

ALCOHOL REGULATORY AND LICENSING AUTHORITY PENALTY GUIDELINES FOR ENFORCEMENT OFFICERS

October 2016

Introduction

[1] The Authority's first penalty guidelines were introduced in about 2004. Those guidelines have served the Authority and enforcement officers well but with the commencement of the Sale and Supply of Alcohol Act 2012, an update to the guidelines, reflecting the object of the Sale and Supply of Alcohol Act 2012, is desirable.

[2] Once it has been established that the grounds for an application for suspension of a licence or manager's certificate are made out, and that it is desirable that a suspension order be made, the most difficult task faced by the Authority is to assess a period of suspension which is both reasonable and reflective of the misconduct (*Police v Karara Holdings Limited* NZLLA PH 800/2003 refers).

[3] The introduction of the Sale and Supply of Alcohol Act 2012 brought significant changes to the regime relating to the sale and supply of alcohol in that while the object of the 1989 Act was the reduction of liquor abuse the object of the 2012 Act requires that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly to achieve minimisation of the harm caused by the excessive or inappropriate consumption of alcohol.

[4] On that basis the Authority has resolved to update its penalty guidelines to reflect this shift. As in the past, where the parties seek to negotiate outcomes that might be acceptable to the Authority, it is desirable that the Authority indicates what periods of suspension it considers might be reasonable given aspects of the misconduct in question.

Guidance from previous cases

[5] With the passage of time, some principles can be gleaned from previous decisions of the Authority and the Courts, which are considered by the Authority when assessing a period of suspension. These include:

- Suspensions may need to deter other licensees from similar misconduct (per *Mill Liquorsave Ltd v Grant David Verner* Wellington High Court CIV-2003-485-874)
- Licensed premises that sell liquor only can be distinguished from premises where the sale of liquor is an ancillary service in that a suspension in the former case will mean the premises will close (as pointed out in *Christchurch District Licensing Agency Inspector v Karara Holdings Ltd and ors* (CA 178/02))

Aggravating factors

- Where there is actual liquor abuse then the sanction will be greater. If there is clear managerial irresponsibility that will be reflected in the period of suspension (per *Karara*).

Mitigating factors

- Efforts made to ensure no repetition of conduct which led to the suspension will be taken into account (*Karara* again)

[6] The Authority, in the exercise of its discretion, continues to adhere to the principle that the imposition of a penalty will vary according to the nature of the activity undertaken in each instance. Against that backdrop, however, where an offence can be described as unexceptional the Authority anticipates that the guidelines listed below will be the commonly acceptable 'norms' for first breaches (per *Payne v General Distributors Limited* [2016] NZARLA PH 76-77). In the case of on-licences a distinction is drawn based on the extent to which the income of the premises in question is derived from the sale of alcohol:

Licences

- (i) On-licences (taverns) or premises which rely **solely** on the sale of alcohol for income – 48 hours suspension.
- (ii) On-licensed premises other than taverns (i.e. hotels, restaurants, conveyances, or any other on-licensed businesses that **do not** rely solely on the sale of liquor for their income) – 72 hours suspension.
- (iii) Off-licences for stand-alone liquor retail premises or bottle stores – 48 hours suspension.
- (iv) Off-licences (supermarkets) – five days suspension.
- (v) Off-licences (grocery stores) – seven days suspension

Managers' certificates

- (i) First failure in a Controlled Purchase Operation – 28 days' suspension
- (ii) First conviction for excess blood/breath alcohol – 28 days' suspension

It is emphasised that these sanctions are to be applied to first offences only.

Holdings

[7] As a means to achieving its object, the current Act provides that in some instances where a term of suspension is imposed by the Authority on a licence or a manager's certificate, a holding pursuant to s 289 (licence) or s 290 (manager's certificate) will be recorded against that licensee or manager which, if repeated twice more within a three-year time frame will place the licence or certificate in jeopardy.

Given the "three strikes provisions of ss 288 to 290 of the Act the Authority will expect that second or subsequent breaches will be heard by way of a public hearing.

Scheduling suspensions

[8] Where the Authority is satisfied that both the facts and grounds have been agreed it will most commonly impose sanctions within a period of approximately four to six weeks following the date of issue of the decision. Respondents should be made aware that unless there are compelling reasons to persuade the Authority to do otherwise, suspensions for any period greater than 24 hours will be scheduled to apply on consecutive days and any suspension will be imposed on, or will include, the day of the week upon which the grounds in support of the incident occurred.

[9] There have been occasions when enforcement officers, having secured agreement from the respondents upon terms of suspension, have purported to fix the dates upon which the penalties will take place. That is not their function (see decision *Police v W Reeves & D J Williams* [2013] NZARLA 854-855, paragraph [6]). Scheduling of penalties is the sole prerogative of ARLA, although the Authority may consider submissions from a respondent if supported with reasons.

[10] In the exercise of its functions the Authority retains the option of setting down any matters for hearing, despite a request for determination on the papers, where the Authority considers this is warranted in the circumstances of the case.