

Alcohol Advisory Council Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Alcohol Advisory Council Act 1976 (the **Act**) to update and simplify the current mechanisms for setting the Alcohol Advisory Council (**ALAC**) levy. ALAC is funded by a levy on all alcoholic beverages manufactured in or imported into New Zealand.

In 2004, the Ministry of Health reviewed the current levy-setting mechanisms. The review found that the way that the levy is calculated and apportioned is outdated and overly complex. Furthermore, there is no process for Cabinet involvement in setting the levy.

This Bill proposes to calculate the ALAC levy for each product according to a system using alcohol classification bands. This is similar to the approach used by the New Zealand Customs Service to collect alcohol excise and excise-equivalent duty. Under this system, a dollar amount per litre would be set for each alcoholic beverage according to its alcohol content or deemed alcohol content. This means that alcoholic beverages with a higher volume of alcohol will contribute a higher proportion to the levy. The Bill will provide for the Governor-General to make regulations that fix the rate of levy payable.

The proposed regime is up to date and simple to calculate. It is also future-proofed against the emergence of new types of beverages that would not easily fit into any liquor class (ie, beer, wine, fortified wine, or spirits) in the current system.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 provides that the Act comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the principal Act amended by this Act is the Alcohol Advisory Council Act 1976.

Part 1 Amendments to principal Act

Clause 4 amends section 2, which is the interpretation provision. It repeals certain terms that are no longer used, amends the definition of preceding statistical year, and substitutes a new definition of wine. It makes some further consequential amendments and inserts a *new subsection (5)*, which has been transferred from its current location in section 26(3). However, the key change is the insertion of the term class of liquor. The classes of liquor are identified in the table in the *new Schedule* to the principal Act. Each class is defined by reference to the proportion of alcohol it contains. A rate, which reflects the proportion of alcohol, is associated with each class, and that rate is used in the calculation of the levy payable under the Act.

Clause 5 substitutes *new sections 26 and 27*. *New section 26(1)* requires the Minister to determine the amount of levy payable in respect of each class of liquor in order to yield the amount that is estimated, under section 25, to be required to fund the operations of the Alcohol Advisory Council of New Zealand in the following financial year. *New section 26(2)* then sets out the calculation that the Minister must apply to arrive at the correct figure for each class, using the rates set out in the *Schedule*. Some of the rates are variable as they will be determined each year on the basis of data from the previous year. *New section 26(3)* requires the Minister to determine the variable rates to be used each year. *New section 27* provides for regulations to be made that fix the levies in accordance with the Minister's determination under *new section 26(2)*, and to identify the variable rates applied for that year.

Clause 6 substitutes a *new section 28(1)*. This is the provision that imposes the obligation to pay the levy on alcoholic beverages imported into, or manufactured in, New Zealand. The changes made are consequential on other changes in the Bill.

Clause 7 amends section 39, which is the regulation-making power. A new paragraph is added that allows the table in the *Schedule* to be replaced by regulations, and includes, in *new subsection (2)*, limitations on when that power can be exercised. The table in the *Schedule* is designed to align with the system used by the New Zealand Customs Service to determine the excise duty payable in respect of alcoholic beverages. This regulation-making power means that if the Customs Service modifies its system, the table will be able to be amended to reflect the change, without the principal Act having to be amended.

Clause 8 adds a *new Schedule* to the principal Act.

Part 3

Transitional provisions

Clause 9 provides a transitional provision to ensure that the current obligation under section 28(1) to pay the levy determined under the principal Act before its amendment will remain in place until the first levy set under the new system set out in this Bill is in place.

The *Schedule* sets out the table showing the classes of liquor, their descriptions, and the rates used for the calculation in *new section 26* and the method used for calculating the variable rates.

Regulatory impact statement

Executive summary

The Ministry of Health (the **Ministry**) has reviewed the levy-setting mechanisms for the Alcohol Advisory Council (**ALAC**) levy as set out in sections 2 and 25 to 27 of the Alcohol Advisory Council Act 1976 (the **Act**). The Alcohol Advisory Council Amendment Bill proposes to amend the Act by replacing the current levy-setting system with the New Zealand Customs Service's (**Customs**) excise alcohol classification bands and retain the collection of a separate levy for ALAC. This option addresses the problems with the current levy-setting mechanisms by introducing an updated and simple classification system that reflects the current alcohol market and future-proofs the levy against new types of alcoholic products.

Adequacy statement

The Ministry has reviewed the RIS. The RIS is adequate according to the adequacy criteria.

Status quo and problem

ALAC was established under the Act to promote responsible drinking and strategies that will minimise alcohol misuse. ALAC is funded by a levy on alcohol produced and imported for sale in New Zealand. According to the Act, the Minister fixes the proportion of the aggregate levy to be borne by 4 classes of liquor, namely: beer, wine, fortified wines, and spirits. The levy is calculated in the same ratio as the volume of each class of liquor imported into or manufactured in New Zealand during the preceding year. Payments from producers and importers are made monthly to Customs which forwards the levy, minus the costs of collection, to ALAC. The total levy amount for ALAC during the 2005/2006 financial year was \$12.996 million.

Government action is needed to address the problems with the current levy-setting mechanisms. The current levy-setting mechanisms are—

- outdated and do not cater for the current types of alcohol consumed in New Zealand, and the spirits category uses an outdated concept that requires the calculation of “proof litres”;
- not future-proofed against new types of beverage;
- overly complex and there is a need for increased simplicity around the processes of calculating and apportioning the levy;
- currently set by the Minister through a *Gazette* notice. This means there is no process for Cabinet to be involved in the levy-setting procedure, which makes the ALAC levy inconsistent with the way the problem gambling levy is set.

Objectives

The objectives of the amendment are to address the issues with the current provisions for calculating the levy as outlined in the status quo and problem section above. In particular, Government action is needed to simplify and update the levy-setting provisions and establish the mechanism for Cabinet to approve the final levy amount.

Alternative options

Non-regulatory options

No non-regulatory measures exist that would be capable of achieving the specified objectives. The ALAC levy mechanisms are set out

under sections 2 and 25 to 27 of the Act, and therefore any changes to these levy-setting mechanisms require a legislative amendment.

Regulatory options

There are 2 alternative regulatory options to update and simplify the levy-setting mechanisms. They are—

- option 1—bringing the ALAC levy under excise and excise-equivalent duty; and
- option 2—replacing the ALAC levy with funding through Vote: Health.

Bring ALAC levy under excise and excise-equivalent duty

Option 1 proposes to raise ALAC's revenue through an earmarked one-off percentage increase in excise and excise-equivalent duty and an annually adjusted percentage increase thereafter. The annual inflation increase on excise would maintain the real value of excise and then a percentage for the ALAC proportion, which changes annually depending on ALAC's funding requirement, would be added. Bringing the ALAC levy within excise duty would end the need for a separate levy collection as Customs would collect the ALAC proportion along with excise collection. This is likely to have little impact on industry as excise and the ALAC levy will be simultaneously collected on 1 July, as of 2007.

Option 1, as in the preferred option below, would provide ALAC with no greater security of revenue. This is because ALAC's revenue would still vary according to how much excise was collected, which is dependent on volumes of alcohol manufactured in and imported into New Zealand during the financial year. The Ministry would continue to determine the aggregate levy for the year. Including the ALAC proportion within excise but separating it from annual inflation indexation would involve costly system changes for Customs. The collection of ALAC's funding would only be simplified if the ALAC proportion were completely included within excise and this would also offer industry additional, minor, compliance-cost reductions.

Funding through Vote: Health

Option 2 proposes to replace the ALAC levy with funding through Vote: Health. The Ministry would review ALAC's budget and would assume responsibility for funding arrangements. There would

be a one-off increase to Vote: Health but any further increases in ALAC's funding would be absorbed within Vote: Health. Option 2 may be less time-consuming as the ALAC levy currently requires input into parliamentary questions and receives requests under the Official Information Act 1982. Option 2 would provide ALAC with greater security of funding as revenue would no longer be dependent upon the varying volume of alcohol manufactured in and imported into New Zealand during the financial year. There would be no levy collected by Customs. Industry would cease to have any direct involvement with the funding of ALAC and it would remove the apparent link to ALAC's funding by the alcohol industry, meaning a significantly reduced cost to industry.

Preferred option

Excise alcohol classification bands

The preferred option proposes to replace the current classes of liquor with a system based on the alcohol classification bands used by Customs to collect alcohol excise and excise-equivalent duty. This would remove the categories of alcohol that currently exist, namely beer, wine, fortified wine, and spirits. Alcoholic beverages would be defined instead by alcohol content and the levy would be calculated for each product according to which alcohol classification band it falls into. ALAC would continue to receive the levy in the same way as it does under the current system and Customs would continue to collect the ALAC levy. The preferred option would not require any administrative changes or additional costs for Customs.

The alcohol industry will be familiar with these bands as they are based on the existing excise regime. The preferred option (as well as option 1) would entail small financial adjustments for alcohol manufacturers and importers, provided that stakeholders receive sufficient advance notice of excise adjustments, including the ALAC proportion. Under this regime, lower-strength beers would incur a lower levy than under the status quo and higher-strength beers would be levied at a slightly higher rate. There would be a small change to the wine industry. This option would favour lower strength fortified wines with less than the equivalent of 18% alcohol. The most noticeable change would be to the spirits industry. There would be a significant change for lower strength spirits, which would be levied according to their actual alcohol content.

The preferred option (as well as option 1) would include an amendment to provide for the Governor-General, by Order in Council, to make regulations to fix the rate of levy payable. This could prove to be more time consuming for the Ministry as it will be required to undertake consultation to comply with the Cabinet Office processes.

On balance, the Ministry considers that the preferred option uses an up-to-date classification system that reflects the current alcohol market and future-proofs the levy against new types of alcoholic products. Using a system based on alcohol content would simplify the way the levy is calculated with little cost to Customs during the implementation of this option. Furthermore, this option maintains the direct contribution by alcohol importers and manufacturers to the work of ALAC in the reduction of alcohol-related harm.

Implementation and review

All options proposed for amending the existing levy-setting provisions require amendments to the Act, in particular section 2, sections 25 to 34, and section 39. Option 1 would also require amendments to the Customs and Excise Act 1996 to allow for an initial increase in, and subsequent annual adjustments to, the excise duty. In the case of replacing the ALAC levy with funding from Vote: Health, section 20(2)(a) and section 1A of the Act, which provide that one of the purposes of the Act, is to make provision for the funding of ALAC's activities by means of a levy on liquor imported into, or manufactured in, New Zealand, would also need to be amended.

Customs would continue to enforce the collection of ALAC's funding under the preferred option. The Ministry is responsible for ensuring that stakeholders receive sufficient advance notice of the ALAC levy each year, which will facilitate industry compliance with the levy. It is envisaged that ALAC would provide an evaluation of the revised levy-setting procedure in its annual report to the Ministry.

The Alcohol Advisory Council Amendment Bill has been approved for the 2007 Legislative Programme with a category 4 priority. The intention is for the revised levy-setting procedures to be implemented for the 2008/2009 levy.

Consultation

In November 2006, the Ministry conducted a targeted consultation with ALAC and external stakeholders on the options to replace the

current system with excise alcohol classification bands and to bring the ALAC levy within excise. Stakeholders included the Distilled Spirits Association, New Zealand Winegrowers, the Beer, Wine and Spirits Council, DB Breweries, and Lion Nathan.

The Distilled Spirits Association supported the preferred option but considered that the levy should be based purely on alcohol content and not the mixture of deemed values and exact percentages used by Customs. Customs noted that it is not feasible to verify the alcoholic content of all alcoholic products. New Zealand Winegrowers considered that ALAC's funding should be drawn from the amount of excise already collected. The former Beer, Wine and Spirits Council considered that either using alcohol classification bands or bringing the ALAC levy within excise were acceptable provided that beer and wine were not disadvantaged compared to spirits. Lion Nathan supported adjusting the annual excise duty rather than funding ALAC through a separate levy.

Treasury, the Ministry of Economic Development, and all government agencies that comprise the Inter-Agency Committee on Drugs were invited to consult on the 3 options for adjusting the existing levy-setting provisions. The Ministry of Foreign Affairs and Trade was also consulted on possible implications for any obligations that New Zealand may have under international treaties relating to levy setting mechanisms.

ALAC considered its independence would be best maintained through a separate levy rather than an adjustment to excise. Treasury considered that the preferred option offers greater transparency because the portion of revenue allocated for ALAC would not be hidden within the excise duty. The Ministry of Social Development supported the move to a levy system based on alcohol bands as proposed under the preferred option and option 1. Customs considered that the collection of ALAC's funding would be simplified and stakeholders would achieve compliance-cost savings from bringing the ALAC levy within excise, but only if the ALAC proportion is included in the annual indexation of excise. Following this, the Ministry of Economic Development supported the move to a levy system based on alcohol classification bands and considered that bringing the ALAC levy within excise offers an efficient method to collect the ALAC levy. Youth Development was the only

government agency to support replacing the ALAC levy with funding from Vote: Health.

Hon Damien O'Connor

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Schedule

New Schedule added to principal Act

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Alcohol Advisory Council Amendment Act **2007**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act amended

This Act amends the Alcohol Advisory Council Act 1976.

Part 1

Amendments to principal Act

4 Interpretation

- (1) Section 2(1) is amended by repealing the definitions of **basic unit of liquor, fortified wine, fruit wine, and grape wine**. 5
- (2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
- “**class of liquor** means a class of liquor as identified in the table in the **Schedule**”. 10
- (3) The definition of **preceding statistical year** in section 2(1) is amended by omitting “beer, sprits, and wine” and substituting “each class of liquor”. 15
- (4) The definition of **wine** in section 2(1) is repealed and the following definition substituted: 15
- “**wine** means the product of the complete or partial fermentation of any fruit (including grapes), vegetable, or honey, and—
- “**(a)** includes— 20
- “(i) cider, perry, and mead; and
- “(ii) fortified wines such as sherry, port, and fruit or vegetable-based liquors; but
- “**(b)** does not include— 25
- “(i) beer or spirits; or
- “(ii) any liquor containing no more than 1.15% volume of alcohol”.
- (5) Section 2 is amended by repealing subsections (2) and (2C).
- (6) Section 2(2D) is amended by omitting “and of subsection (2) of this section,”. 30
- (7) Section 2(3) is amended by omitting “and of subsection (2) of this section,”.
- (8) Section 2 is amended by adding the following subsection:
- “(5) For the purposes of **section 26(2)**, liquor that is exported from New Zealand during the preceding statistical year is not to be treated as liquor that is imported into or manufactured in New Zealand.” 35

5 New sections 26 and 27 substituted

Sections 26 and 27 are repealed and the following sections substituted:

- “26 Minister to determine amounts of levy for each class of liquor** 5
- “(1) After assessing the aggregate levy figure in respect of any financial year, the Minister must determine, in accordance with **subsection (2)**, the amounts of the levies payable under section 28, in respect of each class of liquor, in order to yield an amount equivalent to the aggregate levy figure. 10
- “(2) The process for determining the amounts of levy is as follows:
- “(a) *Step 1*—for each class of liquor, determine the total number of litres of that class of liquor that was imported into or manufactured in New Zealand during the preceding statistical year: 15
- “(b) *Step 2*—for each class of liquor, multiply the result of step 1 by the appropriate rate, as set out in the table in the **Schedule**. This gives the (nominal) total number of litres of alcohol for each class of liquor:
- “(c) *Step 3*—for each class of liquor, divide the number of litres of alcohol for that class by the total number of litres of alcohol for all classes. This gives the proportion of the aggregate levy figure that is to be borne by that class of liquor in the next financial year: 20
- “(d) *Step 4*—for each class of liquor, multiply the result of step 3 by the aggregate levy figure. This gives the amount of levy to be borne by each class of liquor in the next financial year: 25
- “(e) *Step 5*—for each class of liquor, divide the result of step 4 by the result of step 1. This gives the amount of levy payable on each litre of liquor of that class in the next financial year. 30
- “(3) If a rate for a class of liquor is described in the table in the **Schedule** as being variable, the Minister must—
- “(a) determine the rate to be applied to that class of liquor; 35
and
- “(b) in making that determination, use the method for determining variable rates that is described in the **Schedule**.

“27 Rate of levy fixed by Order in Council

“(1) The Governor-General may, by Order in Council, fix for the next financial year, by reference to each class of liquor, the amount of levy payable under **section 28**.

“(2) The amount of levy for each class of liquor must be as determined by the Minister in accordance with **section 26(2)**. 5

“(3) If a rate for a class of liquor is described in the table in the **Schedule** as a variable rate, the Order in Council must identify the rate determined by the Minister under **section 26(3)** and used for the purpose of **section 26(2)**.” 10

6 Levies payable by importers and manufacturers of liquor

Section 28 is amended by repealing subsection (1) and substituting the following subsection:

“(1) In every financial year a levy of the amount set by Order in Council made under **section 27** is payable by every person who— 15

“(a) enters for home consumption (as that expression is used in the Customs and Excise Act 1996) any imported liquor that contains more than 1.15% volume of alcohol; or 20

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

“(c) sells any wine manufactured by that person in New Zealand.”

7 Regulations 25

(1) Section 39 is amended by inserting the following paragraph after paragraph (b):

“(ba) replacing the table in the **Schedule**, and any description of the method for determining variable rates, with a new table (and description of method for determining variable rates, if necessary) setting out the classes of liquor and their applicable rates:” 30

(2) Section 39 is amended by adding the following subsection as subsection (2):

“(2) Regulations under **subsection (1)(ba)** may be made only— 35

“(a) for the purpose of aligning the classes of liquor under this Act with the system for classifying alcoholic beverages that is used in Schedule 3 of the Customs and

Excise Act 1996 (which sets out excise and excise-equivalent duties); and
“(b) after consultation with the Minister of Customs.”

8 Schedule added

The Schedule set out in the Schedule of this Act is added. 5

Part 2
Transitional provision

9 Transitional provision

Section 28(1) of the principal Act, as in force immediately before the commencement of this Act, continues to apply with respect to the whole of the financial year to which the last *Gazette* notice given under section 27(1) of the principal Act (as in force immediately before the commencement of this Act) applies. 10

s 8

Schedule
New Schedule added to principal Act

s 2(1)

Schedule
Classes of liquor, and rates

Class	Description (alcohol content by volume)	Rate	5
A	1.15% or less	0	
B	more than 1.15% but not more than 2.5%	1.5	
C	more than 2.5% but not more than 6%	variable	
D	more than 6% but not more than 9%	8	
E	more than 9 % but not more than 14%	10	10
F	more than 14% but not more than 23%	variable	
G	more than 23%	variable	

Method for calculating variable rates

For a given financial year, the variable rate for a class is the average alcohol content of all the liquor of that class that was imported into or manufactured in New Zealand in the preceding statistical year. **15**

