

SALE OF LIQUOR BILL

EXPLANATORY NOTE

INTRODUCTION

THIS Bill revises the law relating to the sale of liquor. It repeals and replaces the Licensing Act 1908, the Masterton Licensing Trust Act 1947, the Licensing Trusts Act 1949, the Invercargill Licensing Trust Act 1950, the Sale of Liquor Act 1962, the Hotel Association of New Zealand Act 1969, the Distillation Act 1971, the Wine Makers Levy Act 1976, the Beer Act 1977, the Wine Makers Act 1981, and the Winton Holdings Licensing Act 1981.

In large part, the Bill is based on the recommendations of the working party on liquor, chaired by Sir George Laking. In this note that working party is referred to as the Laking Committee. The Laking Committee submitted its report, *The Sale of Liquor in New Zealand*, to the Minister of Justice on 31 October 1986. Appended to that report is a draft Bill. In this note that draft Bill is referred to as the appended Bill.

LAKING COMMITTEE'S PROPOSALS

On pages 28 and 29 of its report, the Laking Committee set out a summary of its principal proposals in the following terms:

- (a) The new legislation will impose legislative controls on the sale and consumption of liquor only to the extent that they can be expected to contribute to the control of alcohol abuse. It will not be concerned with the economic regulation of the liquor industry:
- (b) The requirement of the existing law that before new licences are granted they must be shown to be "necessary or desirable" will no longer exist:
- (c) Provision is made for only four categories of licence to cover all types of liquor outlets:
 1. An On-licence, allowing sale for consumption on the premises:
 2. An Off-licence, allowing sale for consumption off the premises:
 3. A Club licence, to cover all types of Clubs:
 4. A Special licence, to replace the existing array of permits required for the sale of liquor on special occasions:
- (d) The Licensing Control Commission and the District Licensing Committees will be abolished. Authority to issue licences will be conferred on local authorities, thus enabling them to consider licensing matters in conjunction with town planning, health, fire safety and amenity

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protection requirements such as noise control. Subject to satisfaction of those requirements, licences will be granted on the basis of the suitability of applicants. *[Note: This paragraph is not strictly accurate. In paragraph 3.68 of its report, the Committee is at some pains to stress that these matters should be kept separate.]*

- (e) The conditions imposed by local authorities on the issue of licences will be required to conform to the criteria laid down in the legislation. Those criteria will allow flexibility in such matters as hours of opening and closing. They will also allow the issue of licences to applicants who are not engaged exclusively or principally in the sale of liquor e.g. supermarkets and foodstores:
- (f) Provision will be made for the receipt and hearing of objections to the grant or renewal of licences in much the same way as applies in town planning matters:
- (g) Penalties for breaches of the new legislation will be more severe than at present and there is greater emphasis on the suspension or cancellation of licences by local authorities in cases of persistent breaches of law:
- (h) Hotels and taverns will no longer be required to maintain a public bar:
- (i) The few remaining no-licence districts will be abolished along with the various polls provided for in the existing legislation, including the triennial poll:
- (j) Many of the existing restrictions on the operation of Licensing Trusts will be removed. They will be free to operate outside their existing areas. Their limited preferential rights in those areas will not continue:
- (k) The legal minimum drinking age will be reduced to 18 years. More restrictive provisions than at present will apply to the consumption of liquor by minors on licensed premises. Local authorities will have flexibility in relation to restrictions imposed on the presence of minors on such premises:
- (l) Clubs of all kinds, including chartered clubs, will be licensed to sell liquor only to members and guests and only for on-premises consumption.

DEPARTURES FROM COMMITTEE'S PROPOSALS

This Bill departs from the Laking Committee's recommendations in respect of a number of matters. Of these, the principal ones are as follows:

- (a) The minimum drinking age remains 20 years:
- (b) Bars in hotels and taverns are to remain closed on Sundays, Good Friday, and Christmas Day:
- (c) Only wine may be sold in supermarkets and similar outlets:
- (d) Permanent chartered clubs are to retain their present status, and do not need a club licence. Those with off-sales rights, keep those rights and do not need an off-licence:
- (e) Other chartered clubs that presently have off-sales rights are entitled to apply for an off-sales licence:
- (f) BYO restaurants require an on-licence:
- (g) The provision of non-alcoholic refreshments is a condition of every licence:
- (h) The enforcement of the penal provisions of the Bill remains exclusively with the Police:
- (i) All appeals lie to District Courts:
- (j) The residents of existing no-licence districts are given a right to vote for or against trust control before any licences are granted:
- (k) The proposal that Parliament review the new legislation within 5 years of its enactment is not adopted.

In addition, the Bill differs from the Laking Committee's recommendations and the appended Bill in a number of detailed respects. Attention is drawn to these in the notes on the relevant clause.

CLAUSE BY CLAUSE EXPLANATION

Clause 1 relates to the Short Title and commencement. The Laking Committee recommended changing the Short Title to the "Liquor Licensing Act". This has not been adopted. The Laking Committee also recommended that the commencement of the legislation should be deferred for 12 months from its passing. *Subclause (2)* implements this recommendation.

Clause 2 defines certain terms used in the Bill. Attention is drawn to 2 definitions in particular. First, the definition of the term "club" is based on section 162 of the present Act. The Laking Committee recommended that all clubs should be incorporated, and included the element of incorporation in the definition. This has not been adopted. Instead, the Licensing Authority is given power to insist on incorporation as a condition of a club licence: see *clause 56 (3)* of the Bill and section 67B (6) of the present Act.

Secondly, the definition of the term "liquor" has been altered. The present definition reads as follows:

"Liquor" means any spirits, wine, ale, beer, porter, stout, cider, or perry, or any other fermented, distilled, or spirituous liquor, which on analysis is found to contain more than 2 parts percent of proof spirit:

In the context of so-called "low alcohol" or "low strength" beer, the question was raised as to whether the reference to 2 percent of proof spirit applied to the specific types of liquor mentioned in the definition, or qualified only the words "any other fermented, distilled, or spirituous liquor". The Court of Appeal confirmed that it meant the former. Thus, the Act does not apply to beer that contains less than 2 percent of proof spirit.

The Laking Committee recommended an endorsement of the decision (paragraphs 2.81 to 2.83), and suggested certain changes to the definition of the term "liquor" to make this clear. The Bill implements the recommendation in principle, but recasts the definition in a different way to achieve the same end.

Attention should also be drawn to the definition of the terms "bar", "hotel", and "tavern". These definitions are made necessary by the provisions of *subclauses (2) and (3) of clause 14* of the Bill.

Clause 3 is new. It declares that the Bill binds the Crown.

Clause 4 sets out the object of the Bill. Although such a clause was not recommended by the Laking Committee, the essence of the clause is included in the Long Title of the Committee's proposed draft Bill: see generally Part I of the report.

Clause 5 relates to the application of the Bill. It is based on section 3 of the present Act, but a number of important changes recommended by the Laking Committee have been adopted.

Subclause (1) is based on subsection (1) of the present section, but *subclause (2)* is new. It limits the Bill to sales of liquor to the public. The present Act is not so limited.

Subclause (3) lists a number of specific exemptions.

Paragraph (a) repeats subsection (2) (a) of the present section.

Paragraphs (b) and (c) together repeat subsection (2) (b) of the present section.

Paragraph (d) repeats subsection (2) (c) of the present section.

Paragraph (e) repeats in part subsection (2) (d) of the present section relating to Police canteens. However, the present exemption is total. Under this paragraph, only sales for consumption in the canteen are exempt.

Paragraph (f) repeats in part subsection (2) (dd) of the present section relating to prison officers' canteens. Again, the present exemption is total, but under this paragraph only sales for consumption in the canteen are exempt.

Paragraph (g) repeats in part subsection (2) (de) of the present section relating to Fire Service canteens. As with Police canteens and prison officers' canteens, the present total exemption is now limited to sales for consumption in the canteens.

Paragraph (h) replaces section 56 of the Defence Act 1971, which exempts canteens operated under any enactment or under the authority of the Defence Council from the provisions of the present Act.

Paragraph (i) replaces a similar exemption in section 11 of the Armed Forces Canteens Act 1948 in respect of amenities set up and conducted by the Armed Forces Canteen Council.

The following present exemptions are dropped:

- (a) Liquor allowances for ships' crews (subsection (2) (e));
- (b) Liquor on trains (subsection (2) (f));
- (c) Wholesale sales by manufacturers of honeymead (subsection (2) (g)).

Clause 6 is the cornerstone of the Bill. It states the general principle that sales of liquor to the public require a licence, and identifies the 4 types of licence for which the Bill makes provision. These are on-licences (*Part I*), off-licences (*Part II*), club licences (*Part III*), and special licences (*Part IV*). Two or more licences of different kinds may be issued in respect of the same premises.

PART I ON-LICENCES

This Part makes provision for on-licences: see particularly paragraphs 3.9 to 3.17 of the Laking Report, and Part II of the Appended Bill. The licence makes provision for the sale of liquor for consumption on the premises. It replaces hotel, tavern, tourist-house, food and entertainment, airport, ship, and works canteen licences, as well as a number of permits such as vineyard bar permits.

Clause 7 defines the effect of an on-licence. The purpose of classifying into 4 groups the persons to whom liquor may be sold under the licence is that, under *clause 14 (5)* of the Bill, the Licensing Authority may impose different conditions in respect of each of those groups.

Clause 8 specifies who may hold an on-licence. *Subclause (1)* follows broadly section 72 (1) of the present Act.

Subclause (2) is new. It provides that a club (the term is defined in *clause 2* of the Bill) cannot hold an on-licence. That is because a separate licence, called a club licence, has been created for clubs: see *Part III* of the Bill.

Subclause (3) is also new. It provides that the local authority cannot hold an on-licence. To do so would be incompatible with its function as the Licensing Authority.

Clause 9 makes straightforward provision for applications for on-licences. *Subclause (4)* requires public notice (the term is defined in *clause 2*) of an application to be given within 20 working days (that term is also defined in *clause 2*).

Clause 10 provides that any person who has attained the age of 18 years and who has a greater interest in the application than the public generally may

object to the application. As in the present Act, this age is fixed in relation to the voting age rather than the drinking age.

Clause 11 requires the Secretary of the Licensing Authority to obtain a report on the application from the Police and an inspector appointed under the Bill).

Clause 12 sets out the criteria to be taken into account by the Licensing Authority in considering an application for an on-licence. *Paragraphs (a) and (c) to (f) of subclause (1)* are as recommended by the Laking Committee. *Paragraph (b)* of that subclause is additional to those recommendations.

Subclause (2) follows broadly the Laking Committee's recommendations. However, the Committee's concern to ensure that a service station does not have an on-licence (see paragraph 2.78 of its report) is implemented by a separate clause (*clause 13*).

Clause 14 relates to the conditions attaching to on-licences. *Subclauses (4) and (5)* follow the Laking Committee's recommendations, but *subclauses (1) to (3)* are additional. *Subclause (1)* provides that it is a condition of every on-licence that the licensee has available for consumption on the premises or conveyance a reasonable range of non-alcoholic refreshments.

Subclause (2) relates only to hotels and taverns. It continues the present law relating to the selling of liquor on Sundays, Good Friday, and Christmas Day. On those days, only those staying on the premises, and those dining there, may be supplied with liquor in a hotel or a tavern.

Subclause (3) also relates only to hotels and taverns. It requires the Licensing Authority to designate each bar as a restricted area or a family area. The effect is that no person under the age of 20 years may be in any bar in a hotel or tavern unless it is a family area.

Clause 15 makes it clear that the holder of an on-licence is not obliged to be open for business at any particular time or to serve any particular person. This contrasts particularly with the present obligations in respect of public bars. The clause follows the Laking Committee's recommendations: see paragraphs 3.69 to 3.73, and 3.79 and 3.80 of the Committee's report.

Clause 16 makes provision for the holder of an on-licence to apply to the Licensing Authority for the variation or cancellation of any condition of the licence imposed by the Licensing Authority. This follows in part the Laking Committee's recommendations. However, the Committee felt that the right to apply for a variation should be given to the Police and an inspector, as well as the licensee. This has not been adopted: it is considered best left to the disciplinary provisions of the Bill: see *clause 104*.

Clause 17 relates to the duration of an on-licence. A new licence has effect for 12 months, and then will expire unless renewed.

Clauses 18 to 20 make straightforward provision for the renewal of on-licences, and follow the Laking Committee's recommendations.

Clause 21 sets out the criteria for the renewal of an on-licence. These are the suitability of the licensee, the conditions attaching to the licence, and the manner in which the licensee has conducted business under the licence.

Clause 22 relates to the determination of an application for renewal of an on-licence. In effect, in the absence of any objection, or any adverse report from the Police or an inspector, the application must be granted on the same conditions, unless the applicant requests any change. If there is an objection or adverse report, the Licensing Authority may grant the application on different conditions

or refuse to renew the licence. If the Licensing Authority decides to renew the licence, it must specify a date (not later than 3 years) on which the licence will expire unless it is sooner renewed again.

Clauses 21 and 22 follow the Laking Committee's recommendations.

Clause 23 provides that a person claiming any interest in any premises or conveyance in respect of which an on-licence is in force may apply to the Licensing Authority for a temporary authority to sell liquor on those premises or that conveyance. It is a more generalised version of section 135 of the present Act, and follows the Laking Committee's recommendations.

Clause 24 does 2 things in relation to any premises or conveyance in respect of which an on-licence is in force. *Subclause (1)* requires a notice on the outside of the premises (the subclause does not apply to conveyances) of the hours of sale. *Subclause (2)* requires a copy of the licence and of the conditions attaching to the licence to be displayed on the inside of the premises or conveyance.

Clause 25 requires the holder of an on-licence to appoint a manager or managers in accordance with *Part VI* of the Bill.

Clause 26 requires the holder of an on-licence to file annual returns in accordance with *clause 178* of the Bill.

Clauses 24 to 26 follow the Laking Committee's recommendations.

Clause 27 relates to BYO restaurants. At present, they require a permit under section 218A of the Sale of Liquor Act 1962. The Laking Committee recommended that they should be left outside the scope of the Act altogether: that is, that they should not require any specific authority. That recommendation is not adopted. Instead, this clause provides for an appropriate endorsement of an on-licence for BYO restaurants. An on-licence endorsed under this section would not authorise the sale or supply of liquor (other than Irish coffee and the like), but would authorise the licensee to allow customers to bring liquor with them for consumption on the premises. In effect, this preserves the present position of BYO restaurants that hold permits under section 218A of the present Act. The licensee would be relieved of the responsibility to give public notice of his or her hours of sale, to appoint a manager or managers, and to file returns.

PART II

OFF-LICENCES

This Part makes provision for off-licences: see particularly paragraphs 3.18 to 3.23 of the Laking Report, and Part III of the appended Bill. The licence makes provision for the sale of liquor for consumption off the premises. It covers the present bottle stores, wholesale departments, wholesalers, wine resellers, wine makers, and caterers, so far as they sell to the public for consumption off the premises.

Clause 28: Subclause (1) defines the effect of an off-licence, and follows the Laking Committee's recommendations.

Subclause (2) is additional. It brings forward section 66A (2) of the present Act.

Clause 29 specifies who may hold an off-licence. Attention is drawn to *subclause (1) (g)*. It provides that an off-licence may be held by any chartered club that presently has off-sales rights. This contradicts the Laking Committee's view that no club should have off-sales rights: see paragraphs 3.27 to 3.30 of the Committee's report.

Subclauses (2) and (3) correspond to subclauses (2) and (3) of clause 8 of the Bill.

Clauses 30 to 34 correspond to clauses 9 to 13 of the Bill.

Clause 35 relates to the conditions attaching to off-licences. Subclause (3) follows the Laking Committee's recommendations, but subclauses (1) and (2) are additional.

Subclause (1), in effect, continues the present prohibition against off-sales on Sundays, Good Friday, and Christmas Day.

Subclause (2) relates to the sale of liquor in supermarkets and the like. Only wine may be sold through such outlets.

Clauses 36 to 47 correspond to clauses 15 to 26 of the Bill.

Clause 48 makes special provision for caterers who supply liquor at functions on premises other than their own.

The supply of liquor in those cases is not exactly "off-premises" in the strict sense. As recommended by the Laking Committee, these activities are brought within the scope of an off-licence, but with a special endorsement under this section. In effect, this clause replaces the caterer's permit under section 217B of the present Act.

Clause 49 makes special provision for licensed auctioneers to sell liquor by auction. In effect, this clause replaces the auctioneer's permit under section 225 of the present Act. This follows the Laking Committee's recommendations in principle: see paragraph 3.23 of the Committee's report.

PART III

CLUB LICENCES

This Part makes provision for club licences: see particularly paragraphs 3.24 to 3.34 of the Laking Report, and Part IV of the appended Bill. The club licence makes provision for the sale of liquor to club members, invited guests, and members of affiliated clubs for consumption on the club premises. In effect, it replaces club licences and club charters under the Sale of Liquor Act 1962.

The provisions of this Part follow broadly the Laking Committee's recommendations.

Clause 50 defines the effect of a club licence, and clause 51 provides that a club licence may be held by any club.

Clauses 52 to 67 correspond to clauses 9 to 12 and clauses 14 to 26 of the Bill.

PART IV

SPECIAL LICENCES

This Part makes provision for special licences: see particularly paragraphs 3.35 to 3.41 of the Laking Report, and Part V of the appended Bill. A special licence authorises the holder to sell and supply liquor to persons attending any occasion or event, or a series of occasions or events, specified in the licence. It replaces the booth licence under the present Act.

Except as noted below, the provisions of this Part follow broadly the Laking Committee's recommendations.

Clause 68 defines the effect of a special licence.

Clauses 69 to 75 correspond to clauses 8 to 12 and 14 to 16 of the Bill.

Clause 76 relates to the duration of special licences. Subclauses (1) and (3) follow the Laking Committee's recommendations, but subclause (2) is additional. It

brings forward the effect of section 69 (5) of the present Act to cover cases where the occasion or event for which a licence has been issued is postponed.

Clause 77 corresponds to *clause 24* of the Bill.

Clause 78 relates to managers, and differs from the Laking Committee's recommendations. The Committee recommended that the holders of special licences should have to appoint managers in all cases. *Subclause (2)*, however, allows the Licensing Authority to grant a dispensation from this requirement in a particular case.

PART V

LICENSING AUTHORITY

This Part of the Bill establishes each territorial local authority as the Licensing Authority for its district. This follows the recommendations of the Laking Committee: see paragraphs 1.30 to 1.38 and 4.1 to 4.14 of the Committee's report and Part I of the appended Bill.

Clause 79 is the main operative provision of the Part. It provides that each local authority (the term is defined in *clause 2* of the Bill) shall be the Licensing Authority for its district.

Clause 80 is a standard provision. It provides that the Licensing Authority shall have the powers expressly conferred on it by statute, and all such other powers as may be reasonably necessary to enable it to exercise its jurisdiction and perform its duties satisfactorily. In this latter respect, the clause is wider than that recommended by the Laking Committee.

Clause 81 provides that the local authority's principal administrative officer shall be the Secretary of the Licensing Authority.

Clause 82 provides for the appointment by the Licensing Authority of inspectors for the purposes of the Act. They may or may not be employees of the local authority.

Clauses 81 and 82 follow the Laking Committee's recommendations.

Clause 83 provides for the delegation of its powers, duties, and discretions by the Licensing Authority to any committee appointed under section 104 of the Local Government Act 1974, and for further subdelegation by that committee to the Secretary of the Licensing Authority or to a subcommittee. The clause follows broadly the Laking Committee's recommendations, but with some refinements to accord with the principles recommended by the Public and Administrative Law Reform Committee in respect of powers of delegation generally.

In *subclause (1)*, the Licensing Authority must be satisfied that the delegation is necessary, rather than merely desirable.

In *subclause (2)*, subdelegations require the approval of the Licensing Authority.

Subclause (3) requires all delegations and subdelegations to be in writing, and to state explicitly what powers, duties, and discretions are being delegated or subdelegated.

Subclause (4) provides for public inspection of instruments of delegation and subdelegation.

Subclauses (5) to (7) are standard provisions in respect of statutory powers of delegation and subdelegation.

Clause 84 empowers the Licensing Authority to appoint a Commissioner to inquire into and report to the Licensing Authority on any matter referred to the Commissioner by the Licensing Authority. It is narrower than the provision recommended by the Laking Committee, in that only a specific matter can be referred to a Commissioner. It follows more closely section 14 of the present Act.

Clause 85 spells out the procedure to be followed by the Licensing Authority in respect of any application. The Laking Committee had little to say about procedure. However, *subclause (1)*, which allows uncontested applications to be dealt with on the papers, follows clause 156 of the appended Bill. *Subclause (4)* accords with clause 154 of the appended Bill.

The rest of the clause makes standard provision for contested hearings.

Clause 86 empowers the Licensing Authority to receive in evidence any matter that it considers helpful, even though it would not be admissible in a Court of law. It follows broadly clause 155 of the appended Bill, and section 48 of the present Act.

Clause 87 requires all decisions of the Licensing Authority, and the reasons, to be given in writing, and copies to be given to the parties.

Clause 88 provides for the issue of a licence by the Secretary. It follows clause 157 of the appended Bill.

PART VI

MANAGEMENT OF LICENSED PREMISES

This Part of the Bill relates to the management of licensed premises, and the appointment of managers. It follows broadly the Laking Committee's recommendations: see paragraphs 4.35 to 4.38 of the Committee's report, and Part VI of the appended Bill.

Clause 89 lays down the general rule that the licensee or a manager must be on duty at all times while liquor is being sold or supplied pursuant to the licence. Where a manager is on duty, the name of the manager must be displayed.

Managers' Certificates

Clause 90 requires managers to hold certificates granted under this Part of the Bill.

Clause 91 provides for 2 kinds of managers' certificates. A general manager's certificate authorises the holder to be the manager of any licensed premises conducted pursuant to any type of licence. A club manager's certificate, on the other hand, authorises the holder to be the manager only of premises conducted pursuant to a club licence or a special licence.

Clause 92 makes straightforward provision for applications for managers' certificates.

Clause 93 requires the Secretary of the Licensing Authority to obtain a report on the application from the Police and an inspector.

Clause 94 sets out the criteria to be taken into account by the Licensing Authority in considering an application for a manager's certificate.

Subclause (1) relates to general managers' certificates and follows the Laking Committee's recommendations.

Subclause (2) relates to club managers' certificates, and departs in one respect from the Laking Committee's recommendations. The Committee did not include

the applicant's previous experience in managing any licensed premises pursuant to any licence. This subclause does include that experience: see *paragraph (c)*.

Clause 95 relates to the duration of a manager's certificate. A new certificate has effect for 12 months, and then will expire unless renewed.

Clauses 96 and 97 make straightforward provision relating to applications for the renewal of managers' certificates, and follow the Laking Committee's recommendations.

Clause 98 sets out the criteria for the renewal of a manager's certificate, and departs from the Laking Committee's recommendations. The Committee recommended that the criteria should be the same as those prescribed in respect of the issue of a certificate. However, *paragraph (b)* provides that only convictions recorded since the certificate was issued or last renewed are relevant on an application for renewal. *Paragraph (c)* provides that the manner in which the manager has performed his or her duties is also relevant.

Clause 99 gives the Licensing Authority a discretion to renew or decline to renew a manager's certificate. If the Licensing Authority decides to renew the certificate, it must specify a date (not later than 3 years) on which the certificate will expire unless it is sooner renewed again.

Miscellaneous Provisions

Clause 100 provides for the appointment of a temporary manager to act in place of a manager who is ill or absent, or has been dismissed or has resigned. The temporary manager must apply for a manager's certificate within 2 working days after the date of his or her appointment.

Clause 101 provides for the appointment of an acting manager. An acting manager may be appointed for up to 3 weeks where the manager or a manager is ill or absent, or for aggregate periods of 6 weeks in any year to allow the licensee or manager to have a holiday or take annual leave.

Clause 102 provides for notice to be given to the Licensing Authority and the Police of the appointment, or the cancellation or termination of the appointment, of any manager, temporary manager, or acting manager. It differs in one respect from the Laking Committee's recommendations. The Committee recommended that, within 20 working days after receiving notice of the appointment of any manager, temporary manager, or acting manager, the Licensing Authority could require the termination of the appointment. This clause limits that power to temporary managers and acting managers. The disciplining of the holders of managers' certificates is provided for in *clause 105* of the Bill.

Enforcement Provisions

The Laking Committee recommended that inspectors and the Police would be responsible for ensuring compliance with the provisions of the Bill. However, this Bill does not go that far. It leaves the enforcement of the penal provisions entirely in the hands of the Police. The inspectors' role is limited to ensuring compliance with the conditions of licences.

Partly for this reason, those provisions that relate to disciplining rather than penal matters are included in this Part of the Bill, while *Part VIII* includes the penal matters.

Clause 103 gives inspectors power to enter and inspect licensed premises at any reasonable time. The nearest equivalent provision in the appended Bill is clause

133. However, the provision is redrawn to comply with the recommendations of the Search and Search Warrants Committee, which reported to the Minister of Justice recently.

Clause 104 is based on clause 141 of the appended Bill. It gives the Licensing Authority power to vary, suspend, or cancel a licence where the premises are not being conducted properly, or where it has become apparent from the conduct of the licensee that the licensee is not a suitable person to hold the licence. Certain procedural safeguards have been built into the clause recommended by the Laking Committee.

Clause 105 makes similar provision for the suspension or cancellation of a manager's certificate. The clause is based on clause 142 of the appended Bill.

Clause 106 is based on, but is much narrower than, clause 138 of the appended Bill. The Laking Committee recommended that the Licensing Authority should have power to apply to a District Court for an injunction to restrain the continuance of any offence against the Bill. In effect, it would be an injunction against future offending. While this concept is not unknown to the law, it is somewhat unusual, and this clause does not go that far. Instead, it limits such an injunction to continuing breaches of the conditions of a licence. A breach of the injunction is a ground for suspending or cancelling the licence under *clause 104* of the Bill.

PART VII

APPEALS

The Laking Committee recommended 2 types of appeals: see paragraphs 4.20 to 4.22 of the Committee's report and Part IX of the appended Bill. It proposed that appeals on decisions relating to the suitability of any applicant, licensee, or manager should be determined by a District Court. Appeals on other matters would be determined by the Planning Tribunal. Those proposals have not been adopted in this Bill. Instead, this Part of the Bill provides for appeals on any matter to be determined by a District Court.

The provisions follow broadly sections 226A to 226G and section 230 of the present Act, as substituted by section 2 of the Sale of Liquor Amendment Act 1983. Those provisions, in turn, were based on the recommendations of the Public and Administrative Law Reform Committee in its 16th report.

Attention is drawn to 3 clauses.

Clause 116 relates to the effect of a decision of the Licensing Authority pending appeal. It follows clause 147 of the appended Bill.

Clause 117 provides for a further appeal to the High Court on a question of law. It follows clause 148 of the appended Bill.

Clause 118 requires a party to exhaust his or her appeal rights before seeking a judicial review of any decision. It follows clause 149 of the appended Bill.

PART VIII

OFFENCES AND ENFORCEMENT

The provisions of this Part follow broadly Part VIII of the appended Bill. However, the order of the various clauses recommended by the Laking Committee has been changed in some respects.

Unlicensed Persons and Unlicensed Premises

Clause 119 is based on clause 128 of the appended Bill and section 262 of the present Act. It punishes the sale of liquor without a licence. It is the most serious

offence (reflected in the heaviest maximum penalty), and accordingly has been placed first in this Part.

Clause 120 is a rewritten version of clause 129 of the appended Bill and section 263 of the Act. It punishes the occupier of any unlicensed premises who allows any other person to sell liquor on or from the premises.

Clause 121 is a rewritten version of subclauses (1) to (4) and (7) of clause 130 of the appended Bill and subsections (1) to (4) and (7) of section 264 of the present Act. It punishes the keeping of any unlicensed premises as a place of resort for the consumption of liquor.

Clause 122 is based on subclauses (5) and (6) of clause 130 of the appended Bill and subsections (5) and (6) of section 264 of the present Act. It punishes the person who is found on any unlicensed premises kept as a place of resort for the consumption of liquor.

Minors

Clause 123 is based in part on clause 116 of the appended Bill and section 259 of the present Act. It prohibits the sale of liquor on or from any licensed premises to any person who is under the age of 20 years. *Subclauses (4) and (5)* re-enact defences in subsections (3) and (4) of section 259 of the present Act, as recommended by the Laking Committee in subclauses (4) and (5) of clause 116 of the appended Bill. However, the actual age of the customer is immaterial so long as the person selling or supplying the liquor believed on reasonable grounds that the customer had attained the age of 20 years.

Clause 124 creates a new offence of purchasing liquor for a minor: see paragraph 4.43 of the Laking Committee's report and clause 116 (2) of the appended Bill. However, the defence of mistake of age has not been brought forward. The mere fact that a person is asking another person to purchase liquor may in itself raise the question of age.

Clause 125 is based on clause 121 of the appended Bill: see also paragraph 4.52 of the Laking Committee report, and section 191 of the present Act. It prescribes certain rules relating to the employment of minors in licensed premises. In general, a minor cannot be employed in the sale or supply of liquor anywhere on the licensed premises, nor in any capacity in a restricted area. Existing exceptions relating to the service of food and to performance as an entertainer are retained.

Clause 126 punishes the purchase of liquor by minors. It is based on clause 117 of the appended Bill, and section 259 (5) (a) of the present Act.

Clause 127 punishes a minor who is found in any restricted area on any licensed premises, or in any family area while not accompanied by his or her spouse, parent, or guardian, or any other person acting in place of his or her parent. It is based on clause 119 of the appended Bill and section 259 (6) of the present Act.

Clause 128 is the corollary of *clause 127*. It punishes the licensee or a manager who allows any minor to enter or remain in any restricted area, or in any family area in contravention of *clause 127*.

Other Offences on Licensed Premises

Clause 129 punishes the sale of liquor outside authorised hours. It is based on clause 115 of the appended Bill and section 249 of the present Act.

Clause 130 punishes the sale of liquor to a person who is already intoxicated. It is based on clause 124 of the appended Bill and section 243 of the present Act.

Clause 131 punishes a licensee or manager who allows any person to become intoxicated on the licensed premises. It is based on clause 125 of the appended Bill and section 244 of the present Act.

Clause 132 punishes a licensee or manager who allows any intoxicated person to remain on the licensed premises, or allows any disorderly conduct to take place on the premises. It is based on clause 126 of the appended Bill and section 245 of the present Act.

Clause 133 punishes the sale of spirits, for consumption on the premises, otherwise than in a glass of a capacity not exceeding 500 millilitres. The clause is based on clause 123 of the appended Bill, and section 257B of the present Act. The maximum permitted capacity of the glass in the present Act is 300 millilitres.

Clause 134 punishes a person who is found in certain parts of any licensed premises (other than club premises) outside permitted hours. It is based on subclauses (1) and (2) of clause 122 of the appended Bill. The equivalent provisions of the present Act are sections 252 to 253.

Clause 135 punishes a licensee or manager who permits a person to be on licensed premises in contravention of *clause 134*. It is based on clause 122 (3) of the appended Bill.

Clause 136 punishes a person who falsely represents that he or she is a person to whom liquor may be sold or supplied under a licence. It is based on clause 118 of the appended Bill: see also paragraph 4.51 of the Laking Committee's report and section 256 of the present Act.

Closure of Premises

Clause 137 provides for the closure of licensed premises in the case of riot. It is based on clause 134 (3) of the appended Bill and section 289 of the present Act.

Clause 138 provides for the closure of licensed premises following an outbreak of fighting or serious disorder. The clause is based on clause 134 (1) of the appended Bill and section 289A of the present Act.

Further Powers of Police

Clause 139 sets out the powers of the Police to enter upon licensed premises to ascertain whether the licensee is complying with the law. It is based on the principle of clause 133 of the appended Bill, but that provision has been substantially rewritten to incorporate the recommendations of the Public and Administrative Law Reform Committee in relation to powers of entry generally.

Clause 140 sets out the powers of the Police to demand information for the purposes of ensuring compliance with the law. It is based on clause 135 of the appended Bill. The equivalent provisions in the present Act are sections 254 and 272.

Clause 141 provides for a District Court Judge to issue a search warrant where it is believed that liquor is being sold on any premises or conveyance in breach of the law, or that any unlicensed premises or conveyance are or is being kept as a place of resort for the consumption of liquor. The clause is based on clause 136 of the appended Bill, but has been amended to incorporate the

recommendations of the *Search and Search Warrants Committee*. See also paragraph 4.45 of the Laking Committee report and section 271 of the present Act.

Matters of Evidence

Clause 142 relates to formal proof of the status of any premises or conveyance in proceedings under the Bill. The general rule is that the prosecution does not have to prove that the premises were or the conveyance was licensed or unlicensed unless the defendant puts the question in issue by prior notice. The clause is based on subclauses (1) and (2) of clause 132 of the appended Bill.

Clause 143 relates to formal proof of the sale or consumption of liquor. It is based on clause 132 (3) of the appended Bill and section 269 of the present Act.

Miscellaneous Provisions

Clause 144 is based on clause 127 of the appended Bill and section 275 of the present Act. By virtue of section 66 of the Crimes Act 1961, a person is a party to the offence of another if he or she aids, abets, incites, counsels, or procures the other to commit the offence.

Clause 145 provides that all offences under the Bill are to be dealt with summarily. It is based on clause 137 (3) of the appended Bill. The proposed general offence in clause 137 (1) of that Bill has not been brought forward. It is out of keeping with modern drafting practice.

Clause 146 empowers a Court, on convicting any person of an offence against *clause 119* or *clause 120* or *clause 121*, to order forfeiture of any liquor involved in the offence. It is based on clause 128 (3) of the appended Bill and section 262 (2) of the present Act.

Clause 147 provides for notice to be given to the Registrar of Licensees and Managers where proceedings are instituted or a conviction is entered against a manager or licensee. It is based on clause 139 of the appended Bill: see also paragraphs 4.38 and 4.54 of the Laking Committee's report.

PART IX

LICENSING TRUSTS

This Part of the Bill relates to licensing trusts. This topic is discussed in chapter V of the Laking Committee's report: see also Part VII of the appended Bill.

On page 146 of the report, in an introductory note to Part VII of the appended Bill, the Committee summarised its views on this topic in this way:

"In essence, it is proposed that Trusts operate as statutory corporations in competition with private enterprise. Members will continue to be elected, and to that extent only, trusts will be governed by the law relating to local authorities. In all other respects, they will be their own masters."

It should be noted that the provisions relating to the continuance of existing licensing trusts are set out in *Part XI* of the Bill, relating to transitional provisions.

Constitution

Clause 148 is based on clause 97 of the appended Bill, but with a little more flesh added to the bones proposed by the Laking Committee. *Subclause (1)* makes it clear that in making an Order in Council to establish a licensing trust, the Governor-General must act on the advice of the Minister of Justice. Without limiting the Minister's discretion to advise the constitution of a trust, *subclause (2)* requires the Minister to act at the request in the prescribed form of at least 500 residents of the area for which a trust is sought.

Subclause (3) repeats section 4 (2) of the Licensing Trusts Act 1949.

Clause 149 provides that licensing trusts are to be bodies corporate: see clause 94 (8) of the appended Bill.

Clause 150 sets out the basic objects and powers of a licensing trust. It follows clause 95 of the appended Bill.

Clause 151 makes it clear that licensing trusts are liable for taxes, duties, and rates as if they were formed for private gain. It follows clause 96 of the appended Bill and section 44 (3) of the Licensing Trusts Act 1949.

Clause 152 provides for licensing trusts to distribute surplus profits for charitable and philanthropic purposes. The clause is based on clause 95 (2) of the appended Bill.

Elections

Clause 153 states the general principle that members of a licensing trust are to be elected by the residents of the trust district. It is based on clause 99 (1) of the appended Bill.

Clause 154 provides that the first election of members of a licensing trust shall be held on a date appointed by the Minister of Justice. It follows clause 101 of the appended Bill.

Clause 155 differs from the recommendations of the Laking Committee. In principle, the Committee proposed a 3-year term for all members of a licensing trust. What is proposed here, in effect, is a 6-year term for the initial members of the trust. Thereafter, members will have a 3-year term.

Clause 156 relates to the qualifications for electors. In effect, a person who is qualified to vote in local body elections and is resident in the trust district is qualified to vote in trust elections. The clause is based on section 9 of the Licensing Trusts Act 1949. The matter is not dealt with in the appended Bill.

Clause 157 is a much expanded version of clause 100 of the appended Bill, relating to the conduct of elections. *Subclauses (2) to (7)* are based on subsections (2), (3), (4), and (7) of section 12 of the Licensing Trusts Act 1949.

Clause 158 is based on section 13 of the Licensing Trusts Act 1949, and there is no equivalent provision in the appended Bill. It provides for the case where insufficient persons are nominated to fill the vacancies in the membership of a licensing trust.

Members

Clause 159 provides for the members of a licensing trust to elect one of their number to be the president of the trust. It is based on clause 104 of the appended Bill.

Clause 160 empowers a licensing trust to appoint one of its members to be the deputy president of the trust. It is based on clause 105 of the appended Bill.

Clause 161 empowers the Minister of Justice to appoint a deputy member to act for a member who is temporarily incapacitated. It is based on section 6 of the Licensing Trusts Act 1949. There is no equivalent provision in the appended Bill.

Clause 162 empowers a licensing trust to determine the remuneration of its president, deputy president, and other members. It follows clause 103 of the appended Bill.

Conduct of Business

Clause 163 relates to meetings of the trust. It is based on clause 106 of the appended Bill.

Clause 164 gives a licensing trust the power to determine its own procedure and method of operations. It is based on clause 107 of the appended Bill.

Clause 165 requires a licensing trust to keep proper books of account. It is based on clause 108 of the appended Bill.

Clause 166 requires a licensing trust to produce a yearly balance and accounts. It is based on clause 109 of the appended Bill.

Clause 167 empowers a licensing trust to compromise with creditors as if it were a company. It is based on clause 110 of the appended Bill.

Variation, Amalgamation, and Winding Up

Clause 168 empowers the Governor-General, by Order in Council made on the advice of the Minister of Justice, to vary the constitution of a licensing trust in certain specified ways. It is based on subclauses (2) and (3) of clause 97 of the appended Bill.

Clause 169 makes special provision for elections of members on the creation or alteration of wards. It is based on section 11A of the Licensing Trusts Act 1949. There is no equivalent provision in the appended Bill.

Clause 170 makes provision for the amalgamation of 2 or more licensing trusts into 1 new one. It is based on clause 98 of the appended Bill.

Clause 171 provides for the winding-up of a licensing trust, as if it were a company, under Part VI of the Companies Act 1955. It replaces clauses 111 and 112 of the appended Bill.

Clause 172 provides for the distribution of assets of a licensing trust to the local authority or local authorities. It replaces clause 113 of the appended Bill.

Powers of Local Authority

Clause 173 draws attention, as it were, to the powers of a local authority to make or guarantee loans to a licensing trust. The power is to be set out in the Local Government Act 1974. The clause is based on clause 114 of the appended Bill.

PART X

MISCELLANEOUS PROVISIONS

Clause 174 makes provision for an employee of the Department of Justice to be designated as the Registrar of Licensees and Managers for the purposes of the Bill. The clause is based on clause 150 of the appended Bill.

Clause 175 requires the Secretary of each Licensing Authority to keep certain records and registers. The clause is based on clause 151 of the appended Bill.

Clause 176 provides that certified extracts from registers and records kept under *clause 174* or *clause 175* shall be evidence of their contents. The clause is based on clause 153 of the appended Bill.

Clause 177 requires every licensee and manager to have an address for service for the purposes of the Bill. The clause is based on clause 152 of the appended Bill.

Clause 178 requires the holder of an on-licence, an off-licence, or a club licence to file annual returns of liquor sales. The clause is based on clause 163 of the appended Bill.

Clause 179 relates to companies that hold licences. It requires notice to be given to the Secretary of the Licensing Authority when certain changes in the shareholding of the company occur, or where the directors or secretary are changed. The clause is based on clause 158 of the appended Bill.

Clause 180 provides for the issue of a duplicate licence or certificate in place of one that is lost or destroyed. The clause is based on clause 159 of the appended Bill.

Clause 181 provides for the voluntary surrender of a licence. It is based on clause 160 of the appended Bill.

Clause 182 provides for temporary approval to sell liquor at alternative premises where the licensed premises are put out of use through calamity or the need for repair, etc. The clause is based on clause 161 of the appended Bill.

Clause 183 empowers the Licensing Authority to prescribe fees. It is based on clause 162 of the appended Bill.

Clause 184 provides for the making of regulations. It is based on clause 165 of the appended Bill.

Clause 185 makes consequential repeals and amendments.

PART XI

TRANSITIONAL PROVISIONS

This Part of the Bill is concerned largely with the changeover from the licensing system presently operating under the Sale of Liquor Act 1962 to the new system proposed in the Bill. It follows broadly Part XII of the appended Bill.

Clause 186 converts certain licences into on-licences. It follows paragraphs (a) to (j) of clause 168 (1) of the appended Bill.

Clause 187 (1) is consequential upon the decision to require BYO restaurants to hold on-licences. It converts existing BYO restaurant permits into on-licences endorsed under *clause 27* of the Bill.

Clause 187 (2) converts existing wine makers' bar permits into on-premises licences. It follows clause 168 (1) (k) of the appended Bill.

Clause 188 deems the New Zealand Railways Corporation to be the holder of an on-licence in respect of existing liquor facilities on trains. It follows clause 168 (2) of the appended Bill.

Clause 189 converts existing wholesale licences (including limited wholesale licences), wine resellers' licences, and wine makers' licences into off-licences. In those respects it follows clause 169 (1) of the appended Bill. However, it also converts brewers' licences, spirit makers' licences, rectifiers' and compounders' licences, and vignerons' licences into off-licences. This was not recommended by the Laking Committee.

Clause 190 deems the holders of certain licences to be the holders of off-licences. It follows clause 169 (2) of the appended Bill.

Clause 191 deems chartered clubs with present off-sales rights to be the holders of off-licences. This contradicts the Laking Committee's view that such rights should be abrogated.

Clause 192 converts existing club charters (other than permanent club charters) and club licences into club licences under the Bill. It follows clause 170 of the appended Bill.

Clause 193 preserves the present special status of clubs with permanent charters. This contradicts the Laking Committee's view that this special status should be abolished.

Clause 194 converts existing booth licences into special licences. It follows clause 171 of the appended Bill.

Clause 195 deems district licensing trusts and suburban licensing trusts to be the holders of on-licences and off-licences in respect of their present facilities. The clause follows clause 172 of the appended Bill.

Clause 196 provides for the continuance of all existing licensing trusts. In effect, it is based on clause 94 of the appended Bill.

Clause 197 preserves existing conditions of sale in respect of the various licences, permits, and charters that are brought under the new system. It is based on clause 173 of the appended Bill. However, at present spirit makers' licences, rectifiers' and compounders' licences, and vigneron's licences authorise sale only to limited classes of persons. This restriction is removed by *subclause (2)*.

Clause 198 requires new licences to be issued as soon as practicable in place of the existing licences, permits, and charters. The clause follows clause 177 of the appended Bill.

Clause 199 deems certain bars, rooms, and premises to be restricted areas or family areas. It is based on clause 174 of the appended Bill.

Clauses 200 and 201 convert existing managers' certificates to general managers' certificates or club managers' certificates under the Bill. They are based on clause 175 of the appended Bill.

Clause 202 provides for the transfer of records from the existing Licensing Committees to the new Licensing Authorities. It is based on clause 176 of the appended Bill, but it also requires the Secretary for Justice to send to each licensing authority the appropriate records of the Licensing Control Commission.

Clause 203 provides for existing applications and appeals pending at the commencement of this Bill. It follows clause 178 of the appended Bill.

Clause 204 provides that no on-licences or off-licences may be issued in any no-licence district until a trust poll has been held in the district. If the trust proposal is carried, the Minister of Justice must advise the constitution of a licensing trust or licensing trusts under *clause 148* of the Bill. This was not recommended by the Laking Committee.

Clauses 205 to 207 make transitional provisions in relation to the Licensing Fund and the Hotel Investment Account. They are based on clause 164 of the appended Bill.
