

DRAFT FOR CONSULTATION

Sale and Supply of Alcohol (Harm Minimisation) Amendment Bill

Member's Bill

Explanatory note

General policy statement

The objective of the Sale and Supply of Alcohol Act 2012 (**the Act**) includes that “the harm caused by the excessive or inappropriate consumption of alcohol should be minimised”. Unfortunately a number of aspects of the Act do not meet this harm minimisation or public health approach and this Bill does two things to fix this.

Part 1 of the Bill abolishes appeals on local alcohol policies in order to provide proper local control over alcohol regulation. Territorial authorities can try to develop local alcohol policies to enhance community wellbeing. However, this part of the Act has failed because large companies have used their appeal rights in the Act to largely block the development of local alcohol policies. And those that have been adopted have only rarely included regulations over the location and density of stores selling alcohol. This means that communities have not been able to develop public health approaches to the provision of alcohol in their areas.

The Health Promotion Agency, a Crown agent, recommends that the appeal process should be abolished because the appeals process is “expensive and time-consuming”, for community members it is “unfamiliar, stressful and intimidating”, and the Act already requires territorial authorities to go through a special consultative process before adopting a local alcohol policy.

Part 2 of the Bill implements a number of the recommendations of the 2014 Ministerial Forum on Alcohol Advertising and Sponsorship. The Forum’s recommendations focus on reducing young people’s exposure to messages that encourage them to drink alcohol and removing the link between sport and alcohol. The Bill implements their recommendations by banning alcohol sponsorship and advertising of all streamed and live sports and banning alcohol sponsorship at all sporting venues.

The cultural connection between sport and alcohol needs to be broken, particularly given the large number of young people who attend and watch sports games. Similar restrictions on tobacco advertising and sponsorship have contributed to reduced harm from tobacco use and falling rates of youth consumption.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for:

- *Part 1* of the Bill to come into force on the day after Royal assent; and
- *Part 2* of the Bill to come into force 6 months after Royal assent.

Clause 3 identifies the Sale and Supply of Alcohol Act 2012 as the Act being amended by the Bill (the **principal Act**).

Part 1

Amendments relating to local alcohol policies

Clause 4 amends section 79 of the principal Act to replace references to a provisional local alcohol policy with references to a final local alcohol policy.

Clause 5 replaces section 80 of the principal Act, to reflect both the removal of the procedure for producing a provisional local alcohol policy and the ability to appeal against such a policy.

Clause 6 repeals section 81 to 86 of the principal Act, to remove both the procedure for producing a provisional local alcohol policy and the ability to appeal against such a policy.

Clause 7 amends section 87 of the principal Act, to reflect both the removal of the procedure for producing a provisional local alcohol policy and the ability to appeal against such a policy.

Clauses 8 to 10 make consequential amendments to sections 88 to 90 of the principal Act.

Clause 11 amends section 105 of the principal Act to specify two further criteria that the licensing authority or the licensing committee must have regard to in deciding whether to issue a licence.

Clause 12 amends section 131 of the principal Act to require the licensing authority or the licensing committee to have regard to all the matters set out in section 105(1) in deciding whether to renew a licence.

Clause 13 replaces section 133 of the principal Act, which relates to the renewal of licences where a relevant local alcohol policy exists.

Clause 14 amends section 135 of the principal Act, which relates to decisions on renewal of licences.

Clause 15 makes a consequential amendment to section 170 of the principal Act.

Clause 16 makes a consequential amendment to section 205 of the principal Act.

Part 2

Amendments relating to alcohol advertising and sponsorship

Clause 17 inserts a new *Part 4* into the principal Act. *New Part 4* inserts new sections 396A to 396K, which impose prohibitions on alcohol advertising and sponsorship:

- *new section 396A* is the interpretation section for *new Part 4*;
- *new section 396B* prohibits alcohol advertising during a broadcast sports activity;
- *new section 396C* prohibits alcohol advertising in or on a sporting venue during a broadcast sports activity;
- *new section 396D* prohibits alcohol sponsorship of a broadcast sports activity;
- *new section 396E* prohibits alcohol sponsorship of the name of a sports team or a player in a broadcast sports activity;
- *new section 396F* prohibits alcohol sponsorship of sports merchandise, uniforms, and equipment in a broadcast sports activity;
- *new section 396G* prohibits alcohol sponsorship of a sporting venue;
- *new section 396H* exempts certain international events from *new sections 396B to 396G* and authorises the Minister to grant exemptions in respect of certain international events;
- *new section 396I* authorises the Minister to grant exemptions from *new sections 396B to 396G* for certain multinational sporting events;
- *new section 396J* provides for the treatment of notices made under *new sections 396H and 396I*;
- *new section 396K* creates an offence of contravening *new sections 396B to 396G*.

Clause 18 makes a consequential amendment to the heading in Part 3, subpart 3, of the principal Act.

Chlöe Swarbrick

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sale and Supply of Alcohol (Harm Minimisation) Amendment Act **2021**.

2 Commencement

- (1) **Part 1** of this Act comes into force on the day after the date on which this Act receives the Royal assent.
- (2) **Part 2** of this Act comes into force on the day that is 6 months after the date on which this Act receives the Royal assent.

3 Principal Act

This Act amends the Sale and Supply of Alcohol Act 2012 (the **principal Act**).

Part 1

Amendments relating to local alcohol policies

4 Section 79 amended (Territorial authority must produce provisional policy by consulting on draft policy using special consultative procedure)

- (1) In the heading to section 79, replace “**provisional**” with “**final**”.
- (2) In section 79(1) and (2), replace “provisional” with “final”.
- (3) After section 79(2), insert:
- (3) Once a territorial authority has produced a final policy, the authority must consider whether to adopt the policy.

5 Section 80 replaced (Territorial authority wishing to adopt provisional policy must give public notice)

Replace section 80 with:

80 Territorial authority wishing to adopt final policy must give public notice

- (1) If, after producing a final policy under section 79, a territorial authority continues to wish to have a local alcohol policy, it must then give public notice of the final policy.
- (2) The public notice must be given in accordance with regulations made under this Act.

6 Sections 81 to 86 repealed

Repeal sections 81 to 86.

7 Section 87 amended (When local alcohol policy adopted)

- (1) Replace section 87(1) with:
 - (1) A final local alcohol policy is adopted 30 days after its public notification.
- (2) Delete section 87(2) to (5).

8 Section 88 amended (Territorial authority may discontinue development of local alcohol policy)

Repeal section 88(2).

9 Section 89 amended (Disallowance of local alcohol policy)

In section 89(1), replace “Once a provisional local alcohol policy has been adopted and ceased to be provisional” with “Once a final local alcohol policy has been adopted”.

10 Section 90 amended (When local alcohol policy is in force)

In section 90(1), replace “Once a provisional local alcohol policy has been adopted and ceased to be provisional” with “Once a final local alcohol policy has been adopted”.

11 Section 105 amended (Criteria for issue of licences)

After section 105(1)(g), insert:

(ga) whether (in its opinion) the current availability of alcohol for sale and supply in the locality is inadequate or insufficient:

(gb) whether (in its opinion) the issue of the licence will benefit the community and not contribute to alcohol-related harm:

12 Section 131 amended (Criteria for renewal)

In section 131(1)(a), delete “paragraphs (a) to (g), (j), and (k) of”.

13 Section 133 replaced (Renewal of licences where relevant local alcohol policy exists)

Replace section 133 with:

133 Renewal of licences where relevant local alcohol policy exists

(1) A licensing authority or licensing committee may refuse to renew a licence if, in its opinion, the renewal of the licence or the consequences of its renewal would be inconsistent with policies, on any or all of the matters set out in paragraphs (a) to (d) of section 77(1), that are contained in any relevant local alcohol policy.

(2) A licensing authority or licensing committee may impose particular conditions on any licence it renews if, in its opinion, the renewal of the licence or the consequences of its renewal without those conditions would be inconsistent with policies, on any or all of the matters set out in paragraphs (e) to (g) of section 77(1), that are contained in any relevant local alcohol policy.

14 Section 135 amended (Decision on renewal)

In section 135(1), delete “, subject to section 133,”.

15 Section 170 amended (Functions of licensing authority)

Repeal section 170(c).

16 Section 205 repealed (Right of persons to appear in relation to appeal under section 81)

Repeal section 205.

Part 2

Amendments relating to alcohol advertising and sponsorship

17 New Part 4 inserted

After section 396, insert:

Part 4

Prohibitions on alcohol advertising and sponsorship

396A Interpretation

(1) In this Part,—

alcohol product advertisement means any words, whether written, printed, or spoken, including on film, video recording, or other medium, broadcast or telecast, and any pictorial representation, design, or device, used to encourage the use or notify the availability or promote the sale of any alcohol product or to promote the consumption of alcohol; and includes—

- (a) any depiction, in a film, video recording, telecast, or other visual medium, of an alcohol product or an alcohol product trade mark, where in return for that depiction any money is paid, or any valuable thing is given, whether to the maker or producer of that film, video recording, telecast, or visual medium or to any other person; and
- (b) the use in any advertisement or promotion to the public of an alcohol product manufacturer's company name where that name or any part of that name is used as, or is included in, an alcohol product trade mark

broadcast means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus and includes—

- (a) any delayed transmission of programmes; and
- (b) any transmission of programmes streamed on the internet by a broadcaster; and
- (c) any transmission of programmes made on the demand of a particular person for reception only by that person

broadcaster means, subject to **subsection (2)**, a person who broadcasts programmes

craft means—

- (a) an aircraft;
- (b) a ship (as defined in section 2(1) of the Maritime Transport Act 1994)

large retailer, in relation to a person that is alleged to have committed an offence in a certain accounting period, means a retailer whose total turnover in the prior accounting period exceeded \$50 million (as accounting period and turnover are defined by section 2(1) of the Commerce Act 1986, except that in those definitions body corporate is to be read as any retailer)

organised sports activity means an organised sports activity that is—

- (a) to take place, is taking place, or has taken place, in whole or in part, in New Zealand; and
- (b) to be broadcast

programme—

- (a) means sounds or visual images, or a combination of sounds and visual images, intended—
 - (i) to inform, enlighten, or entertain; or
 - (ii) to promote the interests of any person; or
 - (iii) to promote any product or service; but
- (b) does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text

publish means—

- (a) insert in any newspaper or other periodical publication printed, published, or distributed in New Zealand; or
- (b) send to any person, by post or otherwise; or
- (c) deliver to any person or leave upon premises in the occupation of any person; or
- (d) broadcast; or
- (e) include in any film or video recording; or
- (f) include in any disk for use with a computer; or
- (g) disseminate by means of any other electronic medium; or
- (h) distribute by any means; or
- (i) display by way of a sign, notice, poster, or other means; or
- (j) bring to the notice of the public in New Zealand in any other manner

sporting venue includes a multi-purpose venue used for sports and for other activities

streamed means transmitted over the Internet as a continuous flow of data

trade mark includes any trade mark whether or not it is registered or registrable as such under the Trade Marks Act 2002; and also includes—

- (a) any brand name;
 - (b) any company name, where that name is used for advertising or promotional purposes;
 - (c) any name, word, or mark that so resembles any trade mark that it is likely to be taken as, or confused with, that trade mark.
- (2) For the purposes of this Part, a person who supplies transmission services to a person who broadcasts programmes is not, by reason only of the provision of those services, a broadcaster within the meaning of this Act unless the person who provides the transmission services is, where the person who broadcasts programmes is a company, in a position to exercise control, either alone or in association with any other person, of—
- (a) the operations of that company; or
 - (b) the management of any broadcasting station operated by that company; or
 - (c) the management of programmes broadcast by that company; or
 - (d) the selection or provision of programmes to be broadcast by that company.

Prohibitions on alcohol advertising

396B Alcohol advertising during broadcast sports activity prohibited

No person may publish in New Zealand, or arrange for any other person to publish in New Zealand, an alcohol product advertisement intended to be broadcast during an organised sports activity.

396C Alcohol advertising at sporting venue during broadcast sports activity prohibited

No person may publish an alcohol product advertisement in, at, or upon a sporting venue during an organised sports activity.

Prohibitions on alcohol sponsorship

396D Alcohol sponsorship of broadcast sports activities prohibited

- (1) No person who is a manufacturer, importer, distributor, or retailer of alcohol may sponsor (within the meaning of **subsection (2)**) an organised sports activity that involves the use, in the name of that activity, or on or through any thing other than an alcohol product, of all or any of the following:
- (a) an alcohol trade mark;
 - (b) all or any part of a company name included in an alcohol trade mark:

- (c) 1 or more words, logos, colours, shapes, sounds, smells, or other elements of an alcohol product trade mark that, as those 1 or more elements are used in the name, or on or through the thing, are likely to cause a person exposed to the name or thing to believe that the 1 or more elements are used in, on, or through it only or mainly for the purpose of advertising the product.
- (2) A person sponsors an activity for the purposes of **subsection (1)** if, and only if, the person does all or any of the following:
- (a) organises or promotes, before the activity is to take place, or during the time that it takes place, some or all of the activity;
 - (b) makes, before the activity is to take place, or during or after the time that it takes place, any financial or non-financial contribution towards some or all of the activity;
 - (c) makes, before the activity is to take place, or during or after the time that it takes place, any financial or non-financial contribution to any other person in respect of the organisation or promotion, by that other person, of, or the participation, by that other person, in, some or all of the activity.

396E Alcohol sponsorship of team or player in broadcast sports activity prohibited

- (1) No person may use an alcohol trade mark for the purpose of advertising or identifying to the public—
- (a) any sports team participating in an organised sports activity; or
 - (b) any person playing as a member of a sports team that is participating in an organised sports activity; or
 - (c) any person participating in an organised sports activity.
- (2) **Subsection (1)** applies despite a person being licensed to use the alcohol trade mark in question for that purpose.

396F Alcohol sponsorship of sports merchandise, uniforms, and equipment in broadcast sports activity prohibited

- (1) No person may use an alcohol trade mark on a non-alcohol article that is—
- (a) offered for sale or otherwise supplied; and
 - (b) associated with—
 - (i) any sports team participating in an organised sports activity; or
 - (ii) any person playing as a member of a sports team that is participating in an organised sports activity; or
 - (iii) any person participating in an organised sports activity.
- (2) No person may use an alcohol trade mark on a non-alcohol article that is—

- (a) part of a uniform associated with—
 - (i) any sports team participating in an organised sports activity; or
 - (ii) any person playing as a member of a sports team that is participating in an organised sports activity; or
 - (iii) any person participating in an organised sports activity; or
 - (b) an item of sports equipment used by or associated with—
 - (i) any sports team participating in an organised sports activity; or
 - (ii) any person playing as a member of a sports team that is participating in an organised sports activity; or
 - (iii) any person participating in an organised sports activity.
- (3) For the purposes of this section, **non-alcohol article** means an article that is not—
- (a) an alcohol product; or
 - (b) a package or container in which an alcohol product is sold or shipped.

396G Alcohol sponsorship of sporting venue prohibited

No person may permit the official name of a sporting venue to include all or any of the following:

- (a) an alcohol trade mark;
- (b) all or any part of a company name included in an alcohol trade mark;
- (c) 1 or more words, logos, colours, shapes, sounds, smells, or other elements of an alcohol product trade mark that, as those 1 or more elements are used in the name, or on or through the thing, are likely to cause a person exposed to the name or thing to believe that the 1 or more elements are used in, on, or through it only or mainly for the purpose of advertising the product.

Exemptions

396H Exemptions for participants in certain events

- (1) **Sections 396B to 396G** do not apply to the display, on any craft, of any alcohol product trade mark or the company name of any alcohol product manufacturer, where—
- (a) that craft is participating in an international race; and
 - (b) the alcohol product manufacturer who manufactures that alcohol product, or whose company name is so displayed, is sponsoring, in whole or in part, the participation of that craft in that race; and
 - (c) New Zealand is a port of call for that race.

- (2) The Minister may, by notice in writing, grant an exemption from any or all of **sections 396B to 396G** in respect of the promotion of any international craft race where New Zealand is a port of call for that race.
- (3) The Minister may, by notice in writing, grant an exemption from any or all of **sections 396B to 396G** in respect of any participant in an organised sports activity (not being a participant who is a New Zealand resident) for the purpose of allowing that participant to fulfil any obligation imposed on that participant to acknowledge any sponsor (being an obligation incurred before that participant submitted that person's entry for that activity), provided that—
 - (a) the Minister is satisfied that the organised sports activity is of international significance; and
 - (b) any part of that activity is to take place in New Zealand.
- (4) The Minister may grant an exemption under **subsection (2) or subsection (3)** either unconditionally or subject to such conditions as the Minister thinks fit.
- (5) The Minister may from time to time, by notice in writing to the person to whom any exemption is granted under **subsection (2) or subsection (3)**, amend or revoke that exemption.

396I Exemption for multinational sporting events

- (1) In this section, **multinational sporting event** means any sporting event, or any series of sporting events,—
 - (a) in which 3 or more countries are, or will be, represented; and
 - (b) that is being held, or will be held, in 2 or more countries, including New Zealand.
- (2) The Minister may, by notice in writing, grant an exemption from any or all of **sections 396B to 396G** in respect of—
 - (a) the use, in the name of a multinational sporting event, of—
 - (i) an alcohol product trade mark; or
 - (ii) a company name, or any part of a company name, of any manufacturer, importer, or distributor of alcohol products; or
 - (b) the advertisement of—
 - (i) a multinational sporting event; or
 - (ii) the fact that a multinational sporting event is organised or promoted or sponsored, in whole or in part, by any manufacturer, importer, or distributor of alcohol products; or
 - (c) the use, on any article, of—
 - (i) an alcohol product trade mark; or

- (ii) a company name, or any part of a company name, of any manufacturer, importer, or distributor of alcohol products—
for the purpose of advertising or promoting or identifying to the public—
 - (iii) a multinational sporting event; or
 - (iv) the fact that a multinational sporting event is organised or promoted or sponsored, in whole or in part, by any manufacturer, importer, or distributor of alcohol products.
- (3) The Minister may grant an exemption under **subsection (2)** either unconditionally or subject to such conditions as the Minister thinks fit.

396J Treatment of notices under sections 396H and 396I

A notice given under **section 396H or 396I** must, as soon as practicable after it is given, be—

- (a) published on an Internet site administered by or on behalf of the Ministry of Justice; and
- (b) notified in the *Gazette*.

Offences

396K Offence in respect of alcohol advertising and sponsorship

Every person who contravenes any or all of **sections 396B to 396G** commits an offence and is liable on conviction to,—

- (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$600,000; or
- (b) in the case of a large retailer, to a fine not exceeding \$200,000; or
- (c) in any other case, to a fine not exceeding \$50,000.

18 New part heading inserted

Replace the subpart heading and cross-heading above section 397 with:

Part 5
Other matters

Regulations