

# ALCOHOL CONTROL BILL 2018

## SAMOA

### Explanatory Memorandum

#### **Object and Reasons:**

The Alcohol Control Bill 2018 (“Bill”) seeks to repeal the Liquor Act 2011.

The object of the Bill is to:

- (a) regulate the sale and supply of alcohol by controlling its availability;
- (b) reduce demand for and consumption of alcohol, and to minimise the harmful effects from the abuse of alcohol;
- (c) regulate advertising and promotion of alcohol products, and sponsorships associated with the sale and consumption of alcohol products, and to ensure that all such activities are undertaken responsibly and in the public interest;
- (d) provide for powers of enforcement relating to the manufacture, sale, consumption and importation of alcohol;
- (e) reduce alcohol-related problems of any nature; and
- (f) provide for the roles and responsibilities of parents and guardians, village fono and churches in applying the regulatory controls.

#### **Clauses:**

### **PART 1 - PRELIMINARY**

- Clause 1:** - states that, when enacted, the Bill will be called the Alcohol Control Act 2018, and will commence on a date to be nominated by the Minister.

**Clause 2:** - provides for the objectives and application of the Bill.

**Clause 3:** - provides for the definitions of terms within the Bill.

## **PART 2 - AUTHORITY FOR REGULATING ALCOHOL**

**Clause 4:** - provides for the establishment and composition of the Alcohol Control Board (“Board”) and the appointment of its members from the private sector and the community.

**Clause 5:** - provides for the functions of the Board.

**Clause 6:** - provides for the powers of the Board to do anything that is necessary or incidental to the performance of its functions.

**Clause 7:** - provides for the appointment of the Secretary to the Board and acting appointments by the Chief Executive Officer of the Ministry.

**Clause 8:** - provides for the delegation powers of the Board.

**Clause 9:** - provides for rules to be applied for meetings of the Board and its power to determine its own procedures.

**Clause 10:** - provides for hearings held by the Board in relation to cancellation or suspension of a licence or any complaints against an applicant under the Bill.

**Clause 11:** - provides for the standard of proof on which the Board must decide all matters before it.

**Clause 12:** - provides for the powers of the Chief Executive Officer under the Bill.

**Clause 13:** - provides for delegation powers of the Chief Executive Officer.

**PART 3 - OFFENCES RELATING TO THE SALE  
AND CONSUMPTION OF ALCOHOL**

- Clause 14:** - prohibits and making it an offence of selling alcohol without a licence issued under the Bill.
- Clause 15:** - prohibits and making it an offence of selling adulterated alcohol.
- Clause 16:** - making it an offence for both the seller for selling of, and the purchaser of, alcohol of a person under the age of 21 years, except in certain circumstances.
- Clause 17:** - provides for a duty of a licensee to require proof of age for a person who appears to be under the age of 21 years and who wishes to purchase alcohol or remain in a licensed premise. It further provides for the offence of permitting a person who is under 21 years of age to purchase alcohol or remain in a licensed premise and the offence of using any document to falsely represent his or her age when required.
- Clause 18:** - provides for the offence of selling or supplying alcohol to a person who is reasonable believed to be intoxicated or behaving in a manner which suggests that he or she is intoxicated.
- Clause 19:** - provides for the offence of consuming or having in possession alcohol in a public place or any prescribed place except for premises that are licensed under the Bill.
- Clause 20:** - states that, a person under the age of 21 years must not be employed or permitted to work on a licensed premises with a food and beverage, bar or nightclub licence, except in certain circumstances.

**PART 4 - LICENCES**

- Clause 21:** - provides for the classes of licences issued under the Bill.
- Clause 22:** - provides for the requirements for a licence application such as the approved form for the application, the prescribed fee and other general requirement that have to be complied to by the applicant.
- Clause 23:** - empowers the Secretary to the Board to require an applicant for a licence to provide or produce more information for the application.
- Clause 24:** - provides for matters that are to be considered by the Board when considering an application for a licence under Part 4.
- Clause 25:** - empowers the Board to grant or refuse the issuing of a licence after considering all matters related to the application.
- Clause 26:** - powers of the Board to impose and vary/revoke conditions not inconsistent with the Bill on licences as well as prohibiting the selling of alcohol on Sundays unless approved by the Board.
- Clause 27:** - provides for the duration of validity of a licence.
- Clause 28:** - provides for the renewal of a licence.
- Clause 29:** - provides for the transfer of a licence under this Part which requires the written approval of the Board.
- Clause 30:** - provides that a licence issued under this Part does not apply to new or relocated premises of the licensee.

### **PART 5 - TEMPORARY LICENCES**

- Clause 31:** - provides for temporary licence which authorises the sale and supply of alcohol at premises or places which are not licensed under Part 4.
- Clause 32:** - provides for requirements for an application for a temporary licence.
- Clause 33:** - provides for criterias or matters that must be considered by the Board when considering an application for a temporary licence.
- Clause 34:** - provides for the power of the Board to grant or refuse a temporary licence.

### **PART 6 - PERMITTED TIMES FOR THE SALE OF ALCOHOL**

- Clause 35:** - prohibits the selling of alcohol at a licensed premise on a Sunday with except in certain circumstances as listed (i.e. licence used as restaurant etc).

### **PART 7 - LICENCES TO MANUFACTURE ALCOHOL**

- Clause 36:** - provides that a person may only manufacture alcohol if the person holds a manufacturer's licence under this Part.
- Clause 37:** - provides for the application for a manufacturers licence which must be in the approved form and accompanied by the prescribed fee. It further provides for all required information/documents to be submitted together with the application.
- Clause 38:** - provides for the criteria that the Board must be satisfied of when granting a licence to manufacture alcohol under this Part.

- Clause 39:** - provides that Regulations may be made under this Bill to prescribe minimum standard applicable to any matter associated with the manufacture of alcohol.
- Clause 40:** - provides for the power of the Board to grant or refuse to issue a licence to manufacture alcohol on the premises specified in the licence. It also provides for the duration of validity of a licence granted by the Board under this Part.
- Clause 41:** - provides for requirements when renewing a licence to manufacture alcohol.
- Clause 42:** - provides for conditions for a licence to manufacture alcohol is subject to as well as the power of the Board to impose, vary or revoke a condition.
- Clause 43:** - makes it an offence for a licensee to breach any conditions of a licence to manufacture alcohol without lawful excuse.

#### **PART 8 - IMPORT OF ALCOHOL**

- Clause 44:** - provides for the offence of importing alcohol without a licence to import alcohol issued under this Part with the exception for a person over the age of 21 years who enters Samoa and brings as part of his or her personal luggage bottles of alcohol containing not more than 3375ml in total.
- Clause 45:** - provides for the application for a licence to import alcohol which must be addressed to the Secretary and must be in the approved form and be accompanied by the prescribed fee and information required as listed.

- Clause 46:** - provides for matters to be considered by the Board in determining whether or not to grant a licence to import alcohol.
- Clause 47:** - provides for the powers of the Board to impose conditions and any other prescribed conditions to a licence to import alcohol.
- Clause 48:** - provides for the renewal of a licence to import alcohol which must be, lodged with the Secretary, made in the approved form and accompanied by the prescribed fee.
- Clause 49:** - provides that it is an offence if a licensee breaches a condition for a licence to import alcohol.

### **PART 9 - OTHER CONTROLS OVER THE SALE AND SUPPLY OF ALCOHOL**

- Clause 50:** - provides for Regulations to be made to prescribe prohibition of or restriction on the types of alcohol products to be sold and supplied. Grounds for a prohibition of or restriction on are also provided which can be imposed by the Board by way of licence conditions or the Village Fono by way of by-laws.
- Clause 51:** - provides for the requirements that are applied to the labelling of alcohol products which are sold by retailers or wholesalers in containers or receptacles.
- Clause 52:** - provides for the powers under this Bill to make Regulations to control and regulate the advertising and promotion of alcohol by any means.

**PART 10 - HEARINGS BY THE BOARD**

- Clause 53:** - authorises the Board to conduct hearings in relation to complaints made in writing about any alcohol related disturbance to ensure peace and good order.
- Clause 54:** - provides for procedures of a hearing by the Board under this Part and also the powers of the Board to revoke or vary the conditions of a licence, suspend or cancel a licence, penalize a licensee, or reject the complaint and take no action.
- Clause 55:** - empowers the Board to suspend a licence after conducting a hearing if it is satisfied that one of the circumstances listed has been breached.
- Clause 56:** - empowers the Board to cancel a licence after conducting a hearing under this Part and the Board is satisfied that one of the circumstances listed has been breached by the licensee.

**PART 11 - ENFORCEMENT PROVISIONS**

- Clause 57:** - empowers the Chief Executive Officer to appoint employees of the Ministry to be alcohol inspectors for the purpose of the Bill.
- Clause 58:** - provides for the powers of a police officer or alcohol inspector to enter and inspect a licensed premises if there are reasonable grounds that there is a breach of a condition of the licence or any provision of the Bill.

- Clause 59:** - provides for the powers of a police officer or alcohol inspector to direct the licensee to require people to leave the licensed premises if there is a reasonable belief that the number of people on or in the licensed premises exceeds the maximum number that can be in or on the licensed premise at any time, or that the number of people on or in the licence premises constitutes a danger to safety at the premises or in the surrounding areas.
- Clause 60:** - provides for the types of evidence that are prima facie for certain matters.
- Clause 61:** - provides for the powers of the Samoa Police Service Commissioner to order closure of a licensed premises for a period of up to 48 hours on specified grounds and the duty of the Commissioner to notify the Board on such order as soon as practicable.
- Clause 62:** - provides for the powers of a licensee and an employee of a licensee to use reasonable force to remove a person from the licensed premises in certain circumstances.

## **PART 12 - GENERAL OFFENCE PROVISIONS**

- Clause 63:** - provides for the powers under this Bill to make Regulations for the service of an Infringement Notice (IN) on a licensee or a person who is in breach of the Bill or any terms of a licence conditions. It further provides for a list of offences for which IN may be served.

- Clause 64:** - provides for the general penalty that can be imposed for any breach under the Bill that has no specific penalty provided.
- Clause 65:** - provides for the penalty for a breach of a licence condition issued under the Bill that has no other penalty provided.
- Clause 66:** - provides for the offence of allowing people on licenced premises or permitting the use of a licensed premises for unlawful purposes.
- Clause 67:** - provides for the offence of selling any undesirable alcohol products.
- Clause 68:** - provides for the offence of failure to keeping and maintaining a licensed premises in a clean and good condition.
- Clause 69:** - provides for the offence of providing information or document required under this Act that are false, misleading or deceptive or not genuine.
- Clause 70:** - provides that the licensee or manager of a licensed premises commits an offence if their employees are selling or supplying alcohol on the licensed premises in breach of the Bill.

### **PART 13 - MISCELLANEOUS**

- Clause 71:** - empowers the Chief Executive Officer to approve forms for any purpose under the Bill.
- Clause 72:** - provides for the powers of the Courts in Samoa to impose an order after a conviction of any person under this Act, to forfeit to the Government of Samoa any alcohol that was involved in the commission of the offence.

- Clause 73:** - provides for the protection of Board members, the Ministry and police officers who lawfully exercise a power under the Bill.
- Clause 74:** - provides for the Regulation making power of the Head of State, on any matter necessary and incidental to the implementation or enforcement of the Bill.
- Clause 75:** - repeals the Liquor Act 2011.
- Clause 76:** - provides for matters that are saved from the operation of the Liquor Act 2011 to be continued under the Bill once the Liquor Act 2011 is repealed.
- Clause 77:** - provides for the transition of the current Board under the Liquor Act 2011 to be continued under the Bill once the Liquor Act 2011 is repealed.

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(Hon TIALAVEA Fea Leniu Tionisio Hunt)

**MINISTER FOR REVENUE**