

To Secretaries
District Licensing Committees

**ALCOHOL REGULATORY AND LICENSING AUTHORITY
TE MANA WAETURE TAKE WAIPIRO
ISSUED PURSUANT TO s 171 OF THE ACT
PENALTY GUIDELINES FOR ENFORCEMENT OFFICERS**

Introduction

1. The Sale and Supply of Alcohol Act 2012 requires that the sale, supply and consumption of alcohol should be undertaken safely and responsibly to achieve minimization of the harm caused by the excessive or inappropriate consumption of alcohol.
2. As in the past where 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 in the cases of misconduct.

Guidance from Previous Cases

3. Certain principles can be gleaned from previous decisions of the Courts and the Authority. These include:
 - 3.1 Suspensions may need to deter other licensees from similar misconduct (*per Mill Liquorsave Ltd v Grant David Verner – High Court CIV-2003-485-854*).
 - 3.2 Licensed premises that sell liquor only can be distinguished from premises where the sale of liquor is an ancillary service given that in the former case a suspension will mean the premises will close (*as pointed out in Christchurch District Licensing Agency Inspector v Karara Holdings Ltd and ors (CA 178102)*)

Aggravating Factors

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

Mitigating Factors

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

4. 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. Against that backdrop where the offence can be described as unexceptional the Authority anticipates that the guidelines listed below will be the commonly acceptable norms **for first breeches only** (*per Payne v General Distributors Ltd [2016] NZARLA PH 76-77*). In the case of on-licences a distinction is drawn based on the extent the income of the premises in question is derived from the sale of alcohol.

Licences

5. On-licences (taverns) or premises which rely solely on the sale of alcohol for its income - **48 hours suspension**.
6. On-licence premises other than taverns (i.e. hotels, restaurants, any other on-licensed business and Clubs) that do not rely solely on the sale of alcohol for its income - **72 hours suspension**.
7. Off-licence premises (stand-alone liquor/bottle stores) - **48 hours suspension**.
8. Off-licences (supermarkets) - **5 days suspension**.
9. Off-licences (grocery stores) – **7 days suspension**.

Managers' Certificates

10. First failure in a Controlled Purchase Operation – **28 days suspension**.
11. First conviction for excess blood/breath alcohol – **28 days suspension**.

Note

12. It is emphasised that the sanctions listed above are to be applied to **first offences only**.

Holdings

13. The Act provides for some instances where a term of suspension is imposed on a licensee or manager's certificate holder a 'holding', pursuant to s 289 (licence) or s 290 (manager's certificate), will be recorded against the licensee or manager. Three such holdings incurred within a three-year period will place the licence or certificate in jeopardy.
14. The Authority requires that second or third breaches involving holdings are dealt with by way of a public hearing.

Scheduling Suspensions

15. Where the Authority is satisfied that both the facts and grounds are agreed it will commonly impose suspensions to occur within a period of four to six weeks following the date of issue of its decision. Respondents should be made aware

that, unless there are compelling reasons to persuade the Authority otherwise, suspensions greater than 24 hours will apply on consecutive days and any suspension will include the day of the week the offence took place.

16. There have been cases where enforcement officers, having secured agreement from the respondent on the term of the suspension, have endeavored to fix the dates on which the suspension will take place. This is not their function (see *Police v W Reeves & DJ Williams* [2013] NZARLA 854-855, paragraph [6]. The scheduling of penalties is the sole prerogative of ARLA although the Authority may consider submissions from a respondent if supported by reasons.
17. In the exercise of its functions the Authority retains the option of setting down any matter for hearing, despite a request for determination on the papers, where the Authority considers this is warranted in the circumstances of the case.

DATED at Wellington this 8th day of April 2024

A handwritten signature in blue ink, appearing to be 'PR Connell', written in a cursive style.

District Court Judge PR Connell
Chairperson
Alcohol Regulatory and Licensing Authority