

# Implementation Guide

## Changes to the Sale and Supply of Alcohol Act 2012

5 June 2024

*Changes have been made to alcohol licensing processes under the Sale and Supply of Alcohol Act 2012. The changes aim to make licensing processes more accessible, with aspects like hearings being less formal and adversarial.*

*This document provides information for those who deliver the licensing system. It sets out the changes to law that you must now comply with, and gives some suggestions for how you can implement the changes.*

## Overview

Alcohol licensing has a direct impact on communities, including on health, wellbeing, safety, amenity and good order. There are also economic implications for businesses, employment, exports, tax, hospitality and tourism.

The Sale and Supply of Alcohol Act 2012 (the Act) provides a range of ways for communities to influence alcohol licensing decisions, according to their neighbourhood's character, circumstances, and experiences with alcohol-related harm.

Decisions about the way alcohol is sold in New Zealand are mostly made at a local level. This document provides information to those who deliver the licensing system, including:

- Territorial Authorities
- District Licensing Committees (DLCs)
- the Alcohol Regulatory and Licensing Authority (ARLA)
- Licensing Inspectors
- Alcohol Harm Prevention Officers within New Zealand Police, and
- Medical Officers of Health within Health New Zealand – Te Whatu Ora.

### The Sale and Supply of Alcohol (Community Participation) Amendment Act 2023

The Sale and Supply of Alcohol (Community Participation) Amendment Act 2023 (the Amendment Act) aims to make it easier for communities to have a say in alcohol regulation in their area, by making targeted changes to alcohol licensing processes.

The Amendment Act made two sets of changes.

### Changes in force from 31 August 2023

The first set of changes came into force on 31 August 2023. Those changes:

- removed the ability for parties to appeal provisional local alcohol policies (LAPs) to ARLA
- enabled DLCs and ARLA to decline to renew a licence if the licence would be inconsistent with conditions relating to location or licence density in the relevant LAP, and
- allowed any person to object to a licence application, with narrow exceptions for trade competitors and their surrogates, and extended the time a person has to object from 15 to 25 working days.

Guidance for those changes can be found [here](#).

### Changes in force from 30 May 2024

A second set of changes is now in force. These changes make licensing processes more accessible, and less formal and adversarial.

From 30 May 2024, there are changes to procedures for how DLCs consider licensing applications.

These changes mean that DLC procedures must:

- avoid unnecessary formality
- not permit cross-examination, or parties to question other parties and their witnesses
- allow for tikanga Māori to be incorporated into proceedings, and
- allow evidence to be given in te reo Māori.

ARLA and DLCs must now consider any reasonable request made by a person to take part remotely in a hearing, or any part of a hearing.

# How the changes apply to proceedings underway

The Amendment Act sets out how the law applies to proceedings that have begun when the changes come into force.

## Old rules vs. new rules

In this document, the “old rules” mean the alcohol licensing process before the Amendment Act changes came fully into force.

The “new rules” mean the alcohol licensing process in the Act after the Amendment Act changes came fully into force.

## When have ‘proceedings begun’?

Proceedings have begun when an objection is made to an application, or a report is filed by Police or a Medical Officer of Health. Proceedings have also begun if the DLC or ARLA choose to convene a public hearing to consider the application without an objection having been made.<sup>1</sup>

## How do the changes apply?

For proceedings that began *before* 31 August 2023, and are still underway, the old rules continue to apply.

For proceedings that have begun *after* 30 May 2024, the new rules apply.

For proceedings that began *after* 31 August 2023, but have not concluded *before* 30 May 2024, we suggest that the old rules should continue to apply until proceedings have concluded to maintain the shared expectations of all parties at the time proceedings began.

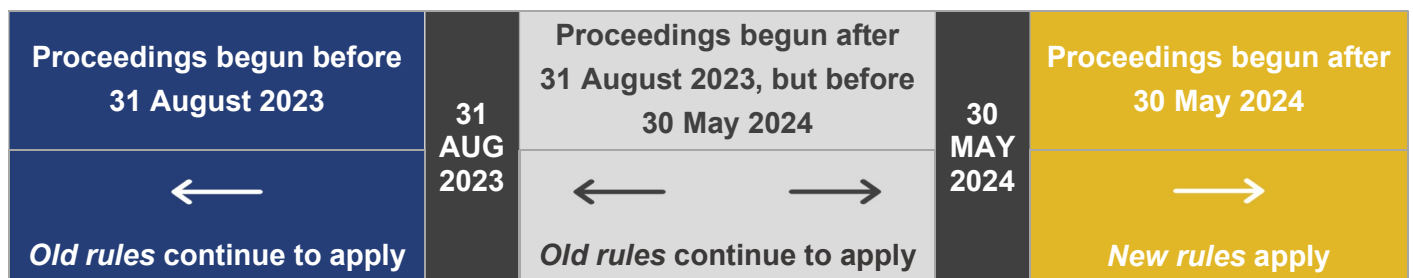
See the diagram below, showing how the changes apply to proceedings underway.

## Seeking independent legal advice

The information provided in this document is guidance provided by the Ministry of Justice to help you understand and implement the changes. However, this does not constitute legal advice.

You may wish to seek your own independent legal advice relating to the changes coming into force from 30 May 2024.

## Diagram showing how the changes apply to proceedings that have begun



<sup>1</sup> Pursuant to section 202(1) of the Act.

# Changes relating to DLC procedures

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## DLC procedures must avoid unnecessary formality

From 30 May 2024, DLCs must ensure their procedures for considering an application avoid *unnecessary* formality.

Formal procedures can be intimidating for some participants in licensing hearings and may discourage parties from engaging with the local licensing process.

This change does not mean that DLC hearings will have no formality. DLC chairs and members can run their hearings in a way that still allows them to consider an application fully and carefully, including by allowing all parties the opportunity to give evidence.

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## What might ‘unnecessary formality’ look like?

DLCs need to decide what this change means for their hearings. To help with this, the Act gives examples of what DLCs could consider to ensure their hearings avoid unnecessary formality. For example, a DLC may consider:

- ***the location and timing of the hearing***, to ensure that when and where the hearing takes place does not make it difficult for people to attend
- ***the layout of the venue***, to ensure that people attending feel they are able to take part fully in the hearing
- ***making a timetable for each hearing***, so that people speaking at the hearing know when they are likely to be heard. This could save people waiting many hours for their turn to speak, and help those joining the hearing by telephone, or video link
- ***the language and terminology used at the hearing***, to make sure the information discussed is appropriate for the people involved and easily understood by them. This will encourage active engagement in hearings and a shared understanding of matters being raised.

There may be other steps individual DLCs wish to take to make sure hearings avoid unnecessary formality for their communities.

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## DLCs cannot permit cross-examination, or parties to question other parties or their witnesses

Questioning is an important tool for DLCs to gather evidence and better consider licensing applications.

From 30 May 2024, DLC procedures must not allow cross-examination. Parties will not be able to ask questions of other parties or other parties’ witnesses. This applies equally to all parties. There is nothing preventing DLCs from asking questions, or a party questioning their own witnesses.

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## What do the changes mean for questioning?

This change means that DLCs will no longer be adjudicating a competitive process between parties to determine facts or the application of the law. Instead, DLCs led by their chairs, will play an important and active role in testing evidence, by asking parties and witnesses questions in an inquisitorial manner.

Questions from DLCs should align with criteria for the issue of licences in the following sections of the Act:

- section 105 for applications for new licences
- section 120 for applications for variation of conditions
- section 131 for applications for renewal
- section 142 for applications for special licences, and
- section 106 relating to amenity and good order.

Reports filed by Licensing Inspectors, Police and Medical Officers of Health will become important sources of information for DLCs considering applications, and help DLCs prepare for hearings.

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## DLCs must allow for tikanga Māori to be incorporated into proceedings

DLCs will need to ensure tikanga Māori can be incorporated into proceedings from 30 May 2024.

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## What is ‘tikanga Māori’?

Tikanga is a fundamental aspect of te ao Māori (the Māori world). Tikanga can be best understood when considered within the wider context of a Māori world view.

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Tikanga is intertwined with values, including:

- manaakitanga (care)
- whanaungatanga (kinship, interpersonal connections)
- awahi (support)
- mana (authority)
- utu (reciprocation)
- ea (resolution or balance)
- tapu (sacred, or restricted), and
- noa (free from the extensions of *tapu*).<sup>2</sup>

Appropriate tikanga is determined by mana whenua (iwi or hapū Māori who exercise historic and territorial authority over an area). This means what is 'tika', or correct, may differ depending on the tikanga recognised and practised by local iwi or hapū.

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## What does tikanga Māori look like in DLC proceedings?

Incorporating tikanga into proceedings can enhance connections with local communities, and improve processes for applicants, objectors and witnesses. Local councils play an important role in supporting DLCs to develop their understanding and capability to meaningfully incorporate tikanga into proceedings. Many councils will have already established relationships with mana whenua and guidelines for what tikanga looks like in local governance procedures.

We recommend that DLCs and their local councils work with mana whenua to ensure tikanga is appropriately incorporated into proceedings.

There are many practical ways through which DLC proceedings might incorporate tikanga. DLCs may wish to consider:

- **incorporating pōwhiri or less formal whakatau and mihimihi processes to welcome, and close proceedings**, which might include the use of karakia (prayer or ritual chants), waiata (songs), or whakawhanaungatanga (process of establishing relationships) in proceedings
- **being flexible on the location and layout of the hearing**, such as holding hearings on marae, or in shared community spaces. This also relates to the requirement for DLC procedures to avoid unnecessary formality

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<sup>2</sup> Te Aka Matua o te Ture | New Zealand Law Commission (2023), *He Poutama* [NZLC SP24], pp. 25–44.

- **ensuring that proceedings are mana-enhancing**, such as respecting and supporting people to take part
- **appointing people with appropriate knowledge or expertise in tikanga Māori to assist**, like cultural advisors or kaumātua, in consultation with mana whenua, and
- **how tikanga might apply to procedures for remote hearings**, and ensuring those joining hearings remotely are informed and able to take part fully.

Wider developments relating to tikanga Māori in New Zealand legislation, common law, and legal procedures are presented in detail in the Law Commission's recent study paper, *He Poutama*.

For more, go to

<https://www.lawcom.govt.nz/our-work/tikanga-maori/>

DLCs may wish to consider these developments when incorporating tikanga into DLC proceedings.

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## DLCs must allow evidence to be given in te reo Māori

The Māori Language | te reo Māori (te reo) is an official language of New Zealand. From 30 May 2024, DLCs must allow evidence to be given in te reo. This change reflects the status of te reo affirmed under the Māori Language Act 2016 | Te Ture mō Te Reo Māori 2016, particularly the right to speak te reo in legal proceedings.

DLCs may wish to arrange interpretation or translation services. DLCs can ask parties prior to a hearing if they require interpretation or translation services, to ensure anyone who wishes to give evidence in te reo at a hearing can do so.

Basic information about the government's public Translation Service is available on the Department of Internal Affairs website.

For more, go to

<https://www.dia.govt.nz/Translation-Service>

# Changes relating to remote participation

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## Anyone can ask to take part remotely in a licensing hearing

Licensing hearings before ARLA and DLCs can already be held by telephone, audio-visual link or other form of remote access if the licensing body considers it is appropriate and the necessary facilities are available.

ARLA and DLCs must now consider any reasonable request made by a person to take part remotely in a hearing, or any part of a hearing.

Attending hearings remotely might mean, for example, giving evidence by video link. The change aims to make hearings more accessible. Remote participation gives parties greater flexibility, so everyone can have a say more easily.

ARLA and DLCs can ask parties prior to a hearing if they wish to take part remotely. This will ensure anyone who wants to join remotely can do so, and so that any necessary arrangements can be made.

## Further information online

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### Where to find the Act

You can access the Sale and Supply of Alcohol Act 2012 and the Sale and Supply of Alcohol Regulations 2013 on the New Zealand Legislation website.

For more, go to

<https://www.legislation.govt.nz/act/public/2012/0120/latest/DLM3339333.html>

<https://www.legislation.govt.nz/regulation/public/2013/0459/latest/DLM5736956.html>

## What Parliament said about the changes

Parliament's website has information from the parliamentary process, including speeches from Members of Parliament, what public submissions said about the changes, and the Justice Committee's report on the Sale and Supply of Alcohol (Community Participation) Amendment Bill.

For more, go to

<https://bills.parliament.nz/v/6/ac17d356-0181-4e8d-825a-ce0c681ebae5>

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## Where to find impact analysis

You can find a Supplementary Analysis Report, which gives an impact assessment of the changes on the Ministry of Justice website.

For more, go to

<https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>

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## Where to find Cabinet material

You can access Cabinet material relating to the changes on the Ministry of Justice website.

For more, go to

<https://www.justice.govt.nz/assets/Documents/Publications/Sale-and-Supply-of-Alcohol-Community-Participation-Amendment-Bill.FINAL.pdf>