

ALCOHOLIC LIQUOR ADVISORY COUNCIL AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Alcoholic Liquor Advisory Council Act 1976.

Clause 1 relates to the Short Title.

Clause 2 relates to interpretation.

Subclause (1) substitutes a new definition of the term "beer", consequent upon the enactment of the Beer Duty Act 1977.

Subclause (2) inserts a new definition of the term "fortified wine", and is to be read with *subclause (4)*, which substitutes a new definition of the term "spirits". Essentially, what is done is to treat cocktails as fortified wine where they are of a strength not exceeding 40 percent proof spirit, and as spirits where they exceed that strength.

Subclause (3) corrects an error in the definition of the term "preceding statistical year" in the principal Act.

Subclause (5) defines the term "Wine Institute's trustee" for the purposes of the amendment to section 31 (2) (a) of the principal Act, set out in clause 11 (1) of the Bill.

Subclause (6) inserts in section 2 of the principal Act 3 new subsections. All 3 are technical provisions designed to allow calculations for the purposes of the principal Act to be based on information already required to be supplied to the Collector of Customs under the Customs Acts. This avoids unnecessary duplication of returns to be made by the manufacturers and importers of liquor.

Subclause (7) provides relief where a holder of a grape wine licence allows the licence to expire on the 30th of June in any year. Under the principal Act he would be obliged to pay a levy in respect of a full year's sales. This amendment allows him to pay only one-quarter of that figure.

Clause 3 provides for the incorporation of the Council.

Clause 4 amends the Council's functions in respect of the advertising of liquor. At present, the Council is required to make its recommendations only to the Minister of Justice. The amendment provides that the Council shall make its recommendations to such person or persons as it thinks fit.

Clause 5 empowers the Council to make advances to any body, association, or person engaged in any activity in any field with which the Council is concerned. At present, it may only make grants.

Clause 6 indemnifies members of the Council and others from personal liability for their official acts, in the absence of negligence or bad faith.

Clases 7 and 8 make minor amendments recommended by the Controller and Auditor-General.

Clause 9 makes it clear that the Council may carry forward any unexpended income to a subsequent financial year. It also provides that the Minister may have regard to any such accumulated funds in fixing the amount to be raised by way of levy in any year.

Clause 10 substitutes a new subsection (1) in section 28 of the principal Act. The only change is in paragraph (a), which imposes the liability to pay the levy in respect of imported liquor on the person who enters the liquor for home consumption. At present, the liability is imposed on the importer, whether or not he disposes of his interest in it before it is released from bond.

Clause 11: Subclause (1) enables the payment of the levy by grape wine makers to be undertaken in instalments. At present, it must be paid in full early in the financial year.

Subclause (2) makes the payment of the levy for the preceding year a condition precedent for the renewal of a grape wine licence under the Sale of Liquor Act 1962.

Clause 12 applies sections 152 to 154 of the Customs Act 1966 to levies to be collected by the Collector of Customs. This constitutes the levy a debt due to the Crown, and a charge on the liquor until fully paid.

Clause 13 provides for the recovery from the Council of the Crown's costs incurred in the administration of the Act.

Hon. Mr Thomson

**ALCOHOLIC LIQUOR ADVISORY COUNCIL
AMENDMENT**

ANALYSIS

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A BILL INTITULED

An Act to amend the Alcoholic Liquor Advisory Council Act 1976

5 **BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

10 **1. Short Title**—This Act may be cited as the Alcoholic Liquor Advisory Council Amendment Act 1978, and shall be read together with and deemed part of the Alcoholic Liquor Advisory Council Act 1976* (hereinafter referred to as the principal Act).

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by omitting the definition of the term “beer”, and substituting the following definition:

15 “‘Beer’ means the product of the alcoholic fermentation of liquid that—

“(a) On analysis is found to contain more than 1.7 percent of alcohol by volume; and

*1976, No. 143

Amendment: 1977, No. 78

2 *Alcoholic Liquor Advisory Council Amendment*

“(b) Is derived from a mash of malted grain or hops or any extract thereof, or other harmless vegetable bitters,—

and includes all other malt liquor or fermented beverages made in imitation of beer or malt liquor that, on analysis, are found to contain more than 1.7 percent of alcohol by volume.” 5

(2) The said section 2 (1) is hereby further amended by inserting, after the definition of the term “financial year”, the following definition: 10

“‘Fortified wine’ includes any spirit-based drink of a strength not exceeding 40 percent of proof spirit.”

(3) The said section 2 (1) is hereby further amended by omitting from the definition of the term “preceding statistical year” the word “proof”. 15

(4) The said section 2 (1) is hereby further amended by omitting the definition of the term “spirits”, and substituting the following definition:

“‘Spirits’ means any alcoholic drink produced by distillation (with or without the addition of any other alcoholic drink, colouring substance, flavouring substance, water, or sugar) of a strength exceeding 40 percent of proof spirit.” 20

(5) The said section 2 (1) is hereby further amended by adding the following definition: 25

“‘Wine Institute’s trustee’ means the person appointed pursuant to section 5 of the Wine Makers Levy Act 1976 as a trustee for the purpose of receiving any levies payable under that Act.”

(6) Section 2 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsections: 30

“(2A) For the purposes of the said section 26 (2), and of subsection (2) of this section, the total number of litres of beer manufactured in New Zealand during any statistical year shall be deemed to be the same as the total number of litres of beer delivered for consumption by the holders of brewers’ licences during that year. 35

“(2B) For the purposes of the said section 26 (2), and of subsection (2) of this section, the total number of litres of spirits manufactured in New Zealand during any statistical year shall be deemed to be the same as the total number of litres of spirits entered for home consumption by the holders of licences under the Distillation Act 1971 during that year. 40

“(2c) For the purposes of the said section 26 (2), and of subsection (2) of this section, the total number of litres of spirits manufactured in or imported into New Zealand during any statistical year shall be calculated in accordance with the following formula:

$$\text{Total number of litres} = \text{P.L.} \times \frac{9}{6.75},$$

where P.L. is the total number of proof litres of spirits manufactured in or imported into New Zealand during that statistical year.”

(7) The said section 2 (as amended by section 2 of the Alcoholic Liquor Advisory Council Amendment Act 1977) is hereby further amended by adding to subsection (4) the following proviso:

“Provided that, where any grape wine licence expires on the 30th day of June in any financial year and is not renewed, the total number of litres of wine sold in New Zealand by the holder of the licence shall be deemed to be one-quarter only of the total number of litres of wine sold in New Zealand by him during the preceding statistical year.”

3. Council to be incorporated—(1) Section 3 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The Council shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, and of suing and being sued, and of doing and suffering all other acts and things that bodies corporate may do and suffer.”

(2) The principal Act is hereby consequentially amended by repealing section 18.

4. Functions of Council—Section 8 (1) (f) of the principal Act is hereby amended by omitting the words “the Minister”, and substituting the words “such person or persons as the Council thinks fit”.

5. Council may make advances—Section 9 (2) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Make advances out of that Fund to any such body, association, or person, on such terms and subject to such conditions as to the payment of interest, the repayment of principal, the giving of security, and otherwise as the Council thinks fit.”.

6. Members of Council, etc., not personally liable—The principal Act is hereby amended by inserting, after section 15, the following section:

“15A. No member of the Council or of any committee appointed by the Council, and no person co-opted by the Council to advise it on any matter, and no officer or employee of the Council, who does any act in pursuance or intended pursuance of any provision of this Act, or omits to do any act required by any such provision, shall be under any criminal or civil liability as a result of that act or omission, whether on the ground of want of jurisdiction or mistake of law or fact, or on any other ground, unless the act was done or omitted in bad faith or without reasonable care.”

7. Bank accounts—Section 19A of the principal Act (as inserted by section 4 of the Alcoholic Liquor Advisory Council Amendment Act 1977) is hereby amended by omitting from subsection (4) the words “, subject to any requirements of the Audit Office,”.

8. Audit of accounts—Section 23 of the principal Act is hereby amended by inserting, after the words “the Fund”, the words “(including all money standing to the credit of the Council in any bank account opened under section 19A of this Act)”.

9. Income may be carried forward to subsequent years—Section 25 of the principal Act is hereby amended by adding the following subsections:

“(3) Nothing in this section shall oblige the Council to expend in any financial year the whole of its income received in that year; instead, the Council may accumulate any part of its income in any financial year and expend it as it sees fit for any of its purposes in any subsequent financial year.”

“(4) Notwithstanding anything in subsection (2) of this section, where the Council carries forward any such amount to a subsequent financial year, the Minister may, in determining the aggregate levy figure for that year, take into account the whole or any part of that amount.”

10. Levies payable by importers and manufacturers of a liquor—(1) The principal Act is hereby amended by repealing subsection (1) of section 28, and substituting the following subsection:

“(1) In every financial year there shall be payable by every person who—

5 “(a) Enters for home consumption in New Zealand any imported liquor of any of the classes referred to in section 26 of this Act; or

“(b) Manufactures in New Zealand any beer or spirits; or

“(c) Sells any fortified wine or unfortified wine manufactured by him in New Zealand,—

10 a levy at the rate for the time being fixed by the Minister in accordance with section 27 of this Act.”

(2) Section 6 (1) of the Alcoholic Liquor Advisory Council Amendment Act 1977 is hereby consequentially repealed.

11. Levies on grape wine may be paid by instalments—

15 (1) Section 31 (2) (a) of the principal Act is hereby amended by inserting, after the words “New Zealand”, the words “may, with the agreement of the Wine Institute’s trustee, be paid in a lump sum or in 2 or more instalments at any time during the financial year, and, except in that respect,”.

20 (2) Section 153 (1) of the Sale of Liquor Act 1962 (as amended by section 4 (2) of the Sale of Liquor Amendment Act 1977) is hereby amended by adding to paragraph (e) the word “; and”; and by adding the following paragraph:

25 “(f) That, in the case of the renewal of a grape wine licence, the applicant has paid any levy payable pursuant to the Alcoholic Liquor Advisory Council Act 1976 during the preceding financial year within the meaning of that Act.”

12. Powers of Minister, Comptroller, and Collectors of
30 **Customs—**Section 32 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) Without limiting subsection (1) of this section, sections 152 to 154 of the Customs Act 1966 shall apply in respect of any levy required to be collected by the Collector
35 of Customs as if it were duty to be collected under that Act.”

13. Costs of administration—(1) Section 34 of the principal Act is hereby amended by inserting in subsection (3), after the words “retained under”, the words “subsection (1) or subsection (2) of”.

(2) The said section 34 is hereby further amended by adding the following subsection: 5

“(4) The Crown shall be entitled in every financial year to recover from the Council out of the Fund such sum in respect of the costs incurred by the Department of Justice in administering this Act as may be determined by the Minister of Finance after consultations with the Council.” 10