

**HEALTH PROMOTION DIRECTORATE
TE WHATA ORA
DLC NETWORK WORKSHOP**

28 JUNE 2023

**DLC Statutory Powers
to improve pre-hearing and hearing processes**

**Presented By:
Alastair Sherriff**

28 June 2023

DLC Statutory Powers to improve pre-hearing and hearing processes

Introduction

1. My *purpose* in presenting this paper is to outline the full extent of your extremely wide direct and discretionary powers. In short, to identify your extensive toolkits of powers. The *object* of the presentation is to improve your performance as a vital and important **community representative decision-maker** – at first instance – in the crucial role of licensing sellers of alcohol to the public. Alcohol is a carcinogenic drug which contributes to considerable community costs when consumed to excess and inappropriately. It is no coincidence that *intoxicated/intoxication* – helpfully defined now in section 5 – both contain the word "*toxic*" which derives from "*toxin*" – from Latin and Greek meaning poison.
2. Your responsibilities should not be undertaken lightly.
3. You have been given wide powers. My goal is to see you make the most of them. As a footnote and ulterior motive, I observe that if, and when, this Government enacts the Community Participation Bill,¹ you will need to be thoroughly familiar with these tool kits because **you will** have to use them for every hearing, if the current rights of party questioning and cross examination disappear.
4. In the brave new Community Participatory DLC hearing world that will emerge in 2024 **you** – as DLC members – will need to become:
 - (a) skilled inquirers;
 - (b) skilled questioners,because you will be the only persons in the hearing who can challenge evidence-in-chief presented to you. Officially you will become **Inquisitors** but I have coined my own word for you – "**Inquistidors**" adapted from Conquistador obviously.
5. That said – **THIS PAPER DEALS ONLY WITH WHAT THE LEGISLATION SAYS IN JUNE 2023.** For those of you who attended last week's webinar there will be some overlap/déjà vu because today's discussion is the other side of last week's coin.

Summary of Paper

6. This paper will cover:
 - 6.1 Your three (legislative) tool kits.
 - 6.2 Pre-hearing use of your powers.
 - 6.3 The use of your powers during hearings.
 - 6.4 Other key factors to improving your processes.

¹ Projected to be enacted during this July, and changing the law for DLC hearings from about 1 April 2024 (9 months later).

Toolkit #1 : Sale & Supply of Alcohol Act

7. Section 188

7.1 As a DLC you have *all the powers given to you under the 2012 Act, and any other Act² and all powers as may be reasonably necessary to enable you to carry out your functions.*³

7.2 This is as broad as you could hope for. There are of course some common sense restraints:

- (a) natural justice;
- (b) reasonableness;
- (c) relevance;
- (d) need to maintain judicial impartiality before the conclusion of the evidence;
- (e) avoiding accusations of frolicking.⁴

7.3 However, this section [188] alone would justify:

- (a) adjournments;
- (b) mediation;
- (c) issuing provisional decisions to solicit feedback/satisfy natural justice⁵;
- (d) deferring a decision pending receipt of further information from a party.⁶

8. Section 190

8.1 This gives you power to hold hearings whenever and wherever you think reasonable and appropriate. This is often used to sit in the actual community where the premises are situated.⁷ (I once participated in an Authority hearing that continued until about 9.30-10.00pm).

9. Section 201

9.1 You have the powers of a Commission of Inquiry under the 1908 Act. I deal with that next.

10. Section 202(5)

10.1 In its terms this applies only to the Authority. However, it is my opinion that, coupled with s 188 and s 203(9) a DLC can utilise the same procedure. [The CP Bill currently adds this for you to put the matter beyond doubt.]

11. Section 203(9)

11.1 There are some public hearings for which s 202(1) and (4) – *the 10 working days' notice* – do not apply. This enables a DLC to hold an urgent hearing in less than 10 working days for at least the following matters:

- (a) an application for a new licence where there is no objection and no opposition report but s 107 is relied on;

² Which I cover next – the COIA and EA.

³ Your functions are set out in s 187.

⁴ *Hari OM (2012)* [2014] NZARLA 949.

⁵ This is a good idea if you fancy coining a famous phrase such as "*orchestrated litany of lies*".

⁶ *Alicious v LNDLU* [2021] NZARLA 36 at [171]-[177].

⁷ My last DLC hearing was in a nearby hotel conference centre: my next one is in a community non-denominational church hall.

- (b) an application for a special licence where there has been no notification under s 139(b) and no objection under s 140;⁸
- (c) a special licence application where s 144 is relied on;
- (d) managers certificate applications/renewals.

11.2 The Authority has used this power to prevent a media representative from searching Authority files relating to previous proceedings – which is of course different from suppression and exclusion of the public orders.

12. Section 203(5)-(6)

12.1 These are valuable powers. I have used them both.

12.2 Excluding the public: This will be rare but there are unusual circumstances where it may be appropriate. Examples: I obtained an order excluding the public for part of a DLC hearing in the Auckland DLC where my client's actual trading figures were in issue to establish whether the business was a *tavern*⁹ or a C4 gambling venue. Excluding the public enabled my client to be freely cross examined by the Inspector's lawyer and questioned by the Committee. Another example may be for privacy protection reasons. E.g. anonymous drunk patrons vomiting on CCTV videos; topless bar servers; CCTV of disorder. It could have happened in the Christchurch case where a patron drank himself to death if the details were sufficiently cogent but graphic. If you wonder why there are occasions where non-publication and suppression orders are inadequate then read *ASG v Hayne (VC University of Otago) [2017] NZSC59*. In short unless the non-publication/confidentiality order is as specific as it was in the *Alicious* case – restricted to named or office holding persons – then non-publication orders are unlikely to mean that a person who hears something in a hearing room is totally prohibited from repeating that to a third person if the third person has a genuine interest in hearing it.

12.3 Non-publication orders¹⁰

You need to consider:

- (a) exactly what is sought; and
- (b) the precise width and breadth of what is reasonable, justified, and necessary to the case.

Publication may be restricted to parties and not witnesses. It may be restricted to some parties only – that is problematic unless natural justice does not require everyone to know. It may just apply to copying or reproduction of documentary information. It may refer only to media. Take care. The starting point is always open justice.

- (c) Objectors are parties: you cannot suppress their names – s 203(5). You can suppress witness's names. The safest way to ensure anonymity is to never have that witness say their name – write it down and call them "A" etc.

⁸ This applies also where special licence applications have attracted opposition reports but no objections.

⁹ As defined in s 5.

¹⁰ Frequently referred to as confidentiality orders or suppression orders.

13. Section 204(2)

13.1 The ability to afford rights of audience and participation to non parties is important. Especially if the Committee itself wants to hear from people. The *leave*/permission can be granted proactively without any application. (Own initiative). This could be particularly useful if you desire to hear from:

- (a) iwi/hapū/Māori Wardens;
- (b) residents' associations;
- (c) school principals;
- (d) councillors;
- (e) the Council;¹¹
- (f) a Community Board or Local Board.

14. Section 207

14.1 If you think evidence is relevant and will assist you determine the application you can get it or listen to it.

15. Section 208

15.1 Waiver powers are important. The current orthodox view is that you can probably use this power to allow in:

- (a) late objections;
- (b) late agency reports;
- (c) evidence filed after a timetable date.

15.2 The tests will always be those of reasonableness, justice, fairness, natural justice – who is (actually prejudiced?), and whether the lateness was *wilful*. Not seeing the public or site notice is unlikely to suffice.

16. Conditions

16.1 On every new off-licence for a *grocery store* or supermarket you must issue an SA condition;

16.2 On every renewal of a *grocery store* or supermarket off-licence you must issue a fresh SA condition;¹²

16.3 There are compulsory and discretionary conditions; and

16.4 Then there is s 117 – the general catch all discretion. Here you are able to consider single sales/RTD sales for bottle stores. You might impose:

- (a) noise volume restrictions or live entertainment time constraints;
- (b) patron number restrictions;
- (c) security personnel conditions;
- (d) vessel type conditions (no glass in certain areas);

¹¹ Eg in relation to a LAP element – you might requisition all the background papers and Council minutes.

¹² s 112(2) and (3). An SA expires.

- (e) liquor ban area signage on licensed premises.
- 16.5 Price restraint conditions are problematic unless agreed to by an applicant, according to the most recent Authority precedent¹³.
- 16.6 If you intend to impose a new condition (not sought by an applicant and not discussed/agreed/argued about at the hearing) or vary an existing condition then you must remember the wise words of Justice Gendall in the HC *Vaudrey* appeal – any condition must satisfy the reasonableness test, the proportionality test, the relationship with s 4 test, and probably not be a total prohibition. It must also only be based on the evidence produced at the hearing or on the papers – if you go off on your own fact finding or google search [which you are entitled to do] then you are obliged to engage with affected parties – tell them about what you have done/discovered, and what you propose to do as a result - **before finalising the condition**. This follows 2 Court of Appeal decisions and is an obvious requirement of natural justice . [The 2 CA decisions are *Karara* and *Meads Brothers* – both well known.] All these propositions are found in Gendall's judgment and were not part of the subsequent appeals – [93] – [119].

Toolkit #2 : Commissions of Inquiry Act 1908

17. **Maintaining order – s 4 (DC civil power).** Theoretically you could exclude someone from a Hearing¹⁴ and/or hold someone in contempt and have them detained.¹⁵ I hesitate to recommend the latter given s 211A was inserted for the Authority but not you! At a DLC hearing I was in recently, held in a Council building, a mentally/socially challenged person was rampaging inside the building. The DLC Chair had the hearing room locked to prevent them disrupting the hearing.
18. **Inspection/Requisition/Information under s 4C (replicated here)**
- 18.1 This allows you, or someone appointed by you, to exercise all the powers set out in s 4C:

4C Powers of investigation

- (1) *For the purposes of the inquiry the Commission or any person authorised by it in writing to do so may—*
- (a) *inspect and examine any papers, documents, records, or things:*
- (b) *require any person to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made:*
- (c) *require any person to furnish, in a form approved by or acceptable to the Commission, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents, or records as aforesaid.*

¹³ *Dharma Enterprises Ltd v Arena Williams MP and Turehou Māori Wardens Ki Otra Charitable Trust* [2023] NZARLA 79 at [21]-[23]. This decision is also remarkable because whilst it was a reserved decision Judge Menzies and Ms Moorhead and Mr Miller released it six days after the hearing.

¹⁴ s 10 District Courts Act 2019 (DCA).

¹⁵ ss 10 and 11 DCA.

- (2) *The Commission may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section shall be verified by statutory declaration or otherwise as the Commission may require.*
- (3) *For the purposes of the inquiry the Commission may of its own motion, or on application, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Commission, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.*
- (4) *Every person shall have the same privileges in relation to the giving of information to the Commission, the answering of questions put by the Commission, and the production of papers, documents, records, and things to the Commission as witnesses have in Courts of law.*

18.2 This power has been used to get an analysis done of a product where the respondent put its alcohol content in issue – the Authority commissioned the analysis. It certainly entitles a DLC to requisition:

- (a) financial records;
- (b) CCTV records, and other documents a licensee might keep – e.g.
 - (i) incident log;
 - (ii) managers' register;
 - (iii) staff rosters;
 - (iv) tax/GST financial statements;
 - (v) POS records;
 - (vi) training logs etc.

19. Summonsing witnesses: s 4D

19.1 You should do this if asked to do so by a party.

19.2 You can, however, do it yourself proactively. Be wary. One DLC Chair summonsed a former Inspector now in another city, plus two school Principals. All three gave evidence favourable to the applicant and resented being disrupted – neither of which the Chair expected.

19.3 Note – a summons can require a person to attend, solely, or it can also require that person to produce relevant specified "*papers, documents, records, or things*" they have relevant to the case.

19.4 It has always surprised me that DLCs have never summonsed the Directors of a private company applicant who are not listed as witnesses. You should want to be satisfied they are each/all suitable and experienced or otherwise how they will ensure compliance with s 4 by the applicant.

Toolkit #3 : Evidence Act 2006

20. Section 18 Hearsay

20.1 Witnesses can give hearsay evidence. Ie what someone else told them. What evaluative weight you give it is over to you. Frequently, my MOHs will contact GPs and Pharmacists in the locality of a premises and inquire as to:

- (a) alcohol-related harm presentations/patients – both chronic and acute; and
- (b) meth program existence etc.

20.2 It is efficient for you to receive such evidence from a MOH rather than disrupt GPs or pharmacists.¹⁶

20.3 There is another thing about hearsay. It is first and foremost evidence of what someone said to the witness. If you believe the witness is credible then you can accept as a fact that the statement was made. The next thing is evaluating if it was true. If a witness says to you 10 people at his/her school have said to them that they have tidied up broken beer bottles outside a bottle store in the street that is probably pretty probative of a degraded *amenity and good order* in that *locality*.

20.4 Finally, s 207(1) allows that anyway.

21. Section 19 Business record hearsay

21.1 This is when a *business record* is produced by a witness who did not create the record and probably wasn't even present when it was created. Vast swathes of police evidence of CARD and NIA data may or may not actually be *business record* hearsay. It is usually admitted and relied on, nevertheless.

21.2 Likewise, ED presentation data. If, in a busy ED, some unidentifiable nurse or registrar or doctor records alcohol as a factor in a patient presentation that is likely to be true and reliable.

22. Opinions – lay and expert – sections 24 and 25

22.1 Some lay opinions are admissible. They are quite likely to assist you so long as you find there is a rational logical factual substratum for the opinion and they explain what the lay witness saw, heard, or perceived. Eg:

I live two doors down the road from a bottle store. I have been in the store. It sells Vodka cruiser cans. Every morning I see vodka cruiser cans in the gutter outside my house. I have seen young people drinking vodka cruiser cans in the street. In my opinion they come from this bottle store.

That seems a reasonable credible, and thus reliable, opinion. It is not speculative as such.¹⁷ However, it would be remiss of me to fail to mention here the very recent ARLA decision in which a lay witness for an objector had undertaken a desktop review, had never visited the locality, had not spoken to anyone in the locality. The Authority said that her evidence would have been inadmissible under the EA as inexpert opinion evidence, but was admissible under s 207(1). However it was not entitled to any significant weight, and, in the result at both DLC and ARLA levels, was effectively rejected: see *Duncraft v GKD Ltd* [2023] NZARLA 78 (26/5/23).

22.2 When I am acting for MOHs they read the *Expert Witness Code* before they write their evidence. They explicitly agree to be bound by it. They give evidence as trained and experienced public

¹⁶ If the Community Participation Bill is passed in its current form, then hearsay evidence will become more commonplace from community folk as you are likely to need to contain the number of witnesses to representatives.

¹⁷ See the evidence of Alison McKone in the *Shady Lady Lighting* case as an example.

health experts and express professional opinions based on the facts they relate to the locality and the community and the applicant and maybe the premises. That expert evidence should help you.

23. Views – section 82 (replicated here)

82 Views

- (1) *If, in any proceeding, the Judge considers that a view is in the interests of justice, the Judge may—*
 - (a) *hold a view; or*
 - (b) *if there is a jury, order a view.*
- (2) *A view may be held or ordered on the application of any party or on the Judge's own initiative.*
- (3) *If there is a jury, a view may be ordered to be held at any time before the jury retires, and the Judge may order a further view of the same place or thing during the jury's deliberations.*
- (4) *If there is not a jury, the Judge may hold a view at any time before judgment is delivered.*
- (5) *Information obtained at a view may be used as though that information had been given in evidence.*
- (6) *Every party, including the defendant in a criminal proceeding, and lawyers for the parties, is entitled to attend a view, but any party, or that party's lawyer, may waive that entitlement.*
- (7) *In this section, **view** means an inspection by the Judge or, if there is a jury, by the Judge and jury, of **a place or thing** that is not in the courtroom.*

23.1 The first critical thing about views is you either invite every party or no party. You can't just go with one or two parties. You certainly cannot just go just with the Inspector. Best to go with the Secretary or Hearings Adviser and no parties.

23.2 The second critical thing about a view is that there is **not meant to be any communication with anyone**. It is **an inspection of a place or thing**. That visit allows you to require production of things or documents during the view so you can inspect documents on site – e.g. incident register, managers register etc. [This is useful for things/documents which inherently need to be at/on the premises]. Many DLCs will inspect the fridge and the freezer in taverns to see the range of food actually available. Similarly, the range of zero alcohols and low alcohols in tavern and bottle store fridges/taps etc. and where water is available – ARLA wants it in every bar/room and not just on the main bar servery.

24. Managing decorum and relevancy may require you to *disallow unacceptable questions*. Check out s 85 for those:

- (a) improper;
- (b) unfair;

- (c) misleading;
- (d) repetitive;
- (e) too complicated.

Also would be included offensive questions.¹⁸ Tread warily on this one. Asking a male licensee or company director if he sleeps with the female staff may be highly relevant. It may not. In one case I did not object to that question being asked of my witness by the lawyer for the objector party.

25. Short cutting the receipt of relevant and helpful evidence – ss 128/129/133

25.1 You can receive evidence of *uncontroverted facts* – e.g. *my Opotoki premises was closed because of the gang feud there last week* – no need to call the mayor or the police etc to confirm. *Reliable published documents* can be produced without the authors being there. Common examples in DLCs are:

- (a) the Law Commission reports (or extracts from them); and
- (b) peer reviewed research papers.

If there are several pages of evidence in a brief, a summary of the key points is very often very useful. Dr Palmer, the Wellington MOH, has perfected this strategy.

Helping yourself and improving efficiency of Hearings – before the Hearing

- 26. Identify controversial issues: "*elevated mantle*" criteria. You might decide to limit evidence to those criteria. At some hearings there might be only one controversial issue.
- 27. Identify parties: status/validity : absences?
- 28. Identifying any unusual or special features which you (DLC) specifically desire evidence on.

Timetabling

- 29. Fix date/place/time for hearing – 6 weeks ahead at least.
- 30. Timetable evidence: [telecon/video (Zoom) conference]:
 - (a) applicant 14 days after timetable;
 - (b) agencies/objectors 14 days after applicant.

Allow at least two weeks before hearing.

- 31. Sort out pre-hearing/interlocutory matters:
 - (a) suppression?
 - (b) requisitions?
 - (c) witness summons?
- 32. Order of parties/witnesses/closings.

Some Other Key Factors to improve your processes

¹⁸ Of the "*when are you going to stop beating your children?*" variety.

33. Know the law

	New licence applications	Renewal applications
Objection rights	102	128
Criteria	105/106(1)	Some 105/106(2)/131
Decision-making	104/107/202(1) 211	130/134 Opposition reports prevent a paper's decision 211
NB single area conditions	112(2)	112(2) <u>and</u> (3)
Appeal rights for grant (new)	152	153
Appeal rights for refusal	153	153

Mediation

34. This will be rare. Care will be needed. Best practice will be to issue a draft or provisional decision with proposed conditions. Solicit feedback from everyone. If the differences are small may be the mediation route – on a *without prejudice* basis – may help. Wellington DLC tried that – in the end the applicant could not agree with the objectors so the licence was refused.¹⁹

Natural Justice

35. Section 27 NZBORA.

36. Probably four key elements:

36.1 Fairness.

36.2 Reasonableness.

36.3 Opportunity to respond or comment on anything which adversely affects one.

36.4 Entitlement to a decision based on evidence/view. This means you could not rely on private google or companies office searches or Facebook or Wikipedia etc. **UNLESS you had been transparent and disclosed those and given parties the opportunity comment on what you discovered before issuing a decision or imposing a new/varied condition not previously discussed/sought.**

Separation of powers and roles and responsibilities and independence of participants

37. See, as appendix, my separate Memorandum. It is a constant source of surprise to me that many people working in territorial authorities – and some DLCs - do not understand and respect these separations – hence the separate detailed Memorandum which I annex as an Appendix, next.

¹⁹ *Gunpowder Ltd* decision. There is a link in Westlaw SA203.03.

APPENDIX

BUDDLE FINDLAY

Memo

March 2023

ALCOHOL LICENSING: THE ROLES/RESPONSIBILITIES/SEPARATION of participants at territorial authority level

A. Participants

1. There are 3 groups of participants in the alcohol licensing process:
 - (a) the District Licensing Committee ("DLC");
 - (b) the Secretary and the Secretariat to the DLC;
 - (c) the parties to the process.
2. These participants have different roles –
 - (a) the DLC is the (judicial) decision-maker;
 - (b) the Secretary & Secretariat administer the process and are the liaison (communication channel) between the DLC and the parties and carry out the statutory functions imposed on the Secretary;
 - (c) the parties comprise:
 - (i) an applicant;
 - (ii) 3 discrete statutory reporting agencies (Police, Medical Officer of Health, Licensing Inspector);
 - (iii) Members of the community who wish to object (objectors) or are given leave to participate (leave or s 204 parties).

B. Separation/Independence

3. The 3 distinct groups each have a discrete and distinct role. This distinction in roles must be recognised and respected at all times, and requires separation and independence. The only overlap between the 3 groups, at the same time, is at hearings, where all participants are present, and the interaction between them all is transparent to all and occurs in real time.
4. The DLC and one or more or all parties must not be communicating directly – such communications should occur through the secretariat or by formal written Minute except and unless they occur during public hearings where everyone is present and a record of the interaction is being made. Outside Hearings, all communications to or from the DLC to any party must be copied to all parties – natural justice. This means that no member of a DLC should speak with the Inspector about any particular application outside a Hearing and before the decision is issued.

BUDDLE FINDLAY

C. The DLC

5. This is established by statute¹. It is constrained in how it considers applications². Neither the Secretary or the Secretariat, and certainly not any of the parties, should be involved in the decision-making process or in actual decision writing.

D. The Secretary & the Secretariat

6. The CE is the Secretary³ and can delegate that responsibility if permitted by the Council⁴. Various responsibilities fall on the Secretary/Secretariat, which is quintessentially tasked with administrative roles enabling the DLC to process alcohol licensing applications⁵ and report to ARLA etc.
7. It is the Secretariat which deals with the public, with inquiries, and with communications between the DLC and parties.

E. Parties

8. The orthodox position is that persons defined in section 204(3) are the only parties to (a) DLC licensing processes and (b) DLC hearings for the purposes of appeals⁶. That is to say applicant, objectors, Police, Licensing Inspector, and Medical Officer of Health.
9. Rejected objectors are not parties.
10. There are other potential parties who may, however, first seek and be granted leave to appear as parties:
 - (a) FENZ;
 - (b) territorial authority authorisees;⁷
 - (c) other persons who meet the section 204(2)(c) threshold.⁸

F. Parties' Roles

11. Police have a public law and order portfolio under section 9 of the Policing Act.
12. Medical officers have a public health mandate under the Health Act. They have specific power to delegate.⁹
13. Licensing Inspectors are a creature of statute too – section 197 of the Act. They are required to act *independently*¹⁰ when they perform their roles¹¹. Independence here means independence from:

¹ Sections 186-195, 200, 201-204, 207-209, 211 Sale & Supply of Alcohol Act 2012 ("the Act"). Reference to sections refer to sections of the Act.

² Sections 105-119 for example for new applications/conditions.

³ Section 196.

⁴ Section 198.

⁵ E.g. sections 64, 66, 102(5), 103(5), 72, 73.

⁶ Section 154.

⁷ This has included a CE, and frequently includes Local Boards, Community Boards etc.

⁸ If a Māori Wardens Association or a School Principal, or Kaumatua or some-such sought leave this is where they could obtain party status to participate.

⁹ Section 151 of the Act.

¹⁰ Section 197(4).

¹¹ - To monitor licensees' compliance – section 197(2);

- To inquire into and report – section 103, 129 and 141.

BUDDLE FINDLAY

- the Secretariat;
- the DLC;
- the territorial authority¹²

when acting as an Inspector. By "*the territorial authority*" I specifically intend to mean that politicians (Councillors and the Mayor) and line managers cannot tell an Inspector what to put in a report nor request something be removed from a report, nor tell an Inspector to oppose or support or remain neutral in respect of any particular alcohol licence application. Nor could any of those persons tell an Inspector to monitor or not monitor a particular licensed premise or kind of licensed premise.

14. The 3 agencies have common duties set out in section 295 which specifically include collaboration with each other.
15. Necessarily, due to their obligations to "inquire" into applications, each of the agencies are expected to contact whomever they think will assist them in their inquiry – that is almost certainly going to include the applicant, the other agencies, other affected persons such as folks in the community including objectors, and potential witnesses. It is well established law that applicants who do not co-operate with the reporting agencies put their suitability into question. Inspectors have certain powers in relation to information gathering – see eg ss 267, 268.

G. Conclusion

16. It follows from the above that:
 - (a) job descriptions (and KPIs) for Inspectors should not include references to managing alcohol licence applications; liaising with the public; assisting or advising DLCs; maintaining licence data or registers;
 - (b) job descriptions (and KPIs) for secretariat administration officers should not include references to assisting or supporting Inspectors in relation to their reporting and inquiry and enforcement roles, nor preparing draft reports or decisions for DLCs or Inspectors¹³;
 - (c) to preserve and maintain the separation of roles and responsibilities and the independence of the Inspector, ideally the Secretariat administrative officers would report to a different line manager from the line manager to whom the Inspectors report – there are clear difficulties if licensing Inspectors report to the delegated Secretary;

A G Sherriff

- To enforce the Act e.g. sections 280 and 285.

- To collaborate with the other two agencies e.g. s 295.

¹² Employer/employee obligations must provide for and respect this independence: see s 197(4) of the Act.

¹³ These matters are quite separate from preparing a complete file with a summary for a DLC, or compiling an agenda for a DLC hearing.