

# **Sale of Liquor Amendment Bill (No 3)**

Government Bill

As reported from the Commerce Committee

## **Commentary**

### **Recommendation**

The Commerce Committee has examined the Sale of Liquor Amendment Bill (No 3) and reports the bill with recommended amendments but could not agree that the bill be passed as amended.

### **Introduction**

The Sale of Liquor Amendment Bill (No 3) (the bill) makes amendments to the Sale of Liquor Act 1989 (the Act). Principally the bill, as referred to us:

- removes the monopoly trading rights of the seven licensing trusts that still have them
- enables licensing trusts to carry on business outside their districts
- provides for licensing trusts to be able to reconstitute as community trusts
- makes other minor changes to the Sale of Liquor Act.

We identified the following major issues:

- trading rights of licensing trusts
- reconstituting licensing trusts as community trusts
- the disclosure threshold for licensing trusts
- transitional arrangements for existing on-licences

- neighbouring land use as a criteria in District Licensing Authorities' considerations.

We were unable to agree on the trading rights of licensing trusts (clause 6 of the bill).

## **Trading rights of licensing trusts**

### **Monopoly rights of district and suburban trusts**

The bill, as referred to us, seeks to remove the monopoly trading rights of the seven licensing trusts that still have exclusive rights to sell liquor at taverns and hotels and to run off-licence liquor stores within their districts. At the same time it removes the restrictions on licensing trusts operating outside their licensing trust district.

By doing so, the bill implements a recommendation from the March 1997 report of the Liquor Advisory Committee. The recommendation was made primarily on the basis that monopoly trading rights do not contribute to the purpose of the Act, which is defined in section 4 of the Act as being:

To establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.

Most of the submissions we received in favour of removing monopoly trading rights for licensing trusts came from supermarkets and private individuals. The main arguments were that:

- there are benefits associated with competition including lower prices, greater choice and convenience
- the sale of liquor in supermarkets, as a complement to food, is in line with mature drinking attitudes
- supermarkets in licensing trust districts are subject to unfair competition from nearby supermarkets that are not in licensing trust districts
- there is significant community support for the removal of monopoly trading rights.

Licensing trusts and community groups are the main opponents of the removal of monopoly trading rights. They argue that:

- removal of monopoly trading rights should remain a community decision
- the current system provides for democratic representation on licensing trust boards
- community groups will receive less funding

- there is no community support for the removal of monopoly rights.

We considered a range of options, as set out in Appendix A, that sought to balance the demands for local democratic control and the operation of a free market. We are unable to reach a majority agreement on this issue.

Government members believe that licensing trusts that retain exclusive retailing rights in the main return significant benefits to their communities. Government members support the other amendments in the bill that will lead to significant operational benefits for the licensing trusts. However, Government members believe that the electors in the licensing trust districts concerned should make any changes to the retailing rights of these trusts. On these grounds Government members see it as unacceptable for the rights of these trusts to be removed by Parliament. However, Government members are open to amendments that would see an early test of local support for the trusts.

National and ACT members believe that the retention of the exclusive retailing rights of the trusts constitute a significant restraint on the freedoms of residents within the remaining trust districts. National and ACT members agree with the recommendation of the Liquor Advisory Committee that forms the basis of the proposal to remove the exclusive trading rights. The opposition believe that retaining these exclusive trading rights does not contribute to the reduction of liquor abuse. National and ACT members agree with those submitters who argue substantial benefits flow to communities from greater competition.

National and ACT members support option 8 (as set out in Appendix A) and therefore do not require amendments to this clause of the bill. Government members believe that any decision to change trust trading rights should be made by the residents of the trust areas affected but do not believe that triennial polls are necessary.

### **Removal of restrictions on local licensing trusts**

The bill also removes the restriction on local licensing trusts (as listed in Part II of the Third Schedule of the Act) operating outside their licensing trust district. Local licensing trusts never had the monopoly trading rights enjoyed by the suburban and district trusts. Four submissions support the repeal of sections 217 to 219 on the grounds that restricting the area of activities of licensing trusts

without monopoly trading rights is unfair. We received no submissions against this change. We believe that it is inappropriate to restrict the geographical area of operation of local licensing trusts in the absence of any favourable trading conditions within that geographical area. It places local licensing trusts at a disadvantage when competing with privately operated premises, which in turn reduces their ability to benefit the community.

### **Reconstituting licensing trusts as community trusts**

Clause 7 adds Part 9A to the Act. Under Part 9A licensing trusts will have the option of reconstituting as community trusts. The Liquor Advisory Committee recommended that all licensing trusts be compelled to reconstitute as community trusts. After consultation with licensing trusts and the Licensing Trust Association in 1998, the then Minister of Justice decided that reconstitution should be optional.

The community trust model was designed to address a number of concerns about the operation of licensing trusts. The major concern was that the current legislation was hindering the financial success of licensing trusts and preventing them from organising their operations in ways that may be more effective. They are also prevented from exploring opportunities outside of the hospitality industry that could lead to improved returns and therefore community benefits. There are other concerns:

- Electors should receive more information about the operation of licensing trusts.
- Management companies and charitable trusts set up or controlled by licensing trusts could fall outside of the accountability and audit regime established by the Act.
- Licensing trusts cannot comply with basic prudent management concepts as their assets are all linked to the hospitality industry.

The aim of the community trust model was to create a flexible mechanism that allowed reconstituted licensing trusts to organise their operations in the way most appropriate to their individual circumstances and give them freedom to operate in industries other than the hospitality industry, while ensuring that their operations remained accountable and transparent. While most submissions support the concept of licensing trusts being able to reconstitute as

community trusts there is substantial criticism of a number of aspects of the framework set out for these trusts.

### **Tax treatment of community trusts**

The main point of contention relating to licensing trusts reconstituting as community trusts relates to the tax status of these trusts. It was submitted that tax status will have a major influence on whether or not licensing trusts use the community trust option. It is already a major influence on how licensing trusts structure operations. Clause 219ZC states that a community trust is liable to income tax, and to rates, and to all other taxes and duties, as if it were a body corporate formed for private pecuniary gain.

We carefully considered submissions in favour of treating community trusts as qualifying trusts. This would effectively mean that distributions to beneficiaries could be taxed at the beneficiary's own tax rate so any distributions to charities will not be taxed. If the community trusts are treated as companies they will need to pay tax at 33 percent on distributions, even if they are to charities. The main arguments in favour of qualifying trust treatment are that:

- the primary focus of community trusts will be to carry out activities "beneficial to the community" as opposed to that of licensing trusts, which operate to make a profit from commercial activity
- other community trusts, such as the community trusts established under the Community Trusts Act 1999 receive such treatment.

While we agree that there are arguments in favour we are not recommending any change to the tax status proposed in the bill. Community trusts are empowered to distribute profits to charitable, cultural, philanthropic, and other purposes beneficial to the community. Many current beneficiaries of licensing trusts, such as local sports clubs, do not have charitable status. We are anxious not to create incentives for trusts to constitute in such a way as to prevent distributions to community groups that are not of charitable status. We are also concerned about establishing a precedent for providing beneficial tax treatment to a particular class of entities. Some of us believe that this issue has brought to light some anomalies in the tax treatment of entities with purposes that would be widely viewed as charitable that should be addressed in a wider review of taxation matters.

**Distribution of profits**

New section 219L specifies that a community trust is to operate towards purposes beneficial to the community in its region of the community trust. We believe that this proposed section should be amended to ensure community trusts can distribute some profits outside their regions. The requirement, in its current form, could be technically hard to comply with given that the areas of operation of beneficiaries may not always be entirely in the area of the community trust district. For example, a charity or club to which the community trust distributes proceeds may have operations, facilities or members outside of the community trust district.

**Reinvestment of net profit**

A number of submitters expressed concern that new section 219M will require a community trust to distribute all its net profit. Prudent management may require some profit to be retained for redevelopment or reinvestment. Such a provision could lead to the gradual degradation of the community trusts. We believe it is desirable to avoid any uncertainty on this matter. We recommend that new section 219M be amended so that it is clear that a community trust is not required to distribute all its net profit, so some may be reinvested or retained for the purposes of the trust.

**Financial year**

Currently licensing trusts have a financial year of 1 April to 31 March. New section 219X(1) provides that the financial year of a community trust commences on 1 July in each year and ends on 30 June in the following year. We received six submissions opposing this provision. Some submitters argue that community trusts should have the same financial year as licensing trusts. Others argue that they should be able to choose their own financial year.

A financial year from 1 July to 30 June is consistent with the financial year in the government sector and is also consistent with community trusts established under the Local Government Act 1974. However, the Community Trusts Act sets the balance date for financial statements at 31 March. It is also common in the private sector for the financial year to be from 1 April to 31 March. As the financial year for licensing trusts currently ends on 31 March it may be more convenient for licensing trusts reconstituting as community trusts to retain the same financial year.

Stipulating a consistent financial year for all community trusts allows the financial performance of each community trust to be compared and contrasted, especially by the Office of the Controller and Auditor-General which produces intermittent reports on licensing trusts. It would also allow this comparison to be done between community trusts and licensing trusts. We recommend amending new section 219X(1) so that the financial year for community trusts is from 1 April to 31 March.

### **Financial statements**

Two issues arose relating to the requirements for the financial statements for community trusts. The first relates to the time frame for completing financial statements. We agree with submissions that argue for the time frame for completing financial statements to be extended from two months to three months and recommend the bill be amended accordingly.

The second issue relates to a requirement for community trusts to send both financial statements and the Audit Office's report to the Minister of Justice, publish them in the *Gazette*, and publicly notify them in the region of the community trust. Licensing trusts are not currently required to send financial statements or Audit reports to the Minister of Justice or to publish them in the *Gazette*. The Minister of Justice is not responsible for the operation of community trusts or accountable to Parliament for their financial performance. Community trusts do not receive any government funding. Therefore we recommend the bill be amended to remove the requirement for a copy of the financial statements and the Audit Office's report to be sent to the Minister of Justice. We also recommend the removal of the requirement for this information to be published in the *Gazette* so long as it is annually published in a form that is publicly available, such as in a local newspaper. We recommend an amendment to require that the financial statements and Audit Office's report be open for public inspection.

To ensure the accountability of community trusts to their electors, we recommend that new section 219X(5) be amended to ensure that the Audit Office can exercise all its powers under the Public Finance Act 1977. It currently exercises these powers in relation to licensing trusts.

## **The disclosure threshold for licensing trusts**

Clause 4 establishes new financial reporting requirements for licensing trusts. Licensing trusts, in preparing their annual financial statements must disclose:

- the remuneration paid the president
- the total fees and expenses paid to members
- the number of employees who receive \$80,000 or more, in bands of \$10,000.

Licensing trusts exist because the law recognises that the community has the right to create and control an entity for community benefit. Licensing trust district electors have a right to monitor and hold the licensing trust accountable to the community to ensure that it delivers benefits to the community. Accountability is enhanced by increasing the amount of relevant knowledge that electors have about the operation of the licensing trust.

While submissions tend to be in favour of disclosure there is some concern that the levels stipulated are not consistent with the Local Government Act 1974 or the Companies Act 1993. The Privacy Commissioner recommended that the \$80,000 threshold be replaced with a \$100,000 threshold and that the bands of \$10,000 be replaced with bands of \$20,000. He gave the following reasons:

- The reporting regime will be consistent with the Companies Act disclosure regime.
- There will be enhanced protection of the privacy of employees in regard to each person's remuneration.
- Where only one salary is reported in a band, provide a comfort zone in which precise particulars of remuneration are disguised.

Raising the disclosure threshold for employees and former employees to \$100,000 would be consistent with the Companies Act. However, the brackets of \$10,000 proposed in the bill are already consistent with those set under the Companies Act. We understand the Privacy Commissioner is working towards having these raised to \$20,000. While we are sympathetic to the privacy arguments behind this move, we believe it is important to ensure consistency with the existing law. For this reason we recommend the disclosure threshold be raised to \$100,000 but that the \$10,000 bands remain.



### **Trading rights of existing on-licences**

On-licenses issued prior to 1 April 2000 were often restricted to allow the sale of liquor to certain classes of consumer.

Last year Parliament amended section 7 of the Sale of Liquor Act so that as from 1 April 2000 an on-licence permits the licensee to sell liquor to any person legally present on the premises. The intent of this amendment is to allow all on-licences to supply liquor to all classes of consumer from 1 April 2000. Some confusion exists as to whether an on-licence granted before 1 April 2000 and only allowing certain classes of consumer to be supplied liquor after 1 April allows all classes of consumer to be supplied liquor. There was no transitional arrangement in the Act to address this issue. Consequently, distinctions may be drawn on the classes of customers to be supplied liquor solely on the date of the issue or renewal of a licence.

We considered the argument put forward by the Hospitality Association of New Zealand that the amendment to section 7 should not be made retrospective. As licences are renewed the current restrictions will gradually be removed. This means that before long all on-licences will be able to supply liquor to all classes of customers. It is not clear what benefit will accrue from continuing the current anomaly. We recommend an amendment to the bill to ensure that existing on-licences granted before 1 April 2000 are treated as having been granted under the new section 7.

### **Neighbouring land use as a criteria in District Licensing Authorities' considerations**

Councillor Richard Northey of the Auckland City Council proposes the inclusion of criteria that would allow District Licensing Authorities to consider the suitability of the location of proposed licensed premises in determining an application for a liquor licence.

We are sympathetic with the thrust of Councillor Northey's submission. However, we believe that general consideration of matters of location are best dealt with under the Resource Management Act 1991. We understand that the lack of a specific location criteria in the Sale of Liquor Act is not an impediment to using the Resource Management Act to consider these issues.

**Supermarket spirit sales outside scope**

The Distilled Spirits Association of New Zealand argues that the bill should be amended to allow supermarkets to be able to sell all types of liquor. It points to what it sees as anomalies in the current law that mean that high alcohol beers and wine can be sold while lower alcohol drinks based on spirits cannot. We were unable to consider the Association's submission as the matter it raises is outside the scope of the bill.

**Commencement date**

The commencement date set in the bill has passed. We recommend a new commencement date of 1 November 2000. We also recommend an amendment so that the first meeting of electors under new section 207A is to be held in 2001, rather than 2000.

## **Appendix A**

### **Monopoly trading rights in the Sale of Liquor Amendment Bill (No 3)**

The committee considered eight options:

1. Status quo
2. Reducing the threshold
3. Requiring an early competition poll
4. Requiring an early competition poll *and* reducing the threshold
5. Requiring regular competition polls and abolishing the other poll triggers
6. Requiring regular competition polls and keeping existing triggers
7. Requiring regular competition polls *and* reducing the threshold
8. Removing monopoly rights (the bill).

#### **Option 1: Status quo**

Licensing trusts would retain monopoly trading rights until a successful competition poll is held.

#### **Option 2: Reducing the threshold**

The competition poll mechanism could be amended so that they are easier for the public to initiate by reducing the required elector threshold from 15 percent to 10 percent. A 10 percent threshold is also consistent with what is required under the Citizens Initiated Referenda Act 1993. This would make it easier for the public to initiate a competition poll and test the community mandate for the retention of monopoly trading rights. This is the option for change that is closest to the status quo.

#### **Option 3: Requiring an early competition poll**

The bill could be amended to force those trusts with monopoly trading rights to conduct a poll in the near future without a resolution from the trust or a petition from 15 percent of the population. If this poll saw a majority vote in favour of maintaining the trust monopoly the situation would revert to the status quo. If this option was followed it is envisaged a poll would be conducted in the remaining monopoly trust areas in conjunction with the next council elections. West Auckland Trust Services (submission 13) stated in their oral submission that a poll, when combined with a local body election costs between \$7,000 and \$8,000. They also estimate that a separately conducted poll costs around \$40,000.

**Option 4: Requiring an early competition poll and reducing the threshold**

Under this option trusts would be forced to hold a poll as with option 3. If this poll saw a majority for the retention of monopoly rights, a new poll could be forced by a petition signed by 10 percent of those entitled to vote in a trust election rather than 15 percent required currently.

**Option 5: Requiring regular competition polls and abolishing the other triggers**

This option would see the current system of polls being triggered by a resolution of the trust or a petition signed by 15 percent of those entitled to vote in trust elections being abolished and replaced by an automatic poll held in conjunction with each triennial council election. This option will allow the community to retain decision making powers but ensure that monopoly rights are not maintained due to apathy.

**Option 6: Requiring regular competition polls and *keeping* the other triggers****Option 7: Requiring regular competition polls *and* reducing the threshold**

These options would see a poll held in conjunction with each council election with voters retaining the ability to require a poll between elections. Option 7 would make it easier to require an inter-election poll. These options seemed to have little support from the committee.

**Option 8: Removing monopoly rights (the bill)**

The monopoly trading rights retained by seven licensing trusts would be removed without requiring a successful competition poll to be held. This option implements a recommendation of the Liquor Advisory Committee. The Liquor Advisory Committee concluded that as there was no evidence that the operation of licensing trusts with monopoly trading rights led to lower rate of liquor abuse or safer drinking environments, there was therefore no justification for maintaining monopoly trading rights. It does not provide for any local democratic control over licensing trusts.

## **Appendix B**

### **Committee process**

The Sale of Liquor Amendment Bill (No 3) was referred to the committee on 5 October 1999. The closing date for submissions was 14 April 2000. We received and considered 49 submissions from interested groups and individuals. We heard 31 submissions orally, including nine in Invercargill and 12 in West Auckland. Hearing evidence took nine hours and 37 minutes. Consideration took four hours and 53 minutes. We received advice from the Ministry of Justice, the Inland Revenue Department and The Treasury.

### **Committee membership**

David Cunliffe (Chairperson)  
Kevin Campbell (Deputy Chairperson)  
Steve Chadwick  
Hon Ruth Dyson  
Gerrard Eckhoff  
Warren Kyd  
Dr the Hon Lockwood Smith  
Pansy Wong

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

**[** Subject to this Act, **]**

Text struck out unanimously

**New (unanimous)**

**[** Subject to this Act, **]**

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Note: This bill has been reformatted in accordance with the resolution of the House of 22 December 1999.

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# Sale of Liquor Amendment (No 3)

## Government Bill

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10	Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Licensing Authority	<i>Amendments relating to Sale of Liquor Amendment Act 1999</i>	
11	Renumbering of subsection	13A	Transitional provision in respect of on-licences
12	Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Licensing Authority	13	Schedule 1 of Sale of Liquor Amendment Act 1999 amended

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

**1 Title**

- (1) This Act is the Sale of Liquor Amendment Act **(No 3) 1999**.
- (2) In this Act, the Sale of Liquor Act 1989<sup>1</sup> is called “the principal Act”.

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<sup>1</sup> 1989, No 63

**1A Commencement**

Except as provided in (*section*) **sections 13A(3) and 13(2)**, this Act comes into force on (*1 April 2000*) **1 November 2000**.

**Part 1**

**Amendments to principal Act relating to licensing trusts**

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**2 Purpose of this Part**

The purpose of this Part is—

- (a) to increase the financial disclosure made by licensing trusts in relation to the fees and remuneration of presidents, members, and certain employees: 15
- (b) to require licensing trusts to hold annual meetings of electors:
- (c) to remove the restrictions on licensing trusts and others competing within and outside the districts of licensing trusts: 20
- (d) to permit licensing trusts to reconstitute as community trusts.

**3 Interpretation**

Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions: 25



“**community trust** means a community trust established under **section 219G** or a community trust that is the amalgamation of 2 or more community trusts under **section 219Z**

“**public notice**,—

- “(a) for the purposes of this Act, other than **Part 9A**, means a notice published twice in a newspaper or newspapers— 5
- “(i) nominated for the purpose of any application or other matter under this Act (whether generally or in any particular case) by the Secretary of the District Licensing Agency; and 10
- “(ii) circulating in the locality to which the act, matter, or thing required to be publicly notified relates or refers, or in which it arises; and
- “(iii) with an interval of not less than 5 nor more than 10 days between each notification: 15
- “(b) for the purposes of **Part 9A**, means a notice published twice in a newspaper or newspapers—
- “(i) circulating in the district of the licensing trust concerned or the region of the community trust concerned (as the case may be); and 20
- “(ii) with an interval of not less than 5 nor more than 10 days between each notification”.

#### **4 Yearly balance sheet and statements**

Section 207 of the principal Act is amended by repealing subsection (1), and substituting the following subsections: 25

- “(1) On or before 30 June in each year, a licensing trust must prepare—
- “(a) a yearly balance sheet and a profit and loss account; and
- “(b) such other statements of account as may be necessary to show fully the financial position of the licensing trust and the financial results of its operations; and 30
- “(c) a statement showing—
- “(i) the sum paid to the president of the licensing trust by way of remuneration; and
- “(ii) the total fees and expenses paid to the members of the licensing trust; and 35
- “(iii) the number of employees and former employees of the licensing trust who received remuneration and any other benefits in their capacity as employees of the licensing trust, the value of 40

which was or exceeded ~~(\$80,000)~~ \$100,000 per annum, and showing the number of employees in brackets of \$10,000.

“(1A) The balance sheet, profit and loss account, and statements must relate to the financial year ended on 31 March preceding the date by which they must be prepared.” 5

## 5 Annual meeting of electors

The principal Act is amended by inserting, after section 207, the following section:

“207A Annual meeting of electors 10

“(1) A licensing trust must call a meeting of electors to be held in each calendar year, beginning in the year ~~(2000)~~ 2001.

“(2) A meeting of electors must be held after, but not later than 2 months after, the yearly balance sheet, profit and loss account, and statements have been audited under section 207. 15

“(3) Not less than 10 working days’ public notice of a meeting of electors must be given to electors.

“(4) At a meeting of electors the president and members of the licensing trust must—

“(a) report to the electors on the licensing trust’s operations in the most recent completed financial year; and 20

“(b) provide a reasonable opportunity for electors at the meeting to ask questions about, and to discuss or comment on, those operations.”

6 Sections 214 to 219 of principal Act repealed 25  
Sections 214 to 219 of the principal Act are repealed.

## 7 New Part 9A inserted

The principal Act is amended by inserting, after Part IX, the following Part:

### “Part 9A 30 “Community trusts

*“Reconstitution of licensing trust as community trust*

“219A Licensing trust members may resolve to reconstitute trust as community trust

The members of a licensing trust may pass a resolution that the trust be reconstituted as a community trust. 35

**“219B Public notice of resolution**

“(1) Within 10 working days after passing a resolution under **section 219A**, the licensing trust must give public notice of the resolution.

“(2) The public notice must also refer to the right of electors of the licensing trust to require a meeting to be called under **section 219C**, and to require a poll to be held under **section 219E**. 5

**“219C Electors may requisition meeting**

“(1) Electors of the licensing trust may, by notice in writing, request the licensing trust to hold a public meeting to discuss the resolution. 10

“(2) If 50 or more electors request a meeting, the licensing trust must hold a public meeting within 20 working days after the day it received the required number of requests.

**“219D Meeting to discuss resolution**

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“(1) A licensing trust must give not less than 5 working days’ public notice of a meeting of electors of the licensing trust to discuss a resolution passed under **section 219A**.

“(2) A meeting of electors of the licensing trust may resolve by a majority of votes to confirm or revoke a resolution. 20

“(3) If a resolution is confirmed, then the licensing trust must be reconstituted as a community trust.

**New (unanimous)**

“(3A) <b>Subsection (3)</b> applies subject to <b>section 219E</b> .
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“(4) If a resolution is revoked, then the licensing trust must not pass another resolution under **section 219A** earlier than 1 year after the date on which the resolution is revoked. 25

**“219E Poll on resolution**

“(1) Electors of the licensing trust may, by notice in writing, request the licensing trust to hold a poll on a resolution passed under **section 219A**. 30

“(2) If, within 40 working days after public notice of the resolution is given, 15% or more of the electors of the licensing trust request a poll, the licensing trust must hold a poll on the

resolution in accordance with regulations made under this Act.

“(3) A poll does not have to be held if a resolution has been revoked under **section 219D(2)**.

“(4) A poll must be held even though a resolution has been confirmed under **section 219D(2)**. 5

**New (unanimous)**

“(5) If on a poll a majority of electors who vote are in favour, then the licensing trust must be reconstituted as a community trust.

**“219F Electors may requisition poll**

“(1) Electors of a licensing trust may, by notice in writing, request the licensing trust to hold a poll on whether the licensing trust should be reconstituted as a community trust. 10

“(2) If 15% or more of the electors request a poll, the licensing trust must hold a poll on the issue in accordance with regulations made under this Act. 15

“(3) If on a poll a majority of electors who vote are in favour, then the licensing trust must be reconstituted as a community trust.

**“219G Establishment of community trust**

“(1) A licensing trust that is required by **section 219D(3)**, **section 219E(5)**, or **section 219F(3)** to be reconstituted as a community trust must, as soon as practicable, establish a community trust. 20

“(2) A community trust is established when the licensing trust executes a trust deed providing for the matters specified in **section 219N**.

“(3) The trust deed must, as soon as practicable after its execution, be notified in the *Gazette*. 25

**“219H Vesting of licensing trust’s undertaking in community trust**

“(1) The Governor-General may, by Order in Council made on the 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. 30

- “(2) The date specified in an Order in Council made under this section must be not less than 20 working days after the date on which the order is made.
- “(3) On the date specified in an Order in Council made under this section,— 5
- “(a) the licensing trust is dissolved:
- “(b) all real and personal property, including all licences under this Act, belonging to the licensing trust, vests in the community trust:
- “(c) all money payable to or by the licensing trust is payable to or by the community trust: 10
- “(d) all liabilities, contracts (including employment contracts), and engagements, and all rights and authorities of any nature whatever, of the licensing trust are the liabilities, contracts, engagements, rights, and authorities of the community trust: 15
- “(e) all proceedings by or against the licensing trust may be carried on or prosecuted by or against the community trust.
- “(4) Nothing authorised or effected under this section— 20
- “(a) places the licensing trust or the community trust in breach of contract or confidence or makes them guilty of a civil wrong:
- “(b) entitles any person to terminate or cancel any contract or arrangement or accelerate the performance of any obligation: 25
- “(c) places the licensing trust or the community trust in breach of any enactment or rule of law prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information: 30
- “(d) 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.

*“Status, name, region, and purpose of community trust*

- “219I **Community trust to be body corporate with full powers** 35
- “(1) A community trust is a body corporate with perpetual succession and a common seal.
- “(2) For the purpose of its object and activities, a community trust has full rights, powers, and privileges.

- “(3) The common seal of a community trust must be judicially noticed in all courts and for all purposes.
- “(4) This section applies subject to the provisions of this Part.
- “219J **Name of community trust**
- “(1) A community trust must have a name. 5
- “(2) A community trust may, from time to time, change its name, subject to **subsection (3)** and its trust deed.
- “(3) The name of a community trust must include the words ‘Community Trust’.
- “219K **Region of community trust** 10
- The region of a community trust is the same as the district of the licensing trust immediately before it was reconstituted as a community trust.
- “219L **Purpose of community trust**
- “(1) All property vested in, or belonging to, a community trust is held on trust to be applied to charitable, cultural, philanthropic, recreational, and other purposes beneficial exclusively or principally to the community in the region of the community trust. 15
- “(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 liquor. 20
- “219M **Duty to apply net profits**
- “(1) A community trust must apply any net profits arising from its *(operations)* activities to the purpose of the community trust as described in **section 219L**. 25
- New (unanimous)**
- “(2) However, a community trust may, instead of applying all of its net profits as required by **subsection (1)**, retain so much of its net profits as appears prudent for the purposes of its activities (including any proposed activities). 30

*“Trust deed***“219N Matters to be included in trust deed**

- “(1) A trust deed of a community trust must contain provisions—
- “(a) specifying the name of the community trust:
  - “(b) specifying the purpose of the community trust as set out in **section 219L**: 5
  - “(c) specifying the general activities to be undertaken by the community trust:
  - “(d) specifying the minimum and maximum number of trustees: 10
  - “(e) for the holding of, and voting at, meetings of trustees and specifying the quorum necessary for the holding of meetings of trustees:
  - “(f) for the remuneration of trustees:
  - “(g) specifying the manner in which a trustee may resign his or her office as trustee: 15
  - “(h) specifying the manner in which a vacancy in the office of trustee must be filled:
  - “(i) for the appointment of officers, employees, managers, and agents: 20
  - “(j) specifying the powers of investment of the trustees:
  - “(k) specifying the powers of the trustees to expend capital and income of the trust:
  - “(l) for the keeping of accounts:
  - “(m) specifying the manner in which the trust deed may be varied: 25
  - “(n) specifying such other matters as the licensing trust or community trust concerned considers appropriate.

**New (unanimous)**

- “(2) **Subsection (1)(m)** applies subject to **section 2190**.

**“219O Variation of trust deed**

- “(1) The trustees of a community trust may vary the trust deed of a community trust by executing a deed of variation of the trust deed. 30
- “(2) A variation of the trust deed must, as soon as practicable after the variation is made, be notified in the *Gazette*. 35

**“219P Trust deed not to be inconsistent with this Act**

- “(1) A trust deed of a community trust must not contain provisions inconsistent with this Act.
- “(2) A provision in a trust deed of a community trust that is inconsistent with this Act is unenforceable and of no effect. 5

**New (unanimous)**

- “(3) In this section, **trust deed** includes a variation of the trust deed.

*“Trustees***“219Q Trustees**

The first trustees of a community trust are the members of the licensing trust immediately before it is reconstituted as the community trust. 10

**“219R Election of subsequent trustees**

- “(1) Trustees of a community trust (after the first trustees) are to be elected. 15
- “(2) An election of trustees must be held on the day on which the triennial general election of members of local authorities is held under the Local Elections and Polls Act 1976.

**“219S Qualification of electors**

A person who is qualified as a residential elector of a territorial authority in respect of an address in a community trust’s region is qualified as an elector of the community trust. 20

**“219T Conduct of elections**

- “(1) An election of trustees of a community trust is governed by this Act and the Local Elections and Polls Act 1976. 25
- “(2) If a community trust’s region is situated wholly within the district of a local authority, the roll of residential electors for the local authority’s district is the roll of electors for the election of trustees of the community trust.
- “(3) If a community trust’s region is situated within the districts of 2 or more local authorities, the rolls of residential electors for 30



the districts of the local authorities are the rolls of electors for the election of trustees of the community trust.

- “(4) It is the duty of the principal administrative officer of the local authority of the district within which a community trust’s region is situated, or the principal administrative officer of the local authority of every district situated wholly or partly within the community trust’s region, to indicate on the roll of residential electors for the district of that local authority, by appropriate words, abbreviations, or marks, the names of the persons entitled to vote at elections of trustees of community trusts.
- “(5) The election of trustees must be conducted within the district of the local authority, or of each local authority, by the Returning Officer for the local authority on behalf of the Returning Officer for the community trust.
- “(6) After determining the total number of votes recorded in the district for each candidate, the Returning Officer for the local authority must send the particulars to the Returning Officer for the community trust, who must make up the total number of votes received by each candidate and declare the result of the election.
- “(7) For the purposes of this section, the term ‘local authority’ does not include a regional council or a united council.

“219U **In default of election Governor-General may appoint trustees**

If on the day appointed for the election of trustees of a community trust, no persons are duly elected, or the number of persons elected is less than the required number, the Governor-General may appoint as many qualified persons to be trustees as are required, and every person so appointed holds office in all respects as if that person had been duly elected in accordance with this Part.

“219V **Term of office of trustees**

- “(1) The trustees of a community trust hold office until their successors are appointed or elected.
- “(2) A trustee is eligible for re-election.
- “(3) A trustee may resign office in the manner prescribed in the trust deed.

- “(4) A trustee is to be treated as having resigned office as a trustee if at any time the trustee is, under **section 219W**, not capable of holding office as trustee of a community trust.
- “(5) A trustee may be removed from office at any time by the Minister, by notice in writing,— 5
- “(a) for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister; or
- “(b) in any case where the Minister is satisfied on reasonable grounds that the trustee has acted or is acting in a manner prejudicial, or likely to be prejudicial, to the interests of the community trust. 10
- “(6) If a trustee dies or resigns or ceases to hold office, the office of that trustee becomes vacant and the vacancy must be filled in the manner prescribed by the trust deed, and a person filling the vacancy holds office for the residue of the term of office of that trustee. 15
- “**219W Persons not capable of holding office as trustee**
- The following persons are not capable of being elected or of holding office as a trustee of a community trust: 20
- “(a) a bankrupt—
- “(i) who has not obtained a final order of discharge; or
- “(ii) whose order of discharge has been suspended for a term not yet expired or is subject to a condition not yet fulfilled: 25
- “(b) a person who has been convicted within the last 3 years of a criminal offence punishable by imprisonment:
- “(c) a person who would be subject to an order under section 189 of the Companies Act 1955 but for the repeal of that section: 30
- “(d) a person to whom an order made under section 199I of the Companies Act 1955 applies (or would apply but for the repeal of that Act) or to whom an order made under section 383 of the Companies Act 1993 applies: 35
- “(e) a patient within the meaning of paragraph (b) or paragraph (c) of the definition of **patient** in the Mental Health (Compulsory Assessment and Treatment) Act 1992:

“(f) any person who is the subject of an order under the Protection of Personal and Property Rights Act 1988.

“*Accountability*

“219X **Financial statements**

- “(1) The financial year of a community trust commences on 5  
1 (*July*) April in each year and ends on (*30 June*) 31 March in  
the following year.
- “(2) The trustees of a community trust must ensure that full and  
correct accounts of all the financial transactions of the com- 10  
munity trust and its assets, liabilities, and funds are kept.
- “(3) The trustees of a community trust must, within 3 months after  
the end of each financial year, prepare financial statements  
including a statement of financial position and income and  
expenditure account and notes to them, giving a true and fair 15  
view of the financial affairs of that community trust for the  
financial year.
- “(4) The financial statements must show separately—
- “(a) the total remuneration paid to the trustees of the com-  
munity trust:
- “(b) the number of employees and former employees of the 20  
community trust who received remuneration and any  
other benefits in their capacity as employees of the  
community trust, the value of which was or exceeded  
(*\$80,000*) \$100,000 per annum, and showing the num- 25  
ber of employees in brackets of \$10,000:
- “(c) the names of persons or organisations to whom distribu-  
tions have been made by the community trust under  
**sections 219L and 219M** in that financial year:
- “(d) the amounts distributed.
- “(5) The financial statements must be audited by the Audit Office, 30  
and for that purpose the Audit Office may exercise all its  
powers in respect of public money and stores under the Public  
Finance Act 1977.
- “(6) The Controller and Auditor-General must certify whether the 35  
financial statements are properly drawn up and give a true and  
fair view of the financial affairs of the community trust for the  
financial year.

**Struck out (unanimous)**

“(7) The financial statements together with the Audit Office’s report on them must be sent to the Minister not later than 1 September in each year, and copies of the financial statements and the Audit Office’s report must be published in the *Gazette* and publicly notified in the region of the community trust. 5

**New (unanimous)**

“(7) The financial statements, when duly audited, must be open for public inspection.

“(7A) A summary of the audited financial statements must, as soon as practicable after the completion of their audit, be publicly notified in the region of the community trust. 10

“(8) A community trust is not required to comply with this section in the year in which it is reconstituted as a community trust if, in that year before being reconstituted as a community trust, the licensing trust concerned complied with section 207. 15

**“219Y Annual meeting of electors**

- “(1) A community trust must call a meeting of electors of the community trust to be held in each calendar year.
- “(2) A meeting of electors must be held after, but not later than 2 months after, the yearly balance sheet, profit and loss account, and statements have been audited under **section 219X**. 20
- “(3) Not less than 10 working days’ public notice of a meeting of electors must be given to electors.
- “(4) At a meeting of electors the trustees of the community trust must— 25
- “(a) report to the electors on the community trust’s operations in the most recent completed financial year; and
- “(b) provide a reasonable opportunity for electors at the meeting to ask questions about, and to discuss or comment on, those operations. 30
- “(5) A community trust is not required to comply with this section in the year in which it is reconstituted as a community trust if,

in that year before being reconstituted as a community trust, the licensing trust concerned complied with section 207A.

*“Amalgamation and liquidation*

**“219Z Amalgamation of community trusts**

- “(1) Two or more community trusts may be amalgamated into 1 5  
new community trust in accordance with this section.
- “(2) Each trust must give public notice of the amalgamation proposal.
- “(3) The amalgamation proposal must include— 10  
“(a) the names of the persons who are to be the first trustees of the new community trust; and  
“(b) the trust deed of the new community trust.
- “(4) If, within 20 working days after the first publication of the public notice, at least 50 electors of a community trust concerned give written notice to the trust that they require a public meeting to be called to discuss the proposal, the community trust must arrange and hold such a meeting accordingly. 15
- “(5) If, within 40 working days after the first publication of the public notice, at least 15% of the electors of a community trust concerned give written notice to the trust that they require a poll of electors to be held on the amalgamation proposal, the community trust must arrange for such a poll to be held in accordance with regulations made under this Act. 20
- “(6) On a poll, the amalgamation proposal is carried if the number of valid votes recorded in favour of the proposal exceeds the number of valid votes recorded against it. 25
- “(7) If no poll is required or a poll is required and the amalgamation proposal is carried, and the community trusts decide to proceed with the proposal, they must submit it, together with a copy of the latest audited accounts of each trust, to the Minister. 30
- “(8) The Governor-General may, by Order in Council made on the advice of the Minister given at the request of each of the community trusts concerned, amalgamate 2 or more community trusts into 1 community trust, and define the region of that new trust. 35

- “(9) As from a date to be specified in the order, being not less than 20 working days after the date of the making of the order, the following provisions apply:
- “(a) the original community trusts are dissolved:
  - “(b) all real and personal property, including all licences under this Act, belonging to each of the original community trusts vests in the new trust: 5
  - “(c) all money payable to or by the original community trusts is payable to or by the new community trust:
  - “(d) all liabilities, contracts (including employment contracts), and engagements, and all rights and authorities of any nature whatever, of the original community trusts become the liabilities, contracts, engagements, rights, and authorities of the new community trust: 10
  - “(e) all proceedings by or against the original community trusts may be carried on or prosecuted by or against the new community trust: 15
  - “(f) the trustees of the new community trust are the persons named as the first trustees of the trust in the amalgamation proposal: 20
  - “(g) the trust deed of the new community trust is the trust deed included in the amalgamation proposal.

**New (unanimous)**

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|--|----|
| “(10) Nothing authorised or effected under this section—   |    |
| “(a) places the original community trusts in breach of contract or confidence or makes them guilty of a civil wrong:   | 25 |
| “(b) entitles any person to terminate or cancel any contract or arrangement or accelerate the performance of any obligation:   |    |
| “(c) places the original community trusts in breach of any enactment or rule of law prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information: | 30 |
| “(d) 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 original community trust.                               | 35 |

**“219ZA Liquidation**

Parts XVI and XVII of the Companies Act 1993 apply, with any necessary modifications, to a community trust as if it were a company incorporated under that Act.

**“219ZB Distribution of assets where community trust put into liquidation** 5

Where the High Court puts a community trust into liquidation, any net surplus, whether or not in money, must be distributed to each local authority whose district is included wholly or partly within the community trust’s region; and, where 2 or 10 more local authorities qualify, the Court must determine the shares in proportion to the number of residents of each local authority’s district who are electors of the community trust.

*“Miscellaneous matters***“219ZC Taxes and duties** 15

“(1) A community trust is liable to income tax, and to rates, and to 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),— 20

“(a) a community trust and the licensing trust that was constituted as the community trust are, in relation to all assets and liabilities that, by this Act, become the assets and liabilities of the community trust, deemed to be the same person: 25

“(b) all transactions entered into by, and all acts of, a licensing trust before it was reconstituted as a community trust, in relation to all assets and liabilities that, by this Act, become assets and liabilities of the community trust, are deemed to have been entered into or performed by the community trust on the date on which they were entered into or performed by the licensing trust. 30

**“219ZD Application of Trustee Act 1956**

The Trustee Act 1956 applies to a community trust. 35

- “219ZE **Application of Local Authorities (Members’ Interests) Act 1968**  
 For the purposes of the Local Authorities (Members’ Interests) Act 1968 a community trust is to be treated as if it were a local authority, and that Act applies accordingly. 5
- “219ZF **Application of Local Government Official Information and Meetings Act 1987**  
 For the purposes of Parts I to IV of the Local Government Official Information and Meetings Act 1987 a community trust is to be treated as if it were a local authority, and that Act applies accordingly.” 10
- Part 2**
- Amendments to principal Act and Sale of Liquor Amendment Act 1999 to make minor corrections**
- 8 Purpose of this Part** 15  
 The purpose of this Part is to make amendments to the principal Act and the Sale of Liquor Amendment Act 1999 to make minor corrections, principally to provisions containing references to the Building Act 1991.
- Amendments to principal Act* 20
- 9 Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Licensing Authority**  
 Section 12(3) of the principal Act (as substituted by section 11 of the Sale of Liquor Amendment Act 1999) is amended by adding to paragraph (d) the expression “; and”, and adding the following paragraph: 25  
 “(e) the certificate referred to in section 9(1)(e).”
- 10 Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Licensing Authority** 30  
 Section 34(3) of the principal Act (as substituted by section 27 of the Sale of Liquor Amendment Act 1999) is amended by adding to paragraph (d) the expression “; and”, and adding the following paragraph: 35  
 “(e) the certificate referred to in section 31(1)(e).”



- 11 Renumbering of subsection**  
Section 52 of the principal Act is amended by renumbering subsection (2) (as inserted by section 39 of the Sale of Liquor Amendment Act 1999) as subsection (1A).
- 12 Unopposed applications may be granted by District Licensing Agency, opposed applications to be forwarded to Licensing Authority** 5  
Section 58(3)(e) of the principal Act (as substituted by section 43 of the Sale of Liquor Amendment Act 1999) is amended by omitting the words “of approval”. 10

*Amendments relating (Amendment) to Sale of Liquor  
Amendment Act 1999*

**New (unanimous)**

- 13A Transitional provision in respect of on-licences**
- (1) On and from the commencement of this section, an on-licence in force immediately before 1 April 2000 has effect as if the licence— 15
- (a) had been granted under section 7 of the principal Act (as substituted by section 6 of the Sale of Liquor Amendment Act 1999); and
- (b) permits the sale and supply of liquor, to any person present on the premises or conveyance described in the licence, for consumption on the premises or conveyance; and 20
- (c) allows the consumption of liquor on the premises or conveyance described in the licence. 25
- (2) **Subsection (1)**—
- (a) applies subject to any endorsement or conditions on the licence; but
- (b) does not limit or affect section 117 of the Sale of Liquor Amendment Act 1999. 30
- (3) This section is deemed to have come into force on 1 April 2000.

**13 Schedule 1 of Sale of Liquor Amendment Act 1999  
amended**

- (1) Schedule 1 of the Sale of Liquor Amendment Act 1999 is amended by omitting the item relating to the Building Act 1991, and substituting the following item: 5  
“1991, No 150—The Building Act 1991: So much of the  
Fourth Schedule as relates to sections 11,  
20, 57, 58, and 66 of the principal Act.”
- (2) This section is deemed to have come into force on 31 August 1999. 10
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**Legislative history**

5 October 1999

Introduction, first and second reading and referral to  
Commerce Committee (Bill 333-1)

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