

Alcohol licensing infosheet

Consistency

What do we mean by consistency?

Consistency in the way we work is generally understood to mean performing in a way that does not vary greatly in quality or nature over time or according to who is involved. It is about fairness and acting in the same manner, with all relevant people, when dealing with issues that are considered similar.

This is important to our colleagues, customers, stakeholders and community.

Each of these parties needs to know and understand what they can expect from you and your team. Further, a lack of consistency can create grounds for appeal or even judicial review of the decision-making process involved.

Ideally, your decisions should be consistent with previous sound decisions you or your region's alcohol-licensing team have made. They might also, but not always, be consistent with those of the other regulatory agencies.

Maintaining consistency

Various factors can compromise consistency. These include the following:

- **People** – people in roles above us may try to control what we do such as a team leader, or others within a territorial authority.

- **Personalities** – whether in your licensing team, tri-agency team or applicants. People may act with a different 'moral compass' to you or with different ideas on how things should be done. Being consistent in your approach will help to ensure your integrity is not compromised.
- **Decision makers** – DLCs and ARLA are the decision makers with the most influence and impact on your work. It is important to be confident to appeal decisions you feel are wrong or inconsistent.

Section 197(6) outlines the function of a chief licensing inspector to foster consistency in enforcement of the Act. Every territorial authority that has more than one inspector must appoint a chief licensing inspector. This should be someone with knowledge of the Sale and Supply of Alcohol Act 2012 and of the role of the inspector.

Maintaining independence

Section 197(4) states that inspectors must act independently when exercising and performing their functions, duties and powers and each territorial authority must take steps to ensure that its inspector(s) are able to act independently. That is, a territorial authority must not direct, pressure, or suggest to an inspector that he or she approach an application in a certain way. Nor should an inspector be influenced by his or her local authority.

In *Re Kelliher* [1998] NZLLA 1075, the then Liquor Licensing Authority made observations on the independence of an inspector. While that decision was under the Sale of Liquor Act 1989, the general comments below remain relevant. In *Kelliher*, the inspector supported an application for a General Manager's Certificate that was opposed by Police. The decision records that the Kaipara District Licensing Agency's 'general policy' was to 'support the Police.' Alongside this, it emphasises the importance of an inspector's independence:

The Authority observed at pp. 3 – 4:

"Inspectors are appointees of the District Licensing Agency (rather than the Chief Executive) pursuant to s 103(1) of the Act. As we have commented in previous decisions, as a statutory officer, an inspector is required to report independently to their Agency and this Authority, and express views which may or may not agree with that of their elected District Licensing Agency, or of its delegates. That independence in reporting is crucial within the scheme of the Act, although each inspector should give due weight to the overall policy of their District Licensing Agency.

.... Independent reporting is important, and as in this application, local differences of opinion are common.

There should be no suggestion that the inspector reports or acts under directions of any other person when reporting on any particular application."

While consistency with similar type applications is important, it is best not to adopt a rigid policy that does not meld to the facts of the particular case before you. Few applications will be identical. Consistency in broad policy and decision making does not mean that a "one size fits all" approach is to be adopted. This can lead to appeals or judicial review: each case must be determined on its own facts.

Working better together

Section 295 says that the agencies must *"establish and maintain arrangements with each other to ensure the ongoing monitoring of licences and the enforcement of the Act; and work together to develop and implement strategies for the reduction of alcohol-related harm"*.

The tri-agency team is obligated to work together from a monitoring, enforcement and harm reduction perspective.

A good place to start is to foster consistency at a local level and then build that across a region. Each agency has differing priorities and mandates. Acknowledge these differences, put them aside, and determine how you can best move forward together. There may be room for differing opinions in a collaborative approach. There is also opportunity for your agency to advance its particular foci or case at the reporting and hearing stages. That is, agencies will legitimately take different approaches or positions and this is part of the purpose of having the three separate reporting agencies with their different foci.

- **Be specific** – what do you require to be consistent in your work? What are the areas of potential or actual inconsistency and how can these be addressed?
- **Be accountable** – ask questions of one another. Ask why decisions have been made. Be prepared to answer questions fully and frankly.
- **Be disciplined** – display integrity in your actions and follow through.

- **Be consistent** – others will know what to expect from you and trust you. Plus, your decisions will be less amenable to appeal or judicial review where they are consistent with sound decisions you or your licensing team have previously made.

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For more information visit alcohol.org.nz