

Sale and Supply of Alcohol (Community Participation) Amendment Bill **The Justice Select Committee**

12 February 2023

Summary:

1. The Salvation Army welcomes this bill as a step in the right direction of addressing the impact of alcohol harm in our communities. We are pleased some changes in this bill that support our previous advocacy work around appeals to Local Alcohol Policies (LAP) and standing requirements. However, we believe that without 'giving an effect' to LAP in the District Licencing Committee (DLC) process the removal of appeals will make little to no difference in regard to alcohol harm. In addition, we strongly oppose Section 205(C) pertaining to striking out evidence or brief. We believe this section is vague, subjective and thwarts community participation. Whilst we welcome this bill, piecemeal reform of the Act is not ideal. In our view, at the core of many of the problems around alcohol consumption and regulation are the failings of the Sale and Supply of Alcohol Act 2012 (SSAA). But even without a clear, comprehensive reform and review plan, the amendments in this Bill have a clear purpose to play in securing better outcomes for local communities.

Background of The Salvation Army:

2. The mission of The Salvation Army Te Ope Whakaora is to care for people, transform lives, and reform society by God's power. The Salvation Army is a Christian church and social services organisation that has worked in New Zealand for one hundred and forty years. It provides a wide range of practical social, community, and faith-based services, particularly for those facing various forms of hardship and vulnerability.
3. The Salvation Army employs almost 2,000 people in New Zealand, and the combined services support around 150,000 people annually. In the year to June 2022, these services included providing around 83,000 food parcels to families and individuals, providing some 2,300 people with short-or long-term housing, over 4,000 families and individuals supported with social work or counselling, around 3,500 families and individuals helped with budgeting, court and prison chaplains helped 3,300 people and around 6,600 people supported to deal with alcohol, drug or gambling addictions,
4. The Salvation Army has a long history in supporting people impacted by alcohol harm in Aotearoa. Our Bridge services established in 1959 provide alcohol and other drugs addictions treatment for more than 4000 people across 17 centres from Whangarei to Invercargill.
5. Michael Douglas the National Operations Manager Addiction Services highlights the significant harm caused by the proliferation and saturation of liquor license premises which can be mitigated through regulation. "Alcohol is no ordinary drug and addiction is a compulsive behaviour that often occurs outside of a person's conscious thought. The impact of the high density of liquor outlets stores in Aotearoa with discounted alcohol from the

early hours of the morning until late at night directly increases the availability, use and abuse of alcohol leading to family/whanau harm, poor health outcomes for people, crime and increased pressure on our health system and emergency departments particularly in the areas of mental health, suicide and addiction, with Māori disproportionately adversely affected.”

6. “The large majority of alcohol-related research consistently indicates that reducing the trading hours of licensed premises, and also reducing the actual number of alcohol outlets, are two of the most effective measures available that would directly contribute to fulfilling the stated object of the Liquor Licensing Act.”
7. Across our wider services we support individuals and families through challenges such as financial hardship, food insecurity, housing issues and family violence – more than 60% of those we support across these wider services have identified alcohol harm as an underlying factor. In our day-to-day work our staff see the detrimental harms of alcohol both indirect and direct on individuals and their families.
8. The Salvation Army believes that alleviating our communities of alcohol harm require policies and legislation that address alcohol accessibility, availability, and affordability. Therefore, we engage as objectors and as witnesses in District Licensing Hearings for alcohol license applications and renewals in our communities. Our submission is based on these experiences and our ongoing advocacy – recently we released a report in August 2022 called *Uncapping community voices*¹ which highlight many of the challenges we face in the alcohol licencing process.
9. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) in collaboration with Addictions, Supportive Housing and Reintegration Services (ASARS) of The Salvation Army. The SPPU works towards the eradication of poverty by advocating for policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army’s Aotearoa New Zealand Fiji Tonga, and Samoa Territory.

Responses to the Bill:

10. We support the removal of the appeal process for Local Alcohol Policies (Clause 7). The LAP provides an opportunity for communities to engage and advocate for policies that will minimize alcohol harm in their communities. These appeal processes have instead aided the supermarket duopoly and the liquor industry to delay and hinder these policies. The supermarket duopoly has appealed 85% of provisional LAPs and liquor outlets have appealed 73% of provisional LAPs. Due to the appeal process our biggest centres in the country do not have an active LAP in place. There are only 42 councils that have adopted an LAP and these 42 councils represent only 34% of the population. In addition, the restrictions developed in many of these provisional LAP which aimed to address alcohol access and minimize alcohol harm were appealed and therefore became less restrictive when adopted. We believe removing the appeal process from LAP will allow for a fair and equitable democratic process for communities to engage in reducing alcohol harm.

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https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/sppu_alcoholreport_aug2022_v3.pdf

- 11.** In addition, we recommend that it become compulsory for all Territorial Authorities to develop and adopt a LAP. We believe that the costs of developing LAPs should be mitigated through alcohol licencing fees.
- 12.** We also recommend that section 105 in the Act be amended so that DLCs must “give effect” to LAPs, rather than “have regard for”. Without this provision the implementation of these policies in the DLC will be ad-hoc and LAP will have no statutory influence of the DLC decisions.
- 13.** The Salvation Army supports the amendment of section 102 and section 128 to allow any person or organisation to object to an alcohol licence application or renewal.
 - a.** In our experience supporting communities in licencing hearings there are significant barriers to getting ‘standing’ – which currently in practice applies only to residents who reside within a 2km distance of the proposed or renewal licenced location. Allowing anyone to object removes this barrier and is particularly pertinent for off-licences as alcohol sold at these licences can be consumed anywhere. In addition, for rural areas and small-town alcohol outlets service a much wider geographic area than 2km. This restriction limits the ability of the community to participate in these processes.
 - b.** We also highlight the challenges that organisations that serve our communities face in these processes. For example, in the Christchurch DLC Woodham Road Liquor Store decision, Mr P McMahon, in his capacity for Community Action on Youth and Drugs (CAYAD), objected to the licence, and his standing was challenged². Captain Jocelynn Smith representing the Salvation Army also objected to an alcohol licence application for Merchant’s Liquor and her ‘standing’ was challenged³. This is despite the fact that the proposed store was relocating to within a few meters of our Family Store, in close proximity to our supportive accommodation and Bridge service. Organisations like CAYAD and The Salvation Army see the impacts of alcohol harm daily. Therefore, engaging in these processes is an important part of our advocacy and bringing lived experience and the impact of alcohol harm to the forefront.
 - c.** We do not believe that allowing anyone to object will result in a significant and unmanageable level of objections for the licencing committee. The objection process is still fraught with licence application notification challenges and statutory requirements for objections that make it difficult for communities to engage in the process. In addition, the amendment for section 102 aligns with jurisdictions overseas including in states in Australia where there is no requirement to prove standing⁴.
- 14.** We support the replacement of section 202(5) to allow for telephone, audio-visual link, or other remote facilities for the district licencing hearing. There are significant costs of time and commitment for objectors in the community to engage in licencing hearings. Extending

² Available at ccc.govt.nz/assets/Documents/Consents-andLicences/business-licences-and-consents/Alcohol/DLC/2017-2020/60E-2019-1092-Nekita-Enterprises-Ltd-Woodham-RoadLiquor-Store-Renwal-ON-Licence-Decision-2019-04-30.pdf

³ <https://www.ccc.govt.nz/assets/Documents/Consents-and-Licences/business-licences-and-consents/Alcohol/DLC/2017-2020/60B-2020-6006-Merchants-Liquor-Progressive-Retails-Ltd-Off-Licence-Decision-18-December-2020.pdf>

⁴ New South Wales Government. Make a submission relating to a liquor or gaming application or authorisation. <https://lnnoticeboard.onegov.nsw.gov.au/lnsubmission/SR0000964572/keyinformation>

the means and methods by which the community can participate can address these challenges.

- a. In our experience the time required to attend licencing hearings is unpredictable. Our staff and Corps members who represent The Salvation Army in these hearings do so in addition to their duties and roles. We believe engaging in these processes and ensuring that the challenges and lived experiences of tangata whai-ora when making decisions that will impact the wellbeing of our communities is vital.
- b. In addition, objectors are not provided with an outline or program of the hearing and therefore required to be present throughout the entirety of the hearing. This is particularly problematic as some hearings will extend to the next day. In other instances, hearings have been adjourned at the hearing to a later date due to the unpreparedness of the applicant. Objectors and witness often take time off work to be able to engage in these processes. The disordered nature of the conduct of hearings impacts objectors and their witnesses, and creates challenges for the community to engage in these processes.
- c. In addition to supporting the replacement of section 202(5), we recommend that the district licensing committee provide a schedule to all who are involved in the hearing but also to the wider community. Providing a structured and ordered outline for the hearing benefits all those who are involved and helps those in the community engaging to better manage the commitment required.
- d. We also implore the DLC to consider where feasible conducting hearings outside of working hours (Monday to Friday 9am-5pm). In our view, providing hearings afterhours or on the weekend will increase the engagement levels of the community in these processes.

15. We support the new section 203a which allows the licensing committees to establish appropriate procedures.

- a. We particularly welcome section 203A(2)(c) the removal of cross-examination. In our experience many of the cross examinations of objectors aim at undermining and diminishing the very real harms of alcohol that objectors present. Below is a quote from Captain Jocelynn Smith in reflection of her hearing experience.

“We got to the end of the hearing, and I just felt absolutely demoralised and brutalised by the [liquor store owner’s] lawyer, who basically tried to intimidate and belittle me, and make it seem like I didn’t know what I was talking about.”

Many of our staff who engage in the hearing process share the same sentiments as Captain Smith. In our previous experience during cross examinations the applicant’s lawyer and the reporting agencies will diminish the level of alcohol harm that our staff see in our communities. The majority of objectors have never been in a court setting or have the ability to address combative questions such as those presented in these hearings. Therefore, removing the cross-examination process will address objectors feeling demoralised and brutalised.

- b. However, although we welcome the removal of cross examination, we do acknowledge that there are benefits to certain areas of cross examinations that are not intended to discredit objectors. In other experiences where we have assisted in hearings the cross-examinations were helpful in enabling us to elaborate more on the evidence brief, we had provided. Overall, the removal of cross-examination is the most equitable outcome for all, particularly for communities.
- c. The deficit created by the absence of cross-examination will mean that DLCs will need to be able to ask appropriate and informative questions during these hearings.

We recommend that the DLC receive training and operational support to ensure they are able to mitigate the absence of cross-examination.

- 16.** We strongly oppose the provisions outlined in Section 205(C) pertaining to striking out evidence or brief. We believe this section is vague and predisposes objectors to subjective opinions. In addition, we believe that what this section is trying to achieve are already covered in section 202 (3)(b). Case law has already illustrated that whilst organisations have the grounds to object to alcohol outlets their objections have been nullified⁵. In our view section 205(c) is the creation of another challenge in response to the amendment of section 102. Sections 205(c) thwarts the engagement of local communities in reducing alcohol harm in their communities.

⁵ Available at nzlii.org/cgi-bin/sinodisp/nz/cases/NZARLA/2018/316.html?query=Black%20Bull%20Gisborne%20Decision