

Enforcement of alcohol bans

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Policy statement and principles

What

Under the Local Government Act 2002 territorial authorities throughout New Zealand may make a bylaw(s) to control the consumption and possession of alcohol in public places. Police have the power to enforce these bylaws. These bylaws can be permanent or for a certain period of time, e.g. over New Year's Eve.

Why

The purpose of the alcohol ban is to encourage a safe and welcoming environment in public places, reduce the negative impact alcohol consumption has and to provide the police with an appropriate tool for dealing with anti-social behavior caused by drinking alcohol in public.

How

Breach of alcohol ban is an offence under the Local Government Act 2002, for which an Alcohol Infringement Offence Notice can be issued requiring payment of a \$250 fee.

The aim for any intervention is to achieve the most appropriate outcome in any given situation. Police exercise discretion in relation to enforcement actions which include warnings, issuing an Alcohol Infringement Offence Notice, or arrest.

Enforcement principles

The principles that Police applies in the enforcement of alcohol bans are:

- Enforcement will not be directed to strict compliance but rather having regard to the reason for imposing a ban.
- It is a question of time, place and circumstance as to whether it is appropriate to take enforcement action.
- Enforcement will be directed to preventing alcohol related harm and antisocial behaviour caused by the consumption of alcohol in public places.

Alcohol related harm and antisocial behaviour may be either existing or anticipated. This judgement may be informed by factors such as:

- the existence of a disorder/ violence/ antisocial behaviour hotspot in a particular location
- behaviour related complaints from members of the public
- behaviour observed giving cause for concern about the probability of disorder and/ or violence
- evidence of intoxication in a public place; and
- the presence of a gathering of individuals that, in the assessment of the attending officer(s), is likely to result in antisocial behaviour associated with alcohol, consumption.

Enforcement in a particular location must be seen to be fair. This factor will be weighed up in relation to any enforcement action.

The Law

Definitions

This table provides definitions relevant to alcohol bans.

Alcohol	<p>'Alcohol' means a substance that-</p> <ul style="list-style-type: none"> - is or contains a fermented, distilled, or spirituous liquor; and at 20°C is found on analysis to contain 1.15% or more ethanol by volume; or - is a frozen liquid, or a mixture of a frozen liquid and another substance or substances and is alcohol as per bullet 1 when completely thawed to 20°C; or - whatever its form, is found on analysis to contain 1.15% or more ethanol by weight in a form that can be assimilated by people. <p>Section 5(1) - Sale and Supply of Alcohol Act 2012.</p>
Public place	<p>'Public place' means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it, but does not include licensed premises.</p> <p>Section 147(1) - Local Government Act 2002</p>

Breach of alcohol ban (section 147 - Local Government Act 2002)

You must prove the identity of the offenders and that they breached a bylaw for alcohol control purposes (an alcohol ban) by:

- consuming alcohol
- bringing alcohol
- possessing alcohol
- in a public place (or in a vehicle in a public place) specified in the bylaw.

Penalty

An Alcohol Infringement Offence Notice (AION) can be issued (prec W655 Consuming, W657 Possessed and W656 Brought into). This can result in a written warning or requiring payment of an infringement fee of \$250.

Exemptions

Alcohol in **unopened** containers may be:

- transported from off licensed premises next to a public place if it was lawfully bought on those premises for consumption off those premises, and it is promptly removed from the public place
- transported from outside a public place for delivery to licensed premises next to the public place
- transported from outside a public place to premises next to a public place by, or for delivery to, a resident of those premises or by their bona fide visitors
- transported from premises next to a public place to a place outside the public place if the transport is undertaken by a resident of those premises, and the alcohol is promptly removed from the public place.

Seizing alcohol (section 169(2)(b) - Local Government Act 2002)

A constable may (without warrant) seize and remove any alcohol (and its container) that is in a restricted place in breach of an alcohol ban.

Arrest, search, and seizure

Search (Section 169 - Local Government Act 2002)

Section 169 states:

2. Any constable may, without warrant:
 - a. for the purpose of ascertaining whether alcohol is present, search:
 - i. a container (for example, a parcel, package, bag, or case) in the possession of a person who is in, or entering, a public place
 - ii. a vehicle that is in, or is entering, a restricted place
 - b. seize and remove alcohol and its container if the alcohol is in a restricted place in breach of an alcohol ban
 - c. arrest any person whom the constable finds committing an offence
 - d. arrest any person who has refused to comply with a request by a constable:
 - i. to leave a restricted place; or
 - ii. to surrender to a constable any alcohol that, in breach of an alcohol ban, is in the person's possession.

Before you can search (section 170 - Local Government Act 2002)

Before you can search a container or a vehicle, you must:

- inform the person in possession of the container or the vehicle that they have the opportunity of removing the container or the vehicle from the public place; and
- provide the person with a reasonable opportunity to remove the container or the vehicle from the public place.

Exception (Section 170(2) & (3))

2. However, on specified dates or in relation to specified events, notified in accordance with subsection (3), a constable may, immediately and without further notice, exercise the power under section 169(a) to search a container or a vehicle.
3. Before a constable may exercise the power of search under subsection (2), the territorial authority must:
 - (a) specify the public place (by public notice given 14 days in advance) where and when Police are authorised to search; and
 - (b) indicate the location of the public place by one or more clearly legible notices affixed in one or more conspicuous places on, or adjacent to, the place to which the notice relates, unless it is impracticable or unreasonable to do so.

Power of arrest

Arrest (Section 169 - Local Government Act 2002)

Section 169 states:

A constable may, without warrant:

- c. arrest any person whom the constable finds committing an offence
- d. arrest any person who has refused to comply with a request by a constable:
 - i. to leave a restricted place; or
 - ii. to surrender to a constable any alcohol that, in breach of an alcohol ban, is in the person's possession.

The power of arrest should be used where circumstances require a firm intervention to prevent alcohol related harm and antisocial behaviour caused by the consumption of alcohol in public places.

This judgement may be informed by factors such as:

- the existence of a disorder/ violence/ antisocial behaviour hotspot in a particular location
- behaviour related complaints from members of the public
- behaviour observed giving cause for concern about the probability of disorder and/ or violence
- evidence of intoxication in a public place; and
- the presence of a gathering of individuals that, in the assessment of the attending officer(s), is likely to result in antisocial behaviour associated with alcohol consumption.

Arrest is the last option and should be used after other options have been considered and discarded.

Offenders should be released from custody as soon as the reason for their arrest is no longer present, i.e. if they are arrested as they are too intoxicated to look after themselves, they should be released as soon as they are sober enough to be safe.

Good practice for enforcement at the scene

On discovering a person suspected of breaching an alcohol ban, follow the steps in the table below at the scene (not necessarily in order).

Step	Action
1	Obtain full details of the offender, run a <u>QP</u> on OnDuty, which will alert you to any previous warnings for alcohol ban breaches as well as relevant alerts for <u>RTA/WTA</u> etc.
2	You need to ascertain: <ul style="list-style-type: none"> - that they knew they were in an alcohol ban area - that the alcohol they were in possession of in breach of the alcohol ban is in fact alcohol.
3	Note if the alcohol in possession of the offender is: <ul style="list-style-type: none"> - in a labelled trade container - if not in a labelled trade container, appears to contain alcohol and smells like alcohol. <p>Also note if the offender displays any signs of being influenced or intoxicated by alcohol.</p>
4	Apply enforcement principles in considering any enforcement.
5	Consider warning and moving offender on. A warning should be issued as a written warning, so any future breaches can be dealt with appropriately.
6	If warning inappropriate as it will not meet the enforcement principles then consider issuing an Alcohol Infringement Notice.
7	If necessary to prevent anti-social behaviour from continuing or to protect any person from harm, consider arresting the offender and return them to the station or taking that offender to a place of safety.
8	The offender must be released from custody as soon as it is safe to do so and issued an infringement notice upon release.
9	In all cases, the alcohol that is the subject of the breach of alcohol ban should be forfeited by the offender and destroyed by them immediately, and notebook endorsed accordingly.
10	It may be desirable in certain rare cases to take the alcohol concerned as an exhibit where a defended hearing is anticipated or for other reasons however this should be avoided if possible and reliance made on the presumption contained in the Local Government Act.

If the offender is below the legal purchase age of 18 years, follow steps as described in 'Policing minors' in the ['Minors'](#) chapter.