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Chair
Justice & Electoral Committee
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ALCOHOL REFORM BILL

Introduction

1. This submission is made by the Legislation Advisory Committee (LAC).
2. The LAC was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced and updates the Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.
3. The terms of reference of the LAC include:
 - (a) to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
 - (b) to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.

4. The LAC considered the Alcohol Reform Bill at its meeting on 25 February 2011. We have a number of specific concerns regarding the Bill that we wish to place before the committee.

Understandable and accessible legislation

5. We note that following the purpose and object sections, the Bill proceeds straight into matters of detail. An example of this detail is clause 6, which concerns the principal business of a shop and the age provisions in Part 2. If this approach is to be retained, a “signpost” or overview provision outlining the various parts of the Bill would be useful. An example of an overview provision is provided by clause 4 of the Criminal Procedure (Reform and Modernisation) Bill.
6. Clause 37 is not clear on when alcohol would be an appropriate “complement to goods of the kind sold on the premises”. There does not appear to be any additional guidance on this matter in the Bill.
7. The Bill is not clear on how clauses 37 and 38(2) will work together. It appears that if premises are situated within a shop (a shop within a shop) then no off-licence under section 37 will be available. It may be that a shop within a shop would mean that more alcohol would be sold than would be “complementary” to the main business of the premises.
8. Clauses 120 and 123(1) both provide for the matters that must be considered in renewing a licence. The Bill is not clear on why these are restated. Also, these two clauses are inconsistent. In clause 123(1) the requirement to consider the amenity and good order of the locality is omitted.
9. We note that the requirement at clauses 287 and 344 for a licensing trust and a community trust to have a seal may be considered outdated.

Basic principles of New Zealand’s legal and constitutional system

10. We note with concern that clause 187(2) appears to suggest that regulations made under this Act may override clause 187(1). Clause 187(1) applies the Commissions of Inquiry Act 1908 to the licensing authority and licensing committees. While clause 187 reflects the present position under the Sale of Liquor Act 1989, the 1989 Act predates the LAC guidelines and the position should be re-examined. The LAC Guidelines, at Chapter 10A.4.1, notes that delegated legislation will be invalid if it is inconsistent with primary legislation. Delegated legislation cannot be used to override primary legislation.

Statutory interpretation

11. We note that the term “conveyance”, defined at clause 5, is not commonly used. We query whether the more common term “means of transport” could be used instead, unless it is overly problematic.

Creation of a new public power

12. At clause 402 of the Bill, the purpose of new section 147(2) of the Local Government Act 2002 seems unclear. The clause appears to be directed at situations in which a by-law has been in force for some time and is being reviewed. For that reason it enables evidence that a locality has in the past experienced high levels of crime to be considered.

Criminal offences

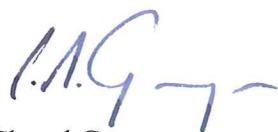
13. The Attorney-General, in his report on this Bill under section 7 the Bill of Rights Act 1990, notes that clauses 403, 405, and 406 allow for arrest without warrant for breaches of alcohol bans, which would be an infringement offence. The report states that this is an unjustifiable breach of the right of freedom from arbitrary arrest under section 22 of the Bill of Rights Act. We share the concerns raised with these clauses.

Appeal and review

14. Clause 313 carries over the ouster provision in section 203 of the Sale of Liquor Act 1989. It aims to prevent judicial review and appeal of decisions by the District Court to remove a licensing trustee. We note this provision was not addressed in the Law Commission report or in the explanatory note to the Bill.
15. We recommend that the ouster provision at clause 313 is reconsidered. We note that the Attorney-General, in his report on this Bill under section 7 the Bill of Rights Act 1990, considers this clause to be an unjustifiable breach of the right to justice under section 27(2) of the Bill of Rights Act.

Powers to require and use personal information

16. We note that the Attorney-General, in his report on this Bill under section 7 the Bill of Rights Act 1990, refers to clause 408 of the Bill (inserting new section 245A into the Local Government Act 2002). The report states that the requirement in this clause to answer questions about another person is a breach of the right to freedom of expression under section 14 of the Bill of Rights Act. The report states that this breach is not justified by reference to the purpose of the power.
17. We share the concerns stated in the Attorney-General's report and further note that there is a lack of clarity regarding the scope of the information that must be provided. The power is broad, requiring the name, address, and whereabouts of any other person connected in any way with the alleged offence.



Cheryl Gwyn
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