

Regulatory Impact Statement: Fee Regime for the Alcohol Licensing System

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice.

It analyses options to regulate the new alcohol licensing fees regime provided for in the Sale and Supply of Alcohol Act 2013, which is due to fully commence on 18 December 2013. That Act requires cost recovery - as far as is reasonable - through fees, and a risk-based approach to fee setting. This is a significant change from the current approach of flat fees irrespective of risk, and low fees that cover about 50 percent of the costs of the licensing system.

Implementing the new Act through nationally-set risk-based fees will impose additional costs on all businesses with an alcohol licence except those that are very low risk. Regulations, however, will provide territorial authorities with the flexibility to introduce by-laws that set locally-agreed alcohol licensing fees to reflect local conditions. The fees set through this route may be lower or higher than the nationally-regulated 'default' fees.

The default fees proposed are derived from assumptions about the total expected costs of the new licensing system, the amount of revenue that needs to be gathered to achieve cost recovery, and the proportions of licensed premises by risk category. We propose to review the alcohol licensing fees in three years by which time we will have reached a steady state with the new regime and will have accurate data on the costs and revenue associated with the regime.

David King
General Manager
Civil and Constitutional Policy
Ministry of Justice

_____ Date

Status quo and problem definition

1. Implementing the Sale and Supply of Alcohol Act 2012 (the Act or the new Act) requires regulations to establish a new alcohol licensing fees regime prior to the Act's full commencement on 18 December 2013 (sections 397 (1)(b) and (c) and 402 refer).
1. Alcohol licensing fees are paid by existing and prospective operators of licensed premises. Territorial authorities (TAs) administer much of the licensing system, including issuing licenses, monitoring, and taking enforcement actions when required. In addition, newly established District Licensing Committees (DLCs) will consider opposed and unopposed license applications from 18 December 2013.
2. Under the existing regime, fees are set nationally by regulation and are the same across licensed premises irrespective of the costs and risks that an operation might create. A small bowling club, for example, pays the same as a 24-hour nightclub or a supermarket. Government considers this to be unfair and inefficient; low-risk/cost premises are effectively subsidising high-risk/cost premises. The Government's preferred approach is that where a sector creates costs, these costs should be fully recovered from that sector.
3. The Law Commission in its 2010 report *Alcohol in Our Lives: Curbing the Harm* identified that the direct and indirect costs of the current alcohol licensing scheme are not covered by current licensing fees and are subsidised by local rates. Recent research concluded that the average degree of under-recovery by local government of the costs of alcohol licensing is around 52 percent.¹ Submissions to the Justice and Electoral Committee as part of its consideration of the Alcohol Reform Bill provided examples of this and indicated that licensing fees recover only 40 percent of the Wellington City Council's licensing costs and about 50 percent of those costs to the Dunedin City Council.

Objectives

4. The new fees regime has been designed to address four objectives, as below:
 - a. to recover the total reasonable costs incurred by TAs and the Alcohol Regulatory and Licensing Authority (ARLA) in administering the alcohol licensing system (section 402 (1)(a) of the new Act refers)
 - b. to ensure that those who create the greatest need for regulatory effort bear the commensurate costs (section 402 (1) (c) refers)
 - c. to allow local circumstances (such as locally required levels of monitoring and enforcement) to be reflected in the fees paid by operators and income received by TAs
 - d. to minimise alcohol-related harm (the ultimate object of the new Act) to the extent that this can be achieved through a cost-recovery fee regime.

Regulatory impact analysis of options

5. In June 2013, the Ministry of Justice publicly released a consultation document *Establishing a New Fee Regime for the Alcohol Licensing System* ('the consultation document') which contained options for achieving the objectives of the new regime, as prescribed in law. This Regulatory Impact Statement (RIS) analyses the options discussed in the discussion document, as well as new options or those modified as a

¹ PJ and Associates. 2012. *Cost of Liquor Licensing in 15 Territorial Authorities*. For the Alcohol Advisory Council of New Zealand

result of the consultation. The consultation process and outcomes is discussed in a later section in the RIS.

6. The options considered relate to:
 - A. national and local approaches to fee setting
 - B. fees to reflect sporadic and ongoing costs
 - C. a framework for stratifying fees according to the costs and risks posed by licensed premises
 - D. default fees
 - E. special licences
 - F. compliance discounts
 - G. transitional arrangements - the date from which the new fees framework will apply.
7. Together, these seven design components make up the major part of the proposed new fees regime, and are those with the potential to result in costs or benefits to different parties. Other minor components of the new fees regime are exempt from consideration in this RIS as they will have no or only minor impacts on businesses, individuals or third sector (community-based) entities (CO (09) 8; recommendation 16.8 refers).
8. The fees discussed in this RIS include those related to new applications, applications for a renewed licence, applications to vary a licence, and annual fees. The fees relate to both licences and managers' certificates but are called, collectively, 'licensing fees'. Other definitions of terms are provided in Appendix 1.
9. All figures in this RIS are GST exclusive unless otherwise stated.

A. National and local approaches to fee setting

10. Currently, fees are set nationally through regulation. The table below analyses the options for national and local approaches to fee setting.

<p>Option 1: Nationally-set licence fees - status quo</p>	<ul style="list-style-type: none"> • Advantages include: simplicity; consistency; and low administration costs. • Disadvantages include: <ul style="list-style-type: none"> ○ does not achieve the objective of local circumstances being reflected in fees and TAs income. ○ nationally-set fees are less likely to achieve the objective of full cost recovery ○ possibly weaker incentives to improve behaviours, as fees would not reflect local circumstances, therefore less effective in reducing alcohol-related harm.
<p>Option 2: Locally-set licence fees in all cases</p>	<ul style="list-style-type: none"> • Advantages include: <ul style="list-style-type: none"> ○ likely that full cost-recovery would be achieved ○ fees would reflect local conditions due to strong local flexibility. • Disadvantages include: <ul style="list-style-type: none"> ○ potential for a wide range of fees across the country ○ TAs could over-recover costs for a number of reasons, such as a lack of accurate information. This would undermine the objective of recovery of reasonable costs in administering the licensing system. ○ potential for high administration costs as each TA would be required to develop its own bylaws and a fees policy framework to support the bylaws ○ lack of clarity for national industries such as supermarkets and hotel chains.

<p>Option 3: Combination of national and local approaches</p>	<ul style="list-style-type: none"> • Combination of a nationally-set fees framework, nationally-set default fees, and the provision for TAs to set their own licence fees at a local level within the prescribed framework. • The national fees framework would specify the types of costs to be recovered through licensing fees and the rules for how fees are to be stratified according to costs and risks. • The Government could establish default or ‘starting point’ fees to apply until and unless TAs established their own fee rates. • Advantages: <ul style="list-style-type: none"> ○ local flexibility within nationally applied parameters ○ likely to achieve full cost recovery ○ likely that those operators creating greatest regulatory effort would bear commensurate costs, as TAs would be able to adjust fees to reflect this. ○ the fees-setting process would be transparent and readily comparable between TAs ○ would minimise costs to each TA (as they would not have to develop and justify their own policies and frameworks). • Disadvantages include: <ul style="list-style-type: none"> ○ potential for a wide range of fees across the country ○ TAs might over-recover costs, though transparency in fee setting should reduce this risk ○ lack of clarity for national industries such as supermarkets and hotel chains.
<p>Summary: On balance, a nationally-set fees framework and nationally-set default fees, combined with the option for TAs to set their own fees through a bylaw seems the most efficient and effective way to progress with the licensing fee regime. It is the option that best delivers on the objectives outlined earlier in this RIS. This approach would also reduce administration costs, be transparent, and support local flexibility. Submissions from industry and TAs about the consultation document provided mixed feedback on this issue: some preferred a nationally-regulated approach with the option for TAs to set fees locally (our preferred option), while others proposed national regulation only with no TA flexibility.</p>	

B. Fees to reflect sporadic and ongoing costs

11. Costs of the licensing system arise from a combination of one-off activities such as the application process itself, and ongoing activities such as monitoring and enforcement activities. Currently, this distinction is not made when the licence fees are paid. The table below considers the advantages and disadvantages of the status quo and an alternative approach.

<p>Option 1: Status quo</p>	<ul style="list-style-type: none"> • Licences are renewed anywhere between one and three years, with the fees for the licence paid at that time. • Sporadic and annual costs are bundled together and essentially ‘smoothed’ over that period, resulting in the funds not always being available at the time that costs are incurred • Licensees paying more frequently than every three years are effectively carrying a disproportionately high burden for meeting on-going costs – such as monitoring and enforcement. This option does not meet the objective that those creating greatest need for regulatory effort should bear the commensurate costs.
<p>Option 2: Proposed approach</p>	<ul style="list-style-type: none"> • It is proposed that fees be paid closer to the time when the costs to which they relate are incurred, with most fees to be paid on an annual basis and some to be paid three-yearly (for applications/renewals). • <i>Application fees</i> will recover costs associated with the application itself – that is, receiving, assessing and considering/deciding the application – and a portion of the costs associated with the applications to ARLA. • <i>Annual fees</i> will recover ongoing costs such as the TA’s ongoing monitoring and enforcement costs expected to be incurred over the coming year, and a portion of ARLA’s costs associated with enforcement and other ongoing functions. • Separating annual and application fees allows fee rates to be more accurately adjusted for the cost/risk profile of licensed premises. Also, because not all licensees renew licences on a three-yearly basis, it allows for a fairer allocation of costs to those that create the greatest need for regulatory effort. • As overall fees will rise, in order to achieve the cost recovery objective, spreading those fees across three years will help to ease pressures on businesses. • None of the submissions on the consultation document disagreed with this approach.
<p>Summary: The utilisation of a combination of application fees and annual fees is preferred to the current regime. As the fees rise, this approach will help spread the costs for the licensees. It will also make the link more transparent between the activities that give rise to the costs and the fees. The funding split will be fairer, especially for licensees who are renewing licenses more frequently than every three years (such as those who were granted a licence in that last 12 months). The funds for monitoring and enforcement will be available to TAs in the year in which they need to make use of them.</p>	

C. Framework for stratifying fees according to risk and cost

12. The current regime does not recognise the costs and risks that different operations impose on the licensing system. The new Act expressly allows regulations to be made that account for cost and risk.

13. The **status quo** option does not stratify fees to take into account cost and risk, meaning it is both unfair and economically inefficient in terms of the price signals it sends to operators. It does not meet the objective that those who create the greatest need for regulatory effort bear the commensurate costs. This option has not been considered further.

14. The **proposed cost/risk framework** is outlined below. This was the preferred option identified in the discussion document. Under the proposed framework premises would be assessed and scored against: type of premise, latest alcohol sales time, and number of enforcements in the last 18 months. Scores would be added to give a total weighting.

15. This framework has been developed using various information sources including:

- a. a survey of TAs about where most effort and resource is applied with respect to alcohol licensing
- b. discussions with enforcement agencies
- c. analysis of the Police database of alcohol-related offences
- d. a review of international approaches to risk-based fees
- e. input from the recent consultation process.

16. Three key variables are used in Australian states and Canadian provinces with risk-based alcohol licensing schemes. Our analysis, surveys and discussions supported the position that those variables are also relevant in the New Zealand context. The key variables are:

- a. type of premise
- b. closing hours
- c. past conduct.

Type of licensed premise	Weighting		Latest alcohol sales time	Weighting		Number of enforcements in the last 18 months	Weighting
Liquor store, Supermarket, Grocery off-licence	15	+	On-licences & club licences before 2:01am; Off-licences before 10:01pm	0	+	None	0
Night clubs, Taverns, Adult premises, "Class 1" restaurants	15		On-licences & club licences 2:01am-3:01am; Off-licences 10:01pm and later	3		1	10
Off-licence in a Tavern	10		On-licences & club licences – all other closing times	5		2 or more	20
Hotels, Function centres, "Class 1" clubs, "Class 2" restaurants, Universities, and Polytechnics	10						
Remote sales, "Class 2" clubs, "Class 3" restaurants, Other	5						
Theatres/ cinemas, Wine cellar doors, BYO restaurants, "Class 3" clubs	2						

17. Submissions on the discussion document were generally in favour of a cost/risk-based approach, except for submitters who owned a high-risk licensed premise.
18. Proposed definitions for classes 1, 2 and 3 of restaurants and clubs are provided in the 'definitions' section in Appendix 1. Weightings in the proposed risk framework differ somewhat to those contained in the consultation document, in response to feedback from TAs and industry that:
 - a. the risks and costs associated with pre-loading from off-licenses needed to be more accurately reflected in the framework, and on- and off-licenses should be differentiated under the "latest alcohol sales" variable due to their differing average closing times. The proposed new approach moves some off-licenses that close after 10:00pm up one risk/cost category compared with the approach proposed in the discussion document.
 - b. the time period over which prior enforcements should be counted against a premises should be reduced to allow operators to make changes to their business and be rewarded for these more quickly - the proposed new framework would reduce the time period from three years in the consultation document to 18 months, with consequential changes to the scoring for enforcements.
19. Submitters were split on whether enforcements prior to the commencement of the new fee regime should be included initially or whether all premises should start with a 'clean slate'. Many TA submissions argued that their costs are driven by the prior behaviour of licensees and that prior enforcements should therefore be factored into assessments immediately. Industry tended to support a clean slate approach, arguing that the new regime should not apply retrospectively.
20. Given that the regime aims to recover TAs' actual costs, this supports the argument that prior enforcements should be assessed from the start of the new regime. This will not be retrospective application of new regulation, since the prior history is a relevant consideration for current and future costs, and is a consideration in all licensing matters.
21. Depending on the total weighting, the level of cost/risk and, therefore, the fees category is proposed as below:

Total weighting	Cost/risk and, therefore, fees category
0-2	Very low
3-5	Low
6-15	Medium
16-25	High
26 plus	Very high

22. These categories will determine the level of default fees, considered in the following section of this report.
23. Regulations will also require that the proposed cost/risk framework and corresponding cost/risk categories be applied by all TAs, including those that elect to set their own fees per category under a bylaw.
24. The proposed cost/risk-based approach is consistent with the objectives for the fees regime under the new Act. In particular, it aligns the fees more closely to those premises that create the greatest need for regulatory effort. It may encourage some premises to reduce their hours of trading and/or take greater steps to remain compliant with the key parts of the legislation, which may in turn contribute to a reduction in alcohol-related harm.

D. Default fees

25. The new Act allows for - but does not require - regulations to be made to set fees.
26. In time, some TAs will choose to pass a bylaw that regulates their own fees; most likely TAs whose licensing regime costs are either significant higher or lower than the average.
27. The setting of default fees, however, is a good idea. Some TAs will decide against establishing a bylaw to set fees if they can use default regulated fees – this approach will be the least costly for them. For those who do decide to establish their own fees, this will take time; at least a year if not longer. Default fees will be required in the interim for those TAs.
28. Default fees will also provide a benchmark against which TA-set fees can be compared. This will help meet the objective of recovery of costs that are reasonable and relate only to administering the licensing system.
29. Some fees, such as those for manager's certificates, appeals to ARLA, and extracts from the register should continue to be set centrally. In the case of ARLA costs, this is because ARLA is a national tribunal funded through central government. For manager's certificates, a nationally consistent fee reflects the fact that managers can be employed anywhere in the country, making a manager's certificate more in the nature of a national vocational certificate. Wide variations in fees across the country would be difficult to justify given that a manager receiving a certificate in one TA's jurisdiction can be employed in a licensed premises anywhere in the country.

Status quo	<ul style="list-style-type: none"> • The current licensing fees regime does not stratify fees according to cost/risk factors. The figures below are different to those in the consultation document as they exclude GST. <table border="1" style="margin-left: 20px;"> <thead> <tr> <th style="text-align: left;">Type of licence</th> <th style="text-align: right;">Application fee</th> <th style="text-align: right;">Renewal fee</th> <th style="text-align: right;">Amount paid to regulator</th> </tr> </thead> <tbody> <tr> <td>On-licence</td> <td style="text-align: right;">\$689.77</td> <td style="text-align: right;">\$689.77</td> <td style="text-align: right;">\$110.23</td> </tr> <tr> <td>Off-licence</td> <td style="text-align: right;">\$689.77</td> <td style="text-align: right;">\$689.77</td> <td style="text-align: right;">\$110.23</td> </tr> <tr> <td>Club licence</td> <td style="text-align: right;">\$689.77</td> <td style="text-align: right;">\$689.77</td> <td style="text-align: right;">\$110.23</td> </tr> <tr> <td>On-licence: BYO</td> <td style="text-align: right;">\$117.33</td> <td style="text-align: right;">\$117.33</td> <td style="text-align: right;">\$18.67</td> </tr> <tr> <td>Off-licence: Caterers/ Auctioneers</td> <td style="text-align: right;">\$117.33</td> <td style="text-align: right;">\$117.33</td> <td style="text-align: right;">\$18.67</td> </tr> <tr> <td>Manager's certificate</td> <td style="text-align: right;">\$117.33</td> <td style="text-align: right;">\$117.33</td> <td style="text-align: right;">\$18.67</td> </tr> <tr> <td>Temporary Authority</td> <td style="text-align: right;">\$117.33</td> <td style="text-align: right;">\$117.33</td> <td style="text-align: right;">\$18.67</td> </tr> <tr> <td>Appeal against a decision of a DLA</td> <td style="text-align: right;">\$286.23</td> <td></td> <td></td> </tr> <tr> <td>Extract from the public register</td> <td style="text-align: right;">\$20.40</td> <td></td> <td></td> </tr> <tr> <td>Temporary licence during repairs of licensed premises</td> <td style="text-align: right;">\$117.33</td> <td></td> <td></td> </tr> <tr> <td>Annual fee for a permanent club charter</td> <td style="text-align: right;">\$920.00</td> <td></td> <td></td> </tr> </tbody> </table> <ul style="list-style-type: none"> • The new Act allows for different fees to be paid by different types of premises and taking into account trading hours, activities, and previous conduct – with the objective that those who create the greatest need for regulatory effort bear the commensurate costs. The current fees regime does not achieve that objective, and does not respond differently to risky behaviour. • Neither does the current fees regime gather enough revenue to achieve the other key objective of full recovery of reasonable costs, to the extent practicable. 	Type of licence	Application fee	Renewal fee	Amount paid to regulator	On-licence	\$689.77	\$689.77	\$110.23	Off-licence	\$689.77	\$689.77	\$110.23	Club licence	\$689.77	\$689.77	\$110.23	On-licence: BYO	\$117.33	\$117.33	\$18.67	Off-licence: Caterers/ Auctioneers	\$117.33	\$117.33	\$18.67	Manager's certificate	\$117.33	\$117.33	\$18.67	Temporary Authority	\$117.33	\$117.33	\$18.67	Appeal against a decision of a DLA	\$286.23			Extract from the public register	\$20.40			Temporary licence during repairs of licensed premises	\$117.33			Annual fee for a permanent club charter	\$920.00		
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Option 1: Modified status quo	<ul style="list-style-type: none"> This option would increase the current fees to a level required to achieve full cost recovery, assuming the current fees framework. While this approach would achieve one of the key objectives, it would not achieve another key objective that those that create the greatest need for regulatory effort bear the commensurate costs. 																																		
Option 2: Fees proposed in the consultation document	<ul style="list-style-type: none"> The indicative estimates for fees provided in the consultation document are shown below: <table border="1" data-bbox="443 412 1390 763"> <thead> <tr> <th rowspan="2">Category of premise</th> <th colspan="2">Application fee</th> <th colspan="2">Annual fee</th> </tr> <tr> <th>Total amount payable by applicant</th> <th>Amount of total fee transferred to ARLA</th> <th>Total amount payable by licensee</th> <th>Amount of total fee transferred to ARLA</th> </tr> </thead> <tbody> <tr> <td>Very Low</td> <td>\$248</td> <td>\$13</td> <td>\$182</td> <td>\$13</td> </tr> <tr> <td>Low</td> <td>\$495</td> <td>\$26</td> <td>\$363</td> <td>\$26</td> </tr> <tr> <td>Medium</td> <td>\$750</td> <td>\$40</td> <td>\$550</td> <td>\$40</td> </tr> <tr> <td>High</td> <td>\$1,373</td> <td>\$73</td> <td>\$1,007</td> <td>\$73</td> </tr> <tr> <td>Very high</td> <td>\$1,875</td> <td>\$100</td> <td>\$1,375</td> <td>\$100</td> </tr> </tbody> </table> This option: would be broadly consistent with the objectives of the Act; would differentiate fees based on a level of cost/risk, and potentially result in some licensed premises reducing their degree of cost/risk in order to reduce fees. Feedback from TAs on the consultation document indicated that: <ul style="list-style-type: none"> a number of TAs with lower cost profiles would be substantially over-collecting fees using these default rates some TAs considered the rates about right overall, but many – particularly metropolitan TAs - did not consider the default fees would be sufficient to recover their costs the costs associated with applications will be flatter between the very low and very high risk categories, and the differences by cost/risk category will be more evident in annual costs (monitoring). 	Category of premise	Application fee		Annual fee		Total amount payable by applicant	Amount of total fee transferred to ARLA	Total amount payable by licensee	Amount of total fee transferred to ARLA	Very Low	\$248	\$13	\$182	\$13	Low	\$495	\$26	\$363	\$26	Medium	\$750	\$40	\$550	\$40	High	\$1,373	\$73	\$1,007	\$73	Very high	\$1,875	\$100	\$1,375	\$100
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Option 3: Revised proposed fees (Continued over page)	<p>The revised proposed fees (below) are derived from:</p> <ol style="list-style-type: none"> reducing the default rates slightly to further mitigate the risk of over-recovery for TAs with low cost profiles - to recognise that TAs with higher cost profiles are able to establish their own fee rates through bylaws and are more likely than TAs with low cost profiles to do that the decision to categorise fees by whether they are related to application-related costs or to ongoing annual costs; and - in response to feedback – a decision that as the annual costs will be the most affected by the different categories of cost/risk, the application fees should be flatter across the categories the proposed cost/risk-based approach primarily driven by the type of premise and trading hours (due to the low proportion of premises associated with enforcements) the proportions of premises that fall into each of the cost categories – based on actual 2012 data – which are: very low - 14 percent; low - 30 percent; medium - 44 percent; high - 11 percent; and very high – 1 percent. <table border="1" data-bbox="443 1738 1390 2080"> <thead> <tr> <th rowspan="2">Category of premise</th> <th colspan="2">Application fee</th> <th colspan="2">Annual fee</th> </tr> <tr> <th>Total amount payable by applicant</th> <th>Amount of total fee transferred to ARLA</th> <th>Total amount payable by licensee</th> <th>Amount of total fee transferred to ARLA</th> </tr> </thead> <tbody> <tr> <td>Very Low</td> <td>\$320</td> <td>\$15</td> <td>\$140</td> <td>\$15</td> </tr> <tr> <td>Low</td> <td>\$530</td> <td>\$30</td> <td>\$340</td> <td>\$30</td> </tr> <tr> <td>Medium</td> <td>\$710</td> <td>\$45</td> <td>\$550</td> <td>\$45</td> </tr> <tr> <td>High</td> <td>\$890</td> <td>\$75</td> <td>\$900</td> <td>\$75</td> </tr> <tr> <td>Very high</td> <td>\$1,050</td> <td>\$150</td> <td>\$1,250</td> <td>\$150</td> </tr> </tbody> </table>	Category of premise	Application fee		Annual fee		Total amount payable by applicant	Amount of total fee transferred to ARLA	Total amount payable by licensee	Amount of total fee transferred to ARLA	Very Low	\$320	\$15	\$140	\$15	Low	\$530	\$30	\$340	\$30	Medium	\$710	\$45	\$550	\$45	High	\$890	\$75	\$900	\$75	Very high	\$1,050	\$150	\$1,250	\$150
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Very high	\$1,050	\$150	\$1,250	\$150																															

Revised proposed fees
(continued)

	Total amount payable by applicant	Amount of total fee payable to ARLA
Manager's certificate application	\$275	\$25
Temporary authority	\$258	nil
Temporary licence	\$258	nil
Appeal to ARLA	\$450	\$450
Extract from register (ARLA or DLC)	\$50	\$50
Permanent club charter annual fee	\$920	\$920

- Proposed new licence fees compared to current fees, annual cost averaged over ten years – and all excluding GST - are:

Category of premise	Ave weekly cost of proposed new fees	Ave annual cost of proposed new fees	Ave annual cost of current fees
Very low	\$5	\$268	\$276
Low	\$11	\$552	\$276
Medium	\$16	\$834	\$276
High	\$24	\$1,256	\$276
Very High	\$32	\$1,670	\$276

- The combination of moving to full cost recovery and applying cost/risk-based approaches will increase costs to the majority of licensees, and significantly increase them for licensees who fall into the higher cost/risk categories. This will introduce incentives for licensees to modify their risky behaviour and benefit from that. TAs will also be able to optimise their regulatory efforts according to local circumstances and adjust their fees income to reflect these decisions.

E. Special licences

30. Special licences can cover one-off or short duration events such as funerals and weddings, but can also cover large events such as wine and food festivals. The regulatory efforts of TAs generally reflect the size and nature of the event and the associated risks.

<p>Status quo</p>	<ul style="list-style-type: none"> • Currently, special licences: <ul style="list-style-type: none"> ○ are regulated nationally ○ \$56.17 (this differs from the amount included in the consultation document, as that figure included GST). • This level of fee does not adequately reflect the costs of the licence where events are large or there are multiple events. The costs of monitoring and enforcement, particularly, are not covered by this fee.
<p>Consultation document approach and submitter's feedback</p>	<ul style="list-style-type: none"> • The consultation document included an indicative average cost for special licenses of \$180.00 • Feedback was sought on whether fees for special licences should always be nationally set, or whether TAs should be given the option for setting their own fees when/if they pass by-laws to set other fees. • Feedback from TAs, in particular, was that a sliding scale of licence fees (or a base fee plus variable additional fees) is needed to respond to different sizes and complexities of special licence applications and events. • TAs also pointed out that each TA will have a different definition for a small or large event, and there needs to be the flexibility for TAs to either set their own fees as a result, or that a national framework of special licence fees should allow TAs flexibility in how they define events.
<p>Proposed approach</p>	<ul style="list-style-type: none"> • It is proposed to establish a three-tier, nationally-regulated, approach to default special licence fees as below: <ol style="list-style-type: none"> 1. one or two small size events covered by the licence = \$55.00 2. three to 12 small sized events covered by the licence, or one to three medium-sized events = \$180.00 3. all other special events, including large events = \$500.00 • TAs would have the opportunity to set their own fees for special licences by bylaw should they wish to do so. • The proposed approach: <ul style="list-style-type: none"> ○ is expected to more adequately cover the monitoring and enforcement costs associated with different size events ○ has been designed to avoid smaller events paying onerous fees ○ will continue with the overall approach for licensing fees which is to provide default fees through a nationally-regulated framework ○ but will allow TAs to define the size of event according to local conditions and the complexity of the licence application ○ and will allow TAs to set their own fees for special licences to match local circumstances, should they wish to do so. • Some TAs advised that if an event involves a public good, the TA may pay the fee.
<p>Summary: The proposed approach is considered to be the most effective in ensuring consistency of signals across the country while enabling TAs to determine the category each event should fall into based on local definitions of 'small', 'medium' and 'large'. The approach responds to submitter feedback. The three-tier approach for default special licence fees will help to ensure that the costs of special licences are proportionate to the event, to avoid providing a disincentive to smaller community-based events. The proposed fee for small events is slightly lower than the current fee. The tiered approach will also help to ensure that TAs' costs can be recognised for monitoring and enforcement of higher cost/risk events.</p>	

F. Compliance discounts

31. One of the overriding objectives of the alcohol reforms is to enable local communities, through their TAs, the flexibility to respond to local needs and conditions while providing national frameworks, guidelines and default positions.
32. Submitters on the consultation document overwhelmingly reminded us that TA discretion is essential in applying nationally-regulated frameworks, and that a degree of flexibility would be useful for responding to special circumstances.
33. For this reason, it is proposed that TAs be enabled through regulation to reduce the risk category of an applicant for a licence or special licence by one step (e.g. from high to medium risk), where the TA believes this to be appropriate; essentially a compliance discount. TAs would not be compelled to apply any discounts. Some TAs may wish to develop their own policies about when and how such discounts might be applied.
34. TAs might consider discounts are appropriate for many reasons. Examples include:
 - a. desire to build relationships with licensees who demonstrate exemplary behaviour and systems
 - b. a recent change in behaviour that the TA would like to recognise
 - c. a premises with multiple licences (such as a tavern with an on- and off-licence) where the costs to the TA associated with each licence are lower than typical for a licence of that type
 - d. where local knowledge or circumstances means this is reasonable, and a lower category better reflects the TAs costs with respect to a premises.

G. Options for transitional arrangements – date the new fees regime should begin

35. Licensees will be paying their fees under the current regime right up to 17 December 2013; many on the assumption that they are paying in advance (ex-ante) for three years under current (less than full cost recovery) rules. There is no material that guides us on the proportion of the current three-yearly fee that was intended to cover the application process compared with the proportion intended to cover annual monitoring and enforcement costs.
36. The new fees regime will involve a three-yearly application fee for most licensees as well as annual fees. The new fees regime could start from the date on which the new Act and regulations come into force (18 December 2013), but systems may not be in place for some TAs for that date. The start date could be delayed by a year to 18 December 2014, but that would result in a year of lost opportunity for cost recovery.
37. Another issue is whether payments under the new regime should be discounted by the assumed 'unused' portion of the previous payment of each licensee. While an argument might be made for this, it is likely to be administratively difficult and costly.
38. The regime could start on a specific date for all existing and prospective licensees, or it could be staggered according to the anniversary date of the issuing of each licence.
39. Issues and options are considered in the following table. To aid understanding, Appendix 2 contains some examples of how people in different situations would be affected under various scenarios.

<p>All licences to be renewed on a single chosen day</p>	<ul style="list-style-type: none"> • Currently TAs renew dog licences on a single day. This approach has the advantage of simplicity but would be an administrative burden for most TAs. If this option were preferred it begs the question of what date should be chosen. • The annual fees in the new regime are paid in advance for the coming year's activity. If a new business starts 11 months before the chosen day for alcohol-related licensing it will receive almost a year of monitoring and enforcement for which it has not paid.
<p>Scenario 1: 18 December 2013 start date; no exemptions</p> <p>Case studies in Appendix 2</p>	<ul style="list-style-type: none"> • This would: <ul style="list-style-type: none"> ○ apply to all new applicants ○ apply to existing licensees on the anniversary of their last application ○ allow no exemptions. • This option would be consistent with the cost recovery objective of the Act. • Some licensees, however, who might otherwise assume that they wouldn't pay another licensing fee until as far out as 17 December 2016, would be required to pay their first annual fee within a year of their last payment under the current regime. This is shown in Scenario 1 in Appendix 2.
<p>Scenario 2: 18 December 2013 start date; with exemptions</p> <p>Case studies in Appendix 2</p>	<ul style="list-style-type: none"> • This would: <ul style="list-style-type: none"> ○ apply to all new applicants ○ apply to existing licensees on the anniversary of their last application ○ include an exception from annual fees until 18 December 2014, where the licensee paid a license application fee between 18 December 2012 and 17 December 2013. • This option would take a pragmatic approach to the cost recovery objective, and would ensure that there were two years for all licensees between their last payment under the current regime and their first annual fee payment under the new regime. This is shown in Scenario 2 in Appendix 2.
<p>Scenario 3: 18 December 2014 start date; no exemptions</p> <p>Case studies in Appendix 2</p>	<ul style="list-style-type: none"> • This would: <ul style="list-style-type: none"> ○ apply to all new applicants ○ apply to existing licensees on the anniversary of their last application of whatever type ○ allow no exemptions. • This option is the least consistent with the cost recovery purpose of the Act - some licensees who would otherwise be paying their three-yearly fee under the old regime between mid-December 2013 and mid-December 2014, essentially skip four years before they pay anything before their application and first annual fee instalment kicks in (the Scenario 3 case studies in Appendix 2 refer). • For most TAs this loss of income would be difficult. Some, however, may welcome additional time to ensure all their systems are in place.

<p>Treatment of the 'unused portion' of a previous payment</p>	<ul style="list-style-type: none"> • The option has been considered, and dismissed. It would involve determining how much of the licensee's last payment has been 'used', and then deduct the 'unused' portion from their first annual payment under the new regime. • Payments under the current regime have been considerably less than cost recovery, and so it could be argued that there will be no 'unused' portion. In addition, it is difficult to assume a split between the application and annual components of the fee under the current regime. • This approach would add transaction costs for TAs.
<p>Summary: On balance, it is considered that the most effective implementation of the new fees regime will result from an 18 December 2013 start date for all new, renewal and variation licence applications; and for all existing licensees to pay annual fees from anniversary of their application. This will be simple and allow TAs to begin their cost recovery programme immediately.</p> <p>It is proposed to give existing licensees a year's grace where they have paid a licence fee (under the current regime) between 18 December 2012 and 17 December 2013 (scenario two).</p>	
<p>TA flexibility</p>	<ul style="list-style-type: none"> • It is also proposed that TAs be enabled through the regulations to begin collecting annual fees under the new regime at any time from the 18 December 2013 start date up to 1 July 2014. • This will allow TAs time to put their systems in place if they need it, while enabling other TAs who are already system-ready to implement the cost recovery approach from the outset. • This approach is consistent with the objective of providing TAs with the flexibility they need to respond to local conditions.

Conclusions

40. The package of proposals for the new fees regime will balance the cost recovery aim of the new Act with the possibility of over-collection of fees. A pragmatic approach to the amount of fees to be collected is suggested, given the many unknown variables, without compromising the cost-recovery objective.
41. The package of proposals will stratify the fees according to the costs/risks created by premises, and introduce slightly lower fees for very low risk premises compared with current fees. The objective of cost/risk-based fees is to ensure that those who create the greatest need for regulatory effort will bear the commensurate costs. Further, the risk categories provide a modest incentive for premises to reduce their risky behaviour and benefit from this. The ultimate objective is to minimise alcohol-related harm.
42. A tiered approach will be introduced for default fees for special licences through which the costs to a TA of the event will be better recognised. Default licence fees for small events will be lower compared with current fees.
43. It is proposed to start the new fees regime from 18 December 2013 to allow TAs that are system-ready to implement the cost recovery regime immediately (with local flexibility introduced as discussed below). The new fees regime will be applied from that date for:
 - a. all license and manager's certificate applicants
 - b. annual fees - all existing licensees on the anniversary of their last licence application
 - c. except for existing licensees who paid a licence application fee between 18 December 2012 and 17 December 2013 who, instead, will be exempt from annual fees until 18 December 2014.
44. TAs will be supported to respond to local needs through:
 - a. a split between fees to meet the one-off costs of the application process and annual fees to cover the ongoing costs of TA monitoring and enforcement

- b. being able to make bylaws to set their own fees, if the local community decides to move away from using the nationally-regulated default fees (with reporting requirements on TAs)
- c. being enabled to reduce the risk category of an applicant for a licence or special licence by one step, where the TA believes this to be appropriate (a compliance discount)
- d. being able to choose to delay the date that the new annual fees begin (before 1 July 2014) if their systems are not ready in time for the proposed start date of 18 December 2013 – though no licensee could have annual fees applied retrospectively and TAs would need to wait until that licensee’s anniversary next fell due.

Consultation

45. Consultation to date has included:

- a. the distribution of a consultation document for submitter feedback – the document was published on the Ministry’s website and key players were advised including all TAs; industry associations, for their distribution to members, such as Hospitality New Zealand or HNZ; clubs associations for their distribution to members, such as Clubs New Zealand and Sports New Zealand; health promoters; and relevant Government agencies
- b. nine local meetings on the proposals with TA representatives and industry members.

46. Seventy-three submissions were received on the public consultation document. Of these, 28 were from TAs, 28 from industry players, six from clubs, and eight from health promoters or district health boards. The feedback revealed:

- a. that TAs are overwhelmingly in favour of proposals relating to cost-recovery and risk-based fees (both of which are already prescribed in the new Act), and the potential for TAs to set fees locally
- b. only seven out of the 73 submitters were generally opposed to the proposals; they submitted that off-licences needed to bear more of the burden of the costs to reflect the risks associated with ‘preloading’; opposed fee increases in general; or considered that administration costs associated with the licensing system are driven by TAs not licensees
- c. 21 submitters were generally neutral about the proposals because they focused on specific issues only (for example clubs and industry stakeholders).

47. Licensing system fee proposals have been modified in response to submitter feedback at local meetings and on the consultation document as outlined below.

- a. Whether fees should be set nationally, locally, or using a combination of approaches – submissions from industry and TAs about the consultation document provided mixed feedback on this issue. Some preferred a nationally-regulated approach with the option for TAs to set fees locally that differ from the nationally-regulated ‘default’ or ‘starting point’ fees (our preferred option). Others proposed national regulation only with no TA flexibility.
- b. The proposed weightings in the risk framework have been modified in response to submissions that the alcohol harm associated with pre-loading (from the purchase of alcohol from off-licenses) should be better recognised.
- c. The period over which prior enforcements count against a business in the risk framework has been reduced from three years to 18 months. Submissions indicated that operators needed to be rewarded more quickly for improvements they have made to their business.

- d. Proposed fees have been reduced in response to TA submissions that the indicative fees in the consultation document would likely result in over-collection for TAs with a low cost profile.
 - e. The proposed range in application fees has been flattened between very low risk and very high risk businesses. This responds to TA and industry feedback that cost differences between premises are most appropriately reflected in the annual fee. This fee takes into account ongoing monitoring and enforcement, while application costs are more similar across risk categories.
 - f. Special licenses – no submitter supported a flat licence fee for all special events, and so a three-tier approach is now proposed. This will reflect the size and type of events and provide TAs with the flexibility they need to respond to local conditions and imperatives.
 - g. All submitters that commented on providing TAs with the flexibility to discount licence fees where they consider those to be appropriate (compliance discounts) were supportive of the proposal.
48. Further consultation may occur later this year. Following the regulations being drafted, it is proposed to publicly consult on an exposure draft of those regulations during late September or early October 2013.

Implementation

49. The package of proposals contained in this RIS will be introduced by regulation to give effect to the new Act which will fully commence on 18 December 2013.
50. Guidance material will be provided to TAs and Local Government New Zealand, and is expected to be published on their websites for general and licensee information.
51. There have been a number of opportunities for stakeholders to contribute to the design of the alcohol reforms through the drafting of the Bill (now Act) and the design of the regulations. Industry, club and TA stakeholders have been informed.
52. The key issue with respect to transitional arrangements relates to the date that the new fees regime will begin, given that licensees will be paying under the current regime right up to 17 December 2013. For simplicity, and to allow TAs to begin their cost recovery programme immediately, an 18 December 2013 start date is proposed for all new, renewal and variation licence applications, with annual fees payable on the anniversary of the licence application. In order to reduce the costs of the transition to the new fees regime, it is proposed to give existing licensees a year's grace from annual fees where they have paid a licence fee (under the current regime) between 18 December 2012 and 17 December 2013.
53. Compliance costs to TAs of administering the new fees regime have been minimised through the introduction of:
- a. practical transition arrangements
 - b. incorporating TA flexibility into the policy design, including the option of TAs continuing with the default fees if they do not wish to set their own fees through bylaws
 - c. enabling TAs to delay the start date of the new annual fees regime if their systems take longer to establish.
54. TAs have incentives to implement the regulations so that they fully recover their monitoring and enforcement costs under the new Act. If they choose to introduce local fees and they set these below their costs, they will essentially require ratepayers to subsidise the costs of the licensing regime. That approach, if it occurs, is the prerogative of the TAs.

Monitoring, evaluation and review

55. TAs are required under the new Act to prepare and send to ARLA an annual report on the proceedings and operations of its licensing committees during the year, within three months after the end of each financial year (section 199). This section of the new Act also allows ARLA to specify the form of the TA's annual report, and the fees and licensing data to be contained in it. Data will be collated nationally, along with information about the numbers of TAs that have set their own fees and the levels at which they have set them. Comparative information will be available each year. TAs will report for the first time within three months after 30 June 2014.
56. Under section 404 of the new Act, the fees regulations are to be reviewed not less than every five years. It is proposed, however, that the first review occur three years after commencement to assess the performance, effectiveness and efficiency of the new fees regime in meeting its objectives. The reasons for this proposal are:
- a. the default fees are based on estimates - within three years there will be real data available from TAs with which to fine-tune the default fees
 - b. it will take at least two years for processes to bed-in, bylaws for locally-agreed fees to be passed, and the volume of opposed applications considered by district licensing committees to stabilise – within three years a more steady state should have been reached allowing better assessment of the adequacy of the default fees.

Definitions

Class 1 restaurants – restaurants with a significant separate bar area and which, in the opinion of the relevant TA, operate that bar at least one night a week in the nature of a tavern, such as serving alcohol without meals to tables situated in the bar area.

Class 2 restaurants – restaurants that have a separate bar (which may include a small bar area) but which, in the opinion of the relevant TA, do not operate that area in the nature of a tavern at any time.

Class 3 restaurants – restaurants that only serve alcohol to the table and do not have a separate bar area.

Class 1 clubs – clubs which, in the opinion of the TA, are large clubs (with 1,000 or more members of drinking age) and which, in the opinion of the relevant TA, operate in the nature of a tavern.

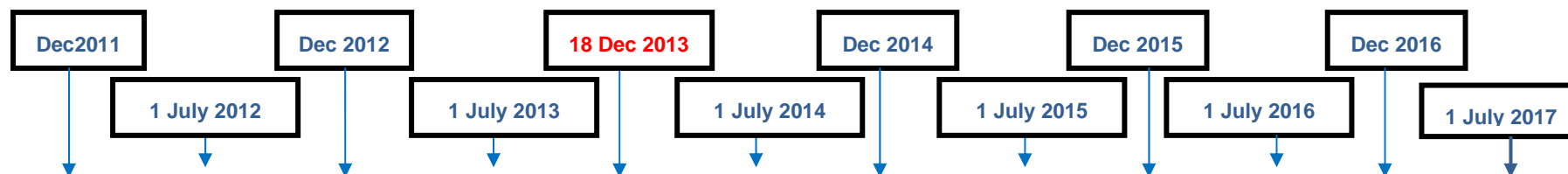
Class 2 clubs – clubs which do not fit class 1 or class 3 definitions.

Class 3 clubs - clubs which, in the opinion of the TA, are small clubs (with up to 250 members of drinking age) and which typically operate a bar for 40 hours or less per week.

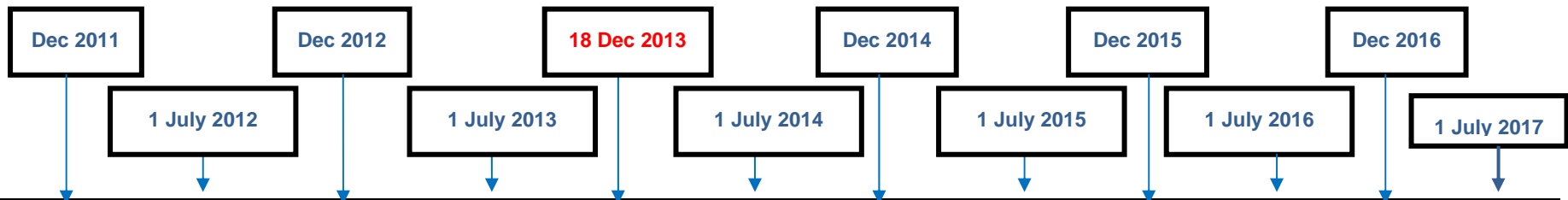
Enforcement – has the same meaning as a “Holding” under section 288 of the Act or an equivalent finding by ARLA, its predecessor, or a court.

Case Studies: Date for the start of the new fees regime

Appendix 2



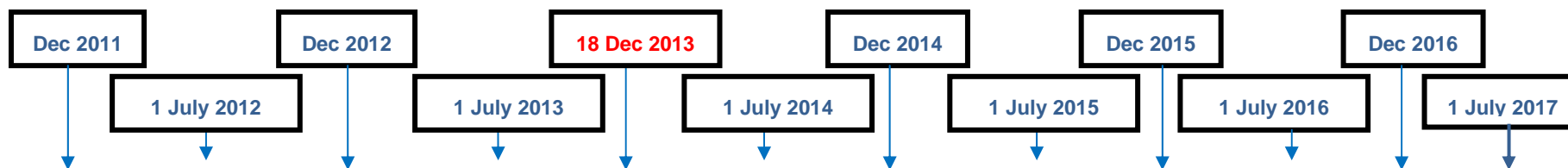
Scenario 1 – 18 December 2013 start date for fees						
No exemptions						
Business 1	Renewed licence on 1 July 2012 Assumes has paid up to 30 June 2015		Annual fee due 1 July 2014	Application fee and annual fee due 1 July 2015	Annual fee due 1 July 2016	Annual fee due 1 July 2017
Business 2		Renewed licence on 1 July 2013 Assumes has paid up to 30 June 2016	Annual fee due 1 July 2014	Annual fee due 1 July 2015	Application fee and annual fee due 1 July 2016	Annual fee due 1 July 2017
Business 3		Renewed licence on 17 December 2012 Assumes has paid up to 17 December 2015		Annual fee due 17 December 2014	Application fee and annual fee due 17 December 2015	Annual fee due 17 December 2016
Business 4	Renewed licence on 15 August 2012 Assumes has paid up to 14 August 2015		Annual fee due 15 August 2014	Application fee and annual fee due 15 August 2015	Annual fee due 15 August 2016	Annual fee due 15 August 2017
Business 5	Renewed licence on 18 December 2011 Assumes has paid up to 17 December 2014		Annual fee due 18 December 2013	Application fee and annual fee due 18 December 2014	Annual fee due 18 December 2015	Annual fee due 18 December 2016



Scenario 2 – 18 December 2013 start date for fees
This scenario is preferred

Exemption from fees until 17 December 2014: where last licence under the old regime was received on or after 18 December 2012

Business 1	Renewed licence on 1 July 2012 Assumes has paid up to 30 June 2015		Annual fee due 1 July 2014	Application fee and annual fee due 1 July 2015	Annual fee due 1 July 2016	Annual fee due 1 July 2017
Business 2		Renewed licence on 1 July 2013 Assumes has paid up to 30 June 2016		Annual fee due 1 July 2015	Application fee and annual fee due 1 July 2016	Annual fee due 1 July 2017
Business 3		Renewed licence on 17 December 2012 Assumes has paid up to 17 December 2015		Annual fee due 17 December 2014	Application fee and annual fee due 17 December 2015	Annual fee due 17 December 2016
Business 4	Renewed licence on 15 August 2012 Assumes has paid up to 14 August 2015		Annual fee due 15 August 2014	Application fee and annual fee due 15 August 2015	Annual fee due 15 August 2016	Annual fee due 15 August 2017
Business 5	Renewed licence on 18 December 2011 Assumes has paid up to 17 December 2014		Annual fee due 18 December 2013	Application fee and annual fee due 18 December 2014	Annual fee due 18 December 2015	Annual fee due 18 December 2016



Scenario 3 – 18 December 2014 start date for fees

No exemptions

Business 1	Renewed licence on 1 July 2012 Assumes has paid up to 30 June 2015			Application fee and annual fee due 1 July 2015	Annual fee due 1 July 2016	Annual fee due 1 July 2017
Business 2		Renewed licence on 1 July 2013 Assumes has paid up to 30 June 2016		Annual fee due 1 July 2015	Application fee and annual fee due 1 July 2016	Annual fee due 1 July 2017
Business 3		Renewed licence on 17 December 2012 Assumes has paid up to 17 December 2015		Application fee and annual fee due 17 December 2015	Annual fee due 17 December 2016	
Business 4	Renewed licence on 15 August 2012 Assumes has paid up to 14 August 2015			Application fee and annual fee due 15 August 2015	Annual fee due 15 August 2016	Annual fee due 15 August 2017
Business 5	Renewed licence on 18 December 2011 Assumes has paid up to 17 December 2014			Application fee and annual fee due 18 December 2015	Annual fee due 18 December	