

Local Government (Alcohol Reform) Amendment Bill

Government Bill

As reported from the committee of the whole
House

This Bill was formerly part of the Alcohol Reform Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Sale and Supply of Alcohol Bill comprising clauses 1 and 2, Parts 1, 3, and 6, and the Schedules
 - this Bill comprising Part 9
 - Summary Offences (Alcohol Reform) Amendment Bill comprising Part 10.
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Local Government (Alcohol Reform)
Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon Judith Collins

Local Government (Alcohol Reform) Amendment Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Local Government (Alcohol Reform) Amendment Act **2012**.
- 2 Commencement** 5
This Act comes into force on the day 12 months after the date on which it receives the Royal assent.
- 3 Principal Act** 10
This Act amends the Local Government Act 2002 (the **principal Act**).
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- 402 New sections 147 to 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Section 147 is repealed and the following sections substituted: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 5

“(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: 10

“(a) the consumption of alcohol in public places:

“(b) the bringing of alcohol into public places:

“(c) the possession of alcohol in public places. 15

“(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 generally or for one or more specified periods, the presence or ~~use of a vehicle~~ consumption of alcohol in vehicles, or vehicles of stated kinds or descriptions, in public places. 20

“(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— 25

“(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 30

“(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 35

“(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**

- “(1) Before making a bylaw under **section 147**, a territorial authority— 5
- “(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— 10
- “(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 15
- “(ii) the bylaw is appropriate and proportionate in the light of that crime or disorder.
- “(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. 20
- “(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— 25
- “(a) the bylaw can be justified as a reasonable limitation on people’s rights and freedoms; and 30
- “(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 35
- “(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)**.

“**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
- “(b) the bylaw, as applied by the resolution,—
 - “(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**

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:
- “(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).”

403 New sections 169 and 169A and new heading substituted

Section 169 is repealed and the following sections and heading substituted:

“**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**

“**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. 5

“(2) A constable may, without warrant,—

“(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 10

“(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: 15

“(c) arrest any person whom the constable finds committing an offence:

“(d) arrest any person who has refused to comply with a request by a constable— 20

“(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.

“(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. 25

*“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** 30

“(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.

“(2) This subsection applies to a substance in respect of which a breach of alcohol ban is alleged to have been committed if the 35

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

“(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 5

“(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— 10

“(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.” 15

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) 20

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 25

“(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 30

“(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;— 35

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. 5

“(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: 10

“243 Interpretation

“(1) In this subpart,—

“**alcohol ban** means a bylaw made under **section 147**

“**enforcement officer**, in relation to an alcohol ban, means a constable 15

“**infringement fee**,—

“(a) in relation to an infringement offence specified as such by regulations under section 259(a), means the amount prescribed by regulations under section 259(b) as the infringement fee for the offence; and 20

“(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**—

“(a) means an offence specified as such by regulations under section 259(a); and 25

“(b) includes a breach of an alcohol ban.

“(2) The definition in **subsection (1)** of **enforcement officer** overrides the definition of that term in section 5.

“244 Proceedings for infringement offences 30

“(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 Act 1957; or 35

- “(b) be served with an infringement notice 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 5
- “(b) must not be proceeded against under the Summary Proceedings Act 1957.”
- 407 Issue of infringement notices** 10
- Section 245 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) An infringement notice not relating to a breach of an alcohol ban may be served—
- “(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 a breach of an alcohol ban may be served— 20
- “(a) by a constable personally delivering it to the person alleged to have committed the breach; or
- “(b) by a constable personally delivering it, at a time after the person alleged to have committed the breach has been arrested for committing it, to the person; or 25
- “(c) by post addressed to the last known place of residence or business of the person alleged to have committed the breach.”
- 408 New section 245A inserted** 30
- 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 his or her name, address, and date of birth.” 35

*Transitional provisions***409 References in bylaws to liquor**

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)**. 5

410 Existing bylaws to expire

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**. 10

411 Processing of certain proposals for bylaws

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 228 402** had not been enacted; but
- (b) it expires 5 years after it is made.

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Legislative history

6 December 2012

Divided from Alcohol Reform Bill by committee of the whole House as Bill 236–3B