

# Licensing Trusts IN NEW ZEALAND

Licensing trusts in New Zealand are a statutory form of community enterprise now existing for over 70 years. Thirty were established between 1944 and 1975. Over the years since they have generated wealth of \$250 million through their business units, benefited their areas in many ways, and through their community support donations programmes<sup>1</sup> distributed significant profit back to enhance their community's quality of life. Today, 18 continue to operate (mainly hospitality) businesses, and provide support to their communities.

Their presence, successes and failures offer insights into this form of statutory enterprise and also the wider sphere of enterprise controlled by defined communities and accountable to them. Yet licensing trusts are relatively unknown in their entirety. To redress this and to confront misconceptions, in July 2017 *A Great Social Experiment* (Teahan, 2017)<sup>2</sup> was published. Key policy conundrums concerning their existence and performance are debated in the book:

- What is the justification for their existence today?

- In today's more fluid communities, how could the 50–70-year-old, street-by-street definitions of trust communities be relevant?
- What is the role of community enterprises in a global world?
- Are democratically elected boards too hit and miss in delivering the necessary talents to govern a competitive enterprise?
- Is it unwise to mix social/community goals with economic goals under one management?

- What are the 'mystical' elements endearing community enterprises to their communities?
- Who are the owners of a licensing trust?
- How have they performed in meeting their statutory objectives?

This article reviews some of the answers *A Great Social Experiment* yields, with emphasis on the lessons they provide for the growing global world of social and community enterprises.

## History: a better way

The sale of liquor in New Zealand has long been controversial, as it has in many countries. In the 1940s, the liquor laws were widely accepted to be a mess.<sup>3</sup> It was a time of war, and an uncertain climate for social change. New Zealand was still a young country, barely a generation away from its pioneering days, when the excesses of alcohol brought about prohibition in many areas.

The concept of licensing trusts was born out of a desire to create something better but not to give rein to the excesses of the past. The parliamentary debates record that it was based on a liquor control scheme originating in Carlisle on the Scottish/English border. But it is most likely that its unique features were the

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design of a remarkable man, the minister of justice, H.G.R. Mason.<sup>4</sup> He sought to establish 'a body corporate for the purpose of providing for the establishment of model hotels ... in the interests of the public well-being, and of providing for the sale of intoxicating liquor in the district, and to provide for the distribution of the profits for public purposes' (Hansard, 1944, p.716). The then prime minister, Peter Fraser, with his socialist beliefs<sup>5</sup> and his keen sense of community, was also a noted supporter.

The Invercargill Licensing Trust Act 1944 was passed on 17 April 1944. The Masterton Licensing Trust Act followed in December 1947 and the Licensing Trusts Act in 1949. Over the years those acts have been merged into the sale of liquor legislation.

#### Structure and governance

The 30 licensing trusts were formed between 1944 and 1975. Thus, no trust has been established for over 40 years. While that in part suggests that the circumstances giving rise to trusts no longer exist, it should be remembered that the 1980s through to the late 1990s or early 2000s was very much a time when the market philosophy and private enterprise dominated. The charitable trusts legislation too is an easier structure through which to establish a community enterprise. A further influence was the business and government climate during the earlier decades. As Bollinger (1967) and others caustically record, often the business and political climate had not been supportive for licensing trusts, even though trusts had been enthusiastically supported by their communities.

To form a licensing trust was never easy. First, the community had to decide whether it wished to do so, in a public poll. The alternative choice was private enterprise.<sup>6</sup> A constitution notice was then promulgated through the Ministry of Justice. Elections were called for (generally six) trustees to represent the community. Once elected, the hard work began. The trustees had to find a property, engage builders, and, most difficult of all, find the necessary finance. Invariably, trusts started out with over 100% debt financing, which was always a significant hurdle to overcome. They then had to

efficiently operate a licensed premises, with all its associated problems and challenges.

Financing a start-up licensing trust was a problem that collectively the trusts never really solved. The more supportive Labour government had guaranteed bank overdrafts and advanced funds from the Consolidated Fund for the Invercargill and Masterton trusts during their establishment stage, and both trusts quickly repaid that support with a speed of providing new premises and achieving profitability that removed the need for the guarantee. But from the 1950s onwards government support was very

to assess whether there are generic causes relative to their structure.

#### Reason for being

A logical starting point justifying the existence of licensing trusts is the objectives they were given, first in the legislation of the 1940s, and today in the Sale and Supply of Alcohol Act 2012, the current legislation for licensing trusts.

The well-being of their communities, particularly in the sale and provision of sensitive products, is the initial unique distinguishing feature. Caring for their communities to the extent that profit was not pursued at the expense of people's

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limited, predominantly restricted to guaranteeing the last 25% of any overdraft funding.

As a body corporate, the trust was vested with the necessary powers to operate a business. It was required to pay taxes, and be audited by the controller and auditor-general. Its meetings are subject to the Local Government Official Information and Meetings Act 1987 and an annual public meeting must be held where its annual accounts and report are open to scrutiny.

#### Performance over the years

To gain a perspective of the performance of licensing trusts over the 70 plus years of their existence, and their value as a form of community enterprise, a number of benchmarks are desirable:

- their collective financial performance;
- their individual range of performance;
- their success or failure in delivering benefits to their communities;
- their comparative performance relative to alternative forms of ownership, notably private enterprise;
- their demise rate and why some have failed to continue to exist, primarily

welfare was a prime motivator in their formation. Mason described it this way: 'although the Board should be primarily a commercial body, we should like to see the element of social welfare developed to the fullest extent ... so that it should predominate strongly in all the operations of the trust, as well as in the distribution of money' (Hansard, 1944, p.719). In the current legislation, as with the Licensing Trusts Act 1949, there is no overt mention of this well-being factor, but take away this accountability to their local community and there is little meaning to licensing trusts' existence that could not be achieved by private ownership. They are required to report back to the electors of their defined district in a number of ways, none (arguably) more influential than the triennial elections to decide which trustees should represent the community.

The second unique reason for existence is the distribution of profits back to community organisations in support of community activities. Today this function is one of the major areas of activity for trusts, and one which, not surprisingly, endears them to their community. But first trusts must make profits. They need to be

**Table 1: Licensing trusts' financial indicators**

	1990	2008	2014*
Annual revenue	\$286.633m	\$356.852m	\$349.787m
Assets employed	\$224.785m	\$313.053m	\$342.802m
Equity	\$151.215m	\$231.813m	\$245.828m
Community support donations	\$2.162m	\$33.444m	\$26.930m
Equity ratio	66.6%	74.05%	71.70%
Profit	\$2.280m	\$41.687m	\$45.977m
Return on equity	1.56%	17.98%	18.70%

\* These three years are the occasions when collective studies were undertaken.

efficient and commercially sound or they will not survive.

The various acts of Parliament over the years have defined the objectives of trusts as being to provide licensed premises for the sale of alcohol, and the provision of meals and accommodation. That business segment, frequently and loosely called the hospitality sector, has been where licensing trusts' commercial activities have been predominantly concentrated. What has resulted have frequently been attractive and significant hotels, taverns, restaurants and bottle stores; so much so that in some communities the licensing trust facilities have been the catalyst for the generation of new economic activity, notably tourism, providing sustained employment. Examples are the hotels in Invercargill (Ascot Park Hotel is a modern facility with 116 accommodation rooms, bars, a restaurant and conference facilities), Solway Park Hotel in Masterton (102 rooms) and Waipuna Hotel (148 rooms) in Mount Wellington, Auckland. Not all of the over 130 trust facilities are of this standard, with some trusts providing more modest social premises of bars, bottle stores and gaming lounges. Some trusts have used the 'catch all' objectives clause in the legislation<sup>7</sup> to broaden their trading base into other sectors: for example, aged care, supermarkets, housing, and property as landlords.

#### *Philosophical underpinning*

Inherent in the structure of licensing trusts are the concepts of a love of community, a sense of self, solidarity and enterprise,<sup>8</sup> which collectively are the driving forces behind community enterprises seeking to enhance the well-being of their community. It is these components that endear community enterprises like

licensing trusts to their communities, and why they have endured. Throughout its history since the signing of the Treaty of Waitangi, New Zealand has had a love affair with the concept. In the nature of love affairs, at times the relationship has been close; at others, distant. The renewed international and national interest<sup>9</sup> in community enterprises of recent times once again emphasises their need in a more globally driven world, in which communities seek to protect their interests and enhance their quality of life. Simply put, community enterprises, and their sister organisations, social enterprises, are primarily concerned with the well-being of their defined community.

How, then, have licensing trusts performed in carrying out this mandate, and what is their collective size and range?

#### *Alcohol care performance*

In the writer's experience, this subject is, at best, one of those 'deep-grained' elements embedded in trusts' fabric. The elected nature of trusts' governance invariably demands a supportive and timely response to community pressure.

Arguably, the design and quality of licensed premises has been a major influence on the use of alcohol in licensing trust communities. Just as the Carlisle scheme designer's sensitive knowledge of social needs led to improvements in social habits, many licensing trusts have led their communities. That this has been a force in trusts' behaviour should not be too surprising. It is human nature for trustees to want the best for their communities, because, at the least, that also reflects well on them. But this trait has also brought about trusts' failures, where the product or premises was not supported by the market, as in the failures

of the Orewa, Hornby and Stokes Valley licensing trusts.

There are no objective statistics that 'prove' licensing trusts have more carefully managed the sale of alcohol in their communities than private enterprise has. Crime, alcohol-related incidents, drunkenness, social excesses, all are influenced by too many variables – unemployment, poverty, education standards, the relative wealth of the community, among some – to provide meaningful answers. What are available are stories, often influenced by the opinions and mindset of the teller, but nonetheless 'real' in the sense that they are contestable. In their submissions on the Law Commission review in 2009 of alcohol law in New Zealand, the New Zealand Licensing Trusts Association recorded a number of examples (see New Zealand Licensing Trusts Association, 2009).

#### *Assets and financial performance*

Table 1 summarises key financial indicators from trusts' annual accounts.

These results collectively provide evidence of good returns and sound equity. Annual returns on equity of around 18% demonstrate good management, and yearly donations approximating \$30 million are noteworthy.

#### *Community support donations*

This function has grown considerably over the last 20 years, to where today the funds donated to the community in support of a very wide range of organisations and activities significantly enhance the quality of community life. The growth has come partly as trusts have matured, and substantially as they moved to provide gaming lounges when legislation in New Zealand authorised 'pokie machines' in licensed premises. Gaming, like alcohol, is a 'sensitive' product requiring management with care, and the trusts were well placed to even-handedly balance availability with the tendency to excess for some people.

Some of the larger trust donations – for example, Invercargill, Waitakere, Portage and Masterton – have been very sizeable, frequently hundreds of thousands of dollars, and sometimes in the millions. The Invercargill Trust's support and facilitation of Stadium Southland, with its indoor

cycle track of international standard, is but one example of an exceptional facility that would be unlikely, arguably, to exist without the trust's efforts. Other examples are Henley Lake in Masterton, the Portage and Waitakere trusts' Trusts Arena in Henderson, and Lake Hood in Ashburton. *A Great Social Experiment* estimates that the total of these cash donations over 70 plus years exceeds \$500 million. To that may be added another sizable sum of 'in kind' support, such as no charge for use of facilities, and sponsorship greater than commercially justified.

However, it is the many small donations, of a few hundred or thousand dollars, that are the lifeblood of many trust communities. It is these that consistently endear trusts to their communities. An example of this activity is listed in the Trust House<sup>10</sup> annual reports (Table 2).

#### *Why trusts have demised*

There is a theme expressed from time to time by the critics of licensing trusts that they are an impractical ideal incapable of reasonable performance.<sup>11</sup> After all, say the critics, if you are going to operate a business, the private ownership model is widely understood, has clear lines of ownership and commitment, and has been proven to be the structure to best deliver the most efficient business performance. All that is true at least in the sense of widely accepted business beliefs. But as we come to the end of three decades during which the market philosophy and neo-liberalism dominated, we have learnt again that other structures provide opportunities to pursue a range of objectives wider than profit generation. For, as Jensen and Meckling record in their seminal essay 'The nature of man, we care about not only money, but about almost everything – respect, honor, power, love, and the welfare of others' (Jensen and Meckling, 1994).

There is another challenge here that, in the harsh limelight of the media, licensing trusts have not addressed well, or been allowed to address criticism:

In reality, trusts became unpopular with most New Zealanders because they succumbed to the normal stultifying consequences of smallness and monopoly. Their return on

**Table 2: Trust House donations**

	2012	2011
Amount of donations	\$2.754 million	\$2.886 million
Number of donations	322	349
Total donations last 10 years (2003–12)	\$31.537 million	\$31.150 million

investment was poor, their accountability weak and their service to consumers dismal, the trusts serving up booze barns, slack service and inferior financial management ... The vast majority of New Zealanders long ago saw through the warm fuzzies that underpin the trust concept (*New Zealand Herald*, 2003)

When opinions such as this are aired, arguably the record should be balanced. In the West Auckland circumstance referred to here, the community by their votes overwhelmingly rejected the editorial's views, but such comment has a way of lingering, and even being accepted as the prevailing truth, if not consistently refuted. Even in recent times a request to the editor to redress significant errors in a *Dominion Post* article drew no response (Du Fresne, 2017).

The common causes of business failure – misreading the size of the market, inadequate management and governance skills, overinvestment, lack of equity – are just as relevant for trusts. The lack of equity capital was especially debilitating, and frequently required trusts to borrow all their capital and their start-up costs. Profits then had to be generated immediately. When start-up problems occurred, at times exacerbated by the inexperience of the trustees in running a tavern or hotel, sometimes it was little short of a miracle the trust survived. Often, the volunteer effort by trustees was remarkable.<sup>12</sup>

The failure of the Stokes Valley trust within a few months of opening its doors for trading was to cast a long shadow over the licensing trust concept for decades to come. To fail within such a short period of time inevitably fuelled the view of some that trusts were inherently flawed. The critics had a field day with their 'told you so' wisdom. The reality evidenced by archived correspondence and reports,<sup>13</sup> and hindsight, shows that there were a number of contributing factors. The flaws

of the licensing trust model, notably the lack of equity capital, did contribute, but the conflicting requirements of the regulating agencies were far more destructive. The Licensing Control Commission required accommodation (16 rooms) to be provided for the travelling public to address their concern about the shortage within the wider Wellington region; and the Lower Hutt City Council opposed the location of the premises on the one site at the entrance to the Stokes Valley where there was a (limited) chance of a reasonable market from the travelling public. From this conflict, the worse outcome resulted: an overcapitalised hotel located in the middle of the Valley catering to the largely incompatible markets of the residents and the visitor. Failure was thus inevitable.

Less defensible was the failure of the four Wellington trusts in the late 1990s. Major shortcomings in governance and management were the significant factors.

The 'failure'<sup>14</sup> rate of trusts can be reasonably compared to the similar rate for private enterprise companies. While one-off failures or a small number comparison need to be viewed with caution, the 70-year period of licensing trust existence gives more credibility. The more credible statistics suggest about 25% of new businesses do not survive the first year, 50% do not survive five years and 71% ten years. That, after an average existence of 45 years for the 30 trusts, the demise rate for licensing trusts of 40% is remarkably good.

#### **Footprint today**

The 18 licensing trusts existing today are an integrated and integral part of their communities. They range from the largest, Invercargill, with assets exceeding \$100 million, annual revenues exceeding \$90 million and community support donations of over \$100 million since 2007, to the smallest, Hawarden, which has recently closed the only tavern servicing

its very small community of 250 for 45 years. Five – Wiri, Mount Wellington, Birkenhead, Portage and Waitākere – are in metropolitan Auckland; four – Invercargill, Porirua, Rimutaka, Flaxmere – in cities; and nine – Mātaura, Clutha, Oamaru, Geraldine, Ashburton, Hawarden, Cheviot, Masterton and Te Kauwhata – in provincial New Zealand.

#### Weaknesses, challenges and the future

The community assets generated are now quite significant. In most cases they provide both a springboard to the future and insulation against the lows of business cycles. But there are warning signals for licensing trusts: the hospitality industry is

A further challenge for trusts is their ability to obtain or retain the level of management and governance skills necessary to make the changes required to remain relevant in the future. Some smaller trusts have met that need by association with a larger licensing trust nearby: for example, the shared resources of Portage and Waitākere in West Auckland, and the management grouping of Masterton, Flaxmere and Rimutaka existing prior to 2015 for nearly 30 years.

Four trusts continue to maintain limited monopoly rights within their constituted area: Portage, Waitākere, Mātaura and Invercargill. So long as these rights continue to exist, supermarkets can not sell

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often over-supplied, with frequently low profitability and returns, and subject to a number of societal threats. Some traditional segments for trusts – for example, bars and bottle stores – may have a limited future for the trusts without the restrictive mandates. Some of the smaller trusts, which have but one outlet providing a bar for their residents, are providing services for a market that time has largely passed by.

Supermarket sales of wine and beer at low margins dominate the take-home liquor sales market. What is left is increasingly captured by a proliferation of traders who operate corner stores in a way similar to the traditional corner diary. Trusts are not able to compete easily with this business model of family living on the premises, long hours for low pay and internal ‘family’ financing. Further, the tendency for these operations to complement their liquor business with the sale of recreational drugs – commonly called party pills – further accelerates the demise of this market for trusts, who see these sales as abhorrent and detrimental to the well-being of their community.

beer and wine, and private operators can not own and operate taverns in these areas. Only the community can vote to remove these rights. Invariably, any such poll is funded and organised by the supermarket chains wanting to access the benefits of beer and wine sales.<sup>15</sup> While these monopoly rights remain, these four trusts have an appreciable degree of protection and are less buffeted by market forces. Their ability to influence their communities beneficially in the use of alcohol and gaming is also significantly greater.<sup>16</sup>

Societal changes too are having an impact on licensing trusts, at times beneficially. Communities are concerned about the abuse of alcohol and are imposing restrictions. It is unlikely that these constraints, which also reinforce the original ideals of licensing trusts, have peaked.

A few trusts have broadened both their geographic and trading segment base. Masterton is the notable example, owning businesses away from its home area and hospitality. Aged care (since exited), supermarkets (also since exited), residential

housing and a small hydro electricity scheme are examples of its diversification.

#### What we can learn from licensing trusts’ experience

Although only a niche of New Zealand society, licensing trusts’ presence in rural, provincial and metropolitan areas, and their existence for over 70 years, give important lessons for today’s more globally interdependent world:

- Community (and social) enterprises provide an important balance to globalisation. Communities can thus better ensure essential services are available; sensitive products are managed in their best interests; the poor, disadvantaged or other subsets of their community are supported; employment or economic development is pursued; or the community is protected from a monopoly position.
- Community well-being goals and business goals can be successfully achieved in concert provided they are clearly established and regularly reviewed.
- There is no substitute for good, committed people governing and managing. If the necessary skills are not available (through the ballot box in licensing trusts’ case), they must be brought in. Ideals must be tempered with reality.
- Accountability to their owners, the community, is essential if the extremes of poor performance and excesses are to be avoided.
- The ‘dividend’ of surplus profits generated from the business units can be deployed to enhance the community’s quality of life. Donations to support cultural, artistic, recreational, educational and sporting organisations can in turn allow these groups to better function.

#### Conclusion

Alcohol sales in the interests of the community’s well-being were both the reason and the vehicle for the establishment of licensing trusts. Today, that remains the dominant trading base for them, with gaming added as the second sensitive product.

For the 18 trusts remaining, the future is diverse. A few have not been able to evolve out of their, mostly small, hospitality trading base and their future in their present form is challenging. Others are determinedly changing to ensure their relevance for the decades ahead, while successfully providing appreciated community services.

Collectively, licensing trusts have contributed much to their communities, and while there have been less than laudable stories and failures, their architects, H.G.R. Mason and Peter Fraser, were they alive, could be forgiven if they took some quiet pleasure in their successes. That they have survived for 70 years and achieved the collective size and support for their communities they have is a notable legacy.

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- 1 These extensive lists of donations are recorded in their annual reports and on their websites.
- 2 The book's title derives from the 1944 parliamentary debates. The author sees the words as a question for the reader to decide.
- 3 For example, see Bollinger (1967) and the many references during the parliamentary debates on licensing trusts in the 1940s.
- 4 Rex Mason was minister of justice (as well as holding a number of other portfolios) from 1935 to 1949 and 1957 to 1960. He is now regarded as making 'possibly the greatest contribution of any politician to law reform in New Zealand in the twentieth century' (Round, 2011). Among his many reforms, he reorganised and modernised New Zealand law in the major Law Reform Act 1936, established the Law Reform Commission of 1937, and, through his persistent efforts over many years, decimal currency in 1967.
- 5 See Bassett and King, 2000.
- 6 Remarkably, and overwhelmingly in the polls, communities chose licensing trusts in 57 areas. By comparison, there were nine areas where private enterprise was chosen ahead of a community licensing trust. Often the mandate was well over 90%.
- 7 The Sale and Supply of Alcohol Act 2012 provides (section 305) that a trust may also 'carry on any other business that, in the Trust's opinion, can be conveniently carried on in conjunction' with their hospitality functions.
- 8 This article does not intend to discuss how these concepts interweave to underpin community enterprises. For more on this, see Teahan, 2007.
- 9 For example, see Laville, 2003; Salamon, 2003; Bollier, 2002; OECD, 1999; Department of Trade and Industry (UK), 2002. Teahan (2007) explores why this growth is occurring.
- 10 Trust House Limited is the operating company for the Masterton Licensing Trust; it also provides some services for the Flaxmere and Rimutaka trusts, and more recently the Porirua Community Trust.
- 11 For example, at the time that four Wellington licensing trusts failed in the late 1990s there was considerable editorial agitation in the local newspapers. Also, in 2003, at the time of the West Auckland competition polls (see Teahan, 2007, chapter 6), editorials were often bitterly opposed to the trusts; when the trusts comfortably won with significant support from the community these unbalanced comments became an ironic epitaph.
- 12 As recorded, for example, in an unpublished account of the first 25 years of the Flaxmere Licensing Trust.
- 13 The files of the Ministry of Justice at Archives New Zealand are a rich source of information.
- 14 Demise is a better term than failure. As for private enterprise companies, cessation will often be voluntary: for example, because time has passed the market opportunity by, or there is no longer a wish to continue.
- 15 Originally, 13 trusts had limited monopoly rights. In all, with some multiple challenges, there have been 16 polls, with six favouring retention of the monopoly rights for the trust, and ten favouring open competition. Only in Invercargill has no poll ever been called. These polls have complex influences: see Teahan, 2007 and 2017.
- 16 An example arose during research into the West Auckland polls in 2003: the number of gaming machines in Portage and Waitakere was one third the occurrence in the rest of New Zealand.



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