

**Submission to the
Quality Regulation Taskforce
On the
Ministerial Review of Regulatory Frameworks
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SUBMISSION ON THE MINISTERIAL REVIEW OF REGULATORY FRAMEWORKS

INTRODUCTION

I write on behalf of the Distilled Spirits Association of New Zealand Inc in response to the call for submissions on the Ministerial Review of Regulatory Frameworks.

The Association is the national trade organisation representing New Zealand's leading producers and marketers of premium spirits (e.g. Brandy, Whisky, Rum, Gin, Vodka) and liqueurs.

The Association's members include: Anchor Ethanol Limited, Bacardi Martini Asia Pacific Ltd, Brown Forman Beverages Worldwide, Diageo (New Zealand) Ltd, Federal*Geo, Foster's NZ Limited, Heaven Hill Distilleries NZ Ltd, Lion Nathan Wines and Spirits Ltd, Maxxium NZ Ltd, Pernod Ricard New Zealand Limited, The Rum Company (New Zealand) Ltd, and Vintage Wines and Spirits Ltd.

The future of the New Zealand economy is increasingly bound to the future of the food and beverage industry.

The spirits sector, established with the assistance of the Government in 1959, comprises a key component of the total industry and is a driving force of our international reputation for innovation and quality.

The sector provides a direct livelihood for some 250 families spread throughout the country. International sales of spirits and liqueurs are dispatched to more than 35 overseas markets and generate nearly \$40million in export receipts. Domestically, some 6.1million cases of spirits and liqueurs are available for sale annually.

The Association's members are affected directly by more than a dozen separate statutes and regulations (see Appendix 1).

ASSOCIATION POSITION

The Association welcomes the Ministerial review of regulations and is fully supportive of the admirable vision to improve the quality of our regulatory environment.

To that end, the Association is particularly pleased that the wide-ranging review of regulation announced by the Hon Lianne Dalziel (22 May) is to be undertaken.

The Association is especially delighted to note her reference to the anomalies and inconsistencies that exist within the Sale of Liquor Act and that these could change. Coincidentally, the Ministry of Justice is also currently reviewing various administrative areas within the Act.

The Act is perhaps the most important piece of structural legislation controlling the retail and sale of alcohol beverages. However, as it currently stands, the Act stifles free and open market competition. This is costly for both consumers and industry and detracts from the Government's much-touted objective of "economic transformation".

It is clearly an imperative to achieving further growth by being able to fully exploit all domestic opportunities in our sector.

Adding value, deploying relevant marketing and innovation continues to be hallmarks of the sector.

This has been demonstrated by several well-known companies and high profile spirit brands that have successfully created products to suit changing consumer lifestyles dictated by convenience, price and quality.

And it is within these guiding parameters that we also work within a regulatory regime.

The Association believes that some regulations are justified and are a necessary part of business life.

Therefore it is vital that a high quality regulatory framework that is logical, fair, balanced and based-upon empirical evidence be enforced in the most efficient way possible be the basis going forward.

The Association trusts that the government has a will and commitment to deliver true to these important universal and overarching principles.

The remainder of this submission follows the electronic submission format, with comments specifically lodged in relation to the following subjects or concerns:

- The Sale of Liquor Act
- The Customs and Excise Act
- Enforcement and Compliance

1) The Concern: Our current liquor laws are inconsistent and discriminatory

The object of the **Sale of Liquor Act** (s 4) is "to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means", is fully accepted by the Association.

Unfortunately, in other areas the Act imposes an illogical prohibition that unnecessarily constrains business development, restricts competition, impose costs and limits consumer choice in terms of what products can or cannot be purchased from licensed premises.

To date, the Association is not aware of any sound policy reason warranting this situation.

Interestingly, the present regime does not see fit to control the product or sales mix for adult consumer purchases in licensed premises, including bottle stores, pubs, clubs, taverns, restaurants, duty free stores, brasseries, canteens, and “Cash n Carry’s”. But the law maintains a nonsensical prohibition on consumers being able to buy the full range of beverages from their supermarkets or grocery stores. This anomaly cannot be rationally justified and is an untenable double standard.

Inconsistently, suppliers of table wine, beer, cider, perry, mead, fruit and vegetable wines and cooking wines are privileged with exclusive rights to be sold through supermarkets and grocery stores whereas; spirits, liqueurs, wine coolers, ports, sherries, and general alcohol beverages (GABs), also all complementary with food, are not permitted and are discriminated against.

There have been defensive arguments advanced in some quarters that one type of licence holder is in some way ‘different’ from others. Some take the view that they should receive special treatment from government and the law.

The Association knows of no empirical grounds for protecting some licensees from the realities of modern commerce over others.

Laws favouring one licence type or business format or how an alcohol beverage is produced over another runs counter to the principle of a free and competitive market place.

Alcohol is alcohol

Alcohol is alcohol regardless of whether it has been brewed, distilled or fermented.

According to the Alcohol Advisory Council, standard servings like a nip of Scotch or a gin and tonic contain the same alcohol content (about 10 grams) and have the same effects as an average glass of chardonnay or glass of lager.

The current law is further confused when high alcohol products such as table wine (up to 15% alcohol by volume) and high strength beer (ranging up to 12%abv) may be sold in supermarkets, whereas low alcohol drinks such as wine coolers and GABs containing around 5% to 6%abv may not.

What have the Expert Review Bodies said?

It is instructive to look at the findings of several expert review committees and bodies that have been convened over the years and examine what they have had to say on the matter.

In fact, all official review bodies have supported equal economic opportunity and consumers being entitled to buy the full range of liquor at their local supermarket or grocery store.

- *“Permit all types of liquor to be sold by the holder of an off-licence granted in respect of a supermarket or grocery store”.*
[Report of the Liquor Review Advisory Committee 1997]
- *“We considered that the sale of liquor for off-premise consumption should in general be limited to hotels, taverns and to those whose principal business is the manufacture or sale of liquor or groceries”.*
[Report of the Committee on the Sale of Liquor Bill 1989]
- *“We conclude that there is no reason why all types of liquor should not be sold by shops which deal in other goods”.*
[Report of the Working Party on Liquor 1986]

The Rule/s

The Sale of Liquor Act falls within the purview of the Ministry of Justice.

The Solution

The Association recommends that the Act be amended to provide a level retail and licensing regime that enables equitable access for consumers.

This is the only way to ensure certain classes of alcohol beverage are not discriminated against on the basis of how they are manufactured.

Consequently, a simple clause permitting the sale of all types of liquor in supermarkets and grocery stores would be the ideal solution.

Some suggested wording would be:

That the Sale of Liquor Act 1989 be amended by amending Section 37, thus:

Section 37 subsection (3) repealed

The principal Act is amended by repealing Section 37 subsection (3).

2) The Concern: Alcohol tax adjustment dates are out of alignment

All alcohol beverage types whether domestically manufactured and imported are charged with an excise tax and the Alcohol Advisory Council (ALAC) levy.

On an annualised basis the spirits sector pays out more than \$200million in excise tax and duties and around \$4million in ALAC levies.

Alcohol excise tax rates are adjusted in line with inflation each year on **1 June**.

The ALAC levy rates (to fund the Council's promotion of moderation activities and discouragement of the misuse of liquor), determined by a convoluted formula and unchanged since 1976, are also adjusted annually however its effective date is **1 July**.

Both imposts are hugely disruptive to the industry and there is a compelling case for both tax rate adjustments to occur on the same date, preferably **1 July**.

The rationale being that this includes removing the need to duplicate necessary logistical changes to computer programs, price guides and advisories to the trade and enable better forward planning.

A 1 July implementation date also marks the beginning of a new financial year and is also the traditional commencement date for many official statistical reporting periods and policies.

The Association believes that the joining up of implementation dates, which carry no public costs, would better accommodate the industry would also benefit immensely the administrator and collector of the taxes, namely the New Zealand Customs Service in terms of more efficient processes.

The Rule/s

The New Zealand Customs Service administers and collects both the alcohol excise tax and the ALAC levy. The Customs and Excise Act enables the timing and adjustment of alcohol excise rates.

The Solution

The Association recommends that the Customs and Excise Act be amended by aligning the effective implementation date for alcohol excise tax with the ALAC levy implementation date of 1 July.

OTHER MATTERS

On Enforcement and Compliance

“Non-compliance is simply not acceptable. It is not sufficient telling people off. Action has to be taken to make them compliant”. [Hon Annette King, Minister of Transport 6/6/06, NZ Government]

The Association’s interest in commenting on enforcement and compliance matters is to lend weight to the view that all aspects of our statutes and regulations should at all times be vigilantly and rigorously monitored and enforced for compliance.

Clearly, our legislative and regulatory regime applies equally to all parties, whether large or small, and where there is transgression or infringement, offenders should be prosecuted to the fullest extent of the law.

Only prosecution and strong penalties can provide significant disincentive to those non-compliant with the law and so reflect the will of Parliament.

Disappointingly, it has been the Association’s observation that the enforcement of regulations in our sector by the agencies such as territorial authorities, public health offices, the Environment Risk Management Authority (ERMA) and the New Zealand

Food Safety Authority (NZFSA) or its agents, is both feeble and inconsistent. This is particularly true when they relate to the handling, storage and dispensing of dangerous goods, food labelling and their compositional issues.

The Association submits this is probably due in part to determinations that some matters are supposedly “low risk”, “involve costs” or are just plain unimportant and can therefore be ignored.

The exceptions being those cases that draw media attention. This approach to upholding the Dangerous Goods regulations, Hazardous Substances and New Organisms (HSNO), food and intellectual property laws should cause alarm for all conscientious and responsible stakeholders.

The Association has a specific interest in food regulations as it relates to the compliance with composition and labelling rules of manufacturers, importers or marketers of distilled spirits.

Distilled spirits and liqueurs are high value and high profile products. Unfortunately, this has made them prone to fraudulent or misleading behaviours by some manufacturers, importers or marketers.

Misleading or untruthful labelling is typical of the deliberate non-compliance, for example, omitting mandatory labelling elements. Beyond product integrity issues, some labelling breaches have the potential to risk public health and safety. Disappointingly, this fact is not well appreciated by enforcement agencies.

Whilst the overwhelming majority of manufacturers, importers and sellers are responsible and adhere to the spirit and letter of the composition and labelling regulations there are others who do not share that same level of responsibility. They flout or fail to operate within the law for any number of reasons including the fact that there is little risk of them getting caught and the authorities taking any corrective action.

The non-compliance with compositional and labelling regulations by some cheating manufacturers, importers or sellers punishes law-abiding business operators as it creates a competitive disadvantage for those industry members who have incurred great expense to be compliant. This sends a message to others that they can easily and without sanction flout the law. Clearly, this leads to a level of contempt for the law that grows daily and is not, we believe, that our lawmakers, the various enforcement agencies and others would wish to send out.

New Zealand consumers and responsible industry members deserve to have confidence in the law and know that all its aspects will be applied consistently and equally on all parties, especially when breaches are detected or notified.

The Association trusts that this review will properly incentivise law regulators and relevant agencies into urgently and unfailingly executing their monitoring and enforcement duties with the highest levels of robustness and vigour.

CONCLUSION & RECOMMENDATIONS

There is much benefit and room for reforming and making high quality laws and regulations.

To that end the Association urges the Government to consider and take on board the following suggested solutions and recommendations:

- Amend the Sale of Liquor Act to eliminate the illogical discrimination against certain product types and their prohibition from being permitted for sale in supermarkets and grocery stores and achieve equity.
- Realign the alcohol excise tax implementation date to the more efficient 1 July (this being the same date as the ALAC levy rates are adjusted).
- Ensure all statutes and their regulations are consistently monitored and enforced for full compliance.

APPENDIX 1

The Association's members are directly subject to numerous statutes, regulations and several self-regulatory codes of conduct.

The following table gives an indication of the regulatory impact on Spirits.

Statute/Regulation	Jurisdiction and Enforcement	Implications for Spirits
Alcohol Advisory Council Act	Alcohol Advisory Council NZ Customs Service	ALAC Act enables a special levy to be charged on all beverage alcohol. Levies are payable by all spirits importers and manufacturers when products are entered for home consumption or at the same time as excise tax payments, both collected by NZ Customs.
Copyright Act	Ministry of Economic Development Intellectual Property Office	Regulates & protects intellectual property against counterfeit products. Parallel imports of spirits (and other goods) permitted since 1998 without the consent of the copyright owner or official agent. [see also Trade Marks Act].
Customs & Excise Act Customs & Excise Regulations	NZ Customs Service	The Act governs the import (and export) of spirits, their documentation and the payment of excise, and other duties. The manufacture of Spirits is licensed as "Customs Controlled Areas" by NZ Customs. All spirits locally manufactured or imported are subjected to excise and import tariffs where applicable.
Food Act Food Safety Regulations	Food Standards Australia New Zealand NZ Food Safety Authority Health Protection Officers	Provides for the protection of public health by regulating product composition, misleading labelling, sales promotion and packaging.
Gambling & Lotteries Act	Internal Affairs	Regulation of competitions or sales promotion schemes It is illegal to offer alcohol as a prize (see also relevant provisions in the Sale of Liquor Act)
Geographical Indications Act	Ministry of Economic Development Intellectual Property Office Commerce Commission	A geographical indication (GI) spirit is a product that has a specific geographical origin and possesses a quality, reputation or other characteristic that is due to that place of origin eg "Scotch", "Tequila", "Cognac", "Bourbon".

		The law protects against “passing off” and other statutes including the Fair Trading Act also protect GI spirits.
Hazardous Substances & New Organisms Act Hazardous Substances & New Organisms Regulations	Environmental Risk Management Authority Department of Labour Territorial authorities	Provides for the health and safety of employees and the public by regulating the storage/handling/labelling of “dangerous goods” (spirits stored in containers of more than 5 litres capacity) by manufacturers, importers, wholesalers and retailers.
Sale of Liquor Act	Ministry of Justice NZ Police	Regulates liquor sales i.e. specifying the types of premises permitted to sell different types of beverage alcohol, the supply of spirits in drinking vessels sold in an on-licence & imposes social obligations e.g. host responsibility.
Tariff Act	NZ Customs Service	Regulates imports and sets import duty levels. Tariffs currently apply only to “Gin”, “Vodka” and “Liqueurs containing less than 23%abv”.
Trade Marks Act	Ministry of Economic Development Intellectual Property Office	Regulates & protects intellectual property against counterfeit products. Parallel imports of spirits (and other goods) permitted since 1998 without the consent of the copyright owner or official agent. [see also Copyright Act].
Weights & Measures Act Weights & Measures Regulations	Ministry of Economic Development	Sets out the labelling requirements for displaying and determining net contents on packaged spirits.
Code for Liquor Advertising	Advertising Standards Authority Advertising Standards Complaints Board	Sets out the guidelines for advertising and sponsorships. Also, guidelines on the merchandising and marketing of beverage alcohol.
Food Standards Code	Food Standards Australia New Zealand NZ Food Safety Authority Health Protection Officers	Standard 2.7 sets out in detail spirit composition/labelling requirements.
National Guidelines on the Naming, Packaging of Alcohol Beverages	Alcohol Advisory Council	Sets out the guidelines on the merchandising and marketing of beverage alcohol.