary of the licensing authority or by the secretary of a licensing committee, and certified as such by the secretary, is evidence of the matters stated in the extract. 30  
Compare: 1989 No 63 s 222

#### **68 Licensees and managers to have address for service**

- (1) Every licensee and every manager must from time to time notify an address for service to the secretary of the licensing authority. 35

- (2) ~~Any notice or other document required by this Act to be served on any licensee or manager may be sent by post to the address for service of the licensee or manager, in which case it is to be treated as having been served at the time when the letter would in the ordinary course of post be delivered.~~ 5
- (2) A notice or other document required by this Act to be served on a licensee or manager (the **recipient**) may be—
- (a) sent by post to the recipient's address for service; or
- (b) left at the recipient's address for service; or
- (c) given to the recipient. 10
- (3) Unless the contrary is proved, the notice or other document—
- (a) is to be treated as having been served when it would in the ordinary course of post have been delivered, if it is proved that it was addressed to the recipient at the recipient's address for service, and dispatched by post; and 15
- (b) is to be treated as having been served when it was left at the recipient's address for service, if it is proved that it was addressed to the recipient at the recipient's address for service and left at that address. 20

Compare: 1989 No 63 s 223

## **69 Notification of licensing authority by company of changes in company shareholding or name**

- (1) ~~A company incorporated under the Companies Act 1955 or the Companies Act 1993 (other than a public company or a company that is that holds a licence and is not a party to a listing agreement with a stock exchange) that holds a licence~~ must notify the secretary of the licensing authority of any change in— 25
- (a) ~~the shareholding of the company; and~~ or 30
- (b) ~~the directors of the company.~~
- (2) ~~A public company or a company that holds a licence and is a party to a listing agreement with a stock exchange that holds a licence~~ must notify the secretary of the licensing authority of any change in— 35
- (a) ~~the shareholding of the company whereby any person becomes the holder of at least 20% of the shares, or of any particular class of the shares, issued by the com-~~

- pany, if that person did not hold at least 20% of the shares or of that class of the shares when the licence was issued to the company; and
- (b) the directors of the company.
- (3) Any notice required by **subsection (1) or (2)** must be given within 10 working days after the board of the company becomes aware of the change to which it relates. 5
- (4) Where a company ~~incorporated under the Companies Act 1955 or the Companies Act 1993~~ that holds a licence changes its name, ~~the company~~ it must notify the secretary of the licensing authority of the change within 10 working days after the change. 10
- (5) If a company fails to comply with any of **subsections (1) to (4)**, every director of the company commits an offence and is liable on conviction to a fine not exceeding \$10,000. 15
- (6) It is a defence to a director charged with an offence ~~under this section if the director~~ against this section relating to a failure to comply with one of its provisions if he or she proves that—
- (a) the company took all reasonable and proper steps to ensure that the ~~subsection of this section to which the charge relates~~ provision concerned would be complied with; or 20
- (b) he or she took all reasonable and proper steps to ensure that the company complied with the ~~subsection of this section to which the charge relates~~ provision; or 25
- (c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the company complied with the ~~subsection of this section to which the charge relates~~ provision. 30
- Compare: 1989 No 63 s 225 30

**70 Notification of licensing authority by beneficial owner of shares of changes in shareholding**

- (1) Any person on whose behalf any shares are held by any other person in any company that holds a licence must notify the secretary of the licensing authority if, after the licence is issued to the company, the number of shares held changes so that the shareholding reaches at least 20% of the shares, or of any particular class of the shares, issued by the company. 35

- (2) ~~Any notice required by **subsection (1)**~~ The notice must be given within 10 working days after the person required to give ~~the notice~~ it becomes aware that the number of shares has reached at least 20% of the shares, or of any particular class of the shares, issued by the company. 5
- (3) If a person required to give a notice under **subsection (1)** fails to comply with **subsection (1) or subsection (2)**, he or she commits an offence and is liable on conviction to a fine not exceeding \$10,000. 10
- Compare: 1989 No 63 s 225A

## 71 Notification of Police

- (1) On receiving any notice under **section 69 or 70**, the secretary of the licensing authority must send a copy of it to—
- (a) the constable in charge of the police station nearest to—
- (i) the premises ~~in respect of~~ for which the licence is held by the company; or
- (ii) the secretary's office, where the licence is held by the company ~~in respect of any~~ for a conveyance; and
- (b) an inspector. 20
- (2) Despite anything in this Act, on receipt of a copy of any notice under **subsection (1)**, any constable or any inspector may apply to the licensing authority for the cancellation of the licence on the ground that, by virtue of the change to which the notice relates, the company is no longer suitable as the holder of the licence. 25
- (3) The provisions of **section 266**, with any necessary modifications, apply ~~in respect of~~ to any application under **subsection (2)**. 30
- Compare: 1989 No 63 s 225B

## 72 Duplicate licence or certificate

If the secretary of the licensing authority or a licensing committee is satisfied that any licence or manager's certificate issued by the licensing authority or licensing committee has been lost or destroyed, the secretary may issue a duplicate licence or certificate to the holder. 35

Compare: 1989 No 63 s 226

**73 Surrender of licence or manager's certificate**

- (1) A licensee may at any time surrender the licence or a person may at any time surrender his or her manager's certificate by sending a written notice to that effect, together with the licence or manager's certificate (as the case may be), to ~~the secretary of the licensing authority~~ or the secretary of the licensing committee. 5
- (2) The secretary must endorse on the notice the date on which it is received, and the licence or manager's certificate ceases to have effect as from that date. 10
- ~~(3) The licensee or person surrendering his or her manager's certificate is entitled to a proportionate refund of any fee paid in respect of the period for which the licence or manager's certificate would have had effect if it had not been surrendered.~~
- (3) The licensee or person surrendering his or her manager's certificate is entitled to a proportionate refund of that part of any fee paid for the licence or certificate for the period for which it would have had effect if it had not been surrendered that did not relate to the cost of processing the application for it or granting it. 15 20
- (3A) The secretary of a licensing committee must write "surrendered" on the face of every licence or manager's certificate surrendered to him or her, and then send a copy to the secretary of the licensing authority.
- (4) The surrender of a licence or manager's certificate does not affect the licensee's or the manager's liability— 25
- (a) to perform any obligation required to be performed by the licensee or manager by or under this Act before the date on which the licence or the manager's certificate ceases to have effect; or 30
- (b) for any act done or default made before that date.

Compare: 189 No 63 s 227

**74 Temporary licence during repairs, etc**

The secretary of the licensing authority (or, in the case of a special licence, the secretary of the licensing committee) may authorise the licensee to sell alcohol pursuant to the licence on 35

or from any other premises for any period the secretary may from time to time determine if—

- (a) any licensed premises become unfit for the sale of alcohol because of a fire, storm, earthquake, or other unforeseen event; or 5
- (b) any licensed premises are or will become unfit for that purpose because of any repairs, alterations, or additions, or their rebuilding; or
- (c) any other circumstances arise in respect of any licensed premises that prevent or will prevent the sale of alcohol on the licensed premises. 10

Compare: 1989 No 63 s 228

### Subpart 2—Local alcohol policies

- 75 Territorial authorities may have local alcohol policies**
- (1) ~~Any territorial authority may have a policy relating to the sale and consumption of alcohol within its district.~~ 15
- (1) Any territorial authority may have a policy relating to the sale, supply, or consumption of alcohol within its district (or to 2 or all of those matters).
- (2) A local alcohol policy— 20
- (a) may provide differently for different parts of its district; and
  - (b) may apply to only part (or 2 or more parts) of its district; and
  - (c) may apply differently to premises for which licences of different kinds are held or have been applied for. 25
- (3) A local alcohol policy must be produced, adopted, and brought into force, in accordance with this subpart.
- (4) No territorial authority is required to have a local alcohol policy. 30
- 76 Territorial authorities may adopt joint local alcohol policy**
- Two or more territorial authorities may adopt a single local alcohol policy for their districts; and in that case this Act applies as if they were a single territorial authority with a single district. 35

**77 Contents of policies**

- (1) A local alcohol policy may include policies on any or all of the following matters relating to licensing (and no others):
- (a) location of licensed premises by reference to broad areas: 5
  - (b) location of licensed premises by reference to proximity to premises or facilities of particular /kinds:
  - (c) whether further licences (or licences of ~~particular a particular kind or kinds~~) should be issued for premises in the district concerned, or any stated part of the district: 10
  - (d) maximum trading hours:
  - (da) the issue of licences, or licences of a particular kind or kinds, subject to discretionary conditions:
  - (e) one-way door restrictions.
- (2) **Paragraphs (a) to (c) of subsection (1)** do not apply to special licences, or premises for which a special licence is held or has been applied for. 15
- ~~(3) A local alcohol policy may include policies on any matter not relating to licensing that is relevant to the object of this Act.~~
- (3) A local alcohol policy must not include policies on any matter not relating to licensing. 20

**78 Authorities must first produce draft policy**

- (1) A territorial authority that wishes to have a local alcohol policy must first use the special consultative procedure to produce a draft local alcohol policy. 25
- (2) ~~The authority must not begin to use the procedure without having consulted—~~
- ~~(a) the Police:~~
  - ~~(b) inspectors:~~
  - ~~(c) Medical Officers of Health.~~ 30
- (3) ~~The authority may at any time discontinue the development of a local alcohol policy.~~

**79 Information required by territorial authority before producing draft policy**

- (1) ~~Before producing a draft local alcohol policy, a territorial authority must assess—~~ 35

- (a) the number of licences of each kind held for premises in its district, and the location and opening hours of each of the premises; and
  - (b) any areas in which bylaws prohibiting alcohol in public places are in force; and 5
  - (c) the demography (including socio-economic status) of the district's residents; and
  - (d) the demography of people who visit the district as tourists or holidaymakers; and
  - (e) the overall health indicators of the district's residents; and 10
  - (f) the nature and severity of the alcohol-related problems arising in the district.
- (2) For the purposes of **subsection (1)**, a district's residents include people who have holiday homes there. 15
- (3) If asked by a territorial authority to do so, the following agencies and people must make reasonable efforts to give the territorial authority any information they hold relating to any of the matters stated in **subsection (1)**:
- (a) the Police; 20
  - (b) inspectors;
  - (c) Medical Officers of Health.

**77A Authorities must first produce draft policy**

- (1) A territorial authority that wishes to have a local alcohol policy must first produce a draft policy. 25
- (2) When producing a draft policy, a territorial authority must have regard to—
- (aa) the objectives and policies of its district plan; and
  - (a) the number of licences of each kind held for premises in its district, and the location and opening hours of each of the premises; and 30
  - (b) any areas in which bylaws prohibiting alcohol in public places are in force; and
  - (c) the demography of the district's residents; and
  - (d) the demography of people who visit the district as tourists or holidaymakers; and 35
  - (e) the overall health indicators of the district's residents; and

- (f) the nature and severity of the alcohol-related problems arising in the district.
- (3) For the purposes of **subsection (2)**, a district's residents include people who have holiday homes there.
- (4) The authority must not produce a draft policy without having consulted the Police, inspectors, and Medical Officers of Health, each of whom must, if asked by the authority to do so, make reasonable efforts to give the authority any information they hold relating to any of the matters stated in **subsection (2)(b) to (f)**. 5  
10
- 78 Authorities must then produce provisional policy**
- (1) If, after producing a draft policy under **section 77A**, a territorial authority continues to wish to have a local alcohol policy, it must produce a provisional policy by using the special consultative procedure to consult on the draft policy. 15
- (2) When producing a provisional policy, a territorial authority must have regard to the matters stated in **section 77A(2)**.
- 80 Public notice to be given of draft provisional policy**
- (1) A territorial authority that has (using the special consultative procedure) produced a draft local alcohol policy must then give public notice of— 20
- (a) the draft; and
- (b) rights of appeal against it; and
- (c) the ground on which an appeal may be made.
- (1) If, after producing a provisional policy under **section 78**, a territorial authority continues to wish to have a local alcohol policy, it must then give public notice of— 25
- (a) the provisional policy; and
- (b) rights of appeal against it; and
- (c) the ground on which an appeal may be made. 30
- (2) The public notice must be given in accordance with regulations made under this Act.
- 81 Right of appeal to licensing authority**
- (1) A person or agency that made submissions as part of the special consultative procedure on a draft local alcohol policy may, 35

within 30 days of its public notification, appeal to the licensing authority against any element of it ~~that is a matter relating to licensing the resulting provisional local alcohol policy.~~

- (2) A person or agency that did not make submissions as part of the special consultative procedure on the draft policy cannot appeal against any element of it the provisional policy. 5
- ~~(3) No element of the draft that is not a matter relating to licensing can be appealed against.~~
- (4) The only ground on which an element of the ~~draft provisional policy~~ policy can be appealed against is that it is unreasonable in the light of the object of this Act. 10
- (5) The appeal must be made in accordance with regulations made under this Act.
- (6) The territorial authority concerned is the respondent in an appeal under this section. 15

**81A Appeals to be dealt with in public**

The licensing authority must deal with every appeal under section 81 by way of public hearing (but may consider, and come to its decisions, in private).

- 82 Consideration of appeals by licensing authority** 20
- (1) The licensing authority must dismiss an appeal against an element of a ~~draft provisional~~ local alcohol policy if it—
- (a) is not satisfied that the element is unreasonable in the light of the object of this Act; or
- ~~(b) is satisfied that the element is not a matter relating to licensing; or~~ 25
- (c) is satisfied that the appellant did not make submissions as part of the special consultative procedure on the draft local alcohol policy concerned.
- (2) The licensing authority must ask the territorial authority concerned to reconsider an element of a draft local alcohol policy appealed against if it is satisfied that—
- (a) the appellant made submissions as part of the special consultative procedure on the draft local alcohol policy concerned; and 30
- 35

- (b) the element is a ~~matter relating to licensing~~, and is unreasonable in the light of the object of this Act.
- (3) The licensing authority must notify the appellant and territorial authority of its decision.
- (4) The appellant has no right of appeal against the decision of the licensing authority. 5
- (5) **Subsection (4)** does not limit or affect the Judicature Amendment Act 1972.

**83 Actions territorial authority may take if asked to reconsider element of draft provisional policy** 10

- (1) If the licensing authority asks a territorial authority to reconsider an element of a draft provisional local alcohol policy, the territorial authority must—
- (a) resubmit the draft policy to the licensing authority with the element deleted; or 15
- (b) resubmit the draft policy to the licensing authority with the element replaced with a new or amended element; or
- (c) appeal to the High Court against the licensing authority's finding that the element is unreasonable in the light of the object of this Act; or 20
- (d) abandon the draft provisional policy.
- (2) In an appeal under **subsection (1)(c)** relating to an element of a provisional local alcohol policy, all appellants to the territorial authority concerned against the element are respondents. 25

**84 Effect of High Court decisions on appeal by territorial authority**

- (1) If the High Court overturns the licensing authority's finding that an element of a draft provisional local alcohol policy is unreasonable in the light of the object of this Act, the element stands as part of the draft policy. 30
- (2) If the High Court upholds the licensing authority's finding that an element of a draft provisional local alcohol policy is unreasonable in the light of the object of this Act, the territorial authority must— 35

- (a) resubmit the ~~draft~~ policy to the licensing authority with the element deleted; or
- (b) resubmit the ~~draft~~ policy to the licensing authority with the element replaced with a new or amended element; or
- (c) abandon the ~~draft~~ provisional policy.

5

**85 Effect of resubmission of ~~draft~~ provisional policy to licensing authority**

- (1) The licensing authority must deal with the resubmission of a ~~draft~~ provisional local alcohol policy under **section 83(b) or 84(2)(b)** as if it were an appeal against every new or amended element that has replaced an earlier element appealed against; and **sections 81 to 84** apply accordingly. 10
- (2) The licensing authority may deal with all or any part of the resubmission in private. 15
- (3) **Subsection (2) overrides subsection (1) and section 81A.**

**86 When local alcohol policy adopted**

- (1) If no appeal against any element of a ~~draft~~ provisional local alcohol policy is made earlier, the policy is adopted 30 days after its public notification. 20
- (2) If appeals against elements of a ~~draft~~ provisional local alcohol policy have been made but they have all been dismissed by the licensing authority, the policy is adopted 30 days after the last of them is dismissed.
- (3) If a ~~draft~~ provisional local alcohol policy has been resubmitted to the licensing authority under **section 83(b) or 84(2)(b)** and the licensing authority decides that it is satisfied that every element it asked the territorial authority to reconsider (other than an element in respect of which the High Court has overturned the licensing authority's finding that it is unreasonable in the light of the object of this Act) has been either deleted or replaced by a new or amended element that is not unreasonable in the light of the object of this Act, the resubmitted policy is adopted when the licensing authority makes its decision. 25 30
- (4) If the High Court has overturned every finding of the licensing authority that an element of a ~~draft~~ provisional local alcohol 35

policy is unreasonable in the light of the object of this Act, the policy is adopted when the High Court makes its decision.

(4A) A provisional local alcohol policy ceases to be provisional when it is adopted.

(5) Even after it has been adopted, a local alcohol policy or amendment of a local alcohol policy has no effect until it is brought into force. 5

**86A Authority may discontinue development of local alcohol policy**

(1) A territorial authority may at any time before the adoption of a local alcohol policy discontinue its development. 10

(2) **Subsection (1) overrides section 86(1) to (4).**

**86B Disallowance of local alcohol policy**

(1) Once a provisional local alcohol policy has been adopted and ceased to be provisional,— 15

(a) any elements of it relating to maximum trading hours or a one-way-door policy must be treated as regulations within the meaning of section 2 of the Regulations (Disallowance) Act 1989; and sections 5 to 10 of that Act apply accordingly; but 20

(b) the rest of it must be treated as not being regulations within the meaning of that Act.

(2) The disallowance under the Regulations (Disallowance) Act 1989 of an element of a local alcohol policy (or of a local alcohol policy that has been brought into force) does not affect the rest of the policy. 25

(3) **Subsections (1) and (2) apply to any element of an amendment of a local alcohol policy relating to maximum trading hours or a one-way-door policy (whether an amendment of an existing element relating to one of those matters or the insertion of a new or substituted element relating to one of those matters) as if the adoption of the amendment were the adoption of a new policy.** 30

**87 When local alcohol policy is in force**

- (1) Once a provisional local alcohol policy has been adopted and ceased to be provisional, the territorial authority concerned—
- (a) must give public notice of its adoption; and
  - (b) may then bring it into force on a day stated by resolution. 5
- (2) The day on which a local alcohol policy is brought into force must be no sooner than 3 months after the giving of public notice of its adoption if—
- (a) it contains an element having the effect of stating maximum trading hours for licensed premises; or 10
  - (b) in the case of an amendment of a local alcohol policy, it modifies (in such a way as to change the maximum trading hours stated for licensed premises, or licensed premises of any kind) an element having the effect of stating maximum trading hours for licensed premises. 15
- (2) If **subsection (5)** applies to a local alcohol policy or an amendment of a local alcohol policy, the day on which it is brought into force must be no sooner than 3 months after the giving of public notice of its adoption. 20
- (3) Regulations prescribing the manner in which public notice of the adoption of a local alcohol policy must be given may require publication of the whole of a local alcohol policy adopted (or, in the case of an amendment of a local alcohol policy, the whole of the policy as amended). 25
- (4) Promptly after adopting a local alcohol policy or an amendment of a local alcohol policy to which **subsection (5)** applies, the territorial authority must take all reasonably practicable steps to give licensees affected by an element by virtue of which the subsection applies written notice of the adoption of the policy or amendment, and a brief written description of the effect of the element. 30
- (5) This subsection—
- (a) applies to a local alcohol policy if—
    - (i) it contains an element having the effect of stating maximum trading hours for licensed premises, or licensed premises of any kind, that differ from those applying previously; or 35

- (ii) it contains an element having the effect of stating a new one-way door restriction for licensed premises, or licensed premises of any kind; and
- (b) applies to an amendment of a local alcohol policy if—
- (i) it modifies (in such a way as to change the maximum trading hours stated for licensed premises, or licensed premises of any kind) an element having the effect of stating maximum trading hours for licensed premises; or 5
- (ii) it modifies (in such a way as to change the one-way door restriction stated for licensed premises, or licensed premises of any kind) an element having the effect of stating a one-way door restriction for licensed premises. 10
- 88 Relationship of local alcohol policies and district plans** 15
- (1) A local alcohol policy may contain a policy more restrictive than the relevant district plan.
- (2) A local alcohol policy does not authorise any thing forbidden by the relevant district plan.
- 89 Local alcohol policies to be consistent with general law** 20
- (1) A local alcohol policy must be consistent with this Act and the general law.
- (2) **Subsection (1)** is subject to **section 88(1)**.
- 90 Amendment of local alcohol policies**
- (1) A territorial authority may amend its local alcohol policy. 25
- (2) This Act, with any necessary modifications, applies to the amendment of a local alcohol policy as if it were the adoption of a local alcohol policy.
- 91 Revocation of local alcohol policies**
- (1) A territorial authority may, by using the special consultative procedure,— 30
- (a) revoke its local alcohol policy, and adopt another in its place; or

(b) revoke its local alcohol policy without adopting another in its place.

(2) This Act, with any necessary modifications, applies to the revocation of a local alcohol policy and adoption of another in its place as if it were the adoption of a local alcohol policy. 5

**92 ~~Local alcohol policies expire after 6 years~~**

(1) ~~A local alcohol policy expires 6 years after it was brought into force (even if it has since been amended).~~

(2) ~~The expiry of a local alcohol policy does not prevent the adoption of another.~~ 10

**92 Local alcohol policies to be reviewed every 6 years**

A territorial authority that has a local alcohol policy must review it, using the special consultative procedure,—

(a) no later than 6 years after it came into force; and

(b) no later than 6 years after the most recent review of it was completed. 15

Subpart 3—Licensing process: on-licences,  
off-licences, and club licences

**93 Licences to which subpart applies**

This subpart applies only to on-licences, off-licences, and club licences. 20

*Applications for licences*

**94 Applications to be made to licensing committee**

(1) An application for a licence must be filed with the licensing committee for the district in which the premises concerned are situated, unless it is an application for an on-licence for a conveyance. 25

(2) An application for an on-licence for a conveyance must be filed with the licensing committee for the district in which the applicant's principal place of business in New Zealand is situated. 30

**95 Form of application**

An application for a licence—

- (a) must be made in the name of the person or club who will hold it if the application is granted; and
- (b) must be made in the prescribed form and manner; and 5
- (c) must contain the prescribed particulars; and
- (ca) if it relates to any premises, must be accompanied by a statement by the applicant that—
  - (i) the owner of the building in which the premises are situated provides and maintains an evacuation scheme as required by section 21B of the Fire Service Act 1975; or 10
  - (ii) because of the building's current use, its owner is not required to provide and maintain such a scheme; or 15
  - (iii) because of the nature of the building, its owner is exempt from the requirement to provide and maintain such a scheme; and
- (d) must be accompanied by the prescribed fee; and
- (e) except in the case of an application relating to a conveyance, must be accompanied by a certificate by the territorial authority that the proposed use of the premises meets requirements of the Resource Management Act 1991 and of the building code. 20

**96 Notification requirements** 25

An applicant for a licence must,—

- (a) within 10 working days after filing the application, ensure that notice of the application in the prescribed form is attached in a conspicuous place on or adjacent to the site to which the application relates; and 30
- (b) within 20 working days after filing the application, give public notice of the application.

**97 Objections to applications**

- (1) A person may object to the grant of a licence only if he or she has a greater interest in the application for it than the public generally. 35

- (2) An objection must be in writing and filed with the licensing committee within 15 working days after the first publication of the public notice of the making of the application.
- (3) No objection may be made in relation to a matter other than a matter specified in **section 100**. 5
- (4) An objection may be made only in relation to the suitability of the applicant if—
- (a) the application relates to any premises ~~in respect of~~ for which a licence is in force; and
  - (b) the applicant seeks conditions the same as applying to that licence. 10
- (5) The secretary must give a copy of every objection to the applicant.

**98 Police, Medical Officer of Health, and inspector must inquire into applications** 15

- (1) On receiving an application for a licence, the secretary must send a copy of it, and of each document filed with it, to—
- (a) the constable in charge of the police station nearest to—
    - (i) the premises ~~in respect of~~ for which the licence is sought; or 20
    - (ii) the secretary's office, where the licence is sought for a conveyance; and
  - (b) an inspector; and
  - (c) the Medical Officer of Health—
    - (i) in whose district the premises are situated; or 25
    - (ii) in whose district the applicant's principal place of business in New Zealand is situated, where the licence is sought for a conveyance.
- (2) The inspector must inquire into, and file with the licensing committee a report on, the application. 30
- (3) The Police and the Medical Officer of Health—
- (a) must each inquire into the application; and
  - (b) if either has any matters in opposition to it, must file with the licensing committee a report on it within 15 working days after receiving the copy of it. 35
- (4) The licensing committee may assume that, if no report is received from the Police or Medical Officer of Health within ~~20~~

15 working days after sending the copy of the application to them, the Police or Medical Officer of Health do not oppose the application.

- (5) The secretary must send to the applicant a copy of any report filed with the licensing committee under this section. 5

### **99 Who decides application for licence**

- (1) A licensing committee may decide any application for a licence. 15
- (2) With the leave of the chairperson of the licensing authority, a licensing committee may refer an application for a licence to the authority for decision. 10
- (3) The licensing committee must give the licensing authority the complete file relating to any application for a licence to be decided by the authority. The **complete file** means— 15
- (a) the application and any papers filed in support of it; and
  - (b) a copy of the public notice of the application, and a statement of the dates of publication of the notice; and
  - (c) any objection, and any papers filed in support of it; and
  - (d) any reports made under **section 98**; and
  - (e) the certificate referred to in **section 95(e)**. 20

### **100 Criteria for issue of licences**

- (1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters: 25
- (a) the object of this Act;
  - (b) the suitability of the applicant;
  - (c) any relevant local alcohol policy;
  - (d) the days on which and the hours during which the applicant proposes to sell alcohol;
  - (e) the design and layout of any proposed premises: 30
  - (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods;
  - (g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low- 35

- alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:
- (h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of the licence: 5
  - (i) whether the applicant has appropriate systems, staff, and training to comply with the law:
  - (j) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under **section 98**. 10
- (2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

**100A Considering effects of issue or renewal of licence on amenity and good order of locality** 15

- (1) In forming for the purposes of **section 100(h)** an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to— 20
- (a) the following matters (as they relate to the locality):
    - (i) current, and possible future, noise levels:
    - (ii) current, and possible future, levels of nuisance and vandalism:
    - (iii) the number of premises for which licences of the kind concerned are already held; and 25
  - (b) the extent to which the following purposes are compatible:
    - (i) the purposes for which land near the premises concerned is used: 30
    - (ii) the purposes for which those premises will be used if the licence is issued.
- (2) In forming for the purposes of **section 120(b)** an opinion on whether the amenity and good order of a locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew a licence, the licensing authority or a licensing committee must have regard to the following matters (as they relate to the locality): 35

- (a) current, and possible future, noise levels:
- (b) current, and possible future, levels of nuisance and vandalism.

- 101 Authority or committee may refuse licence ~~of own motion~~ even if application not opposed** 5  
 The licensing authority or licensing committee concerned may, having regard to any matter stated in **section 100**, refuse to issue a licence, even if no objection was filed against the application for it under **section 97** and no report was filed under **section 98** opposing that application. 10
- 102 Licence may be refused if contrary to local alcohol policy**  
 The licensing authority or licensing committee concerned may refuse to issue a licence if—
- (a) there is any relevant local alcohol policy; and
  - (b) in its opinion, the issue of the licence, or the consequences of the issue of the licence, would be inconsistent with the policy. 15
- 103 Conditions may be imposed if required by local alcohol policy**  
 The licensing committee or licensing authority concerned may issue a licence subject to particular conditions if—
- (a) there is any relevant local alcohol policy; and
  - (b) in its opinion, the issuing of the licence, or the consequences of the issuing of the licence, without those conditions would be inconsistent with the policy. 20 25
- 104 Particular ~~discretionary~~ conditions: on-licences and club licences**
- (1) The licensing authority or licensing committee concerned may issue an on-licence or club licence subject to conditions of any or all of the following kinds: 30
    - (a) ~~conditions stating the days on which and the hours during which alcohol may be sold:~~
    - (b) conditions prescribing steps to be taken by the licensee to ensure that the provisions of this Act relating to the

- sale or supply of alcohol to prohibited persons are observed:
- (c) conditions prescribing steps to be taken by the licensee to ensure that the provisions of this Act relating to the management of the premises concerned are observed: 5
  - (d) conditions prescribing the people or kinds of person to whom alcohol may be sold or supplied:
  - (e) conditions imposing one-way door restrictions:
  - (f) in the case of a club licence or an on-licence endorsed under **section 39**, conditions requiring a manager to be on duty. 10
- (2) ~~In deciding whether to issue for any premises a licence subject to conditions under **subsection (1)(a)** and, if so, what conditions, the licensing authority or licensing committee concerned may have regard to the site of the premises in relation to neighbouring land use.~~ 15
- (1A) The licensing authority or licensing committee concerned must ensure that every on-licence and club licence it issues is issued subject to conditions—
- (a) stating the days on which and the hours during which alcohol may be sold and supplied; and 20
  - (b) if there are in force regulations under this Act empowering the authority or committee to determine for premises of different kinds different levels of licensing fee prescribed by the regulations, stating the fees payable for the licensing of the premises concerned; and 25
  - (c) stating (directly or by description) a place or places on the premises at which drinking water is to be freely available to customers while the premises are open for business. 30
- (2) In deciding the conditions under **subsection (1A)(a)** subject to which a licence is to be issued, the licensing authority or licensing committee concerned may have regard to the site of the premises in relation to neighbouring land use. 35
- (3) **Subsection (1)(ed)** is subject to the Human Rights Act 1993.

**105** ~~One-way door restrictions~~ Imposition of one-way door restrictions by condition

- (1) For the purposes of **section 104(1)(e)**, a one-way door restriction, in relation to a licensee, is a requirement that, during the hours stated in the restriction,= 5
- (a) no person is to be admitted (or re-admitted) into the premises unless he or she is a person described in **subsection (2)**; and
- (b) no person who has been admitted (or re-admitted) into the premises while the restriction applies to the licensee is to be sold or supplied with alcohol. 10
- (2) Any of the following people can be admitted into licensed premises while the restriction applies to the licensee:
- (a) the licensee:
- (b) the licensee's spouse, civil union partner, or de facto partner: 15
- (c) a manager:
- (d) a manager's spouse, civil union partner, or de facto partner:
- (e) a member of the immediate family of the licensee or a manager: 20
- (f) during the hours he or she is employed to work on the premises; and for 60 minutes after those hours have ended; an employee of the licensee who does not live on the premises: 25
- (g) a person who is agent of the licensee; or acting under a contract with the licensee or a manager; and has the authority of the licensee or a manager to enter the premises=
- (i) to clean, repair, or restock the premises (or any equipment in them); or 30
- (ii) to check or remove cash:
- (h) a person who has the authority of the licensee or a manager to enter the premises to remove equipment (for example, band equipment): 35
- (i) an employee of the licensee who lives on the premises:
- (j) a person who lodges on the premises:
- (k) while a person described in **paragraph (j)** is on the premises; a genuine guest of that person:

- (3) ~~For the purposes of **subsection (2)**, a person residing or lodging in the building in which licensed premises are situated resides or lodges on the premises.~~
- (4) A condition imposing one-way door restriction on a licence may be created simply by issuing or renewing a licence 5  
subject to a condition—
- (a) stating that ~~it~~ the licence is subject to a one-way door restriction ~~having effect in accordance with this section;~~ and
- (b) stating the day or days on which and the periods when 10  
the restriction applies.
- (5) To the extent (if any) that elements of a one-way door restriction imposed on a licence are more restrictive than the equivalent elements of an applicable one-way door restriction in a relevant local alcohol policy, the more restrictive elements prevail. 15

**105A Compulsory conditions relating to display and promotion of alcohol in supermarkets and grocery stores**

- (1) The licensing authority or licensing committee concerned must ensure that every off-licence it issues or renews for premises that are a supermarket or a grocery store is subject to a condition describing one part of the premises as a permitted area for the display and promotion of alcohol. 20
- (2) The part can be described verbally, or by means of some sort of plan. 25
- (3) The authority or committee must describe only a part that, in its opinion,—
- (a) is a single area; and
- (b) does not include all or any part of a thoroughfare.
- (4) The condition takes effect as a condition that the licensee— 30
- (a) must ensure that no display, advertisement, or promotion of alcohol occurs on the premises at any place outside the part described; and
- (b) must not arrange or reconfigure the premises in such a way that any part of the part described becomes a thoroughfare or part of a thoroughfare. 35

- (5) For the purposes of this section, a part of any premises is a thoroughfare if the premises are so configured or arranged that most customers are likely to find it impossible, difficult, or inconvenient to undertake a normal shopping trip on the premises (or impossible, difficult, or inconvenient to buy lottery tickets on the premises) without going through the part. 5

**106 Particular discretionary conditions, and other compulsory conditions: off-licences**

- (1) The licensing authority or licensing committee concerned may issue an off-licence subject to conditions of any or all of the following kinds: 10
- (a) ~~conditions stating the days on which and the hours during which alcohol may be sold or delivered;~~
  - (b) conditions prescribing steps to be taken by the licensee to ensure that the provisions of this Act relating to the sale of alcohol to prohibited persons are observed: 15
  - (c) conditions prescribing the people or kinds of person to whom alcohol may be sold or supplied:
  - (d) in the case of premises where (in the opinion of the authority or committee) the principal business carried on is not the manufacture or sale of alcohol, conditions relating to the kind or kinds of alcohol that may be sold or delivered on or from the premises. 20
- (1A) The licensing authority or licensing committee concerned must ensure that every off-licence it issues is issued subject to conditions— 25
- (a) stating the days on which and the hours during which alcohol may be sold or delivered; and
  - (b) if there are in force regulations under this Act empowering the authority or committee to determine for premises of different kinds different levels of licensing fee prescribed by the regulations, stating the fees payable for the licensing of the premises concerned; and 30
  - (c) stating (directly or by description) a place or places on the premises at which drinking water is to be freely available to customers, while alcohol is being supplied free as a sample on the premises. 35

- (2) ~~In deciding whether to issue for any premises a licence subject to conditions under **subsection (1)(a)** and, if so, what conditions, the licensing authority or licensing committee concerned may have regard to the site of the premises in relation to neighbouring land use.~~ 5
- (2) In deciding the conditions under **subsection (1A)(a)** subject to which a licence is to be issued, the licensing authority or licensing committee concerned may have regard to the site of the premises in relation to neighbouring land use.
- (3) **Subsection (1)(c)** is subject to the Human Rights Act 1993. 10
- 107 Other discretionary conditions**
- (1) The licensing authority or licensing committee concerned may issue any licence subject to any reasonable conditions not inconsistent with this Act.
- (2) The generality of **subsection (1)** is not limited or affected by any other provision of this Act. 15
- 108 Different conditions may apply to different parts of premises**
- ~~A licence may be issued subject to conditions applying differently to different parts of the premises concerned.~~ 20
- Any condition subject to which a licence is issued may do either or both of the following:
- (a) apply differently to different parts of the premises:
- (b) apply differently to the same part of the premises at different times, on different days, or both. 25
- 109 Restricted and supervised areas**
- (1) The licensing authority or licensing committee concerned must do one of the things described in **subsection (3)** when issuing an on-licence for a hotel or a tavern.
- (2) The licensing authority or licensing committee concerned may do one of the things described in **subsection (3)** when issuing a licence of any kind for any premises other than a hotel or a tavern. 30
- (3) The things referred to in **subsections (1) and (2)** are—
- (a) designate all of the premises— 35

- (i) an area to which ~~people under the buying age~~ minors must not be admitted; or
- (ii) an area to which ~~people under the buying age~~ minors must not be admitted unless accompanied by a parent or guardian: 5
- (b) designate a part (or any of 2 or more parts) of the premises an area to which ~~people under the buying age~~ minors must not be admitted:
- (c) designate a part (or any of 2 or more parts) of the premises an area to which ~~people under the buying age~~ minors must not be admitted unless accompanied by a parent or guardian: 10
- (d) both—
  - (i) designate a part (or any of 2 or more parts) of the premises an area to which ~~people under the buying age~~ minors must not be admitted; and 15
  - (ii) designate a part (or any of 2 or more parts) of the premises an area to which ~~people under the buying age~~ minors must not be admitted unless accompanied by a parent or guardian. 20

*Variation of conditions*

**110 Variation of conditions**

- (1) The holder of a licence may at any time apply to the licensing committee to vary or cancel any condition of the licence (whether the condition was imposed by the licensing authority or the committee). 25
- (2) The application must be made in the prescribed form and manner.
- (3) The applicant must comply with the notification requirements in **section 96**. 30
- (4) A person may object to the grant of the application if he or she has a greater interest in the application than the public generally.
- (5) Every objection must comply with the requirements set out in **section 97(2) to (5)**. 35
- (6) **Sections 98 and 99**, with any necessary modifications, apply to applications under this section.

- (7) In considering the application, the licensing authority or licensing committee concerned must have regard to any relevant matter that is specified in **section 100**.
- (8) ~~The licensing authority or licensing committee concerned must not vary any conditions imposed on a licence for any premises if—~~ 5
- (a) ~~the conditions are provided for in a relevant local alcohol policy; and~~
- (b) ~~in its opinion,—~~
- (i) ~~holding the licence for the premises while it is subject to the conditions as varied would be inconsistent with the policy; or~~ 10
- (ii) ~~the consequences of holding the licence for the premises while it is subject to the conditions as varied would be inconsistent with the policy.~~ 15
- (8) In deciding whether or not, or to what extent, to vary any conditions imposed on a licence, the licensing authority or licensing committee concerned must have regard to any inconsistency between the conditions as proposed to be varied and any relevant local alcohol policy. 20

### *Duration*

- 111 Licence expires when new licence issued for same premises**  
A licence of any kind expires when another licence of the same kind is issued for the premises concerned.
- 112 Duration of licences after issue** 25
- (1) ~~If no application to renew a licence is made before the day 12 months after the day on which it was issued, it expires on that day.~~
- (2) ~~If an application to renew a licence is made before the day 12 months after the day on which it was issued, it expires on the earlier of the following days:~~ 30
- (a) ~~the day the application is decided;~~
- (b) ~~the day 3 years after the day it was issued.~~
- (3) **Subsections (1) and (2)** apply only to a licence that has not already expired. 35
- (4) ~~This section is subject to—~~

- (a) the requirements of this Act relating to the payment of fees; and
- (b) the provisions of this Act relating to the suspension and cancellation of licences.

- 113 Duration of licences after renewal** 5
- (1) The first renewal of a licence takes effect on the day 12 months after the day it was issued.
- (2) If no further application to renew a licence is made on or before the last day of the period for which it was last renewed, it expires on that day. 10
- (3) If a further application to renew a licence is made on or before the last day of the period for which it was last renewed, it expires on the earlier of the following days:
- (a) the day 3 years after that day;
  - (b) the day the application is decided. 15
- (4) **Subsections (2) and (3)** apply only to a licence that has not already expired.
- (5) A second or later renewal of a licence takes effect on the day after the last day of the period for which it was last renewed.
- (6) This section is subject to— 20
- (a) the requirements of this Act relating to the payment of fees; and
  - (b) the provisions of this Act relating to the suspension and cancellation of licences.
- 112 Expiry or renewal of licences** 25
- (1) In this section,—
- end of its currency,—
- (a) for a licence that has been renewed before, means the close of the last day of the period for which it was last renewed. 30
  - (b) for a licence that has not been renewed before, means the close of the day 12 months after the day it was issued
- end of the prospective renewal period,—
- (a) for a licence that has been renewed before, means the close of the day 3 years after the last day of the period for which it was last renewed. 35

- (b) for a licence that has not been renewed before, means the close of the day 4 years after the day it was issued.
- (2) If no application to renew a licence has been made before the end of its currency, it expires at the end of its currency.
- (3) A licence expires as provided in **subsection (4) or (5)**, or continues in force as provided in **subsection (6)**, if— 5
- (a) an application to renew it has been made before the end of its currency; but
- (b) it has not been renewed before the end of its currency.
- (4) If a decision to refuse to renew the licence has been made before the end of the prospective renewal period, it expires on the day stated under **section 123(3)**. 10
- (5) If no decision on the application to renew the licence has been made before the end of the prospective renewal period, it expires at the end of the prospective renewal period. 15
- (6) If a decision to renew the licence is made before the end of the prospective renewal period, its renewal takes effect (for the period stated under **section 123(2)**) at the end of its currency.

#### **112A Application of section 112**

- Section 112** applies to a licence only if it has not already expired under another provision of this Act; and is subject to— 20
- (a) the requirements of this Act relating to the payment of fees; and
- (b) the provisions of this Act relating to the suspension, cancellation, and surrender of licences. 25

#### **112B Application for renewal lapses if licence expires**

An application for the renewal of a licence lapses when the licence expires.

### *Renewals*

#### **114 Renewal of off-licences**

The licensing authority or licensing committee concerned must not renew an off-licence for any premises unless they are premises for which (by virtue of **section 35, 36, or 37**) an off-licence can be issued. 30

**114 Restriction on renewal of off-licences**

The licensing authority or licensing committee concerned must not renew an off-licence unless—

- (a) the premises are premises for which (by virtue of **section 35, 36, or 37**) an off-licence can be issued; or 5
- (b) the licence has continuously been held by a club since before the commencement of **section 31**.

**115 Renewal of licence held by auctioneer or caterer**

The licensing authority or licensing committee concerned must not renew a licence endorsed under **section 40 or 41** unless the licensee continues to qualify for the endorsement of the licence. 10

**116 Application for renewal of licence**

- (1) The holder of a licence may apply in accordance with this section to renew the licence. 15
- (2) Every application for renewal ~~must~~—
  - (a) must be filed with the licensing committee with which the application for the licence was filed; and
  - (b) must be made no later than 20 working days before the expiry of the licence, or by such later date (not being later than the date of the expiry of the licence) as the licensing committee may allow; and 20
  - (c) must be made in the prescribed form and manner; and
  - (d) must contain the prescribed particulars; and
  - (e) if the application it relates to any premises, must be accompanied by a statement by the applicant that— 25
    - (i) the owner of the building in which the premises are situated provides and maintains an evacuation scheme for public safety that meets the requirements of as required by section 21B of the Fire Service Act 1975; or 30
    - (ii) because of the building's current use, its owner is not required to provide and maintain such a scheme; or
    - (iii) because of the nature of the building, its owner is is exempt from the requirement to provide and maintain such a scheme; and 35

- (f) must be accompanied by the prescribed fee.
- (3) The applicant must comply with the notification requirements set out in **section 96**; but public notice of the application must be given within 10 working days after filing the application, not 20 working days. 5
- ~~(4) Unless earlier decided, the application expires on the day 3 years after the day on which the licence concerned expires.~~

### 117 **Objections to renewal**

- (1) A person may object to a renewal of a licence if he or she has a greater interest in the application than the public generally. 10
- (2) Every objection must be in writing, and must be filed with the licensing committee within 15 working days after the first publication of the public notice of the making of the application.
- ~~(3) No objection may be made in relation to any matter other than—~~ 15
- ~~(a) a matter set out in **section 100** (other than the matter set out in **section 100(f)**); or~~
- ~~(b) the manner in which the applicant has sold alcohol.~~
- (3) No objection may be made in relation to any matter other than those stated in **section 120**. 20
- (4) The secretary must send a copy of every objection to the applicant.

### 118 **Police, Medical Officer of Health, and inspector must inquire into application**

The obligations of the secretary, Police, Medical Officer of Health, and inspector set out in **section 98** apply to an application for a renewal of a licence. 25

### 119 **Who decides application for renewal**

- (1) A licensing committee may decide any application for renewal of a licence. 30
- (2) With the leave of the chairperson of the licensing authority a licensing committee may refer any application for renewal of a licence to the authority for decision.

- (3) The licensing committee must forward the complete file relating to the application to the licensing authority. The **complete file** means—
- (a) the application and any papers filed in support of the application; and 5
  - (b) a copy of the public notice of the application, and a statement of the dates of publication of the notice; and
  - (c) any objection and any papers filed in support of the objection; and
  - (d) any reports made under **section 98**. 10

#### **120 Criteria for renewal**

- (1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
- ~~(a) the matters set out in **section 100**:~~ 15
  - (a) the matters set out in **paragraphs (a) to (g), (i), and (j) of section 100**:
  - (b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence: 20
  - (c) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.
- (2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence. 25

#### **120A Imposition of conditions on renewal**

- (1) When renewing a licence of any kind, the licensing authority or the licensing committee concerned— 30
- (a) may impose any conditions subject to which it may issue a licence of that kind; and
  - (b) must impose any conditions subject to which it must issue a licence of that kind; and
  - (c) may, whether consequentially or not, vary or cancel any conditions applying to the licence before its renewal (whether they are conditions subject to which the li- 35

- cence was issued or conditions imposed on some earlier renewal).
- (2) A condition imposed—
- (a) has the same effect as it would if it were a condition subject to which the licence was issued; and (in particular) a failure or refusal to comply with it has the same effect, and may result in the same consequences, as a failure or refusal to comply with a condition subject to which the licence was issued; and 5
- (b) may be varied under **section 110** as if it were a condition subject to which the licence was issued. 10
- (3) **Subsection (1)** applies to all renewals of licences, whether they were issued under this Act or a former licensing Act.

*Matters that relate to decisions to renew licences*

- 121 Renewal of licences where relevant local alcohol policy exists** 15
- (1) In considering whether to renew a licence, the licensing authority or licensing committee concerned must not take into account any inconsistency between a relevant local alcohol policy and— 20
- (a) the renewal of the licence; or
- (b) the consequences of its renewal.
- (2) The licensing authority or licensing committee concerned may impose particular conditions on any licence it renews if— 25
- (a) there is any relevant local alcohol policy; and
- (b) it considers that the renewal of the licence, or the consequences of the renewal of the licence, without those conditions imposed on it would be inconsistent with the policy.
- 122 Licensing committee may decide certain application on papers** 30
- The licensing committee may decide an application for renewal of a licence on the papers if there are no reports opposing renewal, or objections.

**123 Decision on renewal**

- (1) In considering any application for the renewal of a licence, the licensing committee or the licensing authority concerned must have regard to—
- (a) the matters set out in **section 100**; and 5
  - (b) the manner in which the licensee has sold alcohol.
- (2) After considering an application for the renewal of a licence, the licensing authority or the licensing committee concerned may, subject to **section 121**, renew the licence for further period of not more than 3 years on— 10
- (a) the conditions presently attaching to it; or
  - (b) any different conditions, relating to any matter, that the authority or committee thinks fit.
- (3) If the committee decides to refuse an application for renewal because of any matter specified in **section 100**, the committee must specify the day on which the licence expires, and that day must be within 3 months of the date of its decision. 15
- (3) If the committee refuses to renew the licence, it must state the day on which the certificate expires, and that day must be no later than 3 months after the date of its decision. 20

*Temporary authorities***124 Temporary authorities: on-licences and off-licences**

- (1) A licensing committee may, on the application of a person who appears to the committee to have any right, title, estate, or interest in any premises, or any business conducted in any premises, ~~in respect of~~ for which an on-licence or off-licence is in force, make an order authorising the applicant (or some suitable person nominated by the applicant) to carry on the sale and supply of alcohol for a period, not exceeding 3 months, stated in the order. 25 30
- (2) The application must be made in the prescribed form and manner
- (3) The committee may hear and determine the application ~~ex parte~~ without notice, or direct that notice of the application and the time and place fixed for any hearing be served on any persons and in any manner the committee specifies. 35
- (4) On making an order, the committee—

- (a) must impose any conditions that this Act requires an on-licence or off-licence (as the case requires) to be issued subject to; and
  - (b) may impose any conditions that this Act enables an on-licence or off-licence (as the case requires) to be issued subject to; and 5
  - (c) may impose any other reasonable conditions it thinks fit.
- (5) The person authorised by the order has for the purposes of this Act the same duties, obligations, and liabilities, as the holder of the on-licence or off-licence concerned. 10

Compare: 1989 No 63 ss 24, 47

#### Subpart 4—Licensing process: special licences

##### *Applications for special licences* 15

#### **125 Filing of applications**

- (1) An application for a special licence must be filed, at least 20 working days before the day on which the event concerned begins,—
- (a) with the licensing committee for the district in which the premises concerned are situated, if it is an application for a licence for premises that are not a conveyance: 20
  - (b) with the licensing committee for the district in which the applicant's principal place of business in New Zealand is situated, if it is an application for a licence for a conveyance. 25
- (2) The licensing committee may consider an application for a special licence filed less than 20 working days before the day on which the event concerned begins, if satisfied that the need for a special licence could not reasonably have been foreseen earlier. 30

Compare: 1989 No 63 s 76(2)

#### **126 Form of application**

An application for a special licence—

- (a) must be made in the name of the person who will hold it if the application is granted; and 35

- (b) must state whether the applicant wishes the licence to be designated as an on-site special licence, an off-site special licence, or both; and
- (c) must be made in the prescribed form and manner; and
- (d) must contain the prescribed particulars; and 5
- (e) must be accompanied by the prescribed fee; and
- (f) ~~except in the case of an application relating to a conveyance, must be accompanied by a certificate by the territorial authority that the proposed use of the premises meets requirements of the Resource Management Act 1991 and of the building code.~~ 10

Compare: 1989 No 63 s 76(1)

#### 127 Notification requirements

An applicant for a special licence—

- (a) must comply with any applicable notification requirements prescribed by regulations made under this Act; and 15
- (b) if required to do so by the secretary, must, within 10 working days after filing the application, ensure that notice of the application in the prescribed form is attached 20  
in a conspicuous place on or adjacent to the site to which the application relates.

Compare: 1989 No 63 s 76(4)

#### 128 Objections to applications

- (1) A person may object to the grant of a special licence only if— 25
  - (a) he or she has a greater interest in the application for it than the public generally; and
  - (b) the secretary has under **section 127(b)** required the applicant to give notice of the application.
- (2) An objection must be in writing, and filed with the licensing committee within any period the secretary requires after the applicant has complied with the requirement under **section 127(b)**. 30
- (3) No objection may be made in relation to a matter other than a matter specified in **section 130**. 35

- (4) The secretary must give a copy of every objection to the applicant.

Compare: 1989 No 63 s 77

**129 Police, inspector, and Medical Officer of Health must inquire into applications** 5

- (1) On receiving an application for a special licence, the secretary must send a copy of it, and of each document filed with it, to—
- (a) the constable in charge of the police station nearest to—
    - (i) the premises ~~in respect of~~ for which the licence is sought; or 10
    - (ii) the secretary's office, where the licence is sought for a conveyance; and
  - (b) an inspector; and
  - (c) the Medical Officer of Health—
    - (i) in whose district the premises are situated; or 15
    - (ii) in whose district the applicant's principal place of business in New Zealand is situated, where the licence is sought for a conveyance.
- (2) The inspector must inquire into, and file with the licensing committee a report on, the application. 20
- (3) The Police ~~and the Medical Officer of Health~~—
- (a) must ~~each~~ inquire into the application; and
  - (b) if ~~either~~ they have any matters in opposition to it, must file with the licensing committee a report on it within 15 working days after receiving the copy of it. 25
- (3A) The Medical Officer of Health—
- (a) may inquire into the application; and
  - (b) if he or she has any matters in opposition to it, may file with the licensing committee a report on it within 15 working days after receiving the copy of it. 30
- (4) The licensing committee may assume that, if no report is received from the Police or Medical Officer of Health within ~~20~~ 15 working days after sending the copy of the application to them, the Police or Medical Officer of Health do not oppose the application. 35
- (5) The secretary must send to the applicant a copy of any report filed with the licensing committee under this section.

Compare: 1989 No 63 s 78

**130 Criteria for issue of special licences**

- (1) In deciding whether to issue a special licence, the licensing committee concerned must have regard to the following matters:
- (a) the object of this Act: 5
  - (b) the nature of the particular event ~~in respect of~~ for which the licence is sought and, in particular,—
    - (i) whether the applicant is engaged in, or proposes at the event to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods; and 10
    - (ii) whether the applicant is engaged in, or proposes at the event to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services: 15
  - (c) the suitability of the applicant:
  - (d) any relevant local alcohol policy: 20
  - (e) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of the licence:
  - (f) the days on which and the hours during which the applicant proposes to sell alcohol: 25
  - (g) the design and layout of the premises concerned:
  - (h) whether the applicant has appropriate systems, staff and training to comply with the law:
  - (i) any areas of the premises that the applicant proposes should be designated as restricted areas or supervised areas: 30
  - (j) any steps the applicant proposes to take to ensure that the requirements of this Act in relation to the sale and supply of alcohol to prohibited persons are observed:
  - (k) the applicant's proposals relating to— 35
    - (i) the sale and supply of non-alcoholic drinks and food; and
    - (ii) the sale and supply of low-alcohol drinks; and

- (iii) the provision of help with or information about alternative forms of transport from the premises:
- (l) any matters dealt with in any report from the Police, the Medical Officer of Health, or an inspector made under **section 129**. 5
- (2) The licensing committee must not take into account any prejudicial effect that the issue of the special licence may have on the business conducted pursuant to any other licence.  
Compare: 1989 No 63 s 79
- 131 Additional requirements for large-scale events** 10
- (1) If, in the opinion of the licensing committee concerned, an application for a special licence relates to a large-scale event, the committee may do ~~either or both~~ any or all of the following:
- (a) require the applicant to provide the committee with a management plan describing how the applicant proposes to deal with matters such as security, monitoring, interaction with local residents, and public health concerns: 15
- (aa) require the applicant to provide the committee with a certificate by the territorial authority that the proposed use of the premises meets the requirements of the Resource Management Act 1991 and of the building code: 20
- (b) require the applicant to liaise with the Police and the territorial authority on planning for the event.
- (2) In deciding whether to issue a special licence, the licensing committee concerned may have regard to the following matters (in addition to the matters stated in **section 130(1)**): 25
- (a) whether, and how well, the applicant has complied with any requirement under **subsection (1)(a)**: 30
- (b) whether, and how well, the applicant has complied with any requirement under **subsection (1)(b)**, and whether the Police and the territorial authority are satisfied with any liaison that has taken place.
- 132 Licensing committee may refuse special licence of own motion** 35
- The licensing committee concerned may, having regard to any matter stated in **section 130**, refuse to issue a special licence,

even if no objection was filed against the application for it under **section 128** and no report was filed under **section 129** opposing that application.

- 133 Special licence may be refused if contrary to local alcohol policy** 5  
 The licensing committee concerned may refuse to issue a special licence if—
- (a) there is any relevant local alcohol policy; and
  - (b) in its opinion, the issue of the licence, or the consequences of the issue of the licence, would be inconsistent with the policy. 10
- 134 Conditions may be imposed if required by local alcohol policy**  
 The licensing committee concerned may issue a special licence subject to particular conditions if— 15
- (a) there is any relevant local alcohol policy; and
  - (b) in its opinion, the granting of the licence, or the consequences of the granting of the licence, without those conditions would be inconsistent with the policy.
- 135 Particular discretionary conditions and compulsory conditions: special licences** 20
- (1) The licensing committee concerned may issue a special licence subject to conditions of any or all of the following kinds:
    - (a) ~~conditions stating the days on which and the hours during which alcohol may be sold:~~ 25
    - (b) conditions prescribing steps to be taken by the licensee to ensure that the provisions of this Act relating to the sale of alcohol to prohibited persons are observed:
    - (c) conditions prescribing the people or kinds of person to whom alcohol may be sold or supplied: 30
    - (d) in the case of premises where (in the opinion of the committee) the principal business carried on is not the manufacture or sale of alcohol, conditions relating to the kind or kinds of alcohol that may be sold or delivered on or from the premises: 35

- (e) conditions requiring the provision of food for consumption on the premises concerned:
- (f) conditions requiring low-alcohol beverages to be available for sale and supply:
- (g) conditions requiring non-alcoholic beverages to be available for sale and supply: 5
- (h) conditions requiring assistance with or information about alternative forms of transport from the premises concerned to be available:
- (i) conditions requiring the exclusion of the public from the premises concerned: 10
- (j) conditions—
- (i) requiring alcohol to be sold and supplied on the premises concerned only in containers of certain descriptions; or 15
- (ii) requiring alcohol not to be sold and supplied on the premises concerned in containers of certain descriptions:
- (k) conditions requiring the filing of returns relating to alcohol sold pursuant to the licence: 20
- (l) ~~conditions having the effect of designating all or any part or parts of the premises as—~~
- (i) ~~an area to which people under the buying age must not be admitted; or~~
- (ii) ~~an area to which people under the buying age must not be admitted unless accompanied by a parent or guardian:~~ 25
- (m) ~~any other conditions aimed at promoting the responsible consumption of alcohol:~~
- (n) any conditions of a kind subject to which any licence may be issued under **section 104 or 106**: 30
- (o) any reasonable conditions that, in the committee's opinion, ~~will reduce the risk of alcohol-related harm or make enforcement easier~~ are not inconsistent with this Act.
- (1A) The licensing committee concerned may do one of the things described in **section 109(3)** when issuing a special licence for any premises. 35
- (1B) The licensing committee concerned must ensure that every special licence it issues is issued subject to conditions—

- (a) stating the days on which and the hours during which alcohol may be sold or delivered; and
- (b) stating (directly or by description) a place or places on the premises at which drinking water is to be freely available to customers while the event (or any of the events) described in it is taking place. 5
- (2) In deciding whether to issue for any premises a special licence subject to conditions under **subsection (1)(a)** and, if so, what conditions, the licensing committee concerned may have regard to the site of the premises in relation to neighbouring land use. 10
- (2) In deciding the conditions under **subsection (1B)(a)** subject to which a licence is to be issued, the licensing committee concerned may have regard to the site of the premises in relation to neighbouring land use. 15
- (3) **Subsection (1)(c)** is subject to the Human Rights Act 1993.  
Compare: 1989 No 63 s 80
- 136 Different conditions may apply in certain cases**
- (1) A special licence may be issued subject to conditions applying differently to different parts of the premises concerned. 20
- (2) A special licence designated as both an on-site special licence and an off-site special licence may be issued subject to conditions applying differently to the activities to be undertaken by virtue of the different designations.
- 137 Duration of special licences** 25
- (1) A special licence is in force as follows:
- (a) if issued for a single event, it is in force on the day or days on which the event occurs:
- (b) if issued for a series of events, it is in force for the lesser of the following periods: 30
- (i) the period during which the events occur:
- (ii) the 12 months after its issue:
- (c) if issued to the holder of an on-licence or a club licence, for the premises for which the on-licence or club licence is held, it is in force— 35

- (i) for a period (of not more than 12 months) after its issue stated by the licensing committee concerned when issuing it; or
  - (ii) if no period is stated, for 12 months after its issue.
- (2) If a single event, or any part of a single event, for which a special licence is issued is postponed to some other day, the licence is in force on the day on which the event or part takes place.

Compare: 1989 No 63 s 82

### **138 Display of special licences** 10

- (1) On issuing a special licence, the licensing committee concerned may give any directions relating to the display of the licence, and of the conditions subject to which it is issued, the committee thinks necessary or desirable.
- (2) The holder of a special licence must ensure that all directions under **subsection (1)** are complied with.

Compare: 1989 No 63 s 83

#### *Other matters*

### **139 Medical Officer of Health may delegate functions** 20

- (1) A Medical Officer of Health may delegate to any person the exercise or performance of any or all of his or her powers or functions under this Act in relation to the health district concerned.
- (2) The Medical Officer of Health may delegate the exercise or performance of any power or function to a person only if satisfied that he or she is suitably qualified or trained to exercise or perform it.
- (3) A delegation must be written, and must—
- (a) contain a reference to this section; and
  - (b) state the full name of the delegate; and
  - (c) state the name of the health district.

## Subpart 5—Appeals

### *Appeals to licensing authority*

#### **140 Who may appeal**

Any party to any proceedings before a licensing committee who is dissatisfied with the decision or any part of the decision may appeal to the licensing authority against the decision or any part of the decision. 5

Compare: 1989 No 63 s 137(1)

#### **141 Procedure for commencing appeal**

- (1) An appeal under **section 140** must be made by the appellant giving notice of appeal to the licensing authority within 10 working days after the date on which notice of the decision is given to that party. 10
- (2) Despite **subsection (1)**, on the application of any person having a right of appeal under this section, the licensing authority may extend the time for making an appeal to any time it sees fit if the licensing authority is of the opinion that there was reasonable cause for the failure or inability of the appellant to give notice within the prescribed time. 15
- (3) The notice of appeal must— 20
  - (a) be in writing; and
  - (aa) specify the grounds of appeal in sufficient detail to fully inform the licensing authority and other parties of the issues in the appeal; and
  - (b) be sent to the secretary of the licensing committee; and 25
  - (c) be accompanied by the prescribed fee.
- (4) The Police, inspectors, and Medical Officers of Health are not required to pay the prescribed fee.
- ~~(5) It is not necessary to state in the notice of appeal the grounds of the appeal.~~ 30
- (6) Either before or immediately after the notice of appeal is sent to the secretary, a copy of the notice must be served on each of the other parties to the proceedings before the licensing committee, and a copy left with the secretary of that licensing committee. 35

- (7) As soon as possible after the receipt by the secretary of the licensing committee of a copy of a notice of appeal, the secretary must send to the secretary of the licensing authority—
- (a) any application and supporting documents filed with the licensing committee, and any written submissions, statements, reports, and other papers relating to the decision appealed against: 5
  - (b) a copy of any notes or other record made by the licensing committee of the evidence given at the hearing:
  - (c) any exhibits in the custody of the licensing committee: 10
  - (d) a copy of the decision appealed against.

Compare: 1989 No 63 s 137(1)–(5)

#### **142 Appeals**

- (1) Every appeal is by way of rehearing.
- (2) ~~On hearing any appeal, the licensing authority may confirm, modify, or reverse the decision under appeal:~~ 15
- (3) ~~Except in the cases to which **subsection (4) or (5)** applies, the effect of the decision under appeal is suspended pending the outcome of the appeal:~~
- (4) ~~In the case of an appeal against a decision to suspend the licence under **section 272**, the decision continues to have effect pending the outcome of the appeal:~~ 20
- (5) ~~In the case of an appeal against part of a decision, any part of a decision not appealed against has effect:~~

Compare: 1989 No 63 s 137(6)–(9)

25

#### **141A Adjournment if notice of appeal not given**

- (1) If the licensing authority is not satisfied that a copy of the notice of appeal has been given to each of the other parties to the proceedings before the licensing committee, the licensing authority may adjourn the proceedings and give directions for the service of copies of the notice as it thinks fit. 30
- (2) Every person on whom a copy of the notice of appeal is served is entitled to attend as a party to the proceedings before the licensing authority.

**142 Appeals by way of rehearing**

- (1) Every appeal is by way of rehearing.
- (2) However, where any question of fact is involved in any appeal, the evidence taken before the licensing committee bearing on the question must, subject to any special order, be brought before the licensing authority as follows: 5
- (a) as to any evidence given orally, by the production of a copy of the chairperson of the licensing committee's note or of a written statement read by the witness while under oath, or of such other materials as the licensing committee may consider expedient: 10
- (b) as to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and such of the exhibits as may have been forwarded to the licensing authority by the licensing committee, and by the production by the parties to the appeal of such exhibits as are in their custody. 15
- (3) Despite **subsection (2)**, the licensing authority may in its discretion rehear the whole or any part of the evidence, and must rehear the evidence of any witness if the licensing authority has reason to believe that any note of the evidence of that witness made by the chairperson of the licensing committee is or may be incomplete in any material particular. 20
- (4) The licensing authority has full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit. 25
- (5) The Registrar must also return to the secretary of the licensing committee any application, papers, and exhibits forwarded by the secretary pursuant to **section 141(7)**.

**142A Appeals to licensing authority generally** 30

- (1) On hearing any appeal, the licensing authority may confirm, modify, or reverse the decision under appeal.
- (2) Except in the cases to which **subsection (3) or (4)** applies, the effect of the decision under appeal is suspended pending the outcome of the appeal. 35

- (3) In the case of an appeal against a decision to suspend a licence under **section 272**, the decision continues to have effect pending the outcome of the appeal.
- (4) In the case of an appeal against a decision of any other kind, the licensing authority— 5
- (a) may make a written determination that the decision continues to have effect pending the outcome of the appeal;  
and
- (b) may make the determination subject to any conditions the licensing authority thinks fit. 10
- (5) A determination may only be made if the licensing authority is satisfied that all parties to the appeal agree to the determination, including any conditions.
- (6) A refusal by the chairperson to exercise his or her discretion to make a determination is not appealable. 15  
Compare: 1989 No 63 s 137(6)–(9)

### *Appeals to High Court*

#### **143 Who may appeal to High Court**

~~An applicant or licensee or manager~~ Any party may appeal to the High Court against a decision of the licensing authority if the proceedings ~~commenced in the licensing authority~~ were transferred from a licensing committee to the licensing authority under **section 188(2)**. 20

Compare: 1989 No 63 s 138(1)

#### **144 Procedure for commencing appeal**

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- (1) An appeal under **section 143** must be made by the appellant giving notice of appeal to the High Court within 10 working days after the date on which notice of the decision is given to the applicant, licensee, or manager.
- (2) ~~The notice of appeal must be in writing and filed in the High Court.~~ 30
- (3) ~~The Police, inspectors, and Medical Officers of Health are not required to pay the prescribed fee.~~
- (4) ~~It is not necessary to state in the notice of appeal the grounds of the appeal.~~ 35

- (2) Subject to **sections 147 to 145 and subsection (5)**, every appeal under this section must be dealt with in accordance with rules of court.
- (5) Either before or immediately after the filing of the notice of appeal, a copy of ~~the notice~~ must be served on each of the other parties to the proceedings before the licensing authority, and a copy left with the secretary of the licensing authority. 5
- (6) As soon as possible after the receipt by the secretary of the licensing authority of a copy of a notice of appeal, the secretary must send to the office of the High Court in which the appeal has been filed— 10
- (a) any application and supporting documents filed with the licensing authority, and any written submissions, statements, reports, and other papers relating to the decision appealed against: 15
- (b) a copy of any notes made by the chairperson of the evidence given at the hearing:
- (c) any exhibits in the custody of the licensing authority:
- (d) a copy of the decision appealed against. 20
- Compare: 1989 No 63 s 138(1)–(6) 20

## 145 Appeals

- (1) Every appeal is by way of rehearing.
- (2) However, where any question of fact is involved in any appeal, the evidence taken before the licensing authority bearing on the question must, subject to any special order, be brought before the High Court as follows: 25
- (a) as to any evidence given orally, by the production of a copy of the chairperson's note or of a written statement read by the witness while under oath, or of such other materials as the High Court may consider expedient: 30
- (b) as to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and such of the exhibits as may have been forwarded to the court by the licensing authority, and by the production by the parties to the appeal of such exhibits as are in their custody. 35
- (3) Despite **subsection (2)**, the High Court may in its discretion rehear the whole or any part of the evidence, and must rehear the evidence of any witness if the court has reason to believe

that any note of the evidence of that witness made by the chairperson of the licensing authority is or may be incomplete in any material particular.

- (4) The court has full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit. 5
- (5) If the appellant does not appear at the time appointed for hearing the appeal, the appeal must be dismissed.
- (6) If the appellant does not prosecute the appeal with due diligence, any other party to the appeal may apply to the High Court for the dismissal of the appeal. 10
- (7) On hearing the appeal, the High Court may confirm, modify, or reverse the decision appealed against, and the decision of the court is final and binding on all parties.
- (8) The Registrar of the High Court must transmit to the secretary of the licensing authority a memorandum of the decision of the court, and the decision, in relation to the proceedings appealed against, must be treated as if it had been given by the Authority. 15
- (9) The Registrar must also return to the secretary of the licensing authority any application, papers, and exhibits forwarded by the secretary pursuant to **section 144(6)**. 20

Compare: 1989 No 63 s 138(7)–(13)

*Appeal against decision of licensing authority  
on question of law*

- 146 Appeal against decision of licensing authority on question of law** 25
- (1) Subject to **subsection (3)**, where any party to any proceedings before the licensing authority (whether the proceedings commenced in a licensing committee or the licensing authority) is dissatisfied with any determination of the licensing authority in the proceedings as being erroneous in point of law, that party may appeal to the High Court ~~on that question of law~~ on the question of law concerned. 30
- (2) Subject to **sections 147 to 153**, every appeal under this section must be dealt with in accordance with rules of court. 35

- (3) This section does not apply to a decision by the licensing authority to cancel a licence under **section 274** or a to cancel a manager's certificate under **section 275**.

Compare: 1989 No 63 s 139

**147 Notice of appeal on question of law** 5

- (1) Every appeal under **section 146** must be instituted by the appellant lodging a notice of appeal within 20 working days after the date of the determination with—

- (a) the Registrar of the High Court; and  
(b) the secretary of the licensing authority. 10

**(1A) Subsection (1) overrides section 146(1).**

- (2) ~~Either before or immediately after the lodging of the notice of appeal, the appellant must serve a copy of the notice of appeal, either personally or by post, on every other party to the proceedings before the licensing authority.~~ 15

- (3) ~~Service under **subsection (2)**, if by post, must be by letter and must be deemed in the absence of proof to the contrary for the purposes of this section to be effected at the time when the letter would be delivered in the ordinary course of post.~~

- (4) Every notice of appeal must specify— 20

- (a) ~~the determination or the part of the determination appealed from; and~~  
(b) ~~the error of law alleged by the appellant; and~~  
(c) ~~the question of law to be resolved; and~~  
(d) ~~the grounds of the appeal; which grounds must be specified with such reasonable particularity as to give full advice to both the court and the other parties of the issues involved.~~ 25

- (5) The secretary of the licensing authority must, as soon as is practicable after receiving a copy of the notice of appeal, send 30 a copy of the whole of the determination appealed ~~from~~ against to the Registrar of the High Court.

Compare: 1989 No 63 s 140

**147A Appeals to High Court generally**

- (1) Except in the cases to which **subsection (2) or (3)** applies, the effect of the original decision under appeal continues to be suspended pending the outcome of the appeal.
- (2) In the case of an appeal to the High Court relating to a decision to suspend a licence under **section 272**, the decision continues to have effect pending the outcome of the appeal. 5
- (3) In the case of an appeal to the High Court relating to a decision of any other kind, the Court—
- (a) may make a written determination that the decision continues to have effect pending the outcome of the appeal; 10
- and
- (b) may make the determination subject to any conditions it thinks fit.
- (5) A determination may only be made if the Court is satisfied that all the parties to the appeal agree to the determination, including any conditions. 15
- (6) A refusal by the Court to exercise its discretion to make a determination is not appealable.
- Compare: 1989 No 63 s 137(6)–(9) 20

**148 Right to appear and be heard on appeals**

- (1) Any party to the proceedings before the licensing authority who wishes to appear and be heard on the hearing of the appeal must, within 7 working days after the date of the service on that party of a copy of the notice of appeal, lodge with the Registrar of the High Court a notice of that party's intention to appear and be heard. 25
- (2) Any party who gives a notice of intention to appear and be heard and the appellant are parties to the appeal and are entitled— 30
- (a) to be served with every document later filed or lodged with the Registrar relating to the appeal; and
- (b) to receive a notice of the date set down for the hearing of the appeal.
- Compare: 1989 No 63 s 141 35

**149 Orders relating to determination of appeals**

- (1) Subject to **subsections (2) and (3)**, the High Court may, of its own motion or on the application of any party to the appeal, make all or any of the following orders:
- (a) an order directing the licensing authority to lodge with the Registrar of the High Court any document or other written material or any exhibit in the possession or custody of the licensing authority: 5
  - (b) an order directing the licensing authority to lodge with the Registrar a report recording, in respect of any matter or issue that the court ~~may specify~~ specifies, any of the findings of fact of the licensing authority that are not set out or fully set out in its determination: 10
  - (c) an order directing the licensing authority to lodge with the Registrar a report setting out, in respect of any matter or issue that the court ~~may specify~~ specifies, any reasons or considerations of the licensing authority to which the licensing authority had regard ~~but~~ that are not set out in its determination. 15
- (2) An application under **subsection (1)** must,— 20
- (a) in the case of the appellant, be made within 20 working days after the date of the lodging of the notice of appeal; or
  - (b) in the case of any other party to the appeal, within 20 working days after the date of the service on that party of a copy of the notice of appeal. 25
- (3) The High Court may make an order under **subsection (1)** only if it is satisfied that a proper determination of the point of law in issue so requires; and the order may be made subject to such conditions as the High Court thinks fit. 30
- Compare: 1989 No 63 s 142

**150 Dismissal of appeal**

The High Court may dismiss any appeal under **section 146**—

- (a) if the appellant does not appear at the time appointed for the hearing of the appeal; or 35

- (b) if the appellant does not prosecute the appeal with all due diligence and any party applies to the court for the dismissal of the appeal.

Compare: 1989 No 63 s 143

**151 Appeal in respect of additional points of law** 5

(1) Where any party to an appeal under **section 146** other than the appellant wishes to contend at the hearing of the appeal that the determination appealed from is erroneous in point of law other than those set out in the notice of appeal, that party must, within 20 working days after the date of the service on that party of a copy of the notice of appeal, lodge a notice to that effect with the Registrar of the High Court. 10

(2) The provisions of **sections 146, 147(2) to (4), 149, 150, 152, and 153** apply, with such modifications as may be necessary, to any notice lodged under this section as if it were a notice of appeal. 15

Compare: 1989 No 63 s 144

**151 Appeal on additional question of law**

(1) Any party other than the appellant to an appeal under **section 146** who wishes to contend at the hearing of the appeal that the determination appealed against is erroneous in point of law in relation to a question of law not set out in the notice of appeal may, within 20 working days after the date of the service on the party of a copy of the notice of appeal, lodge a notice to that effect with the Registrar of the High Court. 20 25

(2) With any necessary modifications, **sections 146, 147(2) to (4), 149, 150, 152, and 153** apply to a notice lodged under **subsection (1)** as if it were a notice of appeal.

Compare: 1989 No 63 s 144

**152 Extension of time** 30

The High Court or a Judge of the High Court may, on the application of the appellant, or intending appellant, or any other party, extend any time prescribed or allowed under any of the provisions of **sections 147 143 to 151** for the lodging of any notice, application, or other document. 35

Compare: 1989 No 63 s 145

**153 Date of hearing**

- (1) An appeal is, in all respects, ready for hearing when any party to the appeal notifies the Registrar of the High Court—
- (a) that the notice of appeal has been served on all parties to the proceedings; and 5
  - (b) either—
    - (i) that no application has been lodged under **section 149** and that no order has been made under that section; or
    - (ii) that any every application lodged under **section 149** has been heard and that any every order under that section has been complied with. 10
- (2) The Registrar must arrange a date for a hearing as soon as practicable after an appeal is ready for hearing in accordance with **subsection (1)**. 15
- Compare: 1989 No 63 s 146

**154 Effect of appeal against decision by licensing authority to grant licence or manager's certificate**

- (1) No decision of the licensing authority to grant an application for a licence or a manager's certificate has any effect until the time allowed for filing an appeal has expired if, ~~in respect of the application,~~— 20
- (a) an objection was duly filed and was not withdrawn to the application has been duly filed and has not been withdrawn; or 25
  - (b) a report was has been submitted by the Police or an inspector or a member of the fire service or a Medical Officer of Health recommending that the application be refused.
- (2) Where an appeal is filed against a decision of the licensing authority to grant an application for a licence or a manager's certificate, and either **subsection (1)(a) or (b)** applies, ~~that~~ the decision continues to have no effect pending the final determination of the appeal. 30
- (3) **Sections 142A, 147A, and 157A** override this section. 35
- Compare: 1989 No 63 s 147

**155 Effect of appeal against other decisions by licensing authority**

- (1) Subject to **subsections (2) and (3)**, where an appeal is filed against any decision of the licensing authority, other than a decision to which **section 154** applies, the decision continues in force and has effect pending the final determination of the appeal. 5
- (2) Where an appeal is filed against any decision of the licensing authority, other than a decision to which **section 154** applies, the High Court may, of its own motion or on an application made for the purpose, order that the decision ceases to continue in force and has no effect pending the final determination of the appeal. 10
- (3) Where the High Court makes an order under **subsection (2)** in relation to a decision to refuse to renew, to suspend, or to cancel any licence or manager's certificate, the licence or manager's certificate must, if the appeal is not finally determined on or before the expiry of the licence or certificate by passage of time, be deemed to be extended until the final determination of the appeal. 15  
20

Compare: 1989 No 63 s 147A

**156 No review until right of appeal exercised**

No person who has a right of appeal ~~in respect of~~ against any decision of the licensing authority or of a licensing committee is entitled to do any of the following unless and until that party exercises that right of appeal and the appeal is finally determined: 25

- (a) to make an application for review of that decision under Part 1 of the Judicature Amendment Act 1972; or
- (b) to institute proceedings seeking any writ or order of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or injunction, in respect of that decision. 30

Compare: 1989 No 63 s 148

*Appeals to Court of Appeal***157 Further appeal to Court of Appeal**

- (1) Any party to an appeal under **section 146** who is dissatisfied with the determination of the High Court on any point of law may, with leave of the High Court or (if that leave is declined) with special leave of the Court of Appeal, appeal to the Court of Appeal against the determination. 5
- (2) A party desiring to appeal to the Court of Appeal under this section must, within 15 working days after the determination of the High Court, or within such further time as that court may allow, give notice of the application for leave to appeal in such manner as may be directed by rules of court, and the High Court may grant leave accordingly if in the opinion of that court the question of law involved in the appeal is one that by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision. 10 15
- (3) Where the High Court refuses leave to any party to appeal to the Court of Appeal under this section, that party may, within 15 working days after the refusal of the High Court or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in such manner as may be directed by rules of court, for special leave to appeal to that court, and the Court of Appeal may grant leave accordingly if in the opinion of that court the question of law involved in the appeal is one that by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision. 20 25
- ~~(4) On any appeal to the Court of Appeal under this section, the Court of Appeal has the same power to adjudicate on the proceedings as the High Court had. 30~~
- ~~(5) The decision of the Court of Appeal on any appeal under this section is final, and the same judgment is to be entered in the High Court, and the same execution and other consequences and proceedings follow, as if the decision of the Court of Appeal had been given in the High Court. 35~~
- (4) On any appeal to the Court of Appeal under this section,—

- (a) the Court of Appeal has the power to adjudicate on the proceedings that the High Court had; and
- (b) judgment is to be entered in the High Court, and execution and other consequences and proceedings follow, as if the decision of the Court of Appeal had been given in the High Court. 5
- (6) The decision of the Court of Appeal on any application to that court for leave to appeal is final.  
Compare: 1989 No 63 s 150

**157A Appeals to Court of Appeal generally** 10

- (1) Except in the cases to which **subsection (2) or (3)** applies, the effect of the original decision under appeal continues to be suspended pending the outcome of the appeal.
- (2) In the case of an appeal to the Court of Appeal relating to a decision to suspend a licence under **section 272**, the decision continues to have effect pending the outcome of the appeal. 15
- (3) In the case of an appeal to the Court of Appeal relating to a decision of any other kind, the Court of Appeal—
- (a) may make a written determination that the decision continues to have effect pending the outcome of the appeal; and 20
- (b) may make the determination subject to any conditions it thinks fit.
- (5) A determination may only be made if the Court is satisfied that all the parties to the appeal agree to the determination, including any conditions. 25
- (6) A refusal by the Court to exercise its discretion to make a determination is not appealable.  
Compare: 1989 No 63 s 137(6)–(9)

**Subpart 6—Licensing bodies; and fees** 30

*Alcohol Regulatory and Licensing Authority*

**158 Alcohol Regulatory and Licensing Authority**

- (1) This section continues in existence an authority to be called the Alcohol Regulatory and Licensing Authority.

- (2) The licensing authority is the body established by section 85(1) of the former licensing Act (and immediately before the commencement of this section called the Liquor Licensing Authority).

**159 Functions of licensing authority** 5

The licensing authority's functions are—

- (a) to consider and determine the following matters when referred to it by licensing committees:
- (i) applications for licences:
  - (ii) applications by licensees for the renewal or variation of licences: 10
  - (iii) applications for manager's certificates:
  - (iv) applications for the renewal of manager's certificates; and
- (b) to consider and determine appeals from decisions of licensing committees; and 15
- (c) to consider and determine appeals against elements of draft local alcohol policies; and
- (d) to consider and determine applications by inspectors and constables for the variation, suspension, or cancellation of licences and manager's certificates; and 20
- (e) any other functions conferred on it by or under this Act or any other enactment.

**160 Powers of licensing authority**

The licensing authority has all powers conferred on it by or under this Act or any other enactment, and all other powers reasonably necessary to enable it to perform its functions satisfactorily. 25

Compare: 1989 No 63 s 92

**160A Licensing authority may issue practice directions** 30

For the purpose of ensuring that the application and administration of this Act is consistent, the licensing authority may from time to time issue, for the guidance of licensing committees, any directions, notes, guidelines, or suggestions (not being inconsistent with this Act) that the licensing authority considers necessary or desirable. 35

- 161 Licensing authority may give directions where licensing committee in doubt** 5
- A person who is in doubt as to the appropriate licensing committee to apply to may apply to the licensing authority for directions; and the authority's directions—
- (a) have effect according to their tenor; and
  - (b) override the requirements of this Act as to which licensing committee to apply to.
- Compare: 1989 No 63 s 93
- 162 Licensing authority may refer matters for investigation** 10
- (1) The licensing authority may appoint one of its members, or any other qualified person (other than an inspector), to investigate and report to the authority on any matters it refers to that person for the purpose of the proper exercise of its powers or functions under this Act. 15
  - (2) A person who has custody or possession of any books, papers, accounts, or other documents, relevant to any matter to be investigated under this section commits an offence if he or she—
    - (a) fails or refuses to allow the person conducting the investigation to have access to the documents; or 20
    - (b) obstructs that person in the conduct of the investigation.
  - (3) A person who commits an offence against **subsection (2)** is liable on conviction to a fine of not more than \$2,000. 25
- Compare: 1989 No 63 s 94
- 163 Licensing authority may refer matters to licensing committees** 25
- (1) The licensing authority may ask a licensing committee to inquire into and report to the authority on any matter within the scope of the authority's functions.
  - (2) When reporting, the licensing committee— 30
    - (a) must send to the licensing authority notes of any evidence taken before it in its inquiry, together with any written submissions made to it; and
    - (b) may make any recommendations on the matter it thinks fit. 35

- (3) On receiving the licensing committee's report, the licensing authority—
- (a) may make any decision or order as if it had heard the proceedings itself; or
  - (b) may hear further submissions or evidence on the matter before making any decision or order. 5

Compare: 1989 No 63 s 95

**164 Licensing authority may give statements to licensing committees**

- (1) The licensing authority may give licensing committees statements setting out its views on— 10
- (a) the general administration of this Act; or
  - (b) the policies to be followed in the administration of this Act or any provisions of it; or
  - (c) any information obtained by the authority from any inquiry held by it or from any other source. 15
- (2) A statement must not relate to a matter that may be a ground for an appeal against a decision of a licensing committee.
- (3) In performing its functions under this Act, a licensing committee must observe every statement issued under this section. 20

Compare: 1989 No 63 s 96

**165 Meetings of licensing authority**

- (1) Meetings of the licensing authority may be held at any time and place it or its chairperson decides.
- (2) At all meetings of the licensing authority, 2 members are a quorum. 25
- (3) If present at a meeting of the licensing authority, its chairperson has a deliberative vote and, in the case of an equality of votes, also has a casting vote.
- (4) A deputy chairperson of the licensing authority does not have a casting vote. 30
- (5) The decision of the licensing authority on any matter is determined by a majority of the valid votes recorded on it.

Compare: 1989 No 63 s 97

**166 Annual report**

Within 3 months after the end of its financial year, the licensing authority must prepare and send to the Minister a report—

- (a) of the authority's proceedings and operations during the year; and
- (b) on the working of this Act and the desirability or otherwise of amending it.

5

Compare: 1989 No 63 s 98

**167 Membership of licensing authority**

- (1) The licensing authority comprises the following members, appointed by the Governor-General on the recommendation of the Minister:
  - (a) up to 3 District Court Judges;
  - (b) any number of other members.
- (2) No person is employed in the service of Her Majesty for the purposes of the State Sector Act 1988 by virtue only of appointment to the licensing authority.

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**168 Chairperson and deputy chairperson**

- (1) As the office becomes vacant, a member of the licensing authority who is a District Court Judge must be appointed chairperson of the authority. 20
- (2) Every other member of the licensing authority who is a District Court Judge must be appointed a deputy chairperson of the authority.
- (3) Appointments must be made by the Governor-General on the recommendation of the Minister; and can be made when the member is appointed a member, or later. 25
- ~~(4) If there are 2 deputy chairpersons, the chairperson must designate one of them to serve as acting chairperson in his or her place.~~ 30
- (4) If there are 2 deputy chairpersons and both are present, the deputy chairperson who was first appointed to the licensing authority serves as acting chairperson in the chairperson's absence.
- (5) A deputy chairperson serving as acting chairperson in the chairperson's absence has all the powers of the chairperson. 35

- (6) No acts done by a deputy chairperson serving as acting chairperson in the chairperson's absence, and no acts done by the licensing authority while a deputy chairperson is so serving, can in any proceedings be questioned on the ground that the occasion for his or her so serving had not arisen or had ceased. 5

**169 Term of office of members**

- (1) A member of the licensing authority holds office for a term, stated when the member is appointed, of up to 5 years.
- (2) But unless he or she sooner resigns or is removed from office, the chairperson of the licensing authority continues in office as a member until another member is appointed chairperson. 10
- (3) A member may be reappointed.

**170 Resignation or removal from office**

- (1) A member of the licensing authority may resign from office at any time by written notice to the Minister. 15
- (2) The Governor-General may at any time, on the recommendation of the Minister, remove a member of the licensing authority from office for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the Governor-General's satisfaction. 20
- (3) This section overrides **section 169(1)**.

**171 Fees and allowances**

- (1) A member of the licensing authority who is not a District Court Judge is entitled to receive remuneration not within **subsection (2)** for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework. 25
- (2) Every member of the licensing authority is entitled, in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member. 30
- (3) For the purposes of this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

**172 Officers of licensing authority**

There must be appointed under the State Sector Act 1988 a secretary of the licensing authority, and all other employees necessary for it to carry out its functions efficiently.

**173 Professional assistance**

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With the Minister's authority, the licensing authority may engage, under a contract for services, any professional, technical, or other assistance it thinks necessary to enable it to carry out its functions.

*District licensing committees*

10

**174 Territorial authorities to appoint district licensing committees**

Each territorial authority must appoint 1 or more licensing committees as, in its opinion, are required to deal with licensing matters for its district.

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**175 Functions of licensing committees**

A licensing committee's functions are—

- (a) to consider and determine applications for licences and manager's certificates; and
- (b) to consider and determine applications for renewal of licences and manager's certificates; and 20
- (c) to consider and determine applications for temporary authority to carry on the sale and supply of alcohol in accordance with **section 124**; and
- (d) to consider and determine applications for the variation, suspension, or cancellation of special licences; and 25
- (e) to consider and determine applications for the variation of licences (other than special licences) unless the application is bought under **section 266**; and
- (f) with the leave of the chairperson for the licensing authority, to refer applications to the licensing authority; and 30
- (g) to conduct inquiries and to make reports as may be required of it by the licensing authority under **section 163**; and 35

- (h) any other functions conferred on licensing committees by or under this Act or any other enactment.

**176 Powers of licensing committees**

A licensing committee has all the powers conferred on it by or under this Act or any other Act, and all powers as may be reasonably necessary to enable it to carry out its functions. 5

**177 Composition of licensing committees**

- (1) Each licensing committee consists of 3 members appointed by the territorial authority for that territorial authority's ~~area~~ district. 10
- (2) A territorial authority must appoint 1 member as the chairperson and that person must be a member of that territorial authority.
- (3) The other 2 members of each licensing committee must be appointed from the territorial authority's list maintained under **section 179**. 15
- (4) For the purposes of **subsection (2)**, a member of a territorial authority means an elected member of a territorial authority and, in relation to the Auckland Council, includes a member of the governing body (as defined in section 4 of the Local Government (Auckland Council) Act 2009) or a member of a local board established under section 10 of that Act. 20

**178 Quorum**

~~At any meeting of a licensing committee, the quorum necessary is 2 members, one of which must be the chairperson.~~ 25

**177A Meetings of licensing committees**

- (1) Meetings of a licensing committee may be held at any time and place it or its chairperson decides.
- (2) At a meeting where 3 members are present, the decision of a licensing committee on any matter is determined by a majority of the valid votes recorded on it. 30

**178 Quorum**

- (1) Except as provided in **subsection (2)**, at any meeting of a licensing committee, the quorum necessary is 3 members.
- (2) At a meeting to consider and determine an application of a kind listed in **subsection (3)** where no objection has been filed and no matters of opposition have been raised under **section 98**, the quorum necessary is 1 member who must be the chairperson. 5
- (3) The applications are:
- (a) an application for a licence: 10
  - (b) an application for a manager's certificate:
  - (c) an application for renewal of a licence or manager's certificate.

**179 Territorial authority to establish and maintain list of licensing committee's members** 15

- (1) A territorial authority must either—
- (a) establish, maintain, and publish its own list of persons approved to be members of the territorial authority's licensing committee or committees; or
  - (b) together with 1 or more other territorial authorities, establish, maintain, and publish a combined list of persons jointly approved by those authorities to be members of the territorial authorities' licensing committees. 20
- (2) A territorial authority must not approve a person to be included on the list unless that person has experience relevant to alcohol licensing matters. 25
- (3) A person may be approved for inclusion on the list for a period of up to 5 years and may be approved for any 1 or more further periods of up to 5 years.
- (4) The name of a person must be removed from the list— 30
- (a) when 5 years have elapsed since the territorial authority approved the person's name on the list unless the approval is renewed under **subsection (3)**; or
  - (b) if the person resigns or is removed under **section 181**.
- (5) ~~A person must not be included on the list if that person has any interest in the alcohol industry or is a constable, an inspector, or a Medical Officer of Health.~~ 35

- (5) A person must not be included on the list if—
- (a) the territorial authority believes that person has, directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias; or 5
  - (b) the person is a constable, a Medical Officer of Health, an inspector, or an employee of the territorial authority.
- (6) A person has an interest in the alcohol industry if— 10
- (a) ~~he or she is involved in the production, importation, or sale of alcohol; or~~
  - (b) ~~he or she has a more than an insubstantial financial interest in the alcohol industry (whether personally or as a shareholder or director in a company or as a beneficial owner of a trust); or~~ 15
  - (c) ~~his or her spouse, civil union partner, de facto partner, child, or parent is involved in the production, importation, or sale of alcohol or has a more than an insubstantial financial interest in the alcohol industry.~~ 20

**180 Delegation by territorial authority of functions, etc, of member of licensing committee who is member of territorial authority**

- (1) The chief executive of a territorial authority may delegate, on the recommendation of that territorial authority, the functions, powers, and duties of the chairperson of any of its licensing committees to a commissioner or commissioners appointed by the territorial authority for that purpose. 25
- (2) The chief executive may only appoint a person as a commissioner if that person is of good standing in the community and has the necessary knowledge, skill, and experience relating to matters that are likely to come before the committee. 30
- (3) Any delegation under this section may be made on such terms and conditions as the territorial authority thinks fit, and may be revoked at any time by notice to the commissioner. 35
- (4) Except as provided in the instrument of delegation, every commissioner may, without confirmation by the territorial authority, exercise or perform the function, power, or duty in like

manner and with the same effect as the member of the licensing committee could himself or herself have exercised or performed it.

- (5) Every commissioner is presumed to be acting in accordance with the territorial authority's terms in the absence of proof to the contrary. 5
- (6) A commissioner appointed under this section holds office for a term, stated when the commissioner is appointed, of up to 5 years and may be reappointed for 1 or more further periods of up to 5 years. 10

### **180 Appointment of commissioners**

- (1) The chief executive of a territorial authority may, on the recommendation of the territorial authority, appoint a commissioner or commissioners to any of the territorial authority's licensing committees and any person so appointed has all the functions, powers, and duties of the chairperson of the licensing committee. 15
- (2) The chief executive may only appoint a person as a commissioner if that person is of good standing in the community and has the necessary knowledge, skill, and experience relating to matters that are likely to come before the committee. 20
- (3) A person must not be appointed as a commissioner if—
- (a) the territorial authority believes that person has, directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias; or 25
- (b) the person is a constable, a Medical Officer of Health, an inspector, or an employee of the territorial authority. 30
- (4) A commissioner appointed under this section holds office for a term, stated when the commissioner is appointed, of up to 5 years and may be reappointed for 1 or more further periods of up to 5 years.

**181 Resignation or removal**

- (1) A member of a licensing committee or a commissioner appointed to a licensing committee may resign from office at any time by written notice to the relevant territorial authority.
- (2) A chairperson of a licensing committee ceases to be a chairperson if he or she ceases to be a member of the licensing committee's territorial authority. 5
- (3) The territorial authority may at any time remove a member of a licensing committee or a commissioner appointed to a licensing committee for inability to perform the functions of office, bankruptcy, neglect of duty, or misconduct, proved to the territorial authority's satisfaction. 10

**182 Fees and allowances for members**

- (1) A member of a licensing committee ~~who is not an employee of a territorial authority~~ is entitled to receive remuneration not within **subsection (2)** for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework. 15
- (2) A member of the licensing committee ~~who is not an employee of a territorial authority~~ is entitled, in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member. 20
- (3) For the purposes of this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest. 25
- (4) A commissioner is to be treated as a member of a licensing committee for the purposes of this section.

**183 Secretary of licensing committees**

For the purposes of this Act, the chief executive of the territorial authority is the secretary of its licensing committees. 30

**184 Licensing inspectors**

- (1) For the purposes of this Act, the chief executive of each territorial authority must appoint 1 or more licensing inspectors for its ~~area~~ district.
- (2) Inspectors must monitor licensees' compliance with this Act. 5
- (3) Inspectors have all the other functions, powers, and duties conferred on them by or under this Act.
- (4) Inspectors must act independently when exercising and performing their functions, duties, and powers and each territorial authority must take steps to ensure that its inspector or inspectors are able to act independently. 10
- (5) If more than 1 inspector is appointed by a territorial authority then the territorial authority must appoint one of the inspectors to be its chief licensing inspector.
- (6) The function of a chief licensing inspector is to foster consistency in enforcement of this Act. 15

**185 Delegation of functions, duties, or powers of chief executives**

- (1) While he or she has the territorial authority's general authority to do so, a chief executive may delegate to any person, either generally or particularly, any of the chief executive's functions, powers, and duties under this Act. 20
- (2) The chief executive must not delegate a general power of delegation.
- (3) A person to whom a chief executive delegates a function, power, or duty under **subsection (1)** may delegate the function, power, or duty only with the prior written consent of the chief executive. 25
- (4) A delegation—
- (a) must be in writing; and 30
  - (b) may be made subject to any restrictions and conditions that the chief executive thinks fit; and
  - (c) must state each function, power, duty being delegated; and
  - (d) is revocable at any time, in writing; and 35
  - (e) does not prevent the performance of a function or duty or exercise of any power by the chief executive.

- (5) Copies of all delegations must be kept in the office of the territorial authority and be available for inspection during ordinary business hours.
- (6) A person to whom any functions, duties, or powers are delegated may perform those functions and duties and exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation. 5
- (7) Until a delegation is revoked, it continues in force according to its tenor. 10
- (8) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.  
Compare: 1989 No 63 s 104

**186 Annual report** 15

- (1) Within 3 months after the end of every financial year, every ~~licensing committee~~ territorial authority must prepare and send to the licensing authority a report of ~~its~~ the proceedings and operations of its licensing committees during the year.
- (2) The licensing authority may specify the form of the annual report and the matters to be included in the report. 20
- (3) The licensing authority or the licensing committee must ~~supply, on payment of any reasonable fee it may prescribe, provide~~ a copy of each report to any person who asks for one requests ~~on payment of any reasonable fee that the licensing authority or the licensing committee may prescribe.~~ 25
- (4) Every annual report required to be prepared under this section is a public record for the purposes of this Act.
- (5) A copy of every annual report must be made available by the territorial authority for inspection free of charge and be made available on an Internet site maintained by or on behalf of the territorial authority for a period of not less than 5 years. 30  
Compare: 1989 No 63 s 105

**186A Application of Local Government Official Information and Meetings Act 1987**

Every licensing committee is a committee of its territorial authority; and the Local Government Official Information and Meetings Act 1987 applies accordingly.

5

*General provisions relating to licensing authority and licensing committees*

**187 Licensing authority and licensing committees have powers of commissions of inquiry**

- (1) Within the scope of its jurisdiction, the licensing authority and every licensing committee must be treated as being a Commission of Inquiry under the Commissions of Inquiry Act 1908; and that Act, with any necessary modifications, applies accordingly. 10
- (2) **Subsection (1)** is subject to this Act ~~and any regulations made under it.~~ 15
- (3) The power of the licensing authority or a licensing committee under the Commissions of Inquiry Act 1908 to issue summonses requiring the attendance of witnesses before it or the production of documents, or to do any other act preliminary or incidental to the hearing of any matter by the authority or committee, may be exercised by the chairperson, or by the secretary purporting to act by direction or with the authority of the chairperson. 20
- (4) In addition to its powers under the Commissions of Inquiry Act 1908, the licensing authority or a licensing committee has power at any time if it thinks fit to rehear any matter that it has determined. 25

Compare: 1989 No 63 s 110

**188 Procedure**

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- (1) If no objection to an application is filed within the prescribed time, the licensing authority or licensing committee concerned may either grant the application on the papers or convene a public hearing to consider the application.

- (2) With the leave of the chairperson of the licensing authority, a licensing committee may refer the matter to the licensing authority to make a decision.
- (3) Where an objection is filed within the prescribed time, the licensing authority or licensing committee concerned must convene a public hearing to consider the application, unless— 5
- (a) the application is withdrawn; or
  - (b) having considered the application, the authority or committee believes that the objection is vexatious or based on grounds outside the scope of this Act; or 10
  - (c) the objector does not require a public hearing.
- (4) The licensing authority or licensing committee concerned must give at least 10 working days' notice of the public hearing to— 15
- (a) the applicant; and
  - (b) each objector; and
  - (c) the constable, the inspector, and the Medical Officer of Health, to whom a copy of the application has been sent in accordance with this Act.
- (5) Each of the persons referred to in **subsection (4)** is entitled to appear and be heard at the hearing, whether personally or by counsel, and to call, examine, and cross-examine witnesses. 20
- Compare: 1989 No 63 s 106

**189 Proceedings of licensing authority and licensing committees** 25

- (1) Whenever the licensing authority meets for the purpose of hearing any appeal, or the authority or any licensing committee meets for the purposes of exercising or performing any power or function that it is authorised or required by this Act to exercise or perform at a public sitting, the meeting must, except in a case to which **section 188(1)** applies and subject to the provisions of **subsections (3) and (4)**, be held in public. 30
- (2) Any other meeting of the authority or of any licensing committee may, in the discretion of the authority or committee, be held in public or in private. 35
- (3) Whenever the authority or committee holds a public sitting it may in its discretion hold any part of the sitting in private if,

- having regard to the interests of persons appearing and being heard and to the public interest, it thinks it proper to do so.
- (4) The authority or committee may in any case deliberate in private as to its decision on any matter or as to any question arising in the course of any proceedings. 5
- (5) The authority or committee may make an order prohibiting the publication of any report or description of any part of the proceedings in any matter before it; but no such order may be made prohibiting the publication of the names and descriptions of the parties to the matter, or of particulars of any premises affected. 10
- (5A) In considering whether to make an order prohibiting publication, the authority or committee must consider both the public interest in being able to learn of the proceedings of the authority and licensing committees and the privacy of persons whose affairs are before the authority or committee. 15
- (6) In any proceedings before the authority, any counsel or solicitor engaged by the authority pursuant to this Act may appear and be heard as counsel assisting the authority.
- (7) Any decision, order, direction, certificate, or other document issued by the authority or committee may be signed on its behalf by the chairperson or the secretary. 20
- (8) Subject to the provisions of this Act and of any regulations made under this Act, the authority or committee may regulate its procedure in such manner as it thinks fit. 25
- Compare: 1989 No 63 s 107

#### **190 Right of certain persons to appear**

In any proceedings before the licensing authority or a licensing committee the following persons may appear and be heard:

- (a) any licensing inspector: 30
- (b) any constable:
- (c) any Medical Officer of Health:
- (d) any member of the fire service authorised to undertake fire safety inspections:
- (e) any person authorised in that behalf by any territorial authority: 35

- (f) ~~any other person who satisfies the authority or the committee that he or she has an interest in the proceedings, apart from any interest in common with the public.~~

Compare: 1989 No 63 s 108

- 190** **Right of certain persons to appear in proceedings** 5
- (1) This section applies to the following proceedings:
- (a) an application for a licence under **section 94**:
- (b) an application for variation of the conditions of a licence under **section 110**:
- (c) an application for the renewal of a licence under **section 116**: 10
- (d) an application for a temporary authority under **section 124**.
- (e) an application for a special licence under **section 125**:
- (f) an appeal against a decision of a licensing committee to the licensing authority under **section 140**. 15
- (2) With the leave of the chairperson of the licensing committee or the licensing authority (as the case may be), any of the following persons may appear and be heard, whether personally or by counsel, in any proceedings stated in **subsection (1)**: 20
- (a) a member of the fire service authorised to undertake fire safety inspections:
- (b) a person authorised in that behalf by any territorial authority:
- (c) any other person who satisfies the licensing committee or the licensing authority that he or she has an interest in the proceedings, apart from any interest in common with the public. 25
- (3) Any of the following persons may appear and be heard, whether personally or by counsel, and call, examine, or cross-examine witnesses, in any proceedings stated in **subsection (1)**: 30
- (a) the applicant:
- (b) an objector:
- (c) an inspector: 35
- (d) a constable:
- (e) a Medical Officer of Health.

**190A Right of persons to appear in relation to appeal under section 81**

- (1) The following persons may appear and be heard, whether personally or by counsel, and call, examine, and cross-examine witnesses in an appeal under **section 81** (which relates to an appeal to the licensing authority against any element of a local alcohol policy that is a matter relating to licensing): 5
- (a) the appellant:
- (b) any person authorised in that behalf by an territorial authority. 10
- (2) With the leave of the chairperson of the licensing authority, the following persons may appear and be heard, whether personally or by counsel, and call evidence:
- (a) any inspector:
- (b) any constable: 15
- (c) any Medical Officer of Health:
- (d) any other party who made a submission as part of the special consultative procedure on the draft local alcohol policy:
- (e) any other person who satisfies the licensing authority that he or she has an interest in the proceedings, apart from any interest in common with the public. 20

**190B Right of persons to appear in relation to certain applications for variation, suspension, and cancellation**

- (1) This section applies to the following proceedings: 25
- (a) an application for the variation, suspension, or cancellation of a licence under **section 266**:
- (b) an application for the suspension or cancellation of a licence in respect of certain offences under **section 267**:
- (c) an application for the variation, suspension, or cancellation of special licences under **section 269**: 30
- (d) an application for the suspension or cancellation of a manager's licence under **section 271**:
- (e) an application for the suspension of a licence for non-compliance with public health or fire precaution requirements. 35

- (2) The following persons may appear and be heard, whether personally or by counsel, and call, examine, and cross-examine witnesses:
- (a) the applicant:
- (b) the respondent. 5
- (3) With the leave of the chairperson of the licensing committee or the licensing authority (as the case may be), the following persons may appear and be heard, whether personally or by counsel, and call evidence:
- (a) any inspector: 10
- (b) any constable:
- (c) any Medical Officer of Health.

**191 Evidence in proceedings before licensing authority or licensing committee**

- (1) The licensing authority or licensing committee concerned may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectually with any matter before it, whether or not the statement, document, or matter would be admissible in a court of law. 15
- (2) Subject to the foregoing provisions of this section, the Evidence Act 2006 applies to the authority or the committee and to the members of the authority or committee, and to all proceedings before the authority or committee, in the same manner as if the authority or committee were a Court within the meaning of that Act. 20
- Compare: 1989 no 63 s 109 25

**192 Licensing authority or licensing committee may waive certain omissions**

Where any person has neglected or omitted to do any act or thing in the precise manner or within the precise time prescribed by this Act, the licensing authority or (as the case may require) the licensing committee or the chairperson, if satisfied that the neglect or omission was not wilful, may, ~~by certificate signed by the chairperson,~~ waive the same on such terms as they think equitable. 30

Compare: 1989 No 63 s 111 35

**192A Licensing committee may state case for opinion of licensing authority**

- (1) A licensing committee may state a case for the opinion of the licensing authority on any question of law arising in any proceedings before it. 5
- (2) The licensing authority may order the removal into the High Court of any case stated under this section; and on removal the High Court has the same power to adjudicate on the proceedings as the licensing authority had.
- (3) The provisions of section 78 of the Summary Proceedings Act 1957, so far as they are applicable and with the necessary modifications, apply to any case stated under this section as if the reference in subsection (3) of that section to either party were a reference to any party to the proceedings before the licensing authority 10  
15

**193 Licensing authority ~~or licensing committee~~ may state case for opinion of High Court**

- (1) The licensing authority ~~or a licensing committee~~ may state a case for the opinion of the High Court on any question of law arising in any proceedings before it. 20
- (2) The provisions of section 78 of the Summary Proceedings Act 1957, so far as they are applicable and with the necessary modifications, apply to any case stated under this section as if the reference in subsection (3) of that section to either party were a reference to any party to the proceedings before the li- 25  
censing authority ~~or licensing committee~~.

Compare: 1989 No 63 s 112

**194 Decisions to be given in writing**

Every decision of the licensing authority ~~or a licensing committee~~, and the reasons for the decision, must be recorded in writing, and a copy given to— 30

- (a) the applicant; and  
 (b) each objector who appeared at the hearing; and  
 (c) any other objector who requests a copy; and  
 (d) each person referred to in **section 188(4)(c)**. 35

Compare: 1989 No 63 s 113

**194** Decisions to be given in writing

- (1) The licensing authority and every licensing committee must give its decision on an application given in writing, and must state in it—
- (a) the reasons for the decision; and 5
  - (b) what reports on the application were received; and
  - (c) the attitude towards the application of every report.
- (2) The statement of the attitude towards an application of any report may be in general terms only.
- (3) The licensing authority or licensing committee must give a copy of the decision to— 10
- (a) the applicant; and
  - (b) each objector who appeared at the hearing; and
  - (c) any other objector who requests a copy; and
  - (d) each person referred to in **section 188(4)(c)**. 15
- (4) The licensing authority must take all reasonably practicable steps to ensure that copies of its decisions are publicly available.
- (5) Every territorial authority must take all reasonably practicable steps to ensure that copies of all the decisions of its licensing committees are publicly available. 20
- (6) A decision takes effect on the date stated in the decision (or, if no date is stated, on the date the decision is given).

Compare: 1989 No 63 s 113

**Part 4** 25**Management of licensed premises**Subpart 7—Management of licensed premises**195** **Appointment of manager: on-licences and off-licences**

- (1) Every company, licensing trust, partnership, department of State or other instrument of the Crown, or territorial authority that holds an on-licence or an off-licence must appoint at least 1 manager in accordance with this Part. 30
- (2) Any other holder of an on-licence or an off-licence may appoint a manager or managers in accordance with this Part. 35

~~(3)~~ Nothing in this section applies to an on-licence endorsed under **section 39**.

Compare: 1989 No 63 ss 26, 49

**196 Appointment of manager: club licences**

Every holder of a club licence must appoint at least 1 manager in accordance with this Part. 5

Compare: 1989 No 63 s 71

**195 Appointment of managers: on-licences, off-licences, and club licences**

Every holder of an on-licence, an off-licence (other than an on-licence endorsed under **section 39**), or a club licence must appoint a manager or managers in accordance with this Part. 10

Compare: 1989 No 63 ss 26, 49, 71

**197 Appointment of manager: special licences**

(1) ~~Subject to **subsection (2)**, every company, licensing trust, partnership, department of state or other instrument of the Crown, territorial authority, or club that holds~~ Every holder of a special licence must appoint at least 1 manager in accordance with this Part. 15

(2) The licensing committee may exempt the holder of any special licence from the requirements of **subsection (1)** if it is satisfied that the licensee, or some other person nominated by the licensee, will manage the conduct of the sale of alcohol pursuant to the licence. 20

~~(3) Any other holder of a special licensee may appoint a manager or managers in accordance with this Part.~~ 25

Compare: 1989 No 63 s 84

**198 Manager to be on duty at all times and responsible for compliance**

(1) Except as provided in **section 199**, a manager must be on duty at all times when alcohol is being sold or supplied to the public on any licensed premises. 30

(2) A manager on duty ~~in respect of~~ on any licensed premises is responsible for—

- (a) the compliance with and enforcement of—
- (i) the provisions of this Act; and
  - (ii) the conditions of the licence in force ~~in respect of~~ for the premises; and
- (b) the conduct of the premises with the aim of contributing 5  
to the reduction of alcohol-related harm.
- (3) At all times while a manager is on duty ~~in respect of~~ on any li-  
censed premises, the full name of the manager must be promi-  
nently displayed inside the premises so as to be easily read by 10  
~~persons~~ people using the premises; and the person named as  
manager at any time is to be treated for the purposes of this  
Act as the manager at that time.
- (4) At all times when alcohol is being sold or supplied on licensed  
premises the licensee must take all reasonable steps to enable 15  
the manager to comply with this section.
- Compare: 1989 No 63 s 115

### 199 **Circumstances where section 198 does not apply**

- (1) The requirement to have a manager on duty at all times when  
alcohol is being sold or supplied to the public on any licensed  
premises does not apply ~~in respect of~~ to a club licence or an 20  
on-licence endorsed under **section 39**.
- (2) A manager in respect of those premises is only required to be  
on duty if it is a condition of the licence or a condition of the  
endorsement of the licence and only for the days and times that  
may be specified. 25
- (3) If it is a condition of the licence or the endorsement of the  
licence that a manager be on duty at any particular time, ~~then~~  
**section 198(2) to (4)** ~~apply in respect of that manager when~~  
that manager is on duty applies to a manager of the premises  
when he or she is on duty. 30

### *Manager's certificates*

#### 200 **Managers to hold certificate**

- (1) A person may not be appointed as a manager of any licensed  
premises for the purposes of this Act unless the person is of or  
over the age of 20, and holds a manager's certificate granted 35  
under this Part.

- (2) **Subsection (1)** does not affect any manager's certificate granted before the commencement of this section to a person under the age of 20.

Compare: 1989 No 63 s 116

**201 Manager's certificate** 5

A manager's certificate authorises the holder to manage any licensed premises.

Compare: 1989 No 63 s 117

**202 Manager must hold prescribed qualification**

- (1) The licensing authority or a licensing committee must not issue or renew a manager's certificate on or after the commencement of this section unless the manager holds a prescribed qualification. 10

- (2) In this section, **prescribed qualification** means—

- (a) a qualification prescribed by regulations made under this Act; or 15  
 (b) the successful completion of a course of training, the requirements or criteria of which have been prescribed by regulations made under this Act.

Compare: 1989 No 63 s 117A

20

**203 Applications for manager's certificates**

- (1) Every application for a manager's certificate must—

- (a) be made in the name of the person who will hold the certificate if the application is granted; and  
 (b) be made in the prescribed form and manner; and 25  
 (c) contain the prescribed particulars; and  
 (d) be accompanied by the prescribed fee.

- (2) An application must be filed with the following licensing committee:

- (a) where the applicant intends to be the manager of any particular licensed premises, the licensing committee with which the application for the licence was filed; or 30  
 (b) in any other case, the licensing committee for the district in which the applicant is residing.

Compare: 1989 No 63 s 118

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**204 Reports**

- (1) On receiving an application for a manager's certificate, the secretary of the licensing committee concerned must send a copy of it, and of each document filed with it, to—
- (a) the constable in charge of the police station nearest to— 5
- (i) the premises, where the applicant intends to be the manager of any particular premises; or
- (ii) the secretary's office, where the applicant intends to be the manager of any particular conveyance; or 10
- (iii) the applicant's place of residence in any other case; and
- (b) ~~a licensing an~~ inspector.
- (2) The inspector must inquire into and file with the licensing committee a report on the application. 15
- (3) The Police must inquire into and, if they have any matters in opposition, file a report on the application within 15 working days after receiving the application.
- (4) The licensing committee may assume that, if no report is received from the Police within 20 working days after the application is referred to the Police, they have no matters in opposition to the application. 20
- (5) The secretary must send to the applicant a copy of any reports filed with the licensing committee under this section. 25
- Compare: 1989 No 63 s 119

**205 Who decides application for manager's certificate**

- (1) A licensing committee may decide any application for a manager's certificate.
- (2) With the leave of the chairperson of the licensing authority, a licensing committee may refer an application for a manager's certificate to the authority for decision. 30
- (3) The licensing committee must give the licensing authority the complete file relating to any application to be decided by the licensing authority.
- (4) In this section, **complete file** means— 35
- (a) the application and any papers filed in support of it; and
- (b) any reports made under **section 204**.

**206 Criteria for manager's certificates**

In considering an application for a manager's certificate, the licensing committee or licensing authority, as the case may be, must consider the following matters:

- (a) ~~the character and reputation of the applicant:~~ 5
- (a) the applicant's suitability to be a manager:
- (b) any convictions recorded against the applicant:
- (c) any experience, in particular recent experience, that the applicant has had in controlling any premises ~~in respect of for~~ which a licence was in force: 10
- (d) any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification required under **section 202:**
- (e) any matters dealt with in any report made under **section 204.** 15

Compare: 1989 No 63 s 121

**207 Duration of manager's certificates**

- (1) Every manager's certificate continues in force—
  - (a) until the close of the period of 1 year commencing with the date of its issue; or 20
  - (b) if an application for the renewal of the certificate is duly made, until the application is determined or 3 years after the expiry date, whichever occurs first.
- (2) **Subsection (1)** applies subject to— 25
  - (a) the requirements of this Act relating to the payment of fees; and
  - (b) the provisions of this Act relating to the suspension and cancellation of manager's certificates.

Compare: 1989 No 63 s 122 30

**207 Duration of manager's certificates**

- (1) In this section,—  
end of its currency,—
  - (a) for a manager's certificate that has been renewed before,  
means the close of the last day of the period for which  
it was last renewed: 35

- (b) for a manager's certificate that has not been renewed before, means the close of the day 12 months after the day it was issued
- end of the prospective renewal period, —**
- (a) for a manager's certificate that has been renewed before, means the close of the day 3 years after the last day of the period for which it was last renewed: 5
- (b) for a manager's certificate that has not been renewed before, means the close of the day 4 years after the day it was issued. 10
- (2) If no application to renew a manager's certificate has been made before the end of its currency, it expires at the end of its currency.
- (4) A manager's certificate expires as provided in **subsection (4) or (5)**, or continues in force as provided in **subsection (6)**, if— 15
- (a) an application to renew it has been made before the end of its currency; but
- (b) it has not been renewed before the end of its currency.
- (4) If a decision to refuse to renew the certificate has been made before the end of the prospective renewal period, it expires on the day stated under **section 212(3)**. 20
- (5) If no decision on the application to renew the certificate has been made before the end of the prospective renewal period, it expires at the end of the prospective renewal period. 25
- (6) If a decision to renew the certificate is made before the end of the prospective renewal period, its renewal takes effect (for the period stated under **section 212(2)**) at the end of its currency.
- (7) This section is subject to the provisions of this Act relating to the suspension, cancellation, and surrender of manager's certificates. 30

**208 Application for renewal of manager's certificates**

- (1) The holder of a manager's certificate may apply in accordance with this section for the renewal of the certificate.
- (2) Every application for the renewal of a manager's certificate must— 35
- (a) be filed with—

- (i) the licensing committee for the district in which the applicant is presently employed as a manager; or
- (ii) if the applicant is no longer employed as a manager, the licensing committee for the district in which the applicant is residing; and 5
- (b) be made before the date of the expiry of the certificate; and
- (c) be made in the prescribed form and manner; and
- (d) contain the prescribed particulars; and 10
- (e) be accompanied by the prescribed fee.

Compare: 1989 No 63 s 123

## 209 Reports and applications for renewals

- (1) On receiving an application for the renewal of a manager's certificate, the secretary must send a copy of it, and of each document filed with it, to— 15
  - (a) the constable in charge of the police station nearest to—
    - (i) the premises, where the applicant is the manager of any particular premises; or
    - (ii) the secretary's office, where the applicant is the manager of any particular conveyance; or 20
    - (iii) the applicant's place of residence, in any other case; and
  - (b) ~~a licensing~~ an inspector.
- (2) The inspector must inquire into and file with the licensing committee a report on the application. 25
- (3) The Police must inquire into and, if they have any matters in opposition, file a report on the application within 15 working days after receiving the application.
- (4) The licensing committee may assume that, if no report is received from the Police within 20 working days after the application is referred to the Police, they have no matters in opposition to the application. 30
- (5) The secretary must send to the applicant a copy of any reports filed with the licensing committee under this section. 35

Compare: 1989 No 63 s 124

## 210 Who decides application for renewal of manager's certificates

- (1) A licensing committee may decide any application for renewal of a manager's certificate.
- (2) With the leave of the chairperson of the licensing authority, a licensing committee may refer an application for a renewal of a manager's certificate to the authority for decision. 5
- (3) The licensing committee must give the licensing authority the complete file relating to any application for renewal to be decided by the licensing authority. 10
- (4) In this section, **complete file** means—
  - (a) the application and any papers filed in support of it; and
  - (b) any reports made under **section 209**.

Compare: 1989 No 63 s 125

## 211 Criteria for renewal

- In considering an application for the renewal of a manager's certificate, ~~other than an application to which **section 210(1)** applies,~~ a licensing committee or the licensing authority, as the case may be, must have regard to the following matters: 15
- ~~(a) the character and reputation of the applicant;~~ 20
  - (a) the applicant's suitability to be a manager;
  - (b) any convictions recorded against the applicant since the certificate was issued or last renewed;
  - (c) the manner in which the manager has managed the sale and supply of alcohol pursuant to the licence with the aim of contributing to the reduction of alcohol-related harm; 25
  - (d) any matters dealt with in any report made under **section 209**. 30
- Compare: 1989 No 63 s 126

## 212 Decision on application for renewal

- (1) After considering an application for the renewal of a manager's certificate, the licensing committee or the licensing authority must either renew the certificate or refuse to renew it.
- (2) If it renews the certificate, the licensing committee or the licensing authority must specify a date (being no later than 3

years after the date on which the renewal takes effect) on which the certificate expires unless it is again renewed under this section.

- (3) If the committee refuses to renew the certificate, it must state the day on which the certificate expires, and that day must be no later than 3 months after the date of its decision. 5

Compare: 1989 No 63 s 127

### *Miscellaneous provisions*

#### **213 Temporary manager**

- (1) In any case where a manager is ill or is absent for any reason, or is dismissed, or resigns, the licensee may appoint as a temporary manager a person who is not then the holder of a manager's certificate. 10
- (2) The appointee must, within 2 working days after the appointment, apply for a manager's certificate; and, if an application is made, the temporary manager must, from the time of the appointment until the application is determined, be deemed for the purposes of this Act to be the holder of a manager's certificate. 15
- (3) If the appointee does not apply for a manager's certificate within that period of 2 working days, or if the application is refused, the licensee must cease to employ the appointee as a manager. 20

Compare: 1989 No 63 s 128

#### **214 Acting manager** 25

- (1) Despite any other provision of this Act, a licensee may appoint an acting manager—
- (a) for any period not exceeding 3 weeks at any one time where the licensee or a manager is unable to act because of illness or absence; and 30
- (b) for periods not exceeding in the aggregate 6 weeks in each period of 12 months to enable the licensee or a manager to have a vacation or annual leave.
- (2) Every person appointed as an acting manager in accordance with this section must, while the appointment continues, be deemed for the purposes of this Act to be the holder of a man- 35

ager's certificate, and it is not necessary for that person to apply for or hold a manger's certificate.

Compare: 1989 No 63 s 129

- 215 Notice of appointment, etc, of manager, temporary manager, or acting manager** 5
- (1) A licensee must give notice, in accordance with **subsection (2)**, of the appointment, or the cancellation or termination of the appointment, of any manager, temporary manager, or acting manager.
- (2) Notice is given in accordance with this subsection if the notice is given within 2 working days after the appointment, or the cancellation or termination of the appointment, to—
- (a) the licensing authority; and
  - (b) the licensing committee with which the application for the licence was filed; and 15
  - (c) the constable in charge of the police station nearest to—
    - (i) the premises, where the licence is in force ~~in respect of~~ for any premises; or
    - (ii) the office of the licensing committee with which the application was filed, where the licence is in force ~~in respect of any~~ for a conveyance. 20
- (3) It is not necessary to comply with **subsection (1)** in respect of the appointment of a temporary manager or an acting manager for any period not exceeding 48 consecutive hours.
- (4) The licensing committee may, within 5 working days after receiving a notice of the appointment of any temporary manager or acting manager, notify the licensee that it does not approve the appointment, in which case it must give a copy of the notice to the constable referred to in **subsection (2)(c)**. 25
- (5) On receiving notice under **subsection (4)**, the licensee must terminate the appointment with effect from a date not later than 5 working days after the date of the notice. 30

Compare: 1989 No 63 s 130

**215A Licensees to keep record of temporary and acting managers**

- (1) Every licensee required by this Act to appoint a manager or managers for any premises must keep a book, and enter into it, in respect of each manager or acting manager appointed for the premises, the information prescribed by regulations made under this Act. 5
- (2) The licensee must retain custody of the book for at least 2 years after the last entry was made in it.

**Part 5  
Enforcement**

10

**Subpart 18—Offences, and closure  
of premises***Unlicensed persons and unlicensed premises***216 Sales by unlicensed persons**

15

- (1) A person who does not hold a licence and sells, or displays or keeps for sale, any alcohol commits an offence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to either—
- (a) a term of imprisonment of not more than 3 months; or 20
- (b) a fine of not more than \$40,000.

Compare: 1989 No 63 s 151

**217 Allowing unlicensed premises to be used for sale of alcohol**

- (1) A person who is the occupier or one of the occupiers of any unlicensed premises commits an offence if that person allows any other person to sell, or display or keep for sale, any alcohol in those premises. 25
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to either—
- (a) a term of imprisonment of not more than 3 months; or 30
- (b) a fine of not more than \$40,000.

Compare: 1989 No 63 s 152

**218 Use of unlicensed premises as place of resort for consumption of alcohol**

- (1) A person who is the occupier, or has or takes part in the care, management, or control, of any unlicensed premises commits an offence if that person allows those premises to be kept or used as a place of resort for the consumption of alcohol. 5
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$20,000.
- (3) **Subsections (1) and (2)** do not apply to the consumption of alcohol— 10
- (a) by any person on any premises on which that person resides, whether that person is the occupier of the premises or not; or
- (b) supplied to any person by way of gift by any person who resides on the premises on which the alcohol is consumed. 15
- (4) A person who acts as, or as if he or she were, an occupier or a person having any part in the care, management, or control of any premises is to be treated as an occupier of the premises, but without affecting the liability of any other person. 20
- (5) Premises may be treated as being kept or used as a place of resort for the consumption of alcohol even though they are open only for the use of particular people or particular classes of person, and not to all people who wish to use them. 25
- Compare: 1989 No 63 s 153

**219 People found on unlicensed premises kept as place of resort for consumption of alcohol**

- (1) A person who is not a constable acting in the execution of his or her duty commits an offence if he or she is found on any unlicensed premises kept or used in breach of **section 218**. 30
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$2,000.
- (3) It is a defence to a charge under **subsection (1)** if the defendant satisfies the court that he or she— 35
- (a) was present on the premises for a lawful purpose; and

- (b) neither took part nor intended to take part in any unlawful sale, supply, or consumption of alcohol.

Compare: 1989 No 63 s 154

*Irresponsible promotion of alcohol*

- 220 Irresponsible promotion of alcohol** 5
- (1) A person commits an offence if, in the course of carrying on a business, that person—
- (a) ~~does anything that encourages people, or is likely to encourage people,~~ to consume alcohol to an excessive extent, whether on licensed premises or at any other place; or 10
- (b) ~~promotes or advertises discounts on alcohol (except on licensed premises) leading the public to believe that the price is 25% or more below the price at which that alcohol is ordinarily sold; or~~ 15
- (b) promotes or advertises discounts on alcohol in a way that leads people, or is likely to lead people, to believe that the price is 25% or more below the price at which the alcohol is ordinarily sold (otherwise than—
- (i) on licensed premises; or 20
- (ii) in the catalogue or similar price-list of the holder of an off-licence endorsed under **section 41A**);  
or
- (ba) holds or has on licensed premises a promotion or advertisement of discounts on alcohol that— 25
- (i) leads people, or is likely to lead people, to believe that the price is 25% or more below the price at which the alcohol is ordinarily sold; and
- (ii) can be seen (or, in the case of an audible promotion or advertisement, heard) from outside the premises; or 30
- (c) ~~promotes or advertises alcohol that is free of charge; or~~  
~~(otherwise than—~~
- (i) by promoting or advertising the complimentary sampling of alcohol for consumption on premises for which an off-licence is held; or 35
- (ii) by a promotion or advertisement within licensed premises that cannot be seen (or in the case of an

- audible promotion or advertisement, heard) from outside the premises); or
- (d) offers any goods or services, or the opportunity to obtain any goods or services, or the opportunity to win a prize, on the condition that alcohol is bought; or 5
- (e) promotes or advertises alcohol in a manner aimed at, or that has, or is likely to have, special appeal to, minors.
- (1A) **Subsection (1)(d)** does not apply to a loyalty programme that provides rewards or discounts, unless the rewards or discounts apply only or primarily to alcohol. 10
- (2) A person who commits an offence against this section is liable on conviction,—
- (a) in the case of a licensee, to either or both of the following:
- (i) a fine of not more than \$10,000; 15
- (ii) the suspension of the licensee's licence for a period of not more than 7 days:
- (b) in the case of any other person, to a fine of not more than \$10,000.
- Compare: 1989 No 63 s 154A 20

*Banned and restricted alcohol products*

**221 Offences relating to banned and restricted alcohol products**

- (1) Every person commits an offence who—
- (a) imports, manufactures, distributes, or displays for sale, 25  
a banned alcohol product; or
- (b) sells a banned alcohol product to any person; or
- (c) otherwise than in accordance with regulations made under this Act, imports, manufactures, distributes, displays for sale, or sells to any person, a restricted 30  
alcohol product.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$20,000.

*Offences relating to minors and people under  
buying purchase age*

**222 Sale or supply of alcohol to people under buying purchase age on or from licensed premises**

- (1) A licensee or manager of any licensed premises who sells or supplies alcohol, or allows alcohol to be sold or supplied, on or from the licensed premises to any person who is under the buying purchase age commits an offence. 5
- (2) A person who is not a licensee or a manager of any licensed premises who sells or supplies alcohol on or from the licensed premises to any person who is under the buying purchase age commits an offence. 10
- (3) A person who commits an offence against **subsection (1)** is liable on conviction—
- (a) in the case of a licensee, to either or both of the following: 15
- (i) a fine of not more than \$10,000;
- (ii) the suspension of the licensee’s licence for a period of not more than 7 days;
- (b) in the case of a manager, to a fine of not more than \$10,000. 20
- (4) A person who commits an offence against **subsection (2)** is liable on conviction to a fine of not more than \$2,000.
- (5) **Subsection (2)** applies despite any liability that may attach to the licensee or any manager in respect of the same offence. 25
- (6) In any proceedings for an offence against **subsection (1) or (2)** in respect of selling or supplying alcohol, or allowing alcohol to be sold or supplied, to a person (the **customer**), it is a defence if the defendant proves that—
- (a) before or at the time of the sale or supply of alcohol concerned, there was produced to the person who sold or supplied the alcohol a document purporting to be an approved evidence of age document; and 30
- (b) the person believed on reasonable grounds that the document— 35
- (i) was an approved evidence of age document; and
- (ii) related to the customer; and

- (iii) indicated that the customer was not under the buying purchase age; and
- (c) the person reasonably believed that the customer was not under the buying purchase age.
- (7) In any proceedings for an offence against **subsection (1) or (2)** in respect of selling or supplying alcohol, or allowing alcohol to be sold or supplied, to a person (the **customer**), it is a defence if the defendant proves that, before or at the time of the sale or supply of alcohol concerned, the person who sold or supplied the alcohol verified the customer's age using an approved evidence of age system in the approved manner. 5 10
- (8) A person does not commit an offence against **subsection (1) or (2)** by selling or supplying alcohol to a person who then supplies it to a third person who is under the buying purchase age, unless it is proved that the person knew or had reasonable grounds to believe that the alcohol was intended for a person under the buying purchase age. 15

Compare: 1989 No 63 s 155

### 223 Exemptions in respect of licensed premises

**Section 222(1) and (2)** do not apply to the supply of alcohol on licensed premises (other than a restricted area) to a person under the buying purchase age if— 20

- (a) the person is accompanied by his or her parent or guardian; and
- (b) the alcohol is supplied by his or her parent or guardian. 25

Compare: 1989 No 63 s 157

### 224 Supplying alcohol to minors

- (1) A person who supplies alcohol to a minor commits an offence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$2,000. 30
- (3) It is a defence to a charge under **subsection (1)** if the person supplying the alcohol (the **supplier**)—
- (a) is a parent or guardian of the minor, and supplies the alcohol in a responsible manner; or

- (b) believes on reasonable grounds that the minor is not a minor or is a minor to whom **subsection (7)** applies; or
- (c) believes on reasonable grounds that he or she has the consent of the parent or guardian of the minor, and supplies the alcohol in a responsible manner. 5
- (4) When considering whether the alcohol was supplied in a responsible manner to the minor, the court may, in relation to the occasion on which the alcohol was supplied, take into account the following: 10
- (a) the steps taken by the supplier to supervise the consumption of alcohol:
- (b) whether food was provided with the alcohol:
- (c) whether a choice of low-alcohol or non-alcoholic beverages, or both, was offered: 15
- (d) the nature of the occasion:
- (e) any arrangements for, or provision of, safe transport:
- (f) the period over which the alcohol was supplied:
- (g) the quantity of strength and volume of the alcohol supplied: 20
- (h) the age of the minor:
- (i) any other matter it thinks relevant in the particular circumstances.
- (5) **Subsection (1)** applies irrespective of any liability that may attach to the licensee or any manager or other person in respect of the sale or supply of the alcohol. 25
- (6) A person does not commit an offence against **subsection (1)** by supplying alcohol to a person who then supplies it to a third person who is a minor, unless it is proved that the person knew or had reasonable grounds to believe that the alcohol was intended for a minor. 30
- (7) This subsection applies to the minor at any time if he or she is then no longer subject to guardianship by operation of section 28 of the Care of Children Act 2004. 35
- Compare: 1989 No 63 s 160

**225 Employment of minors**

- (1) A licensee of any licensed premises who employs a minor in any capacity in any restricted area on the premises while that area is open for the sale of alcohol commits an offence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$2,000. 5
- (3) **Subsection (1)** does not apply to the employment in a restricted area of any person for the purpose of—
- (a) preparing or serving a meal; or
  - (b) cleaning, repairing, maintaining, altering, or restocking the area or any equipment in the area; or 10
  - (c) removing or replacing any equipment; or
  - (d) stocktaking; or
  - (e) checking or removing cash.

Compare: 1989 No 63 s 161

15

**226 Buying of alcohol by people under ~~buying~~ purchase age**

- (1) A person under the ~~buying~~ purchase age who buys alcohol on or from any licensed premises commits an offence and is liable on conviction to a fine of not more than \$2,000.
- (2) **Subsection (1)** does not apply to a person who buys alcohol on or from any licensed premises at the request of a constable acting in the course of his or her duties. 20

Compare: 1989 No 63 s 162

**227 Minors in restricted areas or supervised areas**

- (1) A minor who is found in a restricted area on any licensed premises commits an offence. 25
- (2) A minor who is found in a supervised area on any licensed premises commits an offence unless he or she is accompanied by a parent or guardian.
- (3) A person who commits an offence against **subsection (1) or (2)** is liable on conviction to a fine of not more than \$1,000. 30
- (4) **Subsections (1) and (2)** do not apply to a person—
- (a) who is an employee or agent of the licensee, or a person acting under a contract with the licensee or a manager, and who is in the restricted area or supervised area for the purpose of— 35

- (i) cleaning, repairing, maintaining, altering, or restocking the area or any equipment in the area; or
- (ii) removing or replacing any equipment; or
- (iii) stocktaking; or
- (iv) checking or removing cash; or 5
- (b) who is in the restricted area or supervised area for the purpose of preparing or serving a meal; or
- (c) who is in the restricted area or supervised area at the request of a constable acting in the course of his or her duties; or 10
- (d) who is in the supervised area for the purpose of selling or supplying alcohol.

Compare: 1989 No 63 s 163

- 228 Permitting minors to be in restricted areas or supervised areas** 15
- (1) A licensee or manager of any licensed premises who allows a minor to enter or remain in a restricted area or supervised area in contravention of **section 227** commits an offence.
  - (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$2,000. 20
  - (3) In any proceedings for an offence against **subsection (1)** in respect of allowing a person (the **customer**) to enter or remain in a restricted area or supervised area, it is a defence if the defendant proves that—
    - (a) there was produced to the defendant, or an agent or employee of the defendant, a document purporting to be an approved evidence of age document; and 25
    - (b) the defendant, agent, or employee believed on reasonable grounds that the document—
      - (i) was an approved evidence of age document; and 30
      - (ii) related to the customer; and
      - (iii) indicated that the customer was not a minor; and
    - (c) the defendant, agent, or employee reasonably believed that the customer was not a minor; and
    - (d) the defendant satisfies the court that, as soon as the defendant, agent, or employee became aware of the situ- 35

ation, reasonable steps were taken to remove the customer from the restricted area or supervised area.

- (4) In any proceedings for an offence against **subsection (1)** in respect of allowing a person (the **customer**) to enter or remain in a restricted area or supervised area, it is a defence if the defendant proves that the defendant, or an agent or employee of the defendant, verified the customer's age using an approved evidence of age system in the approved manner.

Compare: 1989 No 63 s 164

## 229 Who is guardian

For the purposes of this Act, a person is a minor's guardian only if he or she is guardian by virtue of the Care of Children Act 2004.

### *Other offences on licensed premises*

## 230 Unauthorised sale or supply

- (1) The licensee or a manager of any licensed premises who sells or supplies alcohol to any person at any time when the licensee is not authorised by the licence or this Act to sell or supply alcohol to that person commits an offence. 15
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of a licensee, to either or both of the following: 20
- (i) a fine of not more than \$20,000;
- (ii) the suspension of the licensee's licence for a period of not more than 7 days;
- (b) in the case of a manager, a fine of not more than \$20,000. 25

Compare: 1989 No 63 s 165

## 231 Sale or supply of alcohol to intoxicated people

- (1) The licensee or a manager of any licensed premises who sells or supplies alcohol to an intoxicated person commits an offence. 30
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—

- (a) in the case of a licensee, to either or both of the following: 35
- (i) a fine of not more than \$10,000:
  - (ii) the suspension of the licensee's licence for a period of not more than 7 days:
- (b) in the case of a manager, a fine of not more than \$10,000. 5
- (3) A person who is not a licensee or manager of licensed premises and who sells or supplies alcohol to an intoxicated person commits an offence.
- (4) A person who commits an offence against **subsection (3)** liable on conviction to a fine of not more than \$2,000. 10
- (5) **Subsection (3)** applies irrespective of any liability that may attach to the licensee or any manager in respect of the same offence.
- Compare: 1989 No 63 s 166
- 232 Allowing people to become intoxicated** 15
- (1) The licensee or a manager of any licensed premises who allows any person to become intoxicated on the premises commits an offence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,— 20
- (a) in the case of a licensee, to either or both of the following:
    - (i) a fine of not more than \$10,000:
    - (ii) the suspension of the licensee's licence for a period of not more than 7 days: 25
  - (b) in the case of a manager, a fine of not more than \$10,000.
- Compare: 1989 No 63 s 167
- 233 Manager intoxicated on duty**
- (1) A manager of licensed premises who is intoxicated while on duty on the premises commits an offence. 30
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$4,000.

**234 Employee intoxicated on duty**

- (1) An employee of the licensee of any licensed premises who is intoxicated while on duty on the premises commits an offence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$2,000. 5

**235 Allowing intoxication on licensed premises**

- (1) The licensee or a manager of any licensed premises who allows an intoxicated person to be or remain on the licensed premises commits an offence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$5,000. 10
- (3) It is a defence to a charge under **subsection (1)** if the defendant satisfies the court that, as soon as the defendant or any employee of the licensee became aware of the situation, reasonable steps were taken in respect of the intoxicated person concerned, either— 15
- (a) to take the person to a place of safety on the licensed premises; or
- (b) to remove the person from the licensed premises. 20
- Compare: 1989 No 63 s 168

**236 Allowing disorderly conduct on licensed premises**

- (1) The licensee or a manager of any licensed premises who allows any violent, quarrelsome, insulting, or disorderly conduct to take place on the licensed premises commits an offence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$10,000. 25
- (3) It is a defence to a charge under **subsection (1)** if the defendant satisfies the court that, as soon as the defendant or any employee of the licensee became aware of the situation, reasonable steps were taken in respect of each person involved in the conduct concerned either— 30
- (a) to take the person to a place of safety on the licensed premises; or
- (b) to remove the person from the licensed premises. 35
- Compare: 1989 No 63 s 168

**237 Sales of ~~spirits otherwise than~~ spirit in vessel exceeding 500 ml**

- (1) The licensee or a manager of any licensed premises, or an employee of the licensee, who sells or supplies any ~~spirits~~ spirit to any person, for consumption on the licensed premises, in a vessel exceeding 500 ml commits an offence. 5
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$2,000.
- (3) **Subsection (1)** does not apply to the sale or supply of any ~~spirits~~ spirit to a person who is a lodger on the licensed premises for consumption in the part of the licensed premises in which that person lodges. 10

Compare: 1989 No 63 s 169

**238 Being on licensed premises outside licensing hours**

- (1) ~~A person commits an offence who is found in any part of any licensed premises, other than club premises, that is used principally or exclusively for the sale, supply, or consumption of alcohol—~~ 15
- (a) ~~at any time later than 30 minutes after the premises are required to close for the sale of alcohol; or~~ 20
- (b) ~~at any other time when the premises are required to be closed for the sale of alcohol.~~
- (1) A person commits an offence who on any day is found in any part of any licensed premises, other than club premises, that is used principally or exclusively for the sale, supply, or consumption of alcohol, at any time that— 25
- (a) is not between 6 am and the time when the premises cease to be required to be closed for the sale of alcohol; and
- (b) is— 30
- (i) more than 30 minutes after the premises are required to close for the sale of alcohol; or
- (ii) a time when the premises are required to be closed for the sale of alcohol.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$2,000. 35
- (3) **Subsection (1)** does not apply to—

- (a) the licensee:
- (b) the licensee's spouse, civil union partner, or de facto partner:
- (c) a manager:
- (d) a manager's spouse, civil union partner, or de facto partner: 5
- (e) a member of the immediate family of the licensee or a manager:
- (f) an employee during the hours he or she is employed to work on the premises, and for 60 minutes after those hours have ended, an employee of the licensee who does not live on the premises: 10
- (g) a person who is the agent of the licensee, or acting under a contract with the licensee or a manager, and has the authority of the licensee or a manager to enter the premises— 15
  - (i) to clean, repair, or restock the premises (or any equipment in them); or
  - (ii) to check or remove cash:
- (h) a person who has the authority of the licensee or a manager to enter the premises to remove equipment (for example, band equipment): 20
  - (i) an employee of the licensee who lives on the premises:
  - (j) a person who lodges on the premises:
  - (k) a genuine guest of a person described in **paragraph (j)** while that person is on the premises. 25
- (4) **Subsection (1)** does not apply in respect of a person who is found on any premises where an on-licence is in force if—
  - (a) a special licence is also in force for those premises at the material time; and 30
  - (b) that person's presence on the premises at that time is justified in terms of the special licence.

Compare: 1989 No 63 s 170

### **239 Allowing people on licensed premises outside licensing hours**

35

- (1) A licensee or a manager of any licensed premises who allows a person to be on licensed premises in contravention of **section 238** commits an offence.

- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$10,000.  
Compare: 1989 No 63 s 171

**240 Offences relating to evidence of age documents**

- (1) A person commits an offence who presents to the licensee or a manager of any licensed premises, or to an employee of the licensee,—
- (a) a document that purports to be an approved evidence of age document but is not; or
  - (b) a genuine approved evidence of age document relating to the person but containing (whether because false information was given to the person issuing it, or information it contained when it was issued was later falsified) false information purporting to relate to the person's age or date of birth; or
  - (c) a genuine approved evidence of age document containing information relating to some other person.
- (2) A person commits an offence who—
- (a) sells, hires, lends, or gives to any other person a document that purports to be an approved evidence of age document but is not; or
  - (b) falsifies the information on a genuine approved evidence of age document relating to the age or date of birth of the person to whom the document relates.
- (3) A person commits an offence who, without reasonable excuse, sells, hires, lends, or gives to any other person—
- (a) a genuine approved evidence of age document relating to the other person but containing falsified information purporting to relate to the other person's age or date of birth; or
  - (b) a genuine approved evidence of age document containing information relating to a person other than that other person.
- (4) A person who commits an offence against this section is liable on conviction to a fine of not more than \$2,000.  
Compare: 1989 No 63 s 172

**241 Licensee's offences in respect of manager**

- (1) A licensee who fails, without reasonable excuse, to do any of the following commits an offence:
- (a) appoint a manager as required by **section 195, 196, or 197**: 5
  - (b) ensure that **section 198** is complied with:
  - (c) comply with **section 215**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$5,000. 10  
Compare: 1989 No 63 s 172A

*Failure to comply with requirement or restriction***242 Failure to comply with certain requirements and restrictions imposed by this Act**

- (1) A person who fails or refuses to comply with any of **sections 47 to 63, and 138(2)** commits an offence. 15
- (2) A person who commits an offence against **subsection (1)** is liable to a fine of not more than \$5,000.

**242 Failure to comply with certain requirements and restrictions imposed by or under this Act** 20

- (1) A person commits an offence who fails or refuses to comply with—
- (a) any of **sections 47 to 64, 138(2), and 215(1)**; or
  - (b) any requirement imposed by regulations made under **section 382(1)(ba)**. 25
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine of not more than \$5,000.

*Infringement offences***243 Infringement offences**

- In **sections 244 to 247**,— 30
- infringement fee**, in relation to an infringement offence, means an amount not exceeding \$1000, prescribed for the purposes of this section in regulations made under this Act

**infringement offence** means an offence that is—

- (a) an offence against any of **sections 64, 226, 227, 228, 233, 234, 237, 240, and 242**; or
- (b) an offence against **section 241(1)(b)** relating to a breach of **section 198(3)** 5

**specified infringement offence** means an offence that is—

- (a) an offence against any of **sections 64, 228, 233, 237, and 242**; or
- (b) an offence against **section 241(1)(b)** relating to a breach of **section 198(3)**. 10

Compare: 1989 No 63 s 162A

#### **244 Commission of infringement offences**

- (1) A person who is alleged to have committed an infringement offence (other than an offence against **section 64 or 242**) may either— 15

- (a) be proceeded against for the alleged offence by the laying of an information under the Summary Proceedings Act 1957; or
- (b) be served with an infringement notice as provided for in **section 245**. 20

- (2) A person who is alleged to have committed an offence against **section 64 or 242** may be served with an infringement notice as provided for in **section 245**.

Compare: 1989 No 63 s 162B

#### **245 Infringement notices**

- (1) If a constable observes a person committing an infringement offence, or an inspector observes a person committing a specified infringement offence, or he or she has reasonable cause to believe that such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person. 30

- (2) Any constable or inspector (not necessarily the person who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement offence personally or by post addressed to that person's last known place of residence. 35

- (3) For the purposes of the Summary Proceedings Act 1957, an infringement notice (or a copy of it) sent to a person under **subsection (2)** is to be treated as having been served on that person when it was posted.
- (4) Every infringement notice must be in the prescribed form and must contain the following particulars: 5
- (a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and
  - (b) the amount of the infringement fee; and 10
  - (c) the address of the place at which the infringement fee may be paid; and
  - (d) the time within which the infringement fee must be paid; and
  - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and 15
  - (f) a statement that the person served with the notice has a right to request a hearing; and
  - (g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and 20
  - (h) any other particulars that may be prescribed.
- (5) If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates: and, in that case, the provisions of that section apply with all necessary modifications. 25

Compare: 1989 No 63 s 162C

#### **246 Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account. 30

Compare: 1989 No 63 s 162D

#### **247 Regulations**

The Governor-General may, by Order in Council made on the advice of the Minister, make regulations for all or any of the following purposes: 35

- (a) prescribing the infringement fee payable in respect of infringement offences:
- (b) prescribing the form of infringement notices and reminder notices for infringement offences, and any other particulars to be contained in infringement notices and reminder notices. 5

*Closure of premises*

**248 Closure of premises by order**

- (1) This section applies if a riot occurs, or there are reasonable grounds for believing that a riot may occur, in any place. 10
- (2) A District Court Judge or any 2 or more Justices or any 1 or more Community Magistrates may, at the request of a constable for the time being acting in that place, order every licensee in or within a specified distance of that place to close his or her licensed premises for the sale of alcohol during the time specified in the order, which time must not be later than 24 hours from the end of the day on which the order was made. 15
- (3) Any constable may use any force that may be necessary for the purpose of closing any licensed premises to which the order applies. 20
- (4) A licensee or a manager of any licensed premises to which the order applies who keeps the premises open for the sale of alcohol in contravention of the order commits an offence and is liable on conviction,—
  - (a) in the case of a licensee, to either or both of the following: 25
    - (i) a fine of not more than \$10,000:
    - (ii) the suspension of the licensee's licence for a period of not more than 7 days:
  - (b) in the case of a manager, a fine of not more than \$10,000. 30
- (5) A person who sells any alcohol on or from any licensed premises to which the order applies at any time while the order is in force commits an offence.
- (6) A person who commits an offence against **subsection (5)** is liable on conviction to a fine of not more than \$3,000. 35

Compare: 1989 No 63 s 173

**249 Closure of licensed premises by Police**

- (1) This section applies in the following circumstances:
- (a) if a riot is taking place or there are reasonable grounds for believing that a riot may occur on any licensed premises; or 5
  - (b) if there is fighting or serious disorder or there are reasonable grounds for believing that fighting or serious disorder is about to break out on any licensed premises; or
  - (c) if there is a significant threat to public health or safety; or 10
  - (d) if the conduct on any licensed premises amounts to a substantial public nuisance; or
  - (e) if there are reasonable grounds for believing offences have been committed on the premises that carry a maximum penalty of 5 years or more and there is a significant risk of further such offences being committed on the premises if the premises remain open. 15
- (2) A constable may order the closure of any licensed premises or any specified part of any licensed premises for the sale of alcohol until a time stated in the order, which time must not be later than 24 hours from the end of the day on which the order was made, or order any person to leave the premises or that specified part of them. 20
- (3) Any constable may use any force that may be necessary for the purpose of closing the licensed premises or any part of the licensed premises. 25
- (4) As soon as an order has been given, the licensee or a manager may apply to a District Court Judge or any 2 or more Justices or any 1 or more Community Magistrates for the revocation of the order. 30
- (5) The Judge or Justices or the Community Magistrate or Magistrates—
- (a) may revoke the order either unconditionally or subject to any conditions as he or she may think fit to impose; or 35
  - (b) may refuse to revoke the order.
- (6) A licensee or a manager of any licensed premises to which the order applies who keeps the premises open or the specified

part of them open for the sale of alcohol in contravention of the order commits an offence.

- (7) A person who commits an offence against **subsection (6)** is liable on conviction,—
- (a) in the case of a licensee, to either or both of the following: 5
- (i) a fine of not more than \$10,000;
- (ii) the suspension of the licensee's licence for a period of not more than 7 days:
- (b) in the case of a manager, a fine of not more than 10 \$10,000.
- (8) A person who sells any alcohol on or from the licensed premises or the specified part of the licensed premises at any time while the order is in effect commits an offence.
- (9) A person who commits an offence against **subsection (8)** is 15 liable on conviction to a fine of not more than \$3,000.
- Compare: 1989 No 63 s 174

*Powers of entry on licensed premises*

**250 Powers of entry on licensed premises**

- (1) A constable or an inspector may at any reasonable time enter 20 and inspect any licensed premises, or any part of any licensed premises, to ascertain whether the licensee is complying with the provisions of this Act and the conditions of the licence.
- (2) A constable or an inspector may at any time enter and inspect 25 any licensed premises when he or she has reasonable grounds to believe that any offence against this Act is being committed on those licensed premises.
- (3) For the purposes of exercising the power conferred by this section, a constable or an inspector may—
- (a) require the production of any licence, or any book, notice, record, list, or other document that is required by 30 this Act to be kept, and examine and make copies of it; and
- (b) require the licensee or manager to provide any information or assistance reasonably required by a constable or 35 an inspector relating to any matter within the duties of the licensee or manager.

- (4) A person commits an offence and is liable on conviction to a fine of not more than \$2,000 who, without reasonable excuse,—
- (a) refuses or fails to admit to any licensed premises any constable or inspector who demands entry under this section; or 5
  - (b) delays unreasonably in admitting to any licensed premises any constable or inspector who demands entry under this section.
- (5) A person commits an offence and is liable on conviction to a fine of not more than \$2,000 who, being the licensee or a manager of any licensed premises, without reasonable excuse, refuses or fails—
- (a) to produce the licence or any document when required to do so under **subsection (3)(a)**; or 15
  - (b) to provide any assistance or information when required to do so under **subsection (3)(b)**.

Compare: 1989 No 63 s 175

### **251 Power to seize samples of alcohol**

- (1) This section applies where a constable or inspector has entered and is conducting an inspection of any licensed premises under **section 250**. 20
- (2) If a constable or an inspector has reasonable cause to suspect that any person on the premises has committed, is committing, or is attempting to commit any offence against this Act, he or she may seize, without warrant, for the purpose of analysis, any liquid (including the container holding the liquid) in the possession of that person that is suspected of being alcohol. 25

Compare: 1989 No 63 s 177A

### **252 Power of Police to demand information**

- (1) A constable who has reasonable cause to suspect that any person has committed or is committing or is attempting to commit any offence against this Act may ~~demand~~ require the person to supply particulars of the his or her name and address and date of birth of that person. 30 35

- (2) ~~If the constable has reasonable grounds to suppose that any such particulars are false, he or she may require the person to supply satisfactory evidence of those particulars.~~
- (2) A constable who believes on reasonable grounds that any particulars provided on requirement under **subsection (1)** are false may require the person concerned to provide satisfactory evidence of the particulars. 5
- (3) If any person, without reasonable excuse, refuses or fails to ~~supply~~ provide any particulars or evidence when required to do so by a constable under this section, and persists in ~~that refusal or failure~~ refusing or failing after being cautioned by the constable, ~~that person~~ he or she may be arrested, without warrant, by any constable. 10
- (4) A person commits an offence and is liable on conviction to a fine of not more than \$2,000 who, having been required by any constable to ~~supply~~ provide any particulars or evidence under this section, without reasonable excuse,— 15
- (a) refuses or fails to supply the particulars or evidence; or
- (b) supplies any particulars or evidence knowing that the particulars or evidence are false in a material respect. 20
- Compare: 1989 No 63 s 176

### *Further powers of Police*

#### **253 Constable may apply for search warrant**

- (1) A constable may apply for a search warrant to search a premises. 25
- (2) Any District Court Judge, Justice, Community Magistrate, or Registrar (not being a constable) may, on an application by a constable, issue a search warrant to search a premises if satisfied that there are reasonable grounds for believing that— 30
- (a) any alcohol is being sold, or displayed or kept for sale, on any premises in which it may not lawfully be sold, or displayed or kept for sale; or
- (b) any premises is being kept or used as a place of resort for the consumption of alcohol in contravention of this Act. 35

- (3) The issuing officer may impose reasonable conditions on the execution of the warrant.

Compare: 1989 No 63 s 177(1)(4)

#### **254 Application for search warrant**

- (1) An application for a search warrant must be made in writing and on oath. 5

- (2) The applicant must disclose in the application, so far as they are known to the applicant after making reasonable enquiries,—

- (a) details of any other application for a search warrant under this section made within the previous 28 days in respect of the premises proposed to be searched: 10  
 (b) the result of that application or those applications.

Compare: 1989 No 63 177(1)(2)

#### **255 Search warrant**

15

- (1) Every search warrant issued must be in the prescribed form.

- (2) Every search warrant issued must be directed to—

- (a) a constable by name; or  
 (b) every constable.

- (3) Despite a warrant being directed to another person under **sub-section (2)(a)**, it may be executed by any constable. 20

Compare: 1989 No 63 s 177(3)

#### **256 Powers of entry and search under warrant**

- (1) Every search warrant authorises the constable executing it to do any of the following: 25

- (a) to enter the premises concerned on 1 occasion within 14 days of the date of the issue of the warrant at any time that is reasonable in the circumstances; and

- (b) to request any person to assist with the entry and search; and 30

- (c) to use any force that is reasonable in the circumstances for the purposes of the entry and search; and

- (d) to search for and seize any alcohol, or any packages or containers containing or believed to be containing any alcohol, or any vessels used or believed to be used 35

- for the consumption of any alcohol, or any other thing, found on the premises and believed on reasonable grounds to have been involved in the commission of any offence specified in the warrant or any other offence against this Act. 5
- (2) A constable executing a search warrant must carry the warrant with him or her and must produce it for inspection—
- (a) on first entering the premises to the person appearing to be in charge of the premises; and
- (b) if later required to do so on the premises by any other person appearing to be in charge of the premises or any part of the premises. 10
- (3) If the occupier of the premises is not present at the time the search warrant is executed, the constable must leave in a prominent position at the premises a written statement of the time and date of the search, the constable's name, and the address of the Police station to which enquiries should be made. 15
- (4) If any thing is seized during the execution of a search warrant, the constable executing the warrant must, at the time he or she seizes any thing, and in any case not later than 10 days after that seizure, provide to the occupier a written inventory of every thing seized. 20
- Compare: 1989 No 63 s 177(6)–(9)
- 257 Powers of people requested to assist** 25
- (1) Every person requested to assist a constable executing a search warrant is subject to the control of that constable.
- (2) Every person requested to assist a constable executing a search warrant may do any of the following:
- (a) enter the premises to be searched: 30
- (b) while in the company and under the direction of the person executing the warrant, use reasonable force in respect of any property for the purposes of carrying out the entry and search:
- (c) search areas within the premises that the constable executing the warrant determines may lawfully be searched: 35

- (d) seize any thing that the person executing the warrant determines may lawfully be seized.

*Matters of evidence*

**258 Matters of proof relating to status of premises**

- (1) In any proceedings for an offence against any of the provisions of this Act in relation to anything done or omitted to be done on any licensed premises, it is not necessary for the prosecution to prove that the premises to which the charge relates are, or were at any material time, licensed premises, unless at least 3 working days before the hearing the defendant puts the question in issue by written notice to that effect served on the prosecution. 5 10

- (2) In any proceedings for an offence against any of the provisions of this Act in relation to the sale of any alcohol, or the keeping or displaying of any alcohol for sale, on any unlicensed premises, it is not necessary for the prosecution to prove that the premises are, or were at any material time, unlicensed, unless at least 3 working days before the hearing the defendant puts the question in issue by written notice to that effect served on the prosecution. 15 20

Compare: 1989 No 63 s 178

**259 Matters of proof relating to content of alcohol**

In any proceedings for an offence against any of the provisions of this Act in relation to any alcohol, it is not necessary for the prosecution to prove that the substance concerned contains 1.15% or more ethanol by volume unless at least 20 working days before the hearing the defendant puts the question in issue by written notice to that effect served on the prosecution. 25

Compare: 1989 No 63 s 179

**260 Evidence of sale or consumption of alcohol**

- (1) In any proceedings for an offence against any of the provisions of this Act in relation to the sale or consumption of alcohol on any licensed premises or unlicensed premises, it is not necessary for the prosecution to prove that any money passed or any alcohol was actually consumed, if the court is satisfied that a 30 35

transaction in the nature of a sale actually took place or that any consumption of alcohol was about to take place.

- (2) In any proceedings for an offence against any of the provisions of this Act in relation to the sale of alcohol on any licensed premises, proof of consumption or intended consumption of alcohol on the ~~licensed~~ premises, or of the carrying away of alcohol from the ~~licensed~~ premises, by some person other than the occupier of the ~~licensed~~ premises or any person employed on them is evidence that the alcohol was sold to that person by or on behalf of the licensee. 5 10
- ~~(2)~~ In any proceedings for an offence against any of the provisions of **sections 222 to 228, 230, 231, 238, and 239**, the onus of proving that any person was at the time of the alleged offence entitled to have alcohol sold or supplied to him or her, or to consume or procure it or have it in his or her possession on the licensed premises, or to be on the licensed premises or any particular part of the licensed premises, is on the person alleging the fact. 15
- (3) In any proceedings for an offence against any of **sections 222, and 224 to 228,—** 20
- (a) any element of the offence relating to the age of any person must be treated as having been proved unless at least 20 working days before the hearing the defendant puts the question in issue by written notice to that effect served on the prosecution; and 25
- (b) the age of any person may be proved by the production of—
- (i) a birth certificate (within the meaning of section 2 of the Births, Deaths, Marriages, and Relationships Registration Act 1995) relating to the person; or 30
- (ii) an approved evidence of age document; or
- (iii) a passport relating to the person.

Compare: 1989 No 63 s 180

*Miscellaneous provisions***261 Liability of licensees for offences by managers**

The licensee of any licensed premises is not responsible for any offence against this Act committed by any manager of those premises except where the licensee is a party to the offence. 5

Compare: 1989 No 63 s 181

**262 Offences punishable on summary conviction**

Every offence against this Act (other than an offence in respect of which an infringement notice is issued) is punishable on summary conviction. 10

Compare: 1989 No 63 s 182

**262 Community Magistrates have jurisdiction in some cases**

A District Court presided over by one or more Community Magistrates has jurisdiction in respect of any offence against this Act that is not punishable by imprisonment. 15

**263 Forfeiture**

- (1) A constable may seize and remove any alcohol and the vessels containing it if there are reasonable grounds to suppose that the alcohol is intended for consumption in contravention of this Act. 20
- (2) On a person's being found guilty of an offence against this Act in respect of any alcohol seized, the alcohol and the vessels containing it are forfeit to the Crown.
- (3) Alcohol and the vessels containing it are forfeit to the Crown 25 if—
  - (a) it is seized by the police from a minor who is issued with an infringement notice in respect of an offence against this Act alleged to have been committed by the minor's drinking it, or having it in his or her possession or control, in a public place; and 30
  - (b) the infringement fee is later paid.
- (4) If a person is acquitted of an offence against this Act, alcohol seized under this section in relation to the offence—

- (a) may be collected from the relevant Police station within 28 days of the acquittal by or on behalf of the person or, if the person is under the age of 18 years, by his or her parent or legal guardian; and
- (b) if not collected within that time, may be disposed of in any manner the Commissioner of Police directs. 5

**264 Notice of prosecution or conviction of managers and licensees**

- (1) Any person who lays an information for an offence against this Act against a manager of any licensed premises must send a copy of the information to the licensee. 10
- (2) On the conviction of a manager of any licensed premises of an offence against this Act, the Registrar of the court by which the conviction is entered must send a notice of the conviction, together with any recommendation made by the court in respect of the manager's certificate, to— 15
  - (a) the licensee; and
  - (b) the secretary of the licensing authority.
- (3) On the conviction of a licensee or a manager for an offence against this Act, the Registrar of the court by which the conviction was entered must send a notice of the conviction, together with any recommendation made by the court in respect of the licence, to the secretary of the licensing authority, the Police, the inspector, and the medical Office of Health. 20

Compare: 1989 No 63 s 184

25

**Subpart 29—Other enforcement provisions**

*General enforcement provisions*

**265 Building Act 2004**

- (1) If an inspector believes that any building or sitework does not comply with the Building Act 2004, the inspector must by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply. 30

- (2) For the purposes of this section, **building, sitework, and territorial authority** have the meanings ascribed to them by given to them by section 7 of the Building Act 2004.

Compare: 1989 No 63 s 131A

**266 Variation, suspension, or cancellation of licences other than special licences** 5

- (1) Any constable or any inspector may at any time apply to the licensing authority for an order—
- (a) varying or revoking any condition of a licence, other than a special licence, imposed by the licensing authority or a licensing committee, or imposing any new condition (relating to any matters specified in **section 104(1), 106(1), or 107(1)**); or 10
  - (b) suspending the licence; or
  - (c) cancelling the licence. 15
- (2) Every application for an order must—
- (a) be made in the prescribed form and manner; and
  - (b) contain the prescribed particulars; and
  - (c) be made to the licensing authority.
- (3) The grounds on which an application for an order may be made are as follows: 20
- (a) that the licensed premises have been conducted in breach of any of the provisions of this Act or of any conditions of the licence or otherwise in an improper manner: 25
  - (b) that the conduct of the licensee is such as to show that he or she is not a suitable person to hold the licence:
  - (c) that the licensed premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public. 30
- (4) The ~~Secretary~~ secretary must—
- (a) send a copy of the application to the licensee; and
  - (b) fix the earliest practicable date for a public hearing of the application; and
  - (c) give at least 10 working days' notice of the date, time, and place of the hearing to the applicant and the licensee. 35

- (5) ~~The applicant and the licensee are entitled to appear and be heard at the hearing, whether personally or by counsel, and to call, examine, and cross-examine witnesses.~~
- (6) If the licensing authority is satisfied that any of the grounds specified in **subsection (3)** is established and that it is desirable to make an order under this section, it may, by order,— 5
- (a) vary or revoke any condition of the licence imposed by the licensing authority or a licensing committee; or
  - (b) impose any new condition (relating to any matter specified in **section 104(1), 106(1), or 107(1)**); or 10
  - (c) suspend the licence for such period not exceeding 6 months as the licensing authority thinks fit; or
  - (d) cancel the licence.
- (7) Instead of making an order under **subsection (6)**, the licensing authority may adjourn the application for any period it thinks fit to give the licensee an opportunity to remedy any matters that the licensing authority may require to be remedied within that period. 15
- Compare: 1989 No 63 s 132

**267 Suspension or cancellation of licences by licensing authority in respect of certain offences** 20

- (1) This section and **section 268** apply in respect of an offence committed—
- (a) by a licensee or manager against **section 220, 222(1), 230, 231(1), or 232**; or 25
  - (b) by a person (not being a licensee or manager) against **section 222(2) or 231(3)**.
- (2) A constable must, immediately after the licensee or manager or person has been convicted of the offence, send a report to the licensing authority. 30
- (3) The report must include—
- (a) a certificate of the conviction from the Registrar of the court concerned; and
  - (b) a summary of the evidence on which the conviction was based; and 35
  - (c) a statement by the Police as to whether or not the licensed premises concerned have been conducted in breach of any other provisions of this Act or of any

- conditions of the licence or otherwise in an improper manner and, if so, a statement of the circumstances; and
- (d) a statement by the Police as to whether or not the conduct of the licensee is such as to show that the licensee is not a suitable person to hold the licence and, if so, a statement of the circumstances; and 5
- (e) a recommendation by the Police as to whether the licence of the licensee should be suspended or cancelled; and 10
- (f) the reasons for the recommendation.
- (4) Immediately after receiving the report, the licensing authority must consider it.
- (5) If, after considering the report, the licensing authority considers that it should hold a public hearing into whether the licence held by the licensee should be suspended or cancelled, the secretary must— 15
- (a) advise the licensee accordingly; and
- (b) send a copy of the report of the Police to the licensee; and 20
- (c) fix the earliest practicable date for a public hearing of the matter; and
- (d) give at least 10 working days' notice of the date, time, and place of the hearing to the Police and the licensee. 25
- Compare: 1989 No 63 s 132A(1)–(5)
- 268 Hearing for suspension or cancellation under section 267**
- ~~(1) At the hearing, the Police and the licensee (whether personally or by counsel)—~~
- ~~(a) are entitled to appear and be heard; and~~
- ~~(b) may call, examine, and cross-examine witnesses.~~ 30
- (2) A certificate of the conviction included in the report of the Police under **section 267(3)(a)** is conclusive evidence that the licensee or manager or person committed the offence referred to in the certificate.
- (3) At the conclusion of the hearing, the licensing authority may make an order under **subsection (4)** if— 35
- (a) it is satisfied of either or both of the following matters:

- (i) that the licensed premises concerned have been conducted in breach of the provisions of this Act or of any conditions of the licence or otherwise in an improper manner:
  - (ii) the licensee is not a suitable person to hold a licence; and
- (b) it is also satisfied that it is desirable to make an order under that subsection.
- (4) An order made under this subsection is an order to—
  - (a) suspend the licence for any period, not exceeding 6 months, as the licensing authority thinks fit; or
  - (b) cancel the licence.
- (5) Instead of making an order under **subsection (4)**, the licensing authority may adjourn the hearing for any period it thinks fit to give the licensee an opportunity to remedy any matters that the licensing authority may require to be remedied within the period.

Compare: 1989 No 63 s 132A(5)–(10)

## **269 Variation, suspension, or cancellation of special licences**

- (1) A constable or any inspector may at any time apply to a licensing committee for an order—
  - (a) varying or revoking any condition of a special licence imposed by the committee, or imposing any new condition (relating to any matters specified in **section 135**); or
  - (b) suspending the licence; or
  - (c) cancelling the licence.
- (2) Every application for an order must—
  - (a) be made in the prescribed form and manner; and
  - (b) contain the prescribed particulars; and
  - (c) be made to the licensing committee that issued the licence.
- (3) The grounds on which an application for an order under this section may be made are as follows:
  - (a) that the licensed premises have been conducted in breach of any of the provisions of this Act or of any conditions of the licence or otherwise in an improper manner:

- (b) that the conduct of the licensee is such as to show that he or she is not a suitable person to hold the licence:
- (c) that the licensed premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public. 5
- (4) The secretary must—
  - (a) send a copy of the application to the licensee; and
  - (b) fix the earliest practicable date for a public hearing of the application; and
  - (c) give at least 10 working days' notice of the date, time, and place of the hearing to the applicant and the licensee. 10

Compare: 1989 No 63 s 133(1), (2), (3), and (4)

**270 Hearing for variation, suspension, or cancellation of special licences under section 269** 15

- (1) ~~The applicant and the licensee are entitled to appear and be heard at the hearing, whether personally or by counsel, and to call, examine, and cross-examine witnesses.~~
- (2) If the licensing committee is satisfied that any of the grounds specified in **section 269(3)** is established and that it is desirable to make an order under this section, it may, by order,—
  - (a) vary or revoke any condition of the licence imposed by the committee; or
  - (b) impose any new condition (relating to any matter specified in **section 135**); or 25
  - (c) suspend the licence for any period ~~not exceeding 6 months~~ as the committee thinks fit; or
  - (d) cancel the licence.
- (3) Instead of making an order under **subsection (2)**, the licensing committee may adjourn the application for any period it thinks fit to give the licensee an opportunity to remedy any matters that the committee may require to be remedied within that period. 30
- (4) If the licensing committee makes an order under this section, the secretary must send a copy to the secretary of the licensing authority. 35

Compare: 1989 No 63 s 133(5)–(8)

**271 Suspension or cancellation of manager's certificates**

- (1) Any constable or any inspector may at any time apply in accordance with this section for an order by the licensing authority—
- (a) suspending a manager's certificate; or 5
  - (b) cancelling a manager's certificate.
- (2) Every application for an order under this section must—
- (a) be made in the prescribed form and manner; and
  - (b) contain the prescribed particulars; and
  - (c) be made to the licensing authority. 10
- (3) The grounds on which an application for an order under this section may be made are as follows:
- (a) that the manager has failed to conduct any licensed premises in a proper manner;
  - (b) that the conduct of the manager is such as to show that he or she is not a suitable person to hold the certificate. 15
- (4) The secretary must—
- (a) send a copy of the application to the manager and to the licensee of any licensed premises to which any allegations against the manager relate; and 20
  - (b) fix the earliest practicable date for a public hearing of the application; and
  - (c) give at least 10 working days' notice of the public hearing to the applicant and the manager.
- ~~(5) The applicant and the manager are entitled to appear and be heard at the hearing, whether personally or by counsel, and to call, examine, and cross-examine witnesses. 25~~
- (6) If the licensing authority is satisfied that either of the grounds specified in **subsection (3)** is established and that it is desirable to make an order under this section, it may, by order,— 30
- (a) suspend the certificate for such period not exceeding 6 months as the licensing authority thinks fit; or
  - (b) cancel the certificate.
- (7) Instead of making an order under **subsection (6)**, the licensing authority may adjourn the application for any period it thinks fit to give the manager an opportunity to remedy any matters that the licensing authority may require to be remedied within that period. 35

Compare: 1989 No 63 s 135

**272 Suspension of licence for non-compliance with public health or fire precaution requirements**

- (1) A Medical Officer of Health or any member of the fire service authorised to ~~undertake fire safety inspections~~ enter buildings under section 21F or 29 of the Fire Service Act 1975 may apply to the licensing committee for the suspension of the licence if he or she has reason to believe that, because of the failure of the holder of any on-licence or club licence to comply with any requirements described in **subsection (2)** the health of persons using the premises is likely to be injured or their safety is likely to be endangered. 5 10
- (2) The requirements are those relating to public health or to the escape of people in the event of fire (whether in accordance with an evacuation scheme for public safety which meets the requirements of section ~~21A~~ 21B of the Fire Service Act 1975 or by other means) other than requirements under the Building Act 2004. 15
- (3) The licensing committee must give notice in writing to the licensee calling upon the licensee to appear before the committee at a time and place to be specified in the notice, being not earlier than 7 working days after the giving of the notice, to show cause why the licence should not be suspended. 20
- (4) If, after hearing the licensee (if he or she appears), the licensing committee is satisfied that the licensee has failed to comply with any requirement referred to in **subsection (1) (2)**, it may order the licensee to do all such things as may be necessary to meet those requirements within any reasonable time it may specify, and, in the case of default, may suspend the licence until those requirements have been met. 25
- (5) Despite **subsection (3)**, if, in any case to which that subsection applies, the licensing committee is satisfied that, because of the licensee's failure to comply with any requirement referred to in **subsection (1) (2)**, the health of ~~persons~~ people using the premises to which the application relates is likely to be injured or their safety is likely to be endangered, the committee must suspend the licence until it is satisfied that all things necessary or desirable to remedy the default have been done. 30 35

- (6) Without limiting **subsection (3)** and despite **subsection (4)**, the licensing committee may, instead of suspending the licence, order the closure of any part of the premises accordingly for the undertaking of the necessary work if, in any case to which **subsection (4)** applies, the committee is satisfied— 5
- (a) that the risk to the health or the danger to the safety of ~~persons~~ people using the premises has arisen from any circumstances beyond the control of the licensee or manager; or
- (b) that the risk or danger can be averted by ordering the closure of part only of the premises. 10
- (7) If the work is not completed to the satisfaction of the committee within any period as the committee may allow, the committee must suspend the licence under **subsection (4)**.
- (8) While any licence is suspended the premises ~~is not to be treated as~~ must be treated as not being licensed premises. 15
- Compare: 1989 No 63 s 134

**272A Automatic suspension of licence for non-payment of annual fee**

- A licence for which the annual fee prescribed by regulations made under this Act is not paid within 30 days after the day on which it is due is suspended for the period— 20
- (a) beginning on the day 31 days after the day on which it is due; and
- (b) ending on the day on which it, and all penalties payable in respect of its late payment, are fully paid. 25

*Cancellation of licences and manager's certificates for repeat offending or breaches*

- 273 Holdings giving rise to cancellation of licence and manager's certificate** 30
- Sections 274 and 275** apply to the following (**holdings**):
- (a) a conviction of a person, or what would have been a conviction of a person except for the operation of section 78A of the Summary Proceedings Act 1957, for any ~~1~~ or more of the following offences committed after the commencement of this section: 35

- (i) ~~section 220~~ (irresponsible promotion of alcohol):
- (ii) ~~section 222~~ (sale or supply of alcohol to people under buying age on or from licensed premises):
- (iii) ~~section 230~~ (unauthorised sale or supply): 5
- (iv) ~~section 231~~ (sale or supply of alcohol to intoxicated people):
- (b) a finding of the licensing authority that a person who is a licensee or a manager of any licensed premises has, after the commencement of this section,— 10
  - (i) encouraged people to consume alcohol to an excessive extent or promoted or advertised alcohol in a manner that contravened ~~section 220~~:
  - (ii) sold or supplied any alcohol, or allowed any alcohol to be sold or supplied, on or from licensed premises to any person who was under the buying age in contravention of ~~section 222~~: 15
  - (iii) sold or supplied alcohol to any person at any time when the licensee is not authorised by the licence or this Act to sell to that person in contravention of ~~section 230~~: 20
  - (iv) sold or supplied alcohol to a person who was already intoxicated in contravention of ~~section 231~~: 25
- (1) Sections 274 and 275 apply to a finding (a **holding**) of the licensing authority that a person who is a licensee or a manager of any licensed premises has, after the commencement of this section,— 25
  - (a) done anything that encouraged people, or was likely to encourage people, to consume alcohol to an excessive extent; or 30
  - (b) promoted or advertised discounts on alcohol in a way that lead people, or was likely to lead people, to believe that the price was 25% or more below the price at which the alcohol was ordinarily sold (otherwise than— 35
    - (i) on the premises; or
    - (ii) in the catalogue or similar price-list of the holder of an off-licence endorsed under **section 41A**);  
or

- (c) held or had on the premises a promotion or advertisement of discounts on alcohol that—
- (i) led people, or was likely to lead people, to believe that the price was 25% or more below the price at which the alcohol was ordinarily sold; and 5
- (ii) could be seen (or in the case of an audible promotion or advertisement, heard) from outside the premises; or
- (d) promoted or advertised alcohol that was free of charge (otherwise than— 10
- (i) by promoting or advertising the complimentary sampling of alcohol for consumption on premises for which an off-licence was held; or
- (ii) by a promotion or advertisement within licensed premises that could not be seen (or in the case of an audible promotion or advertisement, heard) from outside the premises); or 15
- (e) offered any goods or services, or the opportunity to obtain any goods or services, or the opportunity to win a prize, on the condition that alcohol was bought; or 20
- (f) promoted (otherwise than by simply stocking, displaying, and selling the alcohol concerned) a competition that required or enabled people to enter it by buying alcohol; or
- (g) promoted or advertised alcohol in a manner aimed at, or that had, or was likely to have, special appeal to, minors; or 25
- (h) sold or supplied any alcohol on or from the premises to a person who was under the purchase age; or
- (i) allowed any alcohol to be sold or supplied on or from the premises to a person who was under the purchase age; or 30
- (j) sold or supplied alcohol to a person at a time when the licensee was not authorised by the licence or this Act to sell or supply alcohol to him or her 35
- (k) sold or supplied alcohol to an intoxicated person.
- (2) In sections 274 and 275, negative holding means a holding to which subsection (1) applies.

**274 Cancellation of licence after 3 holdings within 3 years**

- (1) A constable or an inspector (as the case may be) must make an application for an order by the licensing authority cancelling the licensee's licence if—
- (a) ~~the licensee has been charged with an offence or an application has been made for a finding that, if proven, will result in a negative holding to which **section 273** applies; and~~ 5
  - (b) ~~2 negative holdings to which **section 273** applies have been made in relation to the licensee in respect of incidents occurring during the period of 3 years ending immediately before the day on which the incident giving rise to the ~~charge or application referred to in **paragraph (a)**~~ occurred; and~~ 10
  - (c) ~~the ~~charge or application~~ and the 2 previous holdings all relate to the same premises.~~ 15
- (2) ~~For the purposes of **subsection (1)**, if an incident results in both the conviction of a person for an offence against **section 220, 222, 230, and 234** and a finding that the person has engaged in conduct of a kind described in **section 273(b)**, the finding must be disregarded.~~ 20
- (3) The licensing authority may cancel the licensee's licence if—
- (a) the licensing authority makes a negative holding that is the subject of the ~~charge or application referred to in **subsection (1)(a)**~~ in relation to the licensee; and 25
  - (b) ~~2 other negative holdings to which **section 273** applies have been made in relation to the licensee in respect of incidents occurring during the period of 3 years ending immediately before the day on which the incident giving rise to the ~~charge or application~~ negative holding referred to in **paragraph (a)** occurred; and~~ 30
  - (c) all the negative holdings relate to the same premises.
- (4) A cancellation of a licence takes effect on the date specified in the order, which date must not be more than 3 months after the date of the third holding. 35
- (5) A decision by the licensing authority to cancel a licence under this section may not be appealed against to the High Court.

**275 Cancellation of manager’s certificate after 3 holdings within 3 years**

- (1) The court or the licensing authority (as the case may be) must make an order cancelling a manager’s certificate if—
- (a) the court or the licensing authority makes a negative holding to which **section 273** applies in relation to the manager concerned; and 5
  - (b) 2 other negative holdings to which **section 273** applies have been made in relation to the manager concerned in respect of incidents occurring during the period of 3 years ending immediately before the day on which the incident giving rise to the negative holding referred to in **paragraph (a)** occurred. 10
- (2) For the purposes of **subsection (1)**, if an incident results in both the conviction of a person for an offence against **section 220, 222, 230, or 231** and a finding that the person has engaged in conduct of a kind described in **section 273(b)**, the finding must be disregarded. 15
- (3) A cancellation under this section takes effect immediately.
- (4) A decision by the licensing authority to cancel a manager’s certificate under this section may not be appealed against to the High Court. 20

**276 Procedure for applications for cancellation of licence**

- (1) An application for cancellation of a licence under **section 274** must be made in the form and manner prescribed under **section 271(2)**. 25
- (2) The licensing authority must—
- (a) send a copy of the application to the licensee of the licensed premises; and
  - (b) fix the earliest practicable date for a public hearing of the application; and 30
  - (c) give at least 10 days’ notice of the hearing to the applicant and the licensee.
- (3) The applicant and the licensee are entitled to appear and be heard at the hearing, whether personally or by counsel, and to call, examine, and cross-examine any witnesses. 35

- (4) The evidence of any witnesses, and any submissions made, must be limited to whether the grounds for cancellation (specified in **section 274(3)**) can be established.

**277 Restrictions on person whose licence has been cancelled**

- (1) This subsection applies to a person whose licence has been cancelled under **section 274** if less than 5 years has passed since the date of the cancellation of the licence. 5
- (2) The licensing authority must not grant an application for a licence to a person to whom **subsection (1)** applies in respect of premises to which the holdings relate. 10

**278 Restriction on person whose manager's certificate has been cancelled**

- (1) This subsection applies to a person whose manager's certificate has been cancelled under **section 275** if less than 5 years has passed since the third holding. 15
- (2) The licensing authority must not issue a manager's certificate to a person to whom **subsection (1)** applies.
- (3) A person to whom **subsection (1)** applies must not be appointed as a temporary manager or an acting manager under **section 213 or 214**. 20
- (4) A purported appointment at any time of a person to whom **subsection (1)** applies as a temporary manager or an acting manager under **section 213 or 214** is void (and in the case of a purported appointment of an acting manager under **section 214, section 214(2)** does not apply to him or her), whether or not the licensee concerned then knows that **subsection (1)** applies to the person. 25
- (5) **Subsections (2) to (4)** override **sections 206 to 215**.

**279 Licensing authority may cancel manager's certificate after making finding**

If the licensing authority makes a finding to which **section 275** applies but fails at that time to make an order cancelling the relevant manager's certificate, it may, at any time after making the finding, make an order cancelling the manager's certificate. 30  
35

*Agencies' duty to collaborate***280 Duty to collaborate**

The Police, inspectors, and Medical Officers of Health within each territorial authority's ~~area~~ district must—

- (a) establish and maintain arrangements with each other to ensure the ongoing monitoring of licences and the enforcement of this Act; and 5
- (b) work together to develop and implement strategies for the reduction of alcohol-related harm.

*Licensing authority to keep and maintain list* 10**281 List of licensees and managers who hold licences or manager's certificates**

- (1) The secretary of the licensing authority must keep and maintain a list of licensees and managers who hold licences or manager's certificates. 15
- (2) The list must include the following information in respect of a licensee or manager:
  - (a) the licensee's or manager's name;
  - (b) the licence or manager's certificate number, as the case may be; 20
  - (c) any holdings to which **section 273** applies made against the licensee or manager.

**282 Removal of entry relating to holding**

The secretary of the licensing authority must remove an entry on the list relating to a holding on the date that is 4 years after the date on which the incident giving rise to that holding occurred. 25

**283 Purpose of list**

The purpose of the list is to ensure the accurate enforcement of the cancellation of licences and manager's certificates where a licensee or a manager has been repeatedly convicted of offences or the licensing authority has made findings against a licensee or manager in respect of offences and contraventions of the Act listed in **section 273**. 30

**284 List to be made available to constables and inspectors only**

- (1) The secretary of the licensing authority must make the list available to constables and inspectors.
- (2) The list must not be made available to any other person and does not form part of the register maintained by the secretary under **section 65**. 5
- (3) A constable or inspector may only use or access the list for the purpose set out in **section 283**.

**Part 6****Licensing trusts, community trusts, and other matters** 10**Subpart 1—Licensing trusts***Establishment of licensing trusts***285 Licensing trust established by Order in Council**

- (1) The Governor-General may, by Order in Council made on the ~~advice~~ recommendation of the Minister, establish a licensing trust for any area if that area does not overlap (wholly or partly) the district of any other licensing trust. 15
- (2) The Order in Council may do all or any of the following things in relation to the licensing trust: 20
- (a) prescribe its name:
- (b) define its district in accordance with **subsection (4)**:
- (c) prescribe the number of members:
- (d) prescribe the number of members for a quorum at a meeting of the trust: 25
- (e) divide (in accordance with **subsection (4)**) the district of the trust into wards for the election of members, and prescribe the names and boundaries of the ward and the number of members for each ward:
- (f) make any other necessary provision for establishing the trust in accordance with this Part. 30
- (3) The Order in Council must—
- (a) appoint the date for the first election of the members of the trust; and
- (b) nominate a person to chair the first meeting of the members for the election of the president of the trust. 35

- (4) The boundaries of the licensing trust district and any wards must coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes.

Compare: 1989 No 63 s 185(1), (3)

5

**286 When Minister must ~~advise~~ recommend establishment of licensing trust**

The Minister must ~~advise the Governor-General to establish~~ recommend the making of an order establishing a licensing trust for an area on the request in writing of at least 15% of the residential electors of the area.

10

Compare: 1989 No 63 s 185(2)

**287 Licensing trust is body corporate**

- (1) A licensing trust is a body corporate having perpetual succession.

15

- (2) A licensing trust must have a seal.

Compare: 1989 No 63 s 186

**288 Existing licensing trusts continue in existence**

- (1) This section applies to a licensing trust constituted under the Sale of Liquor Act 1989 and in existence immediately before the commencement of this Act (in this section called an **existing licensing trust**).

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- (2) The existing licensing trusts are the trusts listed in **Parts 1 and 2 of Schedule 1**.

- (3) An existing licensing trust continues in existence as if it were a trust established under this Act except that the next election of its members must be held on the day on which the next succeeding triennial general election of members of territorial authorities is held under the Local Electoral Act 2001.

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Compare: 1989 No 63 s 241(1)

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**289 Alteration of trust boundaries**

- (1) The Governor-General may, by Order in Council made on the advice of the Minister, alter the boundaries of licensing trusts to coincide with the boundaries of the current statistical mesh-

block areas determined by Statistics New Zealand and used for parliamentary electoral purposes (**meshblocks**).

- (2) The Minister may give the advice referred to in **subsection (1)** only on the recommendation of the Local Government Commission (the **Commission**) made in accordance with **subsection (3)**. 5
- (3) The Commission may from time to time review the boundaries of 1 or more licensing trusts and, after consulting with affected persons (including the members of each trust, any affected licensees, and the trust's electoral officer), may recommend their alteration to coincide with meshblocks. 10
- (4) The monopoly provisions in **section 335** do not apply to any existing licensed premises in any new area of the trust district after alteration.
- (5) The alteration of the boundaries of a trust district must not have the effect of disqualifying a member of the trust at the date of alteration whose residence falls outside the new boundaries of the trust district, but this subsection does not affect the ineligibility of any such person to vote or stand as a candidate in later elections of members of the trust. 15 20

## 290 Functions of licensing trust

- (1) The functions of a licensing trust are to—
- (a) sell and supply alcohol; and
  - (b) establish and operate premises for—
    - (i) the sale and supply of alcohol; and 25
    - (ii) the provision of accommodation for travellers; and
    - (iii) the sale and supply of food and refreshments; and
  - (c) carry on any other business that, in the trust's opinion, can be conveniently carried on in conjunction with the functions set out in **paragraphs (a) and (b)**. 30
- (2) For the purpose of performing its functions, a licensing trust may—
- (a) do anything that a natural person may do; and
  - (b) issue debt securities. 35

Compare: 1989 No 63 s 187; 2004 No 115 ss 17, 18

**291 Licensing trust liable for taxes**

A licensing trust is liable to income tax, rates, and all other taxes and duties, as if it were a body corporate formed for private pecuniary gain.

Compare: 1989 No 63 s 188

5

**292 How licensing trust may spend profits**

A licensing trust may spend or distribute the net profit that it makes in performing its functions for all or any of the following purposes:

- (a) the promotion, advancement, or encouragement of education, science, literature, art, physical welfare, and other cultural and recreational purposes: 10
- (b) building, laying out, maintaining, or repairing buildings or places intended to further any of the purposes described in **paragraph (a)**: 15
- (c) any other philanthropic purposes.

Compare: 1989 No 63 s 189

*Elections***293 Election of members**

The members of a licensing trust are elected in accordance with **sections 294 to 299**. 20

Compare: 1989 No 63 s 190

**294 Qualification to be elected or appointed member**

A person (A) is qualified to be elected or appointed a member of a licensing trust if A— 25

- (a) is not disqualified under **section 307**; and
- (b) is,—
  - (i) if the trust district is not divided into wards, qualified to vote under **section 297(1)**; or
  - (ii) if the trust district is divided into wards, qualified to vote under **section 297(2)** in the ward to which the election or appointment relates. 30

Compare: 1989 No 63 s 200(1)(a)

**294 Qualification to be elected or appointed member**

A person is qualified to be elected or appointed a member of a licensing trust if he or she is not disqualified under **section 307**, and—

- (a) in the case of a trust district not divided into wards, is qualified to vote under **section 297(1)**; or 5
- (b) in the case of a trust district divided into wards, is qualified under **section 297(2)** to vote in the ward to which the election or appointment relates.

Compare: 1989 No 63 s 200(1)(a) 10

**295 First election of members**

- (1) The first election of members of a licensing trust established under **section 285** must be held on the day appointed by the Order in Council establishing the trust.
- (2) The electoral officer for the election is the electoral officer of the territorial authority in whose district the licensing trust is situated. 15

Compare: 1989 No 63 s 191

**296 Second and later elections**

- (1) If the first election of members of a licensing trust is not held on the same day as a triennial general election,— 20
- (a) the second election must be held on the day of a triennial general election that is at least 4 years after the first election; and
- (b) all later elections must be held on the same days as later triennial general elections. 25
- (2) If the first election of members is held on the same day as a triennial general election, all later elections must be held on the same days as later triennial general elections.
- (3) The electoral officer for the second and later elections is the electoral officer of the territorial authority in whose district the licensing trust is situated. 30

Compare: 1989 No 63 s 192

**297 Who is qualified to vote in election of members of licensing trust**

- (1) Subject to **subsection (2)**, a person is qualified to vote in the election of members of a licensing trust if that person is qualified as a residential elector of a territorial authority in whose district the trust is situated and resides in the trust's district. 5
- (2) If the trust district is divided into wards, a person who is qualified as a residential elector of the territorial authority on the basis of a residential address within that ward— 10
- (a) is qualified to vote in the election of the member or members for that ward; and
- (b) is not qualified to vote in the election of any other member. 15
- Compare: 1989 No 63 s 193 15

**298 Conduct of election**

Subject to this Part and any regulations made under this Act, the election of the members of a licensing trust must be conducted under the Local Electoral Act 2001 as an election under that Act. 20

Compare: 1989 No 63 s 194(1)

**299 Electoral roll**

- (1) The electoral roll of a licensing trust is,—
- (a) if the trust district is contained within the district of a territorial authority, the electoral roll of residential electors of that territorial authority who reside in the trust's district; and 25
- (b) in any other case, the electoral rolls for residential electors of the territorial authorities whose districts the trust district overlaps who reside in the trust's district. 30
- (2) The electoral officer of a territorial authority whose district contains or overlaps a trust district must indicate on the electoral roll for the residential electors of that territorial authority—
- (a) the names of the persons qualified to vote at elections of members of the licensing trust; and 35

- (b) if the trust district is divided into wards, for each person who is qualified to vote at elections of members of the licensing trust, the ward in which that person is qualified to vote.
- (3) The electoral officer may indicate the names of persons qualified to vote by appropriate words, abbreviations, or marks. 5  
Compare: 1989 No 63 s 194

**300 Governor-General may appoint members to make up required number**

- (1) The Governor-General may appoint as many members of a licensing trust as are required if at any election of members for the trust— 10  
(a) no members are elected; or  
(b) fewer members are elected than the required number.
- (2) A person appointed under this section holds office as if that person had been duly elected at the election. 15  
Compare: 1989 No 63 s 195

**301 Term of office**

- (1) The members of a licensing trust holds office until their successors are appointed or elected at the next triennial general election of members. 20
- (2) An individual member ceases to hold office if he or she vacates his or her office.
- (3) A member is eligible for re-election.

*Members*

25

**302 Election of president of trust**

- (1) At the first meeting of a licensing trust after an election of members, the members must elect one of themselves as president of the trust.
- (2) For the purposes of electing the president, the meeting must be chaired,— 30  
(a) in the case of the election of the president following the first election of members, by the person nominated for the purpose by the Order in Council establishing the trust; and 35

- (b) in all other cases, by the secretary of the trust.
- (3) If the votes for president are tied, the election must be decided by the candidates drawing lots as directed by the members.
- (4) The president comes into office on election and holds office until the election of a successor, and may stand for re-election as president. 5
- Compare: 1989 No 63 s 196(1)–(5)

### **303 Vacancy in office of president**

- (1) The office of president becomes vacant on—
- (a) the written resignation of the president delivered to the secretary of the trust: 10
- (b) the president's ceasing to be a member of the trust.
- (2) Where a vacancy occurs, the secretary must convene a meeting of the trust for the election of a successor as president. 15
- Compare: 1989 No 63 s 196(5), (6)

### **304 Deputy president**

- (1) The members of a licensing trust may appoint one of themselves as deputy president.
- (2) The deputy president must act as president of the trust during the temporary absence or incapacity of the president and in that capacity may do anything that the president could have done. 20
- (3) The exercise or performance by the deputy president of any power, duty, or function of the president is conclusive evidence of his or her authority to exercise or perform that power, duty, or function. 25
- Compare: 1989 No 63 s 197

### **305 Minister may appoint deputy of member**

- (1) This section applies where the Minister is satisfied that a member of a licensing trust is unable through illness, absence, or some other adequate reason to perform his or her duties. 30
- (2) In any case to which this section applies, the Minister may appoint a person to act as deputy for the member, and the person appointed must be a person nominated by the trust or, if the trust fails to nominate a person, a person selected by the Minister at his or her discretion. 35

- (3) There may not be more than 1 deputy in respect of a licensing trust at any one time.
- (4) A person appointed as a deputy under this section and acting in that capacity is treated for all purposes as if he or she were a member of the trust. 5
- (5) The validity of the appointment of a person as deputy, and the acts of that person as deputy and of the trust while that person is acting in that capacity, must not be challenged in any proceeding on the basis that— 10
- (a) there was no ground for making the appointment; or
- (b) the ground for making the appointment had come to an end.

Compare: 1989 No 63 s 198

### 306 Remuneration

A licensing trust may pay the president and each member of the trust fees, travelling allowances and expenses in accordance with the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies. 15

Compare: 1989 No 63 s 199

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### *Disqualification and vacancies*

#### 307 Disqualification from election or appointment as member of licensing trust

- (1) A person (~~A~~) is disqualified from election or appointment as a member of a licensing trust if ~~A~~ he or she— 25
- (a) is not a residential elector of the trust district or, in the case of the election or appointment of any member for a ward of a divided trust district, is not a residential elector entitled to vote at elections of members for that ward: 30
- (b) has (directly or by virtue of his or her relationship with another person) such an involvement or appearance of involvement with the alcohol industry that he or she could not perform the duties of a member of a licensing trust without actual bias or the appearance of bias. 35
- (~~b~~) ~~carries on the business of any of the following:~~

- (i) brewer:
  - (ii) wine or spirit merchant:
  - (iii) maltster:
  - (iv) distiller:
  - (v) importer for sale of fermented or spirituous liquors: 5
  - (vi) dealer in fermented or spirituous liquors:
  - (c) is in partnership with a person carrying on a business referred to in **paragraph (a)**:
  - (d) is any of the following in relation to an incorporated company that carries on a business referred to in **paragraph (a)**: 10
    - (i) member:
    - (ii) employee:
    - (iii) spouse, civil union partner, or de facto partner of a shareholder or an employee: 15
  - (e) is the owner of an estate in fee simple or any lesser estate in licensed premises:
  - (f) is any of the following in relation to an incorporated company that owns the estate in fee simple or any lesser estate in licensed premises: 20
    - (i) shareholder:
    - (ii) employee:
    - (iii) spouse, civil union partner, or de facto partner of a shareholder or an employee: 25
  - (g) is an undischarged bankrupt:
  - (h) has been convicted within the last 3 years of an offence punishable by imprisonment and— 30
    - (i) the time for appealing against the conviction has expired; or
    - (ii) if an appeal has been brought, the appeal has been determined and dismissed:
  - (i) is subject to an order under section 383 of the Companies Act 1993:
  - (j) is subject to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988: 35
- (2) In **subsection (1)(d) and (f)**, **incorporated company** does not include a company that is party to a listing agreement with

a registered exchange within the meaning of section 2(1) of the Securities Markets Act 1988 and has issued securities that are quoted on a securities market operated by that registered exchange.

- (3) If the effect of the alteration of the boundaries of a trust district or ward on the recommendation of the Local Government Commission under **section 289 or 322** is to disqualify a person under **subsection (1)(a)**, that person he or she is to be treated as if he or she were not disqualified under that subsection for the purposes of the 2 next following triennial general elections of members, unless he or she changes his or her residential address during that period. 5 10

Compare: 1989 No 63 s 200(1), (1A)

### **308 Disqualification from continuing to be member of licensing trust**

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- (1) A member of a licensing trust is disqualified from continuing to be a member of the trust if he or she would be disqualified under **section 307** from election or appointment as a member.
- (2) However, where an order is made under section 30 of the Protection of Personal and Property Rights Act 1988 in respect of a member of a licensing trust,— 20
- (a) the member is not disqualified from continuing as a member of the trust by reason only of the order; but
- (b) while the order remains in force, the member is deemed to have been granted leave of absence and is not capable of acting as a member of the trust. 25

Compare: 1989 No 63 s 201(2)

### **309 Offence of acting as member of licensing trust while disqualified**

- (1) Subject to **subsection (2)**, a person who while disqualified under **section 307 or 308** does any act as a member of a licensing trust commits an offence and is liable on conviction to a fine of not more than \$1,000. 30
- (2) This section does not apply if the person is disqualified under **section 307(1)(j)**. 35

Compare: 1989 No 63 s 200(4)

**310 Vacation of office by members**

A member of a licensing trust vacates his or her office if he or she—

- (a) dies; or
- (b) becomes disqualified under **section 307**; or 5
- (c) resigns by notice in writing to the president or the secretary of the trust; or
- (d) is removed under **section 313**; or
- (e) is absent without the leave of the trust from 4 consecutive meetings of the trust. 10

Compare: 1989 No 63 s 201(1)

**311 Extraordinary vacancies**

- (1) An extraordinary vacancy in the office of a member of a licensing trust occurs when a member vacates office under **section 310**. 15
- (2) An extraordinary vacancy must be filled by an election under the applicable provisions of the Local Electoral Act 2001.
- (3) However, if the extraordinary vacancy is a vacancy in the office of an elected member that occurs within 12 months of 12 months or less than 12 months before the date fixed for the next triennial general election of members, either— 20
  - (a) the vacancy must remain unfilled until the next triennial general election of members; or
  - (b) the trust may by resolution appoint a person that is qualified to be elected as a member to fill the vacancy, in which case the person appointed is treated for all purposes as if he or she had been elected. 25
- (4) A person elected or appointed to fill an extraordinary vacancy holds office only for the remainder of the previous member's term. 30

Compare: 1989 No 63 s 202

*Removal from office***312 District Court may issue removal summons**

- (1) A District Court in the district of a licensing trust may issue a removal summons if evidence is produced in that court by affidavit or in some other form that a member of the trust is 35

or has become, under this or another Act, disqualified from continuing in office or otherwise incapable of holding office.

- (2) For the purpose of this section, a **removal summons** is a summons in the prescribed form requiring the member in question to appear before the District Court and give reasons why he or she should not be removed from office on the ground of disqualification or other incapacity referred to in **subsection (1)**.  
Compare: 1989 No 63 s 203(1)

### **313 District Court may remove member from office**

- (1) A District Court that has issued a removal summons under **section 312** may remove the member in question if, on the day and at the time appointed for the member's appearance, the court is satisfied that—
- (a) the summons has been served on the member; and
  - (b) on the basis of affidavit evidence or oral evidence on oath, the member is or has become, under this or another Act, disqualified from continuing in office or otherwise incapable of holding office.
- (2) In proceedings under this section,—
- (a) the District Court may exercise all the powers that it may exercise in its ordinary jurisdiction in civil cases; and
  - (b) the procedure of the District Court applies as far as applicable.
- (3) The District Court must not under this section hear any matter in relation to a disputed election of a member of a licensing trust.
- (4) ~~The High Court must not determine any question that may be determined under this section, and a proceeding under this section (including the issue of a removal summons under **section 312**) must not be removed into the High Court by certiorari or otherwise.~~

Compare: 1989 No 63 s 203(2)–(5)

*Conduct of business***314 First meeting of trust**

The first meeting of a licensing trust established under **section 285** must be held at the time and place appointed by the person nominated by the Order in Council establishing the trust to chair the first meeting. 5

Compare: 1989 No 63 s 204(1)

**315 Procedure at meetings**

- (1) Subject to **section 316(1)**, meetings of a licensing trust must be held at such times and places as the trust decides. 10
- (2) The president must chair all meetings of the trust at which the president is present.
- (3) Each question to be decided at a meeting must be decided by a majority of the valid votes recorded on the question.
- (4) The person chairing the meeting may vote in his or her own right as a member, and as chair has a casting vote if the voting is tied. 15

Compare: 1989 No 63 s 204(2)–(5)

**316 Trusts may determine own procedure**

- (1) Subject to **subsection (2)**, a licensing trust may regulate as it thinks fit— 20
  - (a) its meetings and proceedings; and
  - (b) the general conduct of its business.
- (2) **Subsection (1)** is subject to— 25
  - (a) this Part; and
  - (b) any regulations made under this Act; and
  - (c) the Local Government Official Information and Meetings Act 1987.

Compare: 1989 No 63 s 205

**317 Financial year**

The financial year of a licensing trust begins on 1 April in each year and ends on 31 March in the following year. 30

**318 Records of financial transactions**

- (1) The members of a licensing trust must ensure that full and correct accounts of all the financial transactions of the licensing trust and its assets, liabilities, and funds are kept.
- (2) If the members fail to comply with **subsection (1)**, each member commits an offence and is liable on ~~summary~~ conviction to the penalty set out in section 374(2) of the Companies Act 1993 but subject to section 376 of that Act, which applies as if the members were the board of a company. 5

**319 Financial statements**

- (1) The members of a licensing trust must ensure that financial statements are prepared for the trust for each financial year. 10
- (2) The financial statements must be prepared in accordance with generally accepted accounting practice.
- (3) The financial statements must be audited by the Auditor-General. 15
- (4) The audited financial statements must, as soon as practicable after the completion of their audit, be publicly notified in accordance with regulations made under this Act.
- (5) If the members fail to comply with the requirements of this section, each member commits an offence and is liable on ~~summary conviction~~ to the penalty set out in section 374(2) of the Companies Act 1993 but subject to section 376 of that Act, which applies as if the members were the board of a company. 20

**320 Annual meeting of electors**

- (1) A licensing trust must hold a meeting of electors within 2 months after the annual financial statements have been audited by the Auditor-General. 25
- (2) The trust must give the electors public notice of the meeting not less than 10 working days before the meeting. 30
- (3) At the meeting of electors, the president and members of the trust must—
- (a) present a report (the **annual report**) to the electors on the trust's operations in the immediate past financial year; and 35

- (b) provide a reasonable opportunity for electors at the meeting to ask questions about, and to discuss or comment on, those operations.
- (4) The annual report must—
  - (a) include the financial statements for the immediate past financial year; and 5
  - (b) show separately for that financial year—
    - (i) the total remuneration paid to the members of the licensing trust; and 10
    - (ii) for employees or former employees who were paid remuneration and other benefits of \$100,000 per annum or more as employees, the number of those employees broken down into bands of \$10,000; and 10
    - (iii) a list of all grants made by the licensing trust. 15

Compare: 1989 No 63 s 207A

### **321 Power to compromise with creditors**

A licensing trust has the power to enter into a compromise or arrangement with its creditors as if it were a company incorporated under the Companies Act 1993, and that Act applies, with any necessary modifications, to that compromise or arrangement. 20

Compare: 1989 No 63 s 208

#### *Variation of licensing trust*

- 322 Variation of establishment of licensing trust** 25
- (1) The Governor-General may, by Order in Council made on the advice recommendation of the Minister, in respect of a licensing trust,—
    - (a) vary the number of members:
    - (b) vary the number of members required for a quorum at a meeting of the trust: 30
    - (c) divide the trust district into wards for the election of members:
    - (d) for each ward prescribe—
      - (i) its name: 35
      - (ii) its boundaries in accordance with **subsections (2) and (3)**:

- (iii) the number of members:
- (e) alter the boundaries of a ward in accordance with **subsections (2) and (3)**, or wholly redivide the trust district into wards:
- (f) rename a ward: 5
- (g) alter the number of members for a ward:
- (h) abolish all the wards of the trust district.
- (2) The boundaries of any ward must coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes (**meshblocks**). 10
- (3) In relation to a variation under **subsection (1)(d)(ii) or (1)(e)**, the Minister must give the requisite advice only on the recommendation of the Local Government Commission (the **Commission**) made in accordance with **subsection (4)**. 15
- (4) The Commission may from time to time review the boundaries of wards or proposed wards of a licensing trust and, after consulting with affected persons (including the members of each trust, any affected licensees, and the trust's electoral officer), may recommend,— 20
- (a) in the case of existing wards, their alteration to coincide with meshblocks; or
- (b) in the case of proposed wards, new boundaries to coincide with meshblocks.
- Compare: 1989 No 63 s 209 25

**323 Creation, alteration, or abolition of wards takes effect at next triennial general election of members**

- (1) This section applies when— 30
- (a) an undivided trust district is divided into wards; or
- (b) a trust district divided into wards is wholly redivided; or
- (c) all the wards of a divided trust district are abolished.
- (2) The creation, alteration, or abolition of a ward referred to in **subsection (1)** takes effect only at the next triennial general election of members, except to the extent that is necessary for holding that election. 35
- Compare: 1989 No 63 s 210(1)

**324 Alteration of number of members for ward takes effect at next triennial general election of members**

Where the number of members for a ward of a divided trust district is altered, the alteration takes effect only at the next triennial general election of members, except to the extent that is necessary for holding that election. 5

Compare: 1989 No 63 s 210(2)

*Amalgamation of licensing trusts*

**325 Amalgamation of licensing trusts**

Two or more licensing trusts may be amalgamated into 1 new trust in accordance with **sections 326 to 330**. 10

Compare: 1989 No 63 s 211(1)

**326 Notice of amalgamation proposal**

(1) Where 2 or more licensing trusts propose to amalgamate, each trust must give public notice of the amalgamation proposal. 15

(2) The notice must refer to the right of electors to request a meeting under **section 327** and the right of electors to request a poll under **section 328**.

~~(3) The amalgamation proposal must include—~~

~~(a) the names of the persons who are to be first trustees of the new licensing trust; and~~ 20

~~(b) the trust deed of the new licensing trust.~~

(3) The amalgamation proposal—

(a) must include—

(i) the names of the people who are to be first members of the new licensing trust; and 25

(ii) the proposed name of the new licensing trust; and

(b) may include any other information the licensing trusts concerned think necessary or desirable to inform electors properly of the proposal. 30

Compare: 1989 No 63 s 211(2)

**327 Meeting to discuss amalgamation proposal**

(1) The electors of the trusts concerned may, within 20 working days of publication of a notice under **section 326**, by written notice to the trust of which they are individually electors 35

request that trust to hold a public meeting to discuss the amalgamation proposal.

- (2) If 50 or more electors request a meeting, the trust must hold a public meeting within 20 working days after it receives the required number of requests. 5

Compare: 1989 No 63 s 211(3)

### **328 Poll on amalgamation proposal**

- (1) The electors of the trusts concerned may, within 40 working days of publication of a notice under **section 326**, by written notice to the trust of which they are individually electors request a poll of electors to be held on the amalgamation proposal. 10

- (2) The trust must arrange for a poll to be held if 15% or more of electors request it.

- (3) A poll required to be held under **subsection (2)** must be conducted in accordance with regulations made under this Act. 15

- (4) The amalgamation proposal is approved if a majority of the number of valid votes recorded is in favour of the proposal.

Compare: 1989 No 63 s 211(4), (5)

### **329 Amalgamation by Order in Council** 20

- (1) If an amalgamation proposal is approved under **section 328(4)** or if no poll is required to be held, the amalgamating trusts must, if they proceed with the amalgamation, submit to the Minister—

- (a) the proposal; and 25  
 (b) copies of the latest audited financial statements of each trust.

- (2) On the ~~advice~~ recommendation of the Minister tendered at the request of each of the amalgamating trusts, the Governor-General may, by Order in Council,— 30

- (a) amalgamate 2 or more licensing trusts into 1 new trust; and  
 (b) define the district of the new trust in conformity with the appropriate meshblocks.

Compare: 1989 No 63 s 211(6), (7) 35

**330 Effect of Order in Council**

- (1) An Order in Council under **section 329(2)** must specify a date not less than 14 days after the date of the making of the order for the provisions in **subsection (2)** to apply.
- (2) On the date specified in the order,— 5
- (a) the amalgamating trusts are dissolved;
  - (b) all real and personal property (including all licences under this Act) belonging to each of the amalgamating trusts vests in the new trust;
  - (c) all money payable to the amalgamating trusts is payable to the new trust: 10
  - (d) all liabilities, contracts, engagements, rights, and authorities of each of the amalgamating trusts are liabilities, contracts, engagements, rights, and authorities of the new trust: 15
  - (e) all proceedings by or against the amalgamating trusts may be carried on or prosecuted by or against the new trust.
- (3) Nothing authorised or effected under this section—
- (a) places the amalgamating trusts in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or otherwise makes them guilty of a civil wrong; or 20
  - (b) gives rise to a right for a person to—
    - (i) terminate, cancel, or modify a contract or an agreement; or 25
    - (ii) enforce or accelerate the performance of an obligation; or
    - (iii) require the performance of an obligation not otherwise arising for performance; or 30
  - (c) places the amalgamating trusts in breach of any enactment, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment, transfer, or issue of any property or the disclosure of any information; or 35
  - (d) releases a surety wholly or in part from an obligation; or
  - (e) releases or discharges a contract or security; or

- (f) entitles any employee to receive any payment or other benefit by reason that he or she ceased, as a result of this Act, to be an employee of an amalgamating trust.

Compare: 1989 No 63 s 211(8)

*Voluntary administration and liquidation* 5

**331 Voluntary administration and liquidation under Companies Act 1993**

- (1) Parts 15A, 16, and 17 of the Companies Act 1993 apply, with any necessary modifications, to a licensing trust as if it were a company incorporated under that Act. 10
- (2) However, section 241(2)(a) and (b) of the Companies Act 1993 does not apply to the liquidation of a licensing trust, and instead a liquidator may be appointed by a resolution of the members.

Compare: 1989 No 63 s 212

15

**332 Distribution of assets**

- (1) Any net surplus (whether or not in money) of a licensing trust in liquidation must be distributed to the territorial authority in whose district the trust is situated.
- (2) If the trust district overlaps 2 or more territorial authority districts, the surplus must be distributed in shares to be determined by the High Court in proportion to the number of residents of each territorial authority district who are electors of the licensing trust. 20
- (3) For the purposes of **subsection (2)**, the number of residents who are electors is to be counted as at the date of the last triennial general election of members. 25

Compare: 1989 No 63 s 213

*Special provisions relating to existing district and suburban trusts* 30

**333 Application of sections 334 and 335**

**Sections 334 and 335** apply to each of the district and suburban licensing trusts named in **clause 1** of **Schedule 1**.

Compare: 1989 No 63 s 214

**334 Poll may be held on competition proposal**

- (1) In respect of a licensing trust to which this section applies, a poll of residential electors in the trust district may be held on a competition proposal.
- (2) For the purposes of this section, **competition proposal** means 5  
a proposal that—
- (a) the trust give up its present exclusive right to hold on-licences ~~in respect of~~ for hotels and taverns, and off-licences ~~in respect of~~ for any premises other than certain club premises and premises on which wine is sold or any 10  
kind or alcohol is made, within the trust district; and
- (b) in return for giving up that right, gain the right to carry on any business outside as well as within the district.
- (3) Subject to **subsection (5)**, a poll must be held on a competition proposal if— 15
- (a) the licensing trust so resolves; or
- (b) at least 15% of the residential electors in the trust district so request in writing.
- (4) The poll must be conducted in accordance with regulations made under this Act. 20
- (5) If the competition proposal is not carried, no further poll must be held under this section in respect of that licensing trust until a period of 3 years has expired.

Compare: 1989 No 63 s 215

**335 Monopoly provisions continue to apply** 25

Unless and until a competition proposal is carried in respect of a licensing trust to which this section applies, then, despite any of the other provisions of this Act,—

- (a) an on-licence must not be issued to any person other than the licensing trust ~~in respect of~~ for any hotel or 30  
tavern in the trust district:
- (b) an off-licence must not be issued ~~in respect of~~ for any premises in the trust district, except—
- (i) to the licensing trust; or
- (ii) ~~in respect of~~ for any premises on which any kind 35  
of alcohol is made:
- (c) a licence must not be issued ~~in respect of~~ for any premises outside the trust district, or ~~in respect of~~ for

- any conveyance operated in whole or in part outside the trust district, to—
- (i) the licensing trust; or
  - (ii) any person on behalf of the licensing trust or in respect of any premises in which the licensing trust has any estate or interest; or 5
  - (iii) any company ~~registered under the Companies Act 1993~~ in which the licensing trust holds any of the issued shares (other than shares that carry no right to participate beyond a specified amount in the distribution of either profits or capital); or 10
  - (iv) any company in which the licensing trust has the power to appoint any director; or
  - (v) any trustee or trustees of a trust in respect of which the licensing trust has the power to appoint any trustee; or 15
  - (vi) any other person, ~~company, body corporate,~~ or trustee, if the licensing committee or the licensing authority is satisfied that the application by that person, ~~company, body corporate,~~ or trustees 20 is made pursuant to an arrangement designed to enable the trust to evade the prohibitions set out in **subparagraphs (i) to (v)**:
- (d) the licensing trust must not ~~expend~~ spend or distribute any of its net profits under **section 2792 292** outside the trust district. 25

## Part 7

### Community trusts

#### Subpart 2—Community trusts

*Conversion of licensing trust to community trust* 30

#### **336 Resolution to convert licensing trust to community trust**

- (1) The members of a licensing trust may resolve that the trust be converted to a community trust.

- (2) The members must not, within 12 months after any poll held under **section 341**, pass a resolution for conversion of the licensing trust to a community trust.

Compare: 1989 No 63 s 219A

### **337 Public notice of resolution** 5

- (1) Within 10 working days after passing a resolution under **section 336** for conversion, the licensing trust must give public notice of the resolution.

- (2) The notice must refer to the right of electors of the licensing trust to request a meeting to be called under **section 338** and to require a poll to be held under **section 340**. 10

Compare: 1989 No 63 s 219B

### **338 Electors may request meeting**

- (1) Electors of the licensing trust may, by written notice, request the licensing trust to hold a public meeting to discuss the resolution for conversion. 15

- (2) If 50 or more electors request a meeting, the trust must hold a public meeting within 20 working days after it receives the required number of requests.

Compare: 1989 No 63 s 219C

20

### **339 Meeting to discuss resolution**

- (1) A licensing trust must give not less than 5 working days' public notice of a meeting of electors to discuss a resolution passed under **section 336**.

- (2) The meeting may resolve by a majority of votes to confirm or revoke the resolution. 25

- (3) If the meeting confirms the resolution, then, subject to the result of a poll held under **section 340**, the trust must be converted to a community trust.

- (4) If the meeting revokes the resolution, the trust must not pass another resolution under **section 336** before 1 year or more elapses after the date of the resolution. 30

Compare: 1989 No 63 s 219D

**340 Poll on resolution**

- (1) Electors of the licensing trust may, by notice in writing, request the trust to hold a poll on a resolution passed under **section 336**.
- (2) The trust must hold a poll on the resolution, in accordance with regulations made under this Act, if—
- (a) 15% or more of the electors request a poll on the resolution; and
  - (b) the trust receives the required number of requests within 40 working days after public notice of the resolution is given.
- (3) The trust—
- (a) does not have to hold a poll if the resolution has been revoked under **section 339(2)**;
  - (b) must hold a poll even though the resolution has been confirmed under **section 339(2)**;
  - (c) does not have to hold a poll if, within 12 months before receiving a request for a poll, the trust held a poll under **section 341**.
- (4) If on the poll the majority of electors who vote are in favour of the resolution, then the trust must be converted to a community trust.
- (5) If on the poll the majority of electors who vote are not in favour of the resolution, the trust must not pass another resolution under **section 298** within 12 months after the date of the poll.
- Compare: 1989 No 63 s 219E

**341 Electors may request poll on conversion at any time**

- (1) At any time electors of a licensing trust may, by notice in writing, request the trust to hold a poll on whether the trust should be converted to a community trust.
- (2) The trust—
- (a) must hold a poll on the issue, in accordance with regulations made under this Act, if 15% or more of the electors request a poll;
  - (b) need not hold a poll under this section if the trust held a poll under **section 340** within 12 months before receiving a request under **subsection (1)**.

- (3) If on the poll the majority of electors who vote are in favour of conversion, then the trust must be converted to a community trust.
- (4) If on the poll the majority of electors who vote are against conversion, the trust must not hold another poll under this section 5 within 3 years after the date of the poll.

Compare: 1989 No 63 s 219F

### **342 Establishment of community trust**

- (1) A licensing trust that is required by **section 339(3), 340(4), or 341(3)** to be converted to a community trust must, as soon 10 as practicable, establish a community trust.
- (2) A community trust is established when the licensing trust executes a trust deed that provides for the matters specified in **section 351**.
- (3) The trust deed must be notified in the *Gazette* as soon as practicable after its execution. 15

Compare: 1989 No 63 s 219G

### **343 Order in Council vesting licensing trust's undertaking in community trust**

- (1) The Governor-General may, by Order in Council made on the 20 advice of the Minister given at the request of the licensing trust concerned, specify a date on which the licensing trust's undertaking is vested in the community trust established by the licensing trust.
- (2) The date specified in the Order in Council must be not less than 25 20 working days after the date on which the order is made.
- (3) On the date specified in the Order in Council,—
- (a) the licensing trust is dissolved;
  - (b) all real and personal property of the licensing trust, including all licences under this Act, vests in the community trust: 30
  - (c) all money payable to or by the licensing trust is payable to or by the community trust;
  - (d) all liabilities, contracts (including employment contracts), and engagements, and all rights and authorities, 35 of the licensing trust are the liabilities, contracts, en-

- gagements, rights, and authorities of the community trust:
- (e) all proceedings by or against the licensing trust may be carried on or prosecuted by or against the community trust. 5
- (4) To avoid doubt, in the case of a licensing trust to which **sections 296 and 297 334 and 335** apply, **subsection (3)(d)** does not apply to the exclusive right referred to in **section 334(2)**.
- (5) Nothing authorised or effected under this section— 10
- (a) places the licensing trust or the community trust in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or otherwise makes it guilty of a civil wrong; or
- (b) gives rise to a right for a person to— 15
- (i) terminate, cancel, or modify a contract or an agreement; or
- (ii) enforce or accelerate the performance of an obligation; or
- (iii) require the performance of an obligation not otherwise arising for performance; or 20
- (c) places the licensing trust or the community trust in breach of any enactment, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment, transfer, or issue of any property or the disclosure of any information; or 25
- (d) releases a surety wholly or in part from an obligation; or
- (e) releases or discharges a contract or security; or
- (f) entitles any employee to receive any payment or other benefit by reason that he or she ceased, as a result of this Act, to be an employee of the licensing trust. 30

Compare: 1989 No 63 s 219H

*Status, name, region, and functions of  
community trust*

35

**344 Community trust is body corporate**

- (1) A community trust is a body corporate having perpetual succession.

- (2) A community trust must have a seal.
- (3) The common seal of a community trust must be judicially noticed in all courts and for all purposes.  
Compare: 1989 No 63 s 219I(1), (3)
- 345 Existing community trust continues in existence** 5  
The trust listed in **Part 3 of Schedule 1** continues in existence as if it were established under this Act except that the next election of its trustees must be held on the day on which the next succeeding triennial general election of members of territorial authorities is held under the Local Electoral Act 2001. 10
- 346 Name of community trust**  
(1) A community trust must have a name and that name must include the words “Community Trust”.  
(2) A community trust may change its name, subject to **subsection (1)** and its trust deed. 15  
Compare: 1989 No 63 s 219J
- 347 Region of community trust**  
The region of a community trust is the same as the district of the licensing trust immediately before it was converted to a community trust. 20  
Compare: 1989 No 63 s 219K
- 348 Alteration of community trust boundaries**  
(1) The Governor-General may, by Order in Council made on the advice of the Minister, alter the boundaries of community trusts to coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes (**meshblocks**). 25  
(2) The Minister may give the advice referred to in **subsection (1)** only on the recommendation of the Local Government Commission (the **Commission**) made in accordance with **subsection (3)**. 30  
(3) The Commission may from time to time review the boundaries of 1 or more community trusts and, after consulting with affected persons (including the trustees of each community trust,

any affected licensees, and the community trust's electoral officer), may recommend their alteration to coincide with mesh-blocks.

### **349 Functions of community trust**

- (1) For the purpose of performing its functions, a community trust may— 5
- (a) do anything that a natural person may do; and
  - (b) issue debt securities.
- (2) A community trust is authorised, but not required, to hold 1 or more licences under this Act and to carry on the business of selling or supplying (or selling and supplying) alcohol. 10
- Compare: 1989 No 63 s 219I(2)

### **350 How community trust may spend profits**

- (1) A community trust must apply the net profit that it makes in performing its functions to charitable, cultural, philanthropic, recreational, and other purposes that are beneficial exclusively or principally to the community in the region of the community trust. 15
- (2) However, a community trust may, instead of applying all of its net profit as required by **subsection (1)**, retain so much of its net profit as it thinks prudent for the purposes of its activities (including any proposed activities). 20
- Compare: 1989 No 63 s 219M

### *Trust deed*

### **351 Contents of trust deed**

- The trust deed of a community trust must specify— 25
- (a) the trust's name:
  - (b) the trust's functions:
  - (c) the general activities to be undertaken by the trust:
  - (d) the minimum and maximum number of trustees: 30
  - (e) the procedure for meetings of trustees, including the frequency of meetings, how they are called, voting, and the number of trustees necessary for a quorum:
  - (f) trustees' remuneration:
  - (g) how a trustee may resign office as trustee: 35

- (h) how a vacancy in the office of trustee must be filled:
- (i) matters relating to the appointment of officers, employees, managers, and agents:
- (j) the trustees' powers of investment:
- (k) the trustees' powers to spend or use the trust's capital and income: 5
- (l) how accounts must be kept:
- (m) how the trust deed may be varied (consistently with **section 352**):
- (n) any other matter that the licensing trust or community trust concerned considers appropriate. 10

Compare: 1989 No 63 s 219N(1)

### **352 Variation of trust deed**

- (1) The trustees of a community trust may vary the trust deed of the trust by executing a deed of variation. 15
- (2) A variation of the trust deed must be notified in the *Gazette* as soon as practicable after the variation is made.

Compare: 1989 No 63 s 219O

### **353 Trust deed must be consistent with Act**

- (1) The provisions of the trust deed of a community trust must be consistent with this Act. 20
- (2) A provision in a trust deed of a community trust that is not consistent with this Act is unenforceable and has no effect.
- (3) In this section, **trust deed** includes a variation of a trust deed. 25

Compare: 1989 No 63 s 219P

## *Trustees*

### **354 First trustees**

The first trustees of a community trust are the members of the licensing trust immediately before it is converted to the community trust. 30

Compare: 1989 No 63 s 219Q

### **355 Election of trustees**

- (1) Except for the first trustees, the trustees of a community trust are elected in accordance with **sections 356 to 358**.

- (2) Elections of trustees must be held on the same days as triennial general elections of members of territorial authorities are held under the Local Electoral Act 2001.

Compare: 1989 No 63 s 219R

**356 Who is qualified to vote in election of trustees of community trust** 5

- (1) A person is qualified to vote in the election of the trustees of a community trust if that person is qualified as a residential elector of a territorial authority in whose district the trust is situated and resides in that district. 10

- (2) If the trust district is divided into wards, a person who is qualified as a residential elector of the territorial authority on the basis of a residential address within that ward—

(a) is qualified to vote in the election of the trustee or trustees for that ward; and 15

(b) is not qualified to vote in the election of any other trustee.

Compare: 1989 No 63 s 219S

**357 Conduct of election of trustees**

Subject to this Part and any regulations made under this Act, the election of the trustees of a community trust must be conducted under the Local Electoral Act 2001 as an election under that Act; and the electoral officer for the election is the electoral officer of the territorial authority in whose district the trust is situated. 20 25

Compare: 1989 No 63 s 219T(1)

**358 Electoral roll for election of trustees**

- (1) The electoral roll for a community trust is,—

(a) if the trust region is contained within the district of a territorial authority, the electoral roll for residential electors of that territorial authority: 30

(b) in any other case, the electoral rolls for residential electors of the territorial authorities whose districts the trust region overlaps.

- (2) The electoral officer of a territorial authority whose district contains or overlaps a trust region must indicate on the electoral roll for residential electors of that territorial authority—
- (a) the names of the persons qualified to vote at elections of the trustees of the community trust; and 5
  - (b) if the trust region is divided into wards, for each person who is qualified to vote at elections of trustees of the community trust, the ward in which that person is qualified to vote.
- (3) The electoral officer may indicate the names of persons qualified to vote by appropriate words, abbreviations, or marks. 10  
Compare: 1989 No 63 s 219T(2)–(4)

**359 Governor-General may appoint trustees to make up required number**

- (1) The Governor-General may appoint as many trustees of a community trust as are required if at any election of trustees for the trust—
- (a) no trustees are elected; or
  - (b) fewer trustees are elected than the required number.
- (2) A person appointed under this section holds office as if that person had been duly elected at the election. 20  
Compare: 1989 No 63 s 219U

**360 Trustees' term of office**

- (1) The trustees of a community trust hold office until their successors are appointed or elected. 25
- (2) An individual trustee ceases to hold office if he or she vacates his or her office.
- (3) A trustee is eligible for re-election.  
Compare: 1989 No 63 s 219V(1), (2)

**361 Disqualification from election or appointment as trustee 30**

- A person ~~(A)~~ is disqualified from election or appointment or from holding office as a trustee of a community trust if ~~A~~ he or she—
- (a) is an undischarged bankrupt; or

- (b) has been convicted within the last 3 years of a criminal offence punishable by imprisonment and—
  - (i) the time for appealing against the conviction has expired; or
  - (ii) if an appeal has been brought, the appeal has been determined and dismissed; or 5
- (c) is subject to an order under section 383 of the Companies Act 1993; or
- (d) is the subject of an order under section 30 or 31 of the Protection of Personal and Property Rights Act 1988. 10

Compare: 1989 No 63 s 219W

### **362 Disqualification from continuing to hold office as trustee**

- (1) A trustee of a community trust is disqualified from continuing to hold office as a trustee if he or she would be disqualified under **section 361** from election or appointment as a trustee. 15
- (2) However, where an order under section 30 of the Protection of Personal and Property Rights Act 1988 is made in respect of a trustee of a community trust,—
  - (a) the trustee is not disqualified from continuing to hold office as a trustee by reason only of the order; but 20
  - (b) while the order remains in force, the trustee is deemed to have been granted leave of absence and is not capable of acting as a trustee of the community trust.

Compare: 1989 No 63 s 219V(4A)

### **363 Vacation of office by trustees** 25

A trustee of a community trust vacates his or her office if he or she—

- (a) dies; or
- (b) becomes disqualified under **section 361 or 362**; or
- (c) resigns in the manner prescribed in the trust deed; or 30
- (d) is removed under **section 365**; or
- (e) is absent without the leave of the trust from 4 consecutive meetings of the trust.

Compare: 1989 No 63 s 219V(3), (6)

**364 Extraordinary vacancies**

- (1) An extraordinary vacancy in the office of a trustee of a community trust occurs when a trustee vacates office under **section 363**.
- (2) An extraordinary vacancy must be filled ~~in the manner prescribed by the trust deed~~ by an election under the applicable provisions of the Local Electoral Act 2001. 5
- (3) However, if the extraordinary vacancy is a vacancy in the office of an elected trustee that occurs ~~within 12 months of 12~~ months or less than 12 months before the date fixed for the next triennial general election of trustees, either— 10
- (a) the vacancy must remain unfilled until the next triennial general election of trustees; or
- (b) the trust may by resolution appoint a person to fill the vacancy, in which case the person appointed is treated for all purposes as if he or she had been elected. 15
- (4) A person who fills an extraordinary vacancy holds office only for the remainder of the previous trustee's term.
- Compare: 1989 No 63 s 219V(6)

**365 Removal of trustee from office**

20

The Minister may, by notice in writing, remove a trustee from office if the Minister is satisfied on reasonable grounds that the trustee—

- (a) is unable to perform his or her duties adequately; or
- (b) has neglected his or her duties; or 25
- (c) is guilty of misconduct; or
- (d) has acted or is acting in a manner prejudicial, or likely to be prejudicial, to the interests of the community trust.

Compare: 1989 No 63 s 219V(5)

*Conduct of business*

30

**366 Financial year**

The financial year of a community trust begins on 1 April in each year and ends on 31 March in the following year.

Compare: 1989 No 63 s 219X(1)

- 367 Records of financial transactions**
- (1) The trustees of a community trust must ensure that full and correct accounts of all the financial transactions of the community trust and its assets, liabilities, and funds are kept.
- (2) If the trustees fail to comply with **subsection (1)**, each trustee commits an offence and is liable on **summary** conviction to the penalty set out in section 374(2) of the Companies Act 1993 but subject to section 376 of that Act, which applies as if the trustees were the board of a company. 5
- 368 Financial statements** 10
- (1) The trustees of a community trust must ensure that financial statements are prepared for the trust for each financial year.
- (2) The financial statements must be prepared in accordance with generally accepted accounting practice.
- (3) The financial statements must be audited by the Auditor-General. 15
- (4) The audited financial statements must, as soon as practicable after the completion of their audit, be publicly notified in accordance with regulations made under this Act.
- (5) If the trustees fail to comply with the requirements of this section, each trustee commits an offence and is liable on **summary** conviction to the penalty set out in section 374(2) of the Companies Act 1993 but subject to section 376 of that Act, which applies as if the trustees were the board of a company. 20
- 369 Annual meeting of electors** 25
- (1) A community trust must hold a meeting of electors within 2 months after the annual financial statements have been audited by the Auditor-General.
- (2) The trust must give the electors public notice of the meeting not less than 10 working days before the meeting. 30
- (3) At the meeting of electors, the trustees of the community trust must—
- (a) present a report (the **annual report**) to the electors on the trust's operations in the immediate past financial year; and 35

- (b) provide a reasonable opportunity for electors at the meeting to ask questions about, and to discuss or comment upon, those operations.
- (4) The annual report must—
- (a) include the financial statements for the immediate past financial year; and 5
- (b) show separately for that financial year—
- (i) the total remuneration paid to the trustees of the community trust; and
- (ii) for employees or former employees who were paid remuneration and other benefits of \$100,000 per annum or more as employees, the number of those employees broken down into bands of \$10,000; and 10
- (iii) a list of all grants made by the community trust. 15
- (5) A community trust is not required to comply with this section in the year in which it is converted to a community trust if, in that year before conversion to a community trust, the licensing trust concerned complied with **section 320**. 20
- Compare: 1989 No 63 s 219Y

*Amalgamation of community trusts*

**370 Amalgamation of community trusts**

Two or more community trusts may be amalgamated into 1 new trust in accordance with **sections 371 to 375**.

Compare: 1989 No 63 s 219Z(1)

25

**371 Notice of amalgamation proposal**

- (1) Where 2 or more community trusts propose to amalgamate, each trust must give public notice of the amalgamation proposal.
- (2) The notice must refer to the right of electors to request a meeting under **section 372** and the right of electors to request a poll under **section 373**. 30
- (3) The amalgamation proposal must include—
- (a) the names of the persons who are to be the first trustees of the new community trust; and 35

(b) the trust deed of the new community trust.

Compare: 1989 No 63 s 219Z(2), (3)

### **372 Meeting to discuss amalgamation proposal**

(1) The electors of the community trusts concerned may, within 20 working days of publication of a notice under **section 371**, 5  
by written notice to the trust of which they are individually electors request that trust to hold a public meeting to discuss the amalgamation proposal.

(2) If 50 or more electors request a meeting, the trust must hold a public meeting within 20 working days after it receives the required number of requests. 10

Compare: 1989 No 63 s 219Z(4)

### **373 Poll on amalgamation proposal**

(1) The electors of the community trusts concerned may, within 40 working days after publication of a notice under **section 371**, by written notice to the trust of which they are individually electors request a poll of electors to be held on the amalgamation proposal. 15

(2) The trust must arrange for a poll to be held if 15% or more of electors request it. 20

(3) A poll required to be held under **subsection (2)** must be conducted in accordance with regulations made under this Act.

(4) The amalgamation proposal is approved if a majority of the number of valid votes recorded is in favour of the proposal. 25

Compare: 1989 No 63 s 219Z(5), (6)

### **374 Amalgamation by Order in Council**

(1) If an amalgamation proposal is approved under **section 373(4)** or if no poll is required to be held, the amalgamating trusts must, if they proceed with the amalgamation, submit to the Minister— 30

(a) the proposal; and

(b) copies of the latest audited financial statements of each trust.

- (2) On the advice recommendation of the Minister tendered at the request of each of the amalgamating trusts, the Governor-General may, by Order in Council, —
- (a) amalgamate 2 or more community trusts into 1 new community trust; and 5
  - (b) define the region of the new community trust in conformity with the appropriate meshblocks.
- Compare: 1989 No 63 s 219Z(7), (8)
- 375 Effect of Order in Council**
- (1) An Order in Council under **section 374(2)** must specify a date not less than 14 days after the date of the making of the order for the provisions in **subsection (2)** to apply. 10
- (2) On the date specified in the order,—
- (a) the amalgamating trusts are dissolved;
  - (b) all real and personal property (including all licences under this Act) belonging to each of the amalgamating trusts vests in the new trust: 15
  - (c) all money payable to the amalgamating trusts is payable to the new trust:
  - (d) all liabilities, contracts, engagements, rights, and authorities of the amalgamating trusts are liabilities, contracts, engagements, rights, and authorities of the new trust: 20
  - (e) all proceedings by or against the amalgamating trusts may be carried on or prosecuted by the new trust: 25
  - (f) the trustees of the new trust are the persons named as the first trustees of the trust in the amalgamation proposal:
  - (g) the trust deed of the new trust is the trust deed included in the amalgamation proposal.
- (3) Nothing authorised or effected under this section— 30
- (a) places the amalgamating trusts in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or otherwise makes them guilty of a civil wrong; or
  - (b) gives rise to a right for a person to— 35
    - (i) terminate, cancel, or modify a contract or an agreement; or

- (ii) enforce or accelerate the performance of an obligation; or
- (iii) require the performance of an obligation not otherwise arising for performance; or
- (c) places the amalgamating trusts in breach of any enactment, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment, transfer, or issue of any property or the disclosure of any information; or 5
- (d) releases a surety wholly or in part from an obligation; or 10
- (e) releases or discharges a contract or security; or
- (f) entitles any employee to receive any payment or other benefit by reason that he or she ceased, as a result of this Act, to be an employee of an amalgamating trust. 15

Compare: 1989 No 63 s 219Z(9), (10)

#### *Voluntary administration and liquidation*

### **376 Voluntary administration and liquidation under Companies Act 1993**

- (1) Parts 15A, 16, and 17 of the Companies Act 1993 apply, with any necessary modifications, to a community trust as if it were a company incorporated under that Act. 20
- (2) However, section 241(2)(a) and (b) of the Companies Act 1993 do not apply to the liquidation of a community trust, and instead a liquidator may be appointed by a resolution of the trustees. 25

Compare: 1989 No 63 s 219ZA

### **377 Distribution of assets**

- (1) Any net surplus (whether or not in money) of a community trust in liquidation must be distributed to each territorial authority whose district overlaps wholly or partly the trust region. 30
- (2) If the trust region overlaps 2 or more territorial authority districts, the surplus must be distributed in shares to be determined by the High Court in proportion to the number of resi- 35

dents in each territorial authority district who are electors of the community trust.

Compare: 1989 No 63 s 219ZB

*Miscellaneous*

- 378 Liability of community trust to taxes** 5
- (1) A community trust is liable to income tax, rates, and all other taxes and duties as if it were a body corporate formed for private pecuniary gain.
- (2) For the purposes of the Inland Revenue Acts (as defined in section 3 of the Tax Administration Act 1994),— 10
- (a) a community trust and the licensing trust that was converted into the community trust are, in relation to all assets and liabilities that, by this Act, become the assets and liabilities of the community trust, treated as the same person: 15
- (b) all transactions entered into by, and all acts of, a licensing trust before conversion to a community trust, in relation to all assets and liabilities that, by this Act, become assets and liabilities of the community trust, are treated as having been entered into or performed by the community trust on the date on which they were entered into or performed by the licensing trust. 20
- Compare: 1989 No 63 s 219ZC
- 379 Application of Trustee Act 1956** 25
- The Trustee Act 1956 applies to a community trust.
- Compare: 1989 No 63 s 219ZD
- 380 Application of Local Authorities (Members' Interests) Act 1968** 30
- For the purposes of the Local Authorities (Members' Interests) Act 1968, a community trust is treated as if it were a territorial authority and that Act applies accordingly.
- Compare: 1989 No 63 s 219ZE

**381 Application of Local Government Official Information and Meetings Act 1987**

For the purposes of Parts 1 to 4 of the Local Government Official Information and Meetings Act 1987 a community trust is treated as if it were a territorial authority and that Act applies accordingly. 5

Compare: 1989 No 63 s 219ZF

**Part 8  
Other matters**

Subpart 3—Other matters 10

*Regulations*

**382 Regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for any or all of the following purposes: 15
- (a) prescribing fees payable to the licensing authority for matters relating to the performance of its functions:
  - (b) prescribing fees payable to territorial authorities for matters relating to the performance of the functions of licensing committees: 20
  - (ba) requiring persons who sell alcohol to give the chief executive information relating to the quantities of alcohol they have sold over any period and the prices at which they have sold it:
  - (bb) prescribing the form in which information required to be given by regulations under **paragraph (ba)** must be given: 25
  - (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 30
- (2) Regulations under **subsection (1)(ba)**—
- (a) may apply differently to different sales, depending on whether they are made by people in their capacity as manufacturer, wholesaler, holder of an off-licence, or holder of an on-licence or club licence: 35
  - (b) may apply differently to different kinds of alcohol:

- (c) may—
- (i) create offences for failing or refusing to comply with their requirements; and
- (ii) prescribe penalties (being fines not exceeding \$20,000) for committing the offences. 5

**383 Regulations banning or restricting certain alcohol products**

- (1) Regulations made under **section 382** may do any or all of the following things:
- (a) declare any product containing ethanol to be a banned alcohol product or a restricted alcohol product: 10
- (b) declare products of any described kind containing ethanol to be banned alcohol products or restricted alcohol products:
- (c) regulate or control the distribution, importation, manufacture, or sale of restricted alcohol products (or regulate or control any or all of those things): 15
- (d) regulate, control, or prohibit the advertising, display for sale, labelling, packaging, or promotion of restricted alcohol products (or regulate, control, or prohibit any or all of those things). 20
- (2) A product may be declared to be a banned alcohol product or a restricted alcohol product by reference to its name or trade name.
- (3) A kind of product may be described by reference to any or all of the following characteristics: 25
- (a) its ethanol content as a proportion:
- (b) its ethanol content described in terms of a standard drink (as defined in the regulations concerned):
- (c) its content of any ingredient or ingredients other than ethanol: 30
- (d) the proportions of any of its ingredients (whether or not including ethanol):
- (e) the lack of any ingredient or ingredients:
- (f) the capacity of the container in which it is sold or supplied: 35
- (g) the state in which it is sold or supplied.

- (4) **Subsection (3)(f)** does not prevent the description of a kind of product not (or not necessarily) sold or supplied in containers.
- (5) Before recommending the making of regulations of a kind described in **subsection (1)**, the Minister must, to the extent that is reasonably practicable having regard to the circumstances of the particular case, consult the persons the Minister has reason to believe are representative of interests likely to be substantially affected by the regulations. 5
- (6) This subsection applies to regulations—
- (a) declaring any product containing ethanol to be a banned alcohol product; or 10
- (b) declaring products of any described kind containing ethanol to be banned alcohol products.
- (7) The Minister must not recommend the making of regulations to which **subsection (6)** applies unless satisfied, after consultation with the Minister of Health, that the product or kind of product concerned— 15
- (a) is particularly dangerous to health; or
- (b) has special appeal to young people because of— 20
- (i) its nature; or
- (ii) any advertising, display for sale, labelling, packaging, or promotion.
- (8) The Minister must not recommend the making of regulations of a kind described in **subsection (1)** that come into force sooner than the day 3 months after the date of their notification in the *Gazette* unless satisfied, after consultation with the Minister of Health, that there exists or is about to exist a situation serious enough to justify urgent action. 25

### 384 Point-of-sale information regulations

- Regulations made under **section 382** may require licensees to display at or near points of sale (as defined in the regulations), in accordance with the regulations, information relating to either or both of the following: 30
- (a) the ethanol content of alcohol of different kinds:
- (b) the potential harmful effects of consuming alcohol (on people in general, people of particular kinds, people in particular situations, or 2 or all of them). 35

**385 Content of fees regulations**(1) Regulations under **section 382(a) or (b)**—

- (a) may do anything reasonable necessary to ensure that, so far as is practicable,—
- (i) the total costs of the licensing authority (including the costs of inspectors, and the costs of enforcement activities), and the total costs to territorial authorities of licensing committees, are recovered out of fees; and 5
  - (ii) the costs of the licensing authority, and the costs to territorial authorities of licensing committees, incurred in relation to the performance of particular functions are recovered out of the fees payable in respect of the performance of those functions: 10
- (b) may provide for different fees to be payable in respect of the performance of the same functions in relation to different premises, on the basis of factors such as—
- (i) the kinds of premises involved; and
  - (ii) the capacity and likely patronage of the premises; and 20
  - (iii) the trading hours (or intended trading hours) of the premises; and
  - (iv) any actual or proposed activities, arrangements, or systems that may reduce the risk of alcohol-related harm arising from the operation of the premises; and 25
  - (v) the previous conduct or performance of the licensee or proposed licensee (or any person involved or likely to be involved in the operation of the premises with or on behalf of the licensee or proposed licensee), whether in relation to the premises concerned or in relation to other premises: 30
- (c) may prescribe maximum or minimum fees (or both: 35
- (d) may provide for full or partial refunds of fees in ~~some~~ circumstances the case of clerical error, or a change in the level of fees prescribed by regulation:
- (e) may prescribe annual fees:

- (f) may prescribe a penalty fee (of not more than half the annual fee concerned) for the late payment of any annual fee:
- (g) may provide for the full or partial waiver of fees (or fees of particular kinds) in ~~some circumstances~~ the case of particular financial hardship of the persons required to pay them: 5
- (h) may prescribe the manner in which fees are to be collected or paid (either generally, or in particular circumstances). 10
- (2) **Subparagraphs (i) to (v) of paragraph (b) of subsection (1)** do not limit or affect the generality of that paragraph.
- (3) **Subsection (1)** does not limit or affect the generality of **section 382(a) or (b)**.
- 386 Consultation on proposed fees regulations** 15
- Before recommending the making of regulations under **section 382(a) or (b)**, the Minister must, to the extent that is reasonably practicable having regard to the circumstances of the particular case, consult the persons the Minister has reason to believe are representative of interests likely to be substantially affected by the regulations. 20
- 387 Fees to be reviewed every 5 years**
- (1) Not later than 5 years after the commencement of this section, and not later than 5 years after the most recent review, the chief executive must— 25
- (a) undertake and complete a review of all regulations made under **382(a) or (b)** in force when the review begins; and
- (b) report to the Minister on whether regulations amending or replacing them should be made. 30
- (2) Not later than 3 months after receiving a report under **subsection (1)(b)**, the Minister must consider whether to recommend to the Governor-General the making of regulations amending or replacing the regulations to which it relates.

*Fee-setting by territorial authorities***388 Fee-setting by territorial authorities**

- (1) The Governor-General may, by Order in Council, authorise territorial authorities to prescribe by bylaw fees for any matter for which fees payable to territorial authorities can be prescribed by regulations under this Act. 5
- (2) While an order under **subsection (1)** is in force,—
- (a) if a territorial authority has in force a bylaw prescribing a fee payable to it for a matter stated in the order,—
- (i) the fee for the matter is the fee prescribed by the bylaw; and 10
- (ii) every reference in this Act to the fee prescribed for the matter by regulations under this Act is a reference to the fee for the matter prescribed by the bylaw: 15
- (b) if a territorial authority does not have in force a bylaw prescribing a fee for a matter stated in the order, the fee for the matter is the fee (if any) prescribed by regulations under this Act.
- (3) **Section 386**, with any necessary modifications, applies to the making of the bylaws as if it were the making of regulations. 20
- (4) Before making a bylaw prescribing fees for any matter for which fees payable to territorial authorities can be prescribed by regulations under this Act a territorial authority must, to the extent that is reasonably practicable having regard to the circumstances of the particular case, consult the persons authority has reason to believe are representative of interests likely to be substantially affected by the bylaw. 25

*Transitional matters***389 Certain applications to be dealt with under Sale of Liquor Act 1989** 30

- (1) This section applies to an application made under the 1989 Act for a licence, a variation or cancellation of a licence, ~~or the renewal of licence~~ the renewal of a licence, or the suspension of a licence, if— 35
- (a) it was filed before the day on which this Act received the Royal assent; or

- (b) it was filed after that day, but began to be heard within 6 months of that day.
- (2) An application to which this section applies must be dealt with by the licensing authority or District Licensing Agency (as the case requires)— 5
- (a) under the 1989 Act; and
- (b) as if this Act had not been enacted.
- (3) In this section and **section 390**,—
- 1989 Act** means the Sale of Liquor Act 1989
- assent date** means the day on which this Act received Royal assent 10
- District Licensing Agency** means the appropriate District Licensing Agency under the 1989 Act.
- 390 Certain otherwise ineligible applications may be granted for limited period** 15
- (1) This section applies to an application to which ~~section 389(1)~~ applies if—
- (a) it is an application for an off-licence for premises for which an off-licence cannot be issued under this Act but could have been granted under the 1989 Act; or 20
- (b) it is an application for the renewal of an off-licence for premises for which an off-licence cannot be issued under this Act; or
- (c) it is an application for a licence of a kind that (in the opinion of the licensing authority or District Licensing Agency, reached after considering all the particular circumstances),— 25
- (i) by virtue of the criteria stated in this Act for the issue of licences of that kind, would not be, or would be unlikely to be, issued if the application had been made under this Act; but 30
- (ii) can appropriately be issued under the 1989 Act; or
- (d) it is an application for the renewal of a licence of a kind that (in the opinion of the licensing authority or District Licensing Agency, reached after considering all the particular circumstances),— 35

- (i) by virtue of the criteria stated in this Act for the renewal of licences of that kind, would not be, or would be unlikely to be, renewed if the application had been made under this Act; but
- (ii) could appropriately be renewed under the 1989 Act if the criteria for renewal included the manner in which the applicant has sold alcohol. 5
- (2) Where this section applies to an application,—
- (a) the licence concerned may be granted or renewed; but
- (b) the grant or renewal must be for a period that ends no more than 2 years after the assent date. 10
- ~~(3) **Subsection (2) overrides section 389(2)(b).**~~
- (3) This section is subject to **section 389.**
- 391 Existing licences continue in force**
- (1) Every on-licence, off-licence, club licence, and special licence granted under the former licensing Act that was in force immediately before the commencement of this section, continues in force as if it is a licence of that kind issued under this Act; but—
- (a) it expires in accordance with this Act, as if this Act had been in force when it was granted; and
- (b) it can be renewed only by application made and considered under this Act. 20
- (2) **Subsection (1)** is subject to **section 389.**
- 392 Transitional provision relating to BYO restaurants and managers** 25
- (1) This section applies to the holder of an on-licence endorsed under section 28 of the Sale of Liquor Act 1989 at the commencement of this section who applies under this Act for a renewal of the licence or a variation of conditions. 30
- (2) If the licence is endorsed under this Act with a condition that a manager or managers be appointed, the holder of the licence need not comply with the condition before the expiry of 6 months after the date of the endorsement.

**393 Transitional provision for club manager's certificates**

- (1) Every person is deemed to hold a manager's certificate who, immediately before the commencement of this section, holds a current club manager's certificate or general manager's certificate under the Sale of Liquor Act 1989. 5
- (2) The certificate that the person is deemed to hold under **subsection (1)** continues in force until ~~the expiration of the certificate~~ its expiry under the Sale of Liquor Act 1989.
- (3) On the expiry of the certificate ~~the district licensing authority,~~ a district licensing committee may issue a limited renewal certificate ~~which that~~ is valid for 1 year. 10
- (4) ~~At~~ On the expiry of the limited renewal certificate, the licensing committee may deem ~~the limited renewal certificate~~ it to be a manager's certificate issued under this Act if it is satisfied that ~~the person~~ its holder meets the qualifications prescribed in **section 202**. 15

**394 Existing members of licensing authority continue in office**

- (1) Every member of the licensing authority holding office immediately before the commencement of this section continues in office as if appointed under this Act, but only for the rest of the term for which he or she was appointed. 20
- (2) The person holding office immediately before the commencement of this section as chairperson of the licensing authority continues in office as if appointed chairperson under this Act.

**395 Interpretation of documents constituting certain existing bodies corporate** 25

- (1) In **subsection (2)**, **existing body** means a company or other body corporate incorporated before the commencement of **section 31**.
- (2) For the purposes of **section 31(1)**,— 30
- (a) a restriction in the constitution of an existing body that prevents it from selling liquor must be treated as a restriction that prevents it from selling alcohol:
- (b) a restriction in the constitution of an existing body that prevents it from holding a licence under a former licens- 35

- ing Act must be treated as a restriction that prevents it from holding a licence under this Act:
- (c) a restriction in the constitution of an existing body that prevents it from holding a licence of a particular kind under a former licensing Act must be treated as a restriction that prevents it from holding a licence of that kind (or, as the case may be, a licence of a corresponding kind) under this Act: 5
  - (d) an existing body (other than a company) that is authorised to sell liquor must be treated as being authorised to sell alcohol: 10
  - (e) an existing body (other than a company) that is authorised to hold a licence under a former licensing Act must be treated as being authorised to hold a licence under this Act: 15
  - (f) an existing body (other than a company) that is authorised to hold a licence of a particular kind under a former licensing Act must be treated as being authorised to hold a licence of that kind (or, as the case may be, a licence of a corresponding kind) under this Act. 20

### **396 Permanent club charters unaffected**

- (1) A permanent club charter that (by virtue of section 238 of the Sale of Liquor Act 1989) was in force immediately before the commencement of this section continues in force despite the enactment of this Act; and its holder may continue to sell and supply alcohol in accordance with it without needing a licence. 25
- (2) The provisions of this Act relating to the following matters apply to the holder of a permanent club charter and to the club premises as if the club were the holder of a club licence: 30
  - (a) the appointment of managers and the management of licensed premises:
  - (b) the keeping of records and the filing of returns:
  - (c) the payment of annual or other fees:
  - (d) offences.
- (3) So long as a permanent club charter is in force, it authorises the existence of the club concerned. 35
- (4) Notwithstanding **subsections (1) to (3)**, the holder of a permanent club charter may, with the approval of the licensing

authority, surrender the charter and obtain a club licence instead.

**396A Matters not completed by district licensing authorities**

A matter before a district licensing authority that has not been completed before the authority goes out of existence may be completed by the appropriate district licensing committee; and the committee has all powers necessary to complete it. 5

*Amendment to Children, Young Persons, and Their Families Act 1989*

**397 Jurisdiction of Youth Court** 10

(1) This section amends the Children, Young Persons, and Their Families Act 1989.

(2) Section 272(3) is amended by omitting “imprisonment—” from paragraph (c) and substituting “imprisonment; or” and by adding the following paragraph: 15

“(d) an infringement offence against the **Sale and Supply of Alcohol Act 2010**; or the Summary Offences Act 1981, or **section 239A** of the Local Government Act 2002.”

(3) Section 272(5) is amended by— 20

(a) inserting “or (d)” after “(3)(c)”; and

(b) inserting “or an infringement offence referred to in **subsection (3)(d)**” after “imprisonment”.

*Consequential amendments and repeals*

**398 Consequential amendments** 25

(1) The enactments stated in **Schedule 2** are amended in the manner indicated in that schedule.

(2) The regulations stated in **Schedule 3** are amended in the manner indicated in that schedule.

**399 Repeals** 30

(1) Sections 85 to 98 of the Sale of Liquor Act 1989 are repealed.

(2) Sections 4, 13, 22, 35, 45, 59, 68, and 79, of the Sale of Liquor Act 1989 are repealed.

- (3) The Sale of Liquor Act 1989 is repealed.

**Part 9**  
**Amendments to Local Government Act**  
**2002**

- 400 Principal Act amended** 5  
**This Part of this Act** amends the Local Government Act 2002.
- 401 Commencement**  
**This Part of this Act** comes into force on the day 12 months after the date on which this Act receives the Royal assent. 10
- 402 New sections 147 to ~~147C~~ 147B substituted**  
Section 147 is repealed and the following sections substituted:  
**“147 Power to make bylaws for alcohol control purposes**  
**“(1) In this section,—**  
**“alcohol** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010** 15  
**“licensed premises** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**.  
**“public place—**  
**“(a)** means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but 20  
**“(b)** does not include licensed premises.  
**“(2)** A territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, any or all of the following: 25  
**“(a)** the consumption of alcohol in public places:  
**“(b)** the bringing of alcohol into public places: 30  
**“(c)** the possession of alcohol in public places.  
**“(3)** In conjunction with a bylaw under **subsection (2)**, a territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either gen-

erally or for one or more specified periods, the presence or use of a vehicle in public places.

- “(4) A bylaw under this section does not prohibit, regulate or control, in the case of alcohol in an unopened container,—
- “(a) the transport of the alcohol from licensed premises next to a public place, if—
- “(i) it was lawfully bought on those premises for consumption off those premises; and
- “(ii) it is promptly removed from the public place; or
- “(b) the transport of the alcohol from outside a public place for delivery to licensed premises next to the public place; or
- “(c) the transport of the alcohol from outside a public place to premises next to a public place by, or for delivery to, a resident of the premises or his or her bona fide visitors; or
- “(d) the transport of the alcohol from premises next to a public place to a place outside the public place if—
- “(i) the transport is undertaken by a resident of those premises; and
- “(ii) the alcohol is promptly removed from the public place.
- “(5) **Subsections (2) and (3)** do not limit section 145.

“**147A Criteria for making or continuing bylaws under section 147**

- “(1) Before making any bylaw under **section 147**, a territorial authority must be satisfied that—
- “(a) taken together, the area to which it is proposed to apply and the time for which it is proposed to apply can be justified as a reasonable limitation on people’s rights and freedoms; and
- “(b) there is evidence that the area to which it is proposed to apply has experienced a high level of crime or disorder that can be shown to be caused or made worse by alcohol consumption in the area; and
- “(c) the area to which it is proposed to apply and the time for which it is proposed to apply are appropriate and

proportionate in the light of the evidence referred to in **paragraph (b)**:-

- “(2) Before deciding that a bylaw made under **section 147** should continue without amendment, a territorial authority must be satisfied that— 5
- “(a) taken together, the area to which it applies and the time for which it is proposed to continue to apply can be justified as a reasonable limitation on people’s rights and freedoms; and
  - “(b) there is evidence that the area to which it applies has in the past experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and 10
  - “(c) the area to which it applies and the time for which it is proposed to continue to apply are appropriate and proportionate in the light of the evidence referred to in **paragraph (b)**:- 15

**“147A Criteria for making or continuing bylaws**

- “(1) Before making a bylaw under **section 147**, a territorial authority— 20
- “(a) must be satisfied that it can be justified as a reasonable limitation on people’s rights and freedoms; and
  - “(b) except in the case of a bylaw that will apply temporarily for a large scale event, must also be satisfied that—
    - “(i) there is evidence that the area to which the bylaw is intended to apply has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and 25
    - “(ii) the bylaw is appropriate and proportionate in the light of that crime or disorder. 30
- “(2) Before deciding that a bylaw under **section 147** should continue without amendment, a territorial authority must be satisfied that the level of crime or disorder experienced before the bylaw was made (being crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area concerned) is likely to return to the area to which the bylaw is intended to apply if the bylaw does not continue. 35

- “(3) Before making under **section 147** a bylaw that is intended to replace an expiring bylaw and is to the same effect (or to substantially the same effect) as the expiring bylaw, a territorial authority must be satisfied that—
- “(a) the bylaw can be justified as a reasonable limitation on people’s rights and freedoms; and 5
- “(b) a high level of crime or disorder (being crime or disorder caused or made worse by alcohol consumption in the area concerned) is likely to arise in the area to which the bylaw is intended to apply if the bylaw is not made; and 10
- “(c) the bylaw is appropriate and proportionate in the light of that likely crime or disorder.
- “(4) **Subsection (1)** does not apply to a bylaw of a kind described in **subsection (3)**. 15
- “147AA **Criteria for making resolutions relating to bylaws**
- Before making under section 151 a resolution relating to a bylaw under **section 147**, a territorial authority must be satisfied that—
- “(a) there is evidence that the area to which the bylaw applies (or will apply by virtue of the resolution) has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and 20
- “(b) the bylaw, as applied by the resolution,— 25
- “(i) is appropriate and proportionate in the light of the evidence; and
- “(ii) can be justified as a reasonable limitation on people’s rights and freedoms.
- “147B **Signage for areas in which bylaws for alcohol control purposes apply** 30
- Regulations under section 259 may do any or all of the following:
- “(a) require territorial authorities to erect and maintain signs indicating the existence or boundaries of areas in their districts in which a bylaw under **section 147** applies: 35

- “(b) describe the required placement of the signs required to be erected and maintained:
- “(c) prescribe particular forms for particular kinds of sign required to be erected and maintained (including, without limitation, content, size, lettering, symbols, and colouring).” 5

**403 Powers of arrest, search, and seizure in relation to bylaws prohibiting alcohol in public place**

- (1) The heading of section 169 is amended by omitting “**liquor**” and substituting “**alcohol**”. 10
- (2) Section 169(1) is amended by repealing the definition of **liquor** and inserting the following definition before the definition of **bylaw** :
- “**alcohol** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**”. 15
- (3) Section 169 is amended by omitting “liquor” wherever it occurs and substituting in each case “alcohol”.

**403 New sections 169 and 169A and new heading substituted**  
Section 169 is repealed and the following sections and heading substituted: 20

**“169 Powers of arrest, search, and seizure in relation to alcohol bans**

- “(1) In this section and in sections 169A and 170,—  
“**alcohol** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**” 25  
“**alcohol ban** means a bylaw made under **section 147**  
“**offence** means a breach of an alcohol ban  
“**restricted place** means a public place (within the meaning of **section 147(1)**) in respect of which an alcohol ban is in force.  
“(2) A constable may, without warrant,— 30  
“(a) for the purpose of ascertaining whether alcohol is present, search—  
“(i) a container (for example, a bag, case, package, or parcel) in the possession of a person who is in, or entering, a restricted place; or 35

- “(ii) a vehicle that is in, or is entering, a restricted place:
- “(b) seize and remove any alcohol (and its container) that is in a restricted place in breach of an alcohol ban:
- “(c) arrest any person whom the constable finds committing an offence: 5
- “(d) arrest any person who has refused to comply with a request by a constable—
- “(i) to leave a restricted place; or
- “(ii) to surrender to a constable any alcohol that, in breach of an alcohol ban is in the person’s possession. 10
- “(3) Alcohol or a container seized under subsection (2)(b) is forfeited to the Crown if the person from whom the alcohol or container is seized pays the infringement fee. 15

*“Matters of proof in relation to bylaws prohibiting alcohol in public place*

**“169A Proving substance is alcohol in relation to alleged breach of alcohol ban**

- “(1) In this section, **labelled trade container** means a container that is of a type sold in the ordinary course of trade, and is labelled to the effect that it contains 1.15% or more ethanol. 20
- “(2) This subsection applies to a substance in respect of which a breach of alcohol ban is alleged to have been committed if the substance was in a container at the time the offence is alleged to have been committed, and— 25
- “(a) the container was a labelled trade container; or
- “(b) the container was not a labelled trade container but appeared to contain alcohol, and when it was opened the substance smelled like alcohol; or 30
- “(c) the defendant has at any time made to a constable an admission to the effect that the substance was alcohol.
- “(3) If, in any proceedings for a breach of alcohol ban, it is proved that **subsection (2)** applies to the substance in respect of which the breach is alleged to have been committed, the substance must be presumed to be alcohol unless the defendant— 35
- “(a) proves that it was not; or

“(b) has given notice in writing at least 20 working days before the hearing that he or she disputes that the substance was alcohol.”

**404 New heading and section 169A**

The principal Act is amended by inserting the following heading and section after section 169: 5

*“Matters of proof in relation to bylaws prohibiting alcohol in public place*

**“169A Proving substance is alcohol in prosecution for offence against section 239A** 10

“(1) For the purposes of this section,—

“**alcohol** has the meaning given by **section 169(1)**

“**labelled trade container** means a container that is of a type sold in the ordinary course of trade, and is labelled to the effect that it contains 1.15% or more ethanol. 15

“(2) This subsection applies to a substance in respect of which an offence against **section 239A** is alleged to have been committed if the substance was in a container at the time the offence is alleged to have been committed, and—

“(a) the container was a labelled trade container; or 20

“(b) the container was not a labelled trade container but appeared to contain alcohol, and when it was opened the substance smelled like alcohol; or

“(c) the defendant has at any time made to a constable an admission to the effect that the substance was alcohol. 25

“(3) If, in any proceedings for an offence against a bylaw made under **section 147**, it is proved that **subsection (2)** applies to the substance in respect of which the offence is alleged to have been committed, the substance must be presumed to be alcohol unless the defendant proves that it was not.” 30

**405 New section 239A inserted**

The following section is inserted after section 239:

**“239A Breaches of bylaws under section 147**

Every person commits an offence, and is liable on summary conviction to the penalty set out in section 242(4), who breaches a bylaw made under **section 147**.” 35

**405** New sections 239 and 239A substituted

Section 239 is repealed and the following sections substituted:

**“239** Offences in respect of breaches of bylaws (other than alcohol bans)

Every person commits an offence and is liable on conviction to the penalty set out in section 242(4) or (5) (as the case may be), who breaches a bylaw made under Part 8 (other than a bylaw made under **section 147**).

**“239A** Breaches of alcohol bans

**“(1)** Section 21 of the Summary Proceedings Act 1957 applies to a breach of a bylaw made under **section 147** as if—

**“(a)** the breach were an infringement offence within the meaning of that Act; and

**“(b)** the person who has committed the breach has committed the offence; and

**“(c)** the references in subsection (9) of that section to a defendant’s being found guilty of, or pleading guilty to, an infringement offence for which an infringement notice has been issued were references to the person’s being found to have committed, or admitting to having committed, the breach;—

and Part 3 and section 208 of that Act apply accordingly.

**“(2)** Proceedings in respect of a breach of a bylaw made under **section 147** cannot be commenced by the laying of an information under the Summary Proceedings Act 1957, or by the filing of a notice of prosecution under section 20A of that Act.

**“(3)** **Subsection (2)** overrides **subsection (1)**, and section 21(1)(a) of the Summary Proceedings Act 1957.”

**406** New sections 243 and 244 substituted

Sections 243 and 244 are repealed and the following sections substituted:

**“243** Interpretation

**“(1)** In this subpart,—

**“enforcement officer**, in relation to an offence against **section 239A**, means a constable

~~“infringement fee, in relation to an infringement offence, means the amount prescribed by regulations under section 259(b) as the infringement fee for the offence~~

~~“infringement offence means an offence that—~~

~~“(a) is specified as such by regulations under section 259(a); 5  
or~~

~~“(b) is an offence against **section 239A**—~~

“(1) In this subpart,—

“alcohol ban means a bylaw made under **section 147**

“enforcement officer, in relation to an alcohol ban, means a 10  
constable

“infringement fee,—

“(a) in relation to an infringement offence specified as such 15  
by regulations under section 259(a), means the amount  
prescribed by regulations under section 259(b) as the  
infringement fee for the offence; and

“(b) in relation to a breach of an alcohol ban, means the  
amount prescribed by regulations under section 259(b)  
as the infringement fee for the breach

“infringement offence— 20

“(a) means an offence specified as such by regulations under  
section 259(a); and

“(b) includes a breach of an alcohol ban.

“(2) The definition in **subsection (1)** of **enforcement officer** 25  
overrides the definition of that term in section 5.

#### “244 Proceedings for infringement offences

“(1) A person who is alleged to have committed an infringement  
offence specified as such by regulations under section 259(a)  
may either—

“(a) be proceeded against under the Summary Proceedings 30  
Act 1957; or

“(b) be served with an infringement notice under section  
245.

“(2) ~~A person who is alleged to have committed an offence against  
**section 239A** may be served with an infringement notice 35  
under section 245.~~

- “(2) A person who is alleged to have committed a breach of an alcohol ban—  
 “(a) may be served with an infringement notice under section 245; and  
 “(b) must not be proceeded against under the Summary Proceedings Act 1957.” 5

#### 407 Issue of infringement notices

Section 245 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) An infringement notice not relating to ~~an offence against by-laws made under section 147~~ a breach of an alcohol ban may be served— 10
- “ (a) by an enforcement officer (not necessarily the person who issued the notice) personally delivering it (or a copy of it) to the person alleged to have committed the infringement offence concerned; or 15
- “ (b) by post addressed to that person’s last known place of residence or business.
- “(2B) An infringement notice relating to ~~an offence against by-laws made under section 147~~ a breach of an alcohol ban may be served— 20
- “ (a) by a constable personally delivering it to the person alleged to have committed ~~it~~ the breach; or
- “ (b) by a constable personally delivering it, at a time after the person alleged to have committed the ~~infringement offence~~ breach has been arrested for committing it, to ~~that~~ the person; or 25
- “ (c) by post addressed to ~~that person’s~~ the last known place of residence or business of the person alleged to have committed the breach.” 30

#### 408 New section 245A inserted

The following section is inserted after section 245:

##### “245A Constables may require certain information

A constable who believes on reasonable grounds that a person is committing or has committed an infringement offence may direct the person to give the ~~constable—~~ constable his or her name, address, and date of birth. 35

- “(a) his or her name and address; and  
 “(b) the name and address and whereabouts of any other person connected in any way with the alleged offence.”

*Transitional provisions*

- 409 References in bylaws to liquor** 5  
 Every reference to liquor in a bylaw under section 147(2) made before the commencement of **this Part of this Act** has effect as a reference to alcohol within the meaning of **section 147(1)**.
- 410 Existing bylaws to expire** 10  
 Unless earlier revoked, a bylaw under section 147(2) made before the commencement of this section expires 5 years after the commencement of **this Part of this Act**.
- 411 Processing of certain proposals for bylaws** 15  
 If before the commencement of **this Part of this Act** proposals for a bylaw under section 147(2) have been released for public consultation,—  
 (a) the bylaw may be made as if **section 228** had not been enacted; but  
 (b) it expires 5 years after it is made. 20

**Part 10**

**Amendment to Summary Offences Act  
 1981**

- 412 Principal Act amended** 25  
**This Part of this Act** amends the Summary Offences Act 1981.
- 413 Commencement**  
**This Part of this Act** comes into force on the day 12 months after the date on which this Act receives the Royal assent.

**414 Interpretation**

Section 2(1) is amended by omitting the definition of **intoxicating liquor** and substituting the following definition:

“**intoxicating liquor** means alcohol within the meaning of **section 5(1) of the Sale and Supply of Alcohol Act 2010**”.

**415 Drinking in public place**

Section 38(3) is amended by inserting “(or in a vehicle in any public place)” after “place”.

**416 New sections 44A and 45 substituted**

Section 45 is repealed and the following sections substituted:

**“44A Seizure and forfeiture of burglary instruments**

If a person is found guilty of an offence against section 14, the court—

- “(a) may order the instrument or instruments concerned to be forfeited to the Crown, or disposed of as the court directs at the expense of the person convicted; and
- “(b) may also order the person to pay any reasonable costs incurred by the Commissioner of Police in holding the instrument or instruments.

**“45 Seizure and forfeiture of alcohol**

~~“(1) A constable may seize and remove any intoxicating liquor that there is reasonable ground to suppose is intended for consumption in contravention of section 38, and the vessels containing it.~~

“(1) A constable who believes on reasonable grounds that any intoxicating liquor is intended for consumption in contravention of section 38 may seize and remove it and the vessels containing it.

“(2) On a person’s being found guilty of an offence against section 38 in respect of any intoxicating liquor seized, the intoxicating liquor and the vessels containing it are forfeit to the Crown.

“(3) Intoxicating liquor and the vessels containing it are forfeit to the Crown if—

- “(a) it is seized by the police from a person under the age of 18 years who is issued with an infringement notice in respect of an offence against section 38(3) alleged to have been committed by the young person’s drinking it, or having it in his or her possession or control, in a public place; and 5
- “(b) the infringement fee is later paid.
- “(4) If a person is acquitted of an offence against section 38, intoxicating liquor seized under that section in relation to the offence— 10
- “(a) may be collected from the relevant Police station within 28 days of the acquittal by or on behalf of the person or, if the person is under the age of 18 years, by his or her parent or legal guardian; and
- “(b) if not collected within that time, may be disposed of in any manner the Commissioner of Police directs.” 15
-

**Schedule 1** **ss 288(2), 345**  
**Existing licensing and community trusts**

Part 1

District and suburban trusts

Ashburton Licensing Trust	5
Birkenhead Licensing Trust	
Clutha Licensing Trust	
Geraldine Licensing Trust	
Invercargill Licensing Trust	
Masterton Licensing Trust	10
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Oamaru Licensing Trust	
Portage Licensing Trust	
Waitakere Licensing Trust	

Part 2

15

Local licensing trusts

Cheviot Licensing Trust	
Flaxmere Licensing Trust	
Hawarden Licensing Trust	
Mt Wellington Licensing Trust	20
Parakai Licensing Trust	
Rimutaka Licensing Trust	
Te Kauwhata Licensing Trust	
Wiri Licensing Trust	

Part 3

25

Community trusts

Porirua Community Trust	
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**Schedule 2****s 398(1)****Consequential amendments to other enactments****Alcohol Advisory Council Act 1976 (1976 No 143)**

Section 2(1): insert in its appropriate alphabetical order: 5  
 “**liquor** means alcohol within the meaning of **section 5(1) of the Sale and Supply of Alcohol Act 2010**”.

Section 8(1)(g): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.

**Alcoholism and Drug Addiction Act 1996 (1996 No 97)**

10

Section 2: insert in its appropriate alphabetical order:

“**alcohol** has the meaning given by **section 5(1)** of the Sale and Supply of Alcohol Act **2010**”.

Definition of **alcoholic** in section 2: omit “alcoholic liquor” and substitute “alcohol”. 15

Section 20(2): omit “alcoholic liquor” and substitute “alcohol”.

Section 27 and the heading to that section: omit “liquor” in each place where it appears and substitute “alcohol”.

Section 27: omit “intoxicating liquor” and substitute “alcohol”.

**Armed Forces Discipline Act 1971 (1971 No 53)**

20

Section 2(1): insert in its appropriate alphabetical order:

“**alcohol** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**”.

Heading above section 51: omit “*alcoholic liquor*” and substitute “*alcohol*”. 25

Section 52(1) and the heading to that section: omit “alcoholic liquor” and substitute “alcohol”.

Section 52(2): omit “liquor” and substitute “alcohol”.

**Auckland Domain Act 1987 (1987 No 7)**

Section 11(1)(d): omit “intoxicating liquor” and substitute “alcohol (within the meaning of **section 5 of the Sale and Supply of Alcohol Act 2010**)”. 30

**Auctioneers Act 1928 (1928 No 29)**

Section 4(a): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.

**Broadcasting Act 1989 (1989 No 25)**

Definition of **liquor** in section 2(1): repeal. 5

Section 2(1): insert in its appropriate alphabetical order:

“**alcohol** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**”.

Section 21(1)(e)(v): omit “liquor” and substitute “alcohol”.

**Civil Aviation Act 1990 (1990 No 98)**

10

Section 65I(3): omit “an intoxicating liquor, or” and substitute “alcohol (within the meaning of **section 5(1) of the Sale and Supply of Alcohol Act 2010**) or an intoxicating”.

Section 96: repeal and substitute:

**“96 Sale of alcohol at international airports**

15

“(1) Alcohol may be sold at any international airport to any passenger on an aircraft departing from or arriving in New Zealand if—

“(a) in the case of alcohol bought for consumption off the airport premises, the passenger is of or over the age stated in **section 7 of the Sale and Supply of Alcohol Act 2010**); and 20

“(b) in the case of alcohol bought for consumption on the airport premises, the passenger is of or over the age stated in **section 8 of the Sale and Supply of Alcohol Act 2010**).

“(2) Unless alcohol sold under the authority of **subsection (1)** has been entered by the passenger concerned for home consumption in accordance with the Customs and Excise Act 1996, a person must not deliver it by or on behalf of the buyer to any other person within New Zealand, or consume it within New Zealand. 30

“(3) The Governor-General may, from time to time, by Order in Council, make regulations for either or both of the following purposes: 35

**Civil Aviation Act 1990 (1990 No 98)**—*continued*

- “(a) prescribing the circumstances and conditions relating to the control of the sale of alcohol at international airports to passengers on aircraft departing from or arriving in New Zealand who are of or over the age referred to in **subsection (1)(a) or (b)** (as the case requires): 5
- “(b) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, not exceeding \$1,000, that may, on summary conviction, be imposed in respect of any such offence. 10
- “(4) A person commits an offence who—
- “(a) sells alcohol at any international airport to any passenger on an aircraft departing from or arriving in New Zealand who is under the age referred to in **subsection (1)(a) or (b)** (as the case requires); or 15
- “(b) fails to comply with **subsection (2)**.
- “(5) A person who commits an offence against **subsection (4)** is liable on conviction to a fine not exceeding \$1,000.
- “(6) Nothing in **the Sale and Supply of Alcohol Act 2010** applies to the sale of alcohol under to the authority of this section or of any regulations made under it.” 20

**Corrections Act 2004 (2004 No 50)**

Section 45(1)(d): repeal and substitute:

- “(d) alcohol; or”.

**Customs and Excise Act 1996 (1996 No 27)**

25

Paragraph (c)(ii) of the definition of **manufacture** in section 2(1): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.

**Defence Act 1990 (1990 No 28)**

- Heading to section 89: omit “**liquor**” and substitute “**alcohol**”. 30
- Section 89(1): omit “alcoholic liquor” in each place where it appears and substitute in each case “alcohol”.
- Section 89(1)(c): omit “liquor” and substitute “alcohol”.

**Defence Act 1990 (1990 No 28)**—*continued*

Section 89(2)(c): omit “liquor” in each place where it appears and substitute in each case “alcohol”.

Section 89(5): omit “liquor” in each place where it appears and substitute in each case “alcohol”.

Section 89: insert after subsection (5): 5

“(5A) In this section, **alcohol** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**.”

**Electoral Act 1993 (1993 No 87)**

Section 155(3): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”. 10

Section 155(3): omit “liquor” in the second place where it appears and substitute “alcohol (within the meaning of **section 5(1) of the Sale and Supply of Alcohol Act 2010**)”.

Section 217(3): omit “intoxicating liquor” and substitute “alcohol (within the meaning of **section 5(1) of the Sale and Supply of Alcohol Act 2010**)”. 15

**Electricity Industry Reform Act 1998 (1998 No 88)**

Section 90(g): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.

**Gambling Act 2003 (2003 No 51)** 20

Section 4(1): insert in its appropriate alphabetical order:

“**approved evidence of age document** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**”.

Paragraph (b)(iva) of the definition of **key person** in section 4(1): 25  
repeal and substitute:

“(iva) any other person whom the Secretary reasonably believes to have a significant interest in the management, ownership, or operation of a venue operator, except for the following persons holding 30  
office, elected, or appointed under the Sale and Supply of Alcohol Act **2010**:

**Gambling Act 2003 (2003 No 51)**—*continued*

- “(i) a member of a licensing trust elected in accordance with **sections 225 to 231** of that Act or appointed under **section 232** of that Act; or
- “(ii) a trustee of a community trust holding office under **section 00** of that Act or elected in accordance with **sections 287 to 290** of that Act or appointed under **section 291** of that Act.”. 5
- Section 4(2): repeal. 10
- Section 173: repeal and substitute:
- “**173 On-licences under Sale and Supply of Alcohol Act 2010**  
Despite the Sale and Supply of Alcohol Act **2010**, an on-licence granted under that Act for a licensed casino must be treated as authorising the sale of alcohol for consumption in the casino while the casino is lawfully operated.” 15
- Health Act 1956 (1956 No 65)**
- Section 80(4): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.
- Hotel Association of New Zealand Act 1969 (1969 No 139)** 20
- Section 2: insert in its appropriate alphabetical order:  
“**alcohol** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**.”
- Section 2: omit “liquor” in each place where it appears and substitute in each case “alcohol”. 25
- Section 3(2)(c): omit “general”.
- Section 3(2): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.
- Section 3(3): omit “general”.
- Section 10(1): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”. 30
- Section 20: omit “District Licensing Agency” and substitute “licensing committee”.

**Innkeepers Act 1962 (1962 No 140)**

Section 2: omit “Sale of Liquor Act 1989” in each place where it appears and substitute in each case “Sale and Supply of Alcohol Act **2010**”.

**Local Electoral Act 2001 (2001 No 35)**

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Section 126(2): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.

**Local Government (Rating) Act 2002 (2002 No 6)**

Notes to Part 2 of Schedule 1: omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.

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**Maori Community Development Act 1962 (1962 No 133)**

Section 2: insert in its appropriate alphabetical order:

“**liquor** means alcohol within the meaning of **section 5(1) of the Sale and Supply of Alcohol Act 2010**”.

**Misuse of Drugs Amendment Act 2005 (2005 No 81)**

15

Section 31: insert in its appropriate alphabetical order:

“**alcohol** has the meaning given to it by **section 5(1) of the Sale and Supply of Alcohol Act 2010**”.

Paragraph (b)(vii) of the definition of **substance** in section 31: repeal and substitute:

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“(vii) alcohol:”.

Section 37(2)(a): omit “(within the meaning of section 2A of the Sale of Liquor Act 1989)”.

Section 37: insert after subsection (4):

“(5) In this section, **approved evidence of age document** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**.”

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Section 40(2)(a): omit “(within the meaning of section 2A of the Sale of Liquor Act 1989)”.

Section 40: insert after subsection (4):

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“(5) In this section, **approved evidence of age document** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**.”

**Misuse of Drugs Amendment Act 2005 (2005 No 81)**—*continued*

Section 62(1)(b)(ii): omit “liquor” and substitute “alcohol”.

Section 62(1)(l)(i): omit “liquor” and substitute “alcohol”.

**New Zealand Railways Corporation Act 1981 (1981 No 119)**

Section 115(1)(e): omit “intoxicating liquor” in each place where it appears and substitute in each case “alcohol”. 5

Section 115: insert after subsection (2):

“(3) In this section, **alcohol** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010.**”

**Policing Act 2008 (2008 No 72)**

Section 45(b): omit “Liquor Licensing Authority, a District Licensing Agency” and substitute “Alcohol Regulatory and Licensing Authority, a licensing committee”. 10

**Private Investigators and Security Guards Act 1974 (1974 No 48)**

Definition of **licensed premises** in section 2(1): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”. 15

**Public Audit Act 2001 (2001 No 10)**

Schedule 1: omit “Part 9A of the Sale of Liquor Act 1989” and substitute “Part 5 of the Sale and Supply of Alcohol Act **2010**”.

Item relating to licensing trusts in Schedule 1: omit and substitute: 20  
 “Licensing trusts constituted by **section 217** of the Sale and Supply of Alcohol Act **2010** or specified in **Schedule 1** of that Act.”

**Racing Act 2003 (2003 No 3)**

Definition of **evidence of age document** in section 63(6): repeal and substitute: 25

“**approved evidence of age document** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010.**”

**Referenda (Postal Voting) Act 2000 (2000 No 48)**

Section 72(3): omit “liquor” in the first place where it appears and substitute “alcohol”.

Section 72(3): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.

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**Reserves Act 1977 (1977 No 66)**

Section 106(1)(f): omit “intoxicating liquor” and substitute “alcohol (within the meaning of **section 5(1) of the Sale and Supply of Alcohol Act 2010**)”.

**Residential Tenancies Act 1986 (1986 No 120)**

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Section 5(j): omit “Sale of Liquor Act 1989” and substitute “Sale and Supply of Alcohol Act **2010**”.

**Shop Trading Hours Act Repeal Act 1990 (1990 No 57)**

Definition of **goods** in section 2: omit and substitute:

“**goods** includes all personal chattels other than alcohol (within the meaning of the Sale and Supply of Alcohol Act **2010**), money, and things in action”.

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**Smoke-free Environments Act 1990 (1990 No 108)**

Definition of **licensed premises** in section 2(1): omit and substitute:

“**licensed premises** means any premises, or any part of any premises, on which alcohol is sold pursuant to a licence under the Sale and Supply of Alcohol Act **2010**”.

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Section 2(1): insert in its appropriate alphabetical order:

“**approved evidence of age document** has the meaning given by **section 5(1) of the Sale and Supply of Alcohol Act 2010**”.

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Section 30(2A): omit “(within the meaning of section 2A of the Sale of Liquor Act 1989)”.

Section 30AA(3): omit “(within the meaning of section 2A of the Sale of Liquor Act 1989)”.

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Section 36A(4): omit “(within the meaning of section 2A of the Sale of Liquor Act 1989)”.

**Schedule 3****s 398(2)****Consequential amendments to regulations****Amusement Devices Regulations 1978 (SR 1978/294)**

Regulation 21: omit paragraph (c) and substitute the following:

- “(c) while he is intoxicated (within the meaning of **section 5 of the Sale and Supply of Alcohol Act 2010**): or”.

**Food Hygiene Regulations 1974 (SR 1974/169)**Regulation 2(1): omit the definition of **Liquor** and substitute:

- “**liquor** means alcohol (within the meaning of **section 5 of the Sale and Supply of Alcohol Act 2010**)”.

Definition of **Wine** in regulation 2(1): omit “section 2 of the Sale of Liquor Act 1989” and substitute “**section 5 of the Sale and Supply of Alcohol Act 2010**”.Regulation 4(4)((g): omit “section 2 of the Sale of Liquor Act 1962” and substitute “**section 5 of the Sale and Supply of Alcohol Act 2010**”.Definition of **Licensed premises** in regulation 28: omit “section 2 of the Sale of Liquor Act 1962” and substitute “**section 5 of the Sale and Supply of Alcohol Act 2010**”.Definition of **Occupier** in regulation 28: omit “Sale of Liquor Act 1962” and substitute “**Sale and Supply of Alcohol Act 2010**”.**Gambling (Prohibited Property) Regulations 2005 (SR 2005/299)**

Regulation 4(b): revoke and substitute:

- “(b) alcohol (within the meaning of **section 5 of the Sale and Supply of Alcohol Act 2010**):”.

**New Zealand Railways Corporation (Staff) Regulations 1982 (SR 1982/46)**

Regulation 2(1): insert in its appropriate alphabetical order:

- “**alcohol** has the meaning given by **section 5 of the Sale and Supply of Alcohol Act 2010**”.

Regulation 93: omit “alcoholic liquor” in every place where it appears and substitute in each place “alcohol”.

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**New Zealand Railways Corporation (Staff) Regulations 1982  
(SR 1982/46)—*continued***

Regulation 95(2): omit “alcoholic liquor” in both places where it appears and substitute in each place “alcohol”.

**Ticketing (Public Bar) Notice 1982 (SR 1982/180)**

Clause 3: omit “Sale of Liquor Act 1962” and substitute “**Sale and Supply of Alcohol Act 2010**”.

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**Legislative history**

8 November 2010  
11 November 2010

Introduction (Bill 236–1)  
First reading and referral to Justice and Electoral  
Committee

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