

LOCAL GOVERNMENT LAW REFORM BILL (NO. 3)

AS REPORTED FROM THE INTERNAL AFFAIRS AND LOCAL
GOVERNMENT COMMITTEE

COMMENTARY

Recommendation

The Internal Affairs and Local Government Committee has examined the Local Government Law Reform Bill (No. 3) and recommends that it be passed with the amendments shown.

Conduct of the examination

The Local Government Law Reform Bill (No. 2) was referred to the Internal Affairs and Local Government Committee on 20 July 1999. The bill was divided into two separate bills with Parts 2 and 3 of the original bill constituting the present bill. Part 2 provides for miscellaneous amendments to the Local Government Act 1974 including liquor bans. Part 3 provides for amendments to the Rating Powers Act 1988. We have divided the original bill to enable the House to consider the provisions dealing with the liquor bans while we complete our consideration of Part 1 which deals with amendments to the Dog Control Act 1996. The closing date for submissions was 11 August 1999. The committee received and considered 18 submissions on liquor bans, provided for in Part 2, clause 21 of the original bill. These came largely from councils, but three were received from public health organisations and one from the New Zealand Police. Some of these submitters commented on other provisions in Part 2 of the original bill. Six of the 18 submissions were heard orally. Eight submissions were received on Part 3 of the original bill amending section 34 of the Rating Powers Act 1988. Three hours and 54 minutes were spent on the hearing of evidence and consideration took 2 hours and 3 minutes.

Advice was received from the Department of Internal Affairs.

Purpose of the bill

Part 2

Part 2 of the bill contains the following proposals.

- Section 37z of the Local Government Act 1974 is to be amended to allow members of the Local Government Commission to remain in office until a successor is appointed. At the moment there is no such provision and this led to a situation last year where there were no appointed members.
- Section 122ZR of the Local Government Act 1974 is to be amended to clarify the intention of provisions relating to sinking funds. Concerns with this section were identified by the Controller and Auditor-General in his 1997 report. The report stated that the intention of section 122ZR, as inserted by the Local Government Amendment Act (No. 3) 1996, was to allow local authorities greater flexibility to provide for the repayment of loans. However it appeared that this was not being achieved.

The power to dismantle a sinking fund under section 122ZR (2) is hindered by a requirement on the local authority to obtain the consent of the “creditor”. This is taken to include all lenders. At present there exists a situation in which the objection of one lender would be sufficient to require the sinking fund to continue.

Additionally, there is a conflict in section 122ZR (1). The proposed amendment introduces consistency throughout the subsection.

- Section 223E (3) (h) of the Local Government Act 1974 is to be amended to clarify local authorities’ annual reporting requirements relating to term liabilities and incidental arrangements. The Audit Office expressed the view that this section is capable of interpretation in three different ways. The amendment is intended to rectify this.

The following consequential amendments are proposed by the bill.

- Sections 459 (6), 558 (1) and 514 (3) of the Local Government Act 1974 are to be amended to remove unnecessary references to section 221 relating to interest rates applying in specific situations.
- Sections 594B (2) of the Local Government Act 1974 is to be amended to correct cross references as a result of the enactment of the Local Government Amendment Act 1999.
- Section 674 (3) of the Local Government Act 1974 is to be amended to omit reference to an already repealed section of the Act.
- A consequential amendment to Schedule 3B to the Local Government Act 1974, relating to provisions for giving effect to reorganisation schemes, is required by deleting reference in paragraph 5 to district schemes under the Town and Country Planning Act 1977, and replacing these with references to regional and district plans under the Resource Management Act 1991. It is proposed to delete paragraph 21 which also relates to provisions under the Town and Country Planning Act, as these are made redundant by section 81 of the Resource Management Act.

Liquor bans in public places

The bill originally provided for the imposition of liquor bans for up to 12 hours during a specified day, these days being: 24th December to 2nd of January inclusive, the Easter weekend, including Good Friday and Easter Monday, Guy Fawkes day, the day following, and Waitangi Day.

The bill provides that in imposing a ban, the territorial authority must meet two key criteria. It must have reasonable grounds to suspect that the presence of alcohol will lead to disorderly behaviour, and it must consult with the community on a proposed ban.

The origin of these provisions was the Queen Street riot in December 1984, which arose from a pop concert in Aotea Square. Over recent years, some territorial authorities have used section 709A of the Local Government Act 1974 to impose extended liquor bans. Some others have attempted to control the consumption of liquor in public places using their bylaw making powers. The legality of these measures is questionable.

The objective of the new sections 709B to 709H of the Local Government Act 1974 is to enable territorial authorities to minimise the risk of large scale public drunkenness, and the associated problems that often accompany the celebrations of special holidays.

The provision for a 12 hour maximum ban within a specified day was felt by a majority of submitters to be overly restrictive as were the nominated "specified days". Submitters put forward a persuasive case for expanding the 12 hour limit and also increasing the number of specified days. Some territorial authorities proposed the inclusion of such days as might traditionally present a problem for them. Others, including all three public health organisations, considered that the territorial authorities should have some flexibility and discretion in deciding when liquor bans are required. A number of submitters felt that without a broadening of the bill's provisions there was no need for the consultation requirement.

While we noted the options put to us, we balanced these against the original intent of the bill and the grounds upon which a ban was to be justified. We also considered advice from the Department of Internal Affairs and took into account the following:

- present legislative provisions concerning underage drinking and disorderly behaviour in a public place;
- the need for consistency with the New Zealand Bill of Rights Act 1990; and
- the ability of the Police to enforce extended bans.

There presently exists a number of provisions concerning underage drinking and disorderly behaviour in public places. Under the Summary Offences Act 1981, any person under the age of 20 who drinks alcohol in any public place, or who has in his or her possession any alcohol for consumption there, commits an offence and may be fined and arrested. Police can seize any alcohol if there are reasonable grounds to believe it is intended for consumption by underage individuals in a public place. Liquor bans should not therefore be seen as the only means to deter underage drinking or disorderly behaviour.

A balance is required to take account of the individual rights and freedoms contained in the New Zealand Bill of Rights Act 1990. The Act guarantees certain rights and freedoms, such as freedom of peaceful assembly. Unqualified liquor bans might be difficult to justify in terms of the New Zealand Bill of Rights Act.

Human rights criteria are satisfied in the bill by the inclusion of the requirement on a territorial authority to satisfy itself that there are "reasonable grounds to suspect that the presence of alcohol will lead to disorderly behaviour."

The Police have indicated that their ability to enforce extended and wide-ranging bans given the area they may cover is dependent on the availability of staff.

Response to submissions on liquor bans

Some members of the committee are of the view that a degree of flexibility will assist particular territorial authorities and Police in controlling disorderly behaviour where this regularly occurs. Accordingly, the committee recommends that clause 21 is amended to remove the proposed 12 hour restriction on vehicle and liquor bans and provide instead, for discretionary power to be granted to territorial authorities to impose a ban of up to 24 hours in any specified day.

Further, we accept that for particular territorial authorities, the “specified” days might not meet their true needs. Accordingly, the committee recommends that clause 21 be amended to include Queen’s Birthday weekend and Labour weekend.

We have given some deep thought to these recommendations and taken steps to accommodate particular territorial authorities as best we can, for what seems to us to be for the good of the wider community. We recognise however, that there may be implications to some localised customary practices which may now be prevented because of a ban.

Part 3

Part 3 of the bill provides for section 34 of the Rating Powers Act 1988 to be amended to allow regional councils to use area rating to fund functions, including regional pest management strategies, under the Biosecurity Act 1993.

KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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Indicates clauses retained by the Internal Affairs
and Local Government Committee as Local
Government Law Reform Bill (No. 2)

PART 2

LOCAL GOVERNMENT ACT 1974

11. Part to be part of Local Government Act 1974—This Part is part of the Local Government Act 1974* (in this Part referred to as the principal Act). 5

*R.S. Vol. 25, p. 1

Amendments: 1991, Nos. 49, 58, 115; 1992, Nos. 42, 71, 74, 113, 139; 1994, No. 68; 1995, Nos. 25, 40; 1996, Nos. 12, 43, 83, 84, 96; 1997, Nos. 49, 78, 95; 1998, No. 89; 1999, Nos. 11, 24

12. Term of office—Section 37Z of the principal Act is amended by adding the following subsection:

“(3) A member of the Commission who is in office at the end of his or her term of appointment continues to hold office until— 10

“(a) The member is reappointed; or

“(b) The member’s successor is appointed; or

“(c) The member is informed in writing by the Minister that he or she is not to be reappointed; or 15

“(d) The member resigns his or her office by writing addressed to the Minister.”

13. Provisions relating to sinking funds—(1) Section 122ZR (1) of the principal Act is amended by omitting the words “repays any loan”, and substituting the words “repays in part any loan”. 20

(2) Section 122ZR (2) of the principal Act is amended by omitting the words “with the consent in writing of the Commissioners for the sinking fund and the creditor, or person acting on behalf of the creditor, of the relevant loan”, and substituting the words “if consent is given in accordance with subsection (2A)”. 25

(3) Section 122ZR of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) Consent is given in accordance with this subsection if— 30

“(a) Consent is given in writing; and

“(b) Consent is given by the Commissioners of the sinking fund; and

“(c) Consent is given by—

“(i) The creditor of the relevant loan; or 35

“(ii) Where there are 2 or more creditors of the relevant loan,—

“(A) All creditors of the relevant loan; or

5 “(B) Some creditors of the relevant loan if the sinking fund is sufficient to repay the balance of the loan on maturity in respect of amounts owed to creditors who do not consent.”

10 **14. Annual report**—Section 223E (3) (h) of the principal Act is amended by omitting the words “by maturity showing, in respect of each financial year in which term liabilities are repayable, the amounts repayable in that year together with a summary of the interest costs and other expenses incurred in connection with those amounts and arrangements for that year”.

15 **15. Council may require owners of land in certain cases to provide private drains**—Section 459 (6) of the principal Act is amended by omitting the words “pursuant to section 221 of this Act”.

20 **16. Council may make advances to owners**—Section 514 (3) of the principal Act is amended by omitting the words “pursuant to section 221 of this Act”, and substituting the words “by the council”.

17. Repayment of advances and purchase money—Section 558 (1) of the principal Act is amended by omitting the words “pursuant to section 221 of this Act”, and substituting the words “by the council”.

25 **18. Definition of local authority trading enterprise**—Section 594B (2) of the principal Act is amended by omitting the words “subparagraphs (iii) and (iv) of subsection (1)(a) of this section”, and substituting the expression “subsection (1)(a) (ii)”.

30 **19. Advances by council to land owners to meet emergency expenditure**—Section 674 (3) of the principal Act is amended by omitting the words “pursuant to section 221 of this Act”, and substituting the words “by the council”.

35 **20. Prohibition of vehicles and consumption or possession of intoxicating liquor in public place**—(1) Section 709A (1) of the principal Act is amended by omitting from paragraphs (b) and (e) the words “or empty liquor containers” in each place where they occur.

(2) Section 709A (7) (c) of the principal Act is amended by omitting the words “or liquor containers”.

(3) Section 709A (8) (b) and (c) of the principal Act is amended by omitting the words “or any empty liquor container” in each place where they occur.

(4) Section 709A (10) of the principal Act is amended by omitting paragraph (c), and substituting the following paragraph:

“(c) But subject to subsections (11) and (12), search any—

“(i) Vehicle in, entering, or about to enter any specified public place in respect of which any prohibition relating to liquor under subsection (1) is for the time being in force, for the purpose of ascertaining whether or not the vehicle contains any liquor:

“(ii) Parcel, package, bag, case, or other container in the possession of any person in, entering, or about to enter any specified public place in respect of which any prohibition relating to liquor under subsection (1) is for the time being in force, for the purpose of ascertaining whether or not the parcel, package, bag, case, or container contains any liquor.”

(5) Section 709A of the principal Act is amended by repealing subsections (11) and (12), and substituting the following subsections:

“(11) Before exercising the power of search conferred by subsection (10) (c), the constable must inform the person in possession of the vehicle or parcel, package, bag, case, or other container of the provisions of subsection (12), and in any case where the person is in possession of the vehicle or item in the specified public place, give the person a reasonable opportunity of removing the vehicle or item from the specified public place.

“(12) No constable may exercise the power of search conferred by subsection (10) (c) if the person in possession of the vehicle or parcel, package, bag, case, or other container removes it from or, as the case may be, refrains from taking it into the specified public place and leaves it outside the public place until the period of the prohibition ceases.”

(6) Section 709A (13) of the principal Act is amended by omitting the words “other liquor container”, and substituting the words “other container”

21. New sections inserted—The principal Act is amended by inserting, after section 709A, the following sections:

“709B. **Interpretation**—In sections 709c to 709H, unless the context otherwise requires,—

“‘Liquor’ has the same meaning as in the Sale of Liquor Act 1989:

5 “‘Prohibition’ means a prohibition under section 709c:

“‘Public place’—

“(a) Means a place that is—

“(i) Under the control of a council; and

10 “(ii) Open to or being used by the public, whether admission is free or on payment of a charge; and

“(b) Includes—

“(i) A road, whether or not the road is under the control of a council; and

15 “(ii) One or more parts of a public place:

“‘Specified day’ means any of the following days:

“(a) Waitangi Day:

“(b) The seventh of February:

20 “(c) A day in the period beginning on Good Friday and ending on the close of the following Easter Monday:

New (Unanimous)

25 “(ca) A day in the period comprising the Sovereign’s birthday and the Saturday and Sunday immediately before it:

“(cb) A day in the period comprising Labour Day and the Saturday and Sunday immediately before it:

“(d) The fifth of November:

“(e) The sixth of November:

30 “(f) A day in the period beginning on 24 December and ending on the close of 2 January in the following year:

“‘Vehicle’—

35 “(a) Has the same meaning as in section 2 of the Land Transport Act 1998; but

“(b) Does not include an ambulance, fire engine, or police vehicle.

40 “709c. **Further power to prohibit vehicles and liquor in public places**—(1) A council may exercise the power in subsection (2) if the council—

“(a) Is satisfied on reasonable grounds that—

“(i) Liquor will be present in a public place on a specified day; and

“(ii) The presence of liquor in the public place on the specified day is likely to lead to the commission in the public place of a number of offences against 1 or more of the following sections of the Summary Offences Act 1981: 5

“(A) Section 3 (disorderly behaviour):

“(B) Section 4 (offensive behaviour or language):

“(C) Section 5A (disorderly assembly): 10

“(D) Section 7 (fighting in a public place):

“(E) Section 9 (common assault); and

“(b) Has used the special consultative procedure in section 716A.

“(2) A council may prohibit 1 or more of the following: 15

“(a) The use of vehicles in a public place during a specified day:

“(b) The consumption of liquor in a public place during a specified day:

“(c) The bringing of liquor into a public place during a specified day: 20

“(d) The possession of liquor in a public place during a specified day.

Struck Out (Unanimous)

“(3) The power in **subsection (2)** must not be exercised— 25

“(a) In respect of a period of time in a specified day that exceeds 12 hours:

“(b) In respect of 2 or more periods of time in a specified day that, in total, exceed 12 hours.

New (Unanimous)

30

“(3) The power in **subsection (2)** may be exercised—

“(a) In respect of 1 or more periods of time in a specified day:

“(b) In respect of the whole of a specified day.

“(4) The power in **subsection (2)** may be exercised in respect of 2 or more specified days, whether consecutive or not. 35

“(5) A council must not delegate its power in **subsection (2)** to—

“(a) A committee of the council under section 114Q unless all the members of the committee are members of the council; or

“(b) A member or officer of the council under section 715.

5 “(6) The power in **subsection (2)** is in addition to the powers conferred on a council under—

“(a) Sections 319 and 342:

“(b) Regulations made under section 167 of the Land Transport Act 1998.

10 “709D. **Exceptions to prohibition for residents and their visitors**—A prohibition does not apply to—

“(a) The use of a vehicle by a person residing in premises on land having a frontage to the public place concerned or by genuine visitors of the person:

15 “(b) The transport of liquor from premises on land having a frontage to the public place concerned if—

“(i) The liquor is being delivered by a person residing on the premises or by the person’s genuine visitors to a place outside the public place; and

20 “(ii) The liquor is promptly removed from the public place:

“(c) The transport of liquor from outside the public place concerned if—

25 “(i) The liquor is being delivered to a person residing on premises having a frontage to the public place or to the person’s genuine visitors; and

“(ii) The liquor is promptly removed from the public place.

30 “709E. **Exceptions to prohibition for licensed premises**—A prohibition does not apply to—

“(a) The transport of liquor from premises on land having a frontage to the public place concerned if—

35 “(i) The liquor has, under the Sale of Liquor Act 1989, been sold on the premises for consumption off the premises; and

“(ii) The liquor is promptly removed from the public place:

“(b) The transport of liquor from outside the public place concerned for delivery to premises on land having a frontage to the public place concerned if—

40 “(i) The liquor may, under the Sale of Liquor Act 1989, be sold on the premises; and

“(ii) The liquor is promptly removed from the public place.

“709F. **Public notice**—(1) A prohibition has no effect unless public notice of the prohibition is given in accordance with this section.

“(2) Public notice of a prohibition must be given—

“(a) By displaying the notice in the public place concerned on the date it comes into force and before the time it comes into force; and 5

“(b) In a newspaper circulating in the district concerned on at least 3 occasions during the period of 21 days immediately before— 10

“(i) The specified day on which the prohibition comes into force; or

“(ii) If the prohibition applies to 2 or more consecutive specified days, the first of the specified days on which the prohibition comes into force. 15

“(3) However, if it is not practicable to give public notice of a prohibition in accordance with **subsection (2) (b)** because the decision of the council was made in special circumstances within a short period before the date of the prohibition, the council must— 20

“(a) Comply with **subsection (2) (b)** so far as is practicable; and

“(b) Ensure that similar notices are given to the public in whole or in part by such other means as the council, after consultation with the police, considers appropriate. 25

“(4) A notice required to be given or displayed under **subsection (2)** or **subsection (3)** must—

“(a) State the specified day or days on which the prohibition is in force and the hours of the specified day or days during which the prohibition is in force; and 30

“(b) Describe clearly the public place concerned; and

“(c) State whether or not the use of vehicles is prohibited in the public place concerned and, if it is, state the classes of vehicles (if any) the prohibition does not apply to; and 35

“(d) State any prohibitions relating to the consumption of liquor and the bringing or possession of liquor that apply; and

“(e) State the powers conferred on the police by **section 709H**; and 40

“(f) State the maximum penalty for offences against **section 709G**.

“709G. **Offences**—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$500

who, knowing that a prohibition is in force, contravenes the prohibition.

“709H. Powers of arrest, search, and seizure—(1) A member of the police may, without a warrant,—

5 “(a) Arrest a person whom the member of the police finds committing an offence against **section 709G**:

 “(b) While a prohibition is in force, arrest a person whom the member of the police has reasonable cause to suspect of having committed an offence against **section 709G**.

10 “(2) A member of the police may, without a warrant, search—

 “(a) A vehicle in, entering, or about to enter a public place, in respect of which a prohibition under 1 or more of **paragraphs (b) to (d) of section 709c (2)** is in force, for the purpose of ascertaining whether or not the vehicle contains liquor:

 “(b) A container (for example, a parcel, package, bag, or case) in the possession of a person who is in, entering, or about to enter a public place, in respect of which a prohibition under 1 or more of **paragraphs (b) to (d) of section 709c (2)** is in force, for the purpose of ascertaining whether or not the container contains liquor.

25 “(3) Before exercising the power of search in **subsection (2)**, a member of the police must—

 “(a) Inform the person in possession of the vehicle or container of the provisions of **subsection (4)**; and

30 “(b) If the person is in possession of the vehicle or container in the public place, give the person a reasonable opportunity to remove the vehicle or container from the public place.

 “(4) A member of the police must not exercise the power of search in **subsection (2)** if the person in possession of the vehicle or container removes it from, or refrains from taking it into, the public place concerned.

35 “(5) A member of the police may seize and remove liquor and its container or any other container that the member of the police has reasonable cause to believe would be evidence of the commission of an offence against **section 709G**.

40 “(6) Liquor or a container seized under **subsection (5)** is forfeited to the Crown if the person from whom the liquor or container is seized is convicted of an offence against **section 709G**.”

22. Schedule 3B amended—(1) Schedule 3B of the principal Act is amended by repealing clause 5, and substituting the following clause:

“5. Provisions dealing with the administration of any existing proposed or operative district plan or regional plan under the Resource Management Act 1991.”

(2) Schedule 3B of the principal Act is amended by repealing clause 21.

PART 3

RATING POWERS ACT 1988

23. Part to be part of Rating Powers Act 1988—This Part is part of the Rating Powers Act 1988* (in this Part referred to as the principal Act).

*1988, No. 97

Amendments: 1989, No. 38; 1989, No. 135; 1991, No. 55; 1992, No. 44; 1996, No. 87

24. Regional works and services rates—Section 34 of the principal Act is amended by adding the following subsection:

“(3) However, a rate under this section that may be made and levied for the purposes of undertaking any function or work, or for providing any service, authorised by or under the Biosecurity Act 1993 may also be made and levied on the area system as a uniform rate or differentially.”