

8. MINISTRY OF JUSTICE – REVIEW OF FUNCTION, STRUCTURE AND ROLE OF LIQUOR LICENSING AUTHORITY (LLA)

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The purpose of this report is to advise that the Secretary of Justice is seeking comment on the composition of the Liquor Licensing Authority (LLA) following the Minister of Justice indicating a review of the function, structure and role of the LLA in 2001. These comments are requested by the end of February 2003.

The LLA is the Authority that considers and determines within the provisions of the Sale of Liquor Act 1989 all applications for liquor premises licence and general manager certificates referred to it by District Licensing Agencies (DLA). Primarily these are applications that have been opposed by way of public objection or a reporting agency. The LLA also determines appeals made against DLA decisions with respect to special licence and temporary authority applications.

The letter from the Secretary of Justice follows below:

“As you may know, in 2001 the Minister of Justice initiated a review of the function, structure and role of the Liquor Licensing Authority (LLA). Responsibility for that work has now passed to the Associate Minister of Justice, Hon Rick Barker. Given the important role of the LLA, we now wish to seek the views of key stakeholders on the outcome of the review.

A review of the LLA was considered to be timely given the devolution of power to District Licensing Agencies arising from the Sale of Liquor Amendment Act 1999. The review, undertaken by Judge Unwin as incoming Chair of the LLA, was completed in late November 2001. Its key recommendations are:

- The LLA should comprise the Chair and one other member.*
- The Chair should continue to be a District Court Judge.*
- The additional member would not need a legal qualification but must have knowledge of, or experience in, the industry.*
- To give the LLA the flexibility it needs, there should be a quorum of one.*

The recommendation for a quorum of one was intended to give the LLA flexibility and enable it to make best use of its resources. However, there are potential problems with a quorum of one, particularly if members do not co-operate and act independently of each other. It is therefore proposed that, instead, the LLA should have the power to delegate its powers and functions either generally or particularly to any of its members. The power would be modelled on a delegation power given to the Broadcasting Standards Authority in the Broadcasting Act 1989. It would enable the LLA to be flexible and make best use of its resources.

With the benefit of additional experience as Chair, Judge Unwin has indicated that his revised view is that the LLA should be a one person authority. However, the Associate Minister of Justice has decided not to pursue that option at this stage. The Minister is keen to progress these proposals, subject to considering the views of those who have an interest in the LLA and the functions it performs. Before the proposals are put to the government for decision, we would therefore welcome your comments. We would appreciate receiving any comments by the end of February 2003 to enable them to be taken into account. If you have any queries, please do not hesitate to contact me on (04) 494 9741.”

The following points are made to provide some background information.

- The Sale of Liquor Act 1989 states:

“The LLA shall consist of three or four persons to be appointed by the Governor-General on the recommendation of the Minister of whom one shall be a District Court Judge who shall be appointed as the chairperson of the Authority.”

The Act also states that at meetings of the Authority two members shall constitute a quorum.

- From April 1990 (commencement of the Act) the Authority operated with three persons usually but on occasions with two. On retirement of the then Judge membership changed to two persons. This has continued until the present time.

- There is no firm opinion held by officers on membership numbers. The number whether two or three has never affected hearing proceedings. Proceedings have always been professional. It would be anticipated that if a one person authority (a Judge) were to result no adverse impact would occur.
- If there is a concern then it would relate to ensuring the ability to sit regularly to process applications in good time.

In the initial years of the 1989 Act considerable delays were experienced caused by transition issues (moving from the framework of the 1962 to 1989 Act), and the Authority processed all new applications as well as those with opposition. All new unopposed applications since 1999 are now processed by DLA's. The Authority in their 2002 Annual Report nevertheless reported that there was a backlog of the more current opposed applications and would attempt to remove this during 2003. In recent times this DLA has not really experienced any undue delays. The LLA sits in Christchurch (for the Canterbury area) every 3-4 months approximately, and scheduling of hearings is discussed with the LLA support staff.

- The merits could be argued for any membership number:
 - One person authority provides greater decision making consistency,
 - Two or three person authority provides wider decision making balance/base,
 - A one person authority provides more flexibility in arranging hearings, or may conversely be seen as limiting flexibility in case of illness or leave.
- Given the complexity of some hearings the retention of a District Court Judge is seen as preferable.
- If pressed it is considered that the membership should reflect the greatest flexibility and therefore a more than one person authority would be suggested, and that a District Court Judge continue as Chair.

Recommendation: That the comments reflected in this report be forwarded to the Secretary of Justice.