



Photo courtesy of pastor Lui Ponifasio, Auckland

THE DEMAND FOR ALCOHOL

*It is proper that the imposition of excise tax gives due **recognition to the benefits** many people draw from the consumption of liquor.*

*Advertising can link alcohol to **values and aspirations** to which many people aspire: sophistication, happiness, success, confidence, and desirability.*

DEMAND REDUCTION

CHAPTER 10

THE PRICE OF ALCOHOL

INTRODUCTION

- 10.1 Extensive studies and research, covering many countries and spanning decades of experience, show that price does influence consumer demand for alcohol.¹ Tax or price measures designed to increase the retail price of alcohol products are widely viewed as being an effective mechanism for reducing alcohol-related harm.²
- 10.2 Price is particularly relevant in the New Zealand context. As noted in Part I of this paper, over the past 20 years alcohol overall has become more affordable relative to our levels of income. This trend, at least in part, has been driven in two respects by the relatively liberalised licence regime ushered in by the Sale of Liquor Act 1989. First, the Sale of Liquor Act 1989 allowed supermarkets to sell wine, followed by beer a decade later. It is the case that supermarkets regularly sell beer and wine at cheap prices. This is achieved through bulk buying, coupled with the ability to sustain lower per unit profit margins on the basis of a high volume of sales. But it is not solely supermarkets that offer cheap alcohol products. Some large off-licence retail chains operate on the same low margin/high volume retail model. Because supermarkets and discount liquor chains are common in urban centres, low priced alcohol has become a readily accessible commodity for those who seek it.

- 10.3 A second consequence of the liberalised licensing regime in terms of its impact on price is that high density of off-licence outlets is often associated with the marketing and selling of cheap alcohol products. Where there are many outlets in one area, low prices are one of the ways retailers can differentiate themselves and achieve profitability on alcohol sales. In this context, low prices simply constitute market forces at work.

THE IMPORTANCE OF PRICE

- 10.4 Why does the existence of cheap alcohol products matter? As discussed, heavy drinking sessions are associated with higher levels of alcohol-related harm. People drink to the point of intoxication for many reasons. The price of alcohol products may not be a reason in its own right. However, cheap alcohol does facilitate heavy sessional drinking. The link has been established in the literature.³ These studies are consistent with what the Law Commission has seen and heard in the course of this review. Accordingly, the case for increasing the retail price of alcohol products in order to reduce the incidence of heavy sessional drinking is a strong one.
- 10.5 In terms of the effect of price rises on young people, a large body of research suggests that young people are more 'price elastic' than other population groups.⁴ In other words, they are more sensitive to price changes and will purchase less alcohol when the price is higher. Thus, price, and in particular raising the price of cheap alcohol, becomes a very important tool in any package of measures that aim to reduce alcohol-related harm among young people.
- 10.6 There is some disagreement in the literature on the effect of price rises on heavy drinkers. Some studies suggest that heavy drinkers have relatively low price sensitivity to price increases, that is, they are 'price inelastic'.⁵ One reason for this is due to product substitution. Faced with a price increase, some heavy drinkers will simply downgrade the 'quality' of the alcohol products they purchase while consuming the same actual volume of alcohol.⁶ This shift in quality of product is something that occurs in sections of the drinking population as a whole when the price of alcohol rises. But it is particularly problematic in the case of heavy drinkers because it may reduce the effectiveness of price as a mechanism for influencing the levels of alcohol consumption.
- 10.7 Nevertheless, a considerable number of studies suggest that heavy drinkers *do* reduce the amount of alcohol they consume when the retail price rises.⁷ Having reviewed the research in this field, the World Health Organisation concluded firmly that the evidence does not support the notion that heavy drinkers are less affected by price than other population groups.⁸

EXCISE TAXES

Current alcohol excise regime

- 10.8 Excise tax is levied on the manufacture of alcohol under the authority of the Customs and Excise Act 1996. All manufacturers of alcohol products, such as wineries, breweries and distilleries, are required to have their production premises licensed by the New Zealand Customs Service. Exemptions to this requirement include home brewing, where production is solely for personal use. No excise tax is applied to alcohol products that are exported. In addition, alcohol beverages less than 1.15 per cent volume of alcohol are exempt from excise.
- 10.9 The mechanism for determining excise rates differs slightly for different beverage types. For example, as wine can vary in alcohol content between 9 per cent and 14 per cent, excise duty is calculated on a litre of alcohol basis. For normal strength beer products or spirit based ready-to-drinks (RTDs) (that is, those between 2.5 per cent and 6 per cent alcohol), where it is easier for manufacturers to calculate the alcohol content, excise is calculated on the actual alcohol content. Table 10.1 sets out the excise rates for common alcohol beverages.

TABLE 10.1
EXCISE TAX RATES FOR ALCOHOL PRODUCTS IN NEW ZEALAND

BEVERAGES		EXCISE RATE
All low-alcohol beverages	– 1.15% or less alcohol by volume	No excise levied
	– more than 1.15% but not more than 2.5% alcohol by volume	38.208c per litre
Beer	– more than 2.5% alcohol by volume	\$25.476 per litre of alcohol
Wine of fresh grapes and vermouth	– more than 14% alcohol by volume, fortified by the addition of spirits or any substance containing spirits (that is, fortified wine such as sherry)	\$46.400 per litre of alcohol
	– other (such as table wine)	\$2.5476 per litre
Other fermented beverages (such as cider, perry, mead)	– more than 2.5% but not more than 6% alcohol by volume	\$25.476 per litre of alcohol
	– more than 6% but not more than 9% alcohol by volume	\$2.0380 per litre
Spirits (including spirits-based ready-to-drinks)	– more than 9% but not more than 14% alcohol by volume	\$2.5476 per litre
	– more than 14% alcohol by volume	\$46.400 per litre of alcohol
Liqueurs and cordials		\$46.400 per litre of alcohol

Note: For a full description of the alcohol products and rates applicable, see the Customs Act 1996, schedule 3.

- 10.10 The following are examples of the excise payable on common alcohol products:
- Six-pack of beer (330ml cans) at 4 per cent alcohol: \$2.02
 - Four-pack of RTDs (440ml bottles) at 5 per cent alcohol: \$2.24
 - 750ml bottle of wine at 12 per cent alcohol: \$1.91
 - One litre bottle of vodka at 37 per cent alcohol: \$17.17

- 10.11 In addition to the excise tax levied by Customs on New Zealand manufacturers, duty at the equivalent excise tax rate is applied to all imported alcohol products.
- 10.12 As with other consumer goods, alcohol is subject to goods and services tax (GST). Alcohol excise taxes are also subject to GST.
- 10.13 For the 2008/09 financial year the amount of tax raised from excise (including excise equivalent taxes) was forecast to be \$830 million.
- 10.14 Section 79 of the Customs and Excise Act 1996 provides for excise duty and the equivalent levied on imports to be indexed having regard to movement in the Consumer Price Index annually. Thus, rates of alcohol excise were increased by 2.8 per cent from 1 July 2009.

THE PURPOSE OF ALCOHOL EXCISE TAX

- 10.15 The imposition of excise tax, let alone its increase in relation to alcoholic beverages, is controversial. It is proper that the imposition of excise tax gives due recognition to the benefits many people draw from the consumption of liquor.
- 10.16 The final report of the Government's Tax Review 2001 (the McLeod Review) was of the view that the then levels of excise could not be justified on tax sufficiency or tax equity grounds.⁹ The report said:¹⁰

In the case of alcohol, the question turns on the most appropriate form of intervention. While external harm can be identified (for example, in alcohol-related third-party road trauma and public disorder), targeted instruments are available (and are being successfully used) to address these problems. The relevant tax policy question must be: what additional contribution can then be made by excise taxes, which, because they apply uniformly to all units consumed, suppress beneficial as well as harmful consumption.

- 10.17 The McLeod Review recommended that "as a matter of tax principle the general revenue component of [excise] taxes should be replaced by an increase in GST".¹¹ The Government at that time rejected that recommendation and it was not implemented.
- 10.18 In 2003, in approving legislation to amend the rates of some of the excise duties, the Cabinet identified that the primary purpose of excise duty was the minimisation of harm, with a secondary purpose of recovering the net fiscal cost of external alcohol-related harm.¹² The latter includes such matters as police costs, enforcing drink driving laws and a number of other government costs.
- 10.19 It is clear that excise tax can modify drinking patterns, either by reducing demand for alcohol generally, or by influencing the types of alcohol products that are purchased. This it can do by having different rates of excise tax for different types or strengths of alcohol products. An excise tax can bring about a reduction in the levels of drinking across the population, and in particular, those drinkers that are most sensitive to price (for example young drinkers). Even a slight reduction in the average amounts people drink, when extrapolated out across the country, can potentially

bring about significant reductions in alcohol-related harm, particularly in terms of morbidity and mortality outcomes. Large liquor tax increases in 1921 and 1958 were followed by steep reductions in per capita alcohol consumption, as illustrated in figure 1.1 (see chapter 1).

- 10.20 There are two particular issues with excise tax increases as a demand reduction mechanism. First, it is possible that the full amount of an excise tax increase may not pass through to the retail price. Because the tax is imposed at a production level, the excise may be absorbed, at least in part, by producers, wholesalers, and distributors along the way, as well as by retailers themselves. The degree of excise tax 'hold back' may vary between different alcohol products. Where per unit profit margins are smaller, as with beer, an excise tax increase may be passed on in full. For spirits, the hold back may be larger because higher profit margins provide more of a buffer for the excise tax to be absorbed.
- 10.21 Studies in the United States have shown increased alcohol taxes being fully reflected in the final retail price of alcohol products.¹³ Conversely, anecdotal evidence from the United Kingdom has suggested that supermarket chains may use their market strength to effectively force producers to absorb some, or all, of an alcohol tax increase.¹⁴ It is clear that some licensed premises in New Zealand do hold back excise tax increases where they are able.¹⁵ Depending on the degree of excise tax hold back within the industry generally, subsequent excise tax increases may be required to achieve the desired increase in retail price. It is difficult to see how any legal requirement that excise tax increases be reflected in the retail price of alcohol products could work, given the complexities of retail pricing.
- 10.22 A second issue, albeit a more pragmatic one, is that excise tax increases are invariably unpopular with the public who are forced to pay more for their alcohol. This is underpinned by a feeling that moderate drinkers should not have to bear the responsibility for the harmful drinking practices of a minority. Nevertheless, it is the case that those who drink the most also pay the most tax. This means that although moderate drinkers will face a slight increase in price for alcohol products, most of an excise tax increase actually falls on the heavy drinkers to pay. Moreover, depending on the sensitivity of drinkers to price changes, a reduction in consumption will result in fewer alcohol-related harms that would otherwise end up imposing costs on the taxpayer.
- 10.23 The flipside of increasing the rate of excise is to reduce it for low-alcohol products.¹⁶ This would encourage increased marketing and consumption of low-alcohol products as a means of reducing alcohol-related harm. Such a change need not be limited to beer, but could include lower alcohol wines and RTDs.

DETERMINING THE SOCIAL COSTS OF ALCOHOL

- 10.24 There are a number of reasons to gain a general understanding of the social costs of alcohol. These can include identifying where the costs of alcohol-related harm are being borne, isolating potentially avoidable costs,

and measuring the impact of changes in policy. For example, ACC may wish to ascertain the portion of its benefit payments properly attributable to alcohol-related activities. This would enable it to target better preventative measures.

- 10.25 Such reports can also be useful for measuring the costs that may be recovered by the imposition of alcohol excise tax.
- 10.26 Quantifying the magnitude of alcohol-related harm, and putting a dollar value on it, is not an exact science and is sensitive to which harms are being considered. It is inevitably a value-laden exercise. In New Zealand there have been three recent attempts to do so. In 1997, economist Dr Brian Easton estimated the social costs of alcohol misuse to be \$16.1 billion in 1990 (\$24.5 billion in 2005 dollar terms).¹⁷ Dr Easton's estimate covered all social costs including the human costs of morbidity and mortality arising from alcohol consumption. In the same year, but using quite a different method, University of Otago academics estimated the social cost of alcohol abuse to be between \$1 billion and \$4 billion in 1999 (a midpoint of approximately \$3.8 billion in 2005 dollar terms).¹⁸ A Treasury working paper in 2002 reanalysed the University of Otago study using different assumptions to estimate the external costs (i.e. those not included in the cost of alcohol) of harmful alcohol use to be most likely more than \$735 million annually in 1991.¹⁹
- 10.27 Most recently the Ministry of Health and the Accident Compensation Corporation (ACC) commissioned Business and Economic Research Limited (BERL) to estimate the social costs of alcohol-related harm in New Zealand, including costs to the government sector.²⁰
- 10.28 BERL estimated the social costs of the harmful use of alcohol in 2005/06 (expressed in 2008 dollar terms) to be \$5.3 billion, of which 76 per cent (\$3.7 billion) were tangible costs.²¹ Tangible costs are those which have a monetary value and are borne by private individuals (for example, increased car insurance costs, lost wages, reduced productivity and medical treatment) and by government (for example, crime costs, road crashes, police and justice resources, healthcare costs and ACC costs).
- 10.29 The tangible costs represent approximately 2.5 per cent of New Zealand's GDP. This figure compares with an average tangible cost of alcohol to the European Union of 1.3 per cent of GDP (based on analysis of 21 social cost studies with a range of 0.9 per cent-2.4 per cent of GDP).²² A recent Australian study, using the same methodology as in the BERL study, estimated tangible social harm of alcohol at 1.4 per cent of GDP,²³ while a USA estimate was 2.3 per cent of GDP, and a Canadian study estimated tangible costs at 0.9-1.3 per cent of GDP.²⁴
- 10.30 The BERL report has been strongly criticised by two economists (Eric Crampton and Matt Burgess) on the grounds that BERL failed to include any of the economic benefits associated with alcohol consumption and also inflated the costs in a number of ways, including counting as a cost the money spent on alcohol that is consumed in such a way that it leads to alcohol-related harm.²⁵ They concluded that the external costs of alcohol roughly match the amount currently collected by the alcohol excises.

- 10.31 According to Statistics New Zealand figures, New Zealanders spend an estimated \$4 billion to \$5 billion on alcohol beverages a year.²⁶ The wine industry alone has been estimated to contribute \$1.5 billion to New Zealand's GDP.²⁷ These global figures can be described as a benefit to the economy. People would not spend these sums unless they are deriving a benefit. It then becomes an issue of whether the benefits of drinking outweigh its costs.
- 10.32 These are controversial issues and the Law Commission is in no position as yet to arbitrate in this debate which has become highly charged. The Law Commission itself has been criticised.²⁸

TREASURY ADVICE

- 10.33 What we have done is to seek the advice of the Treasury. The Treasury has provided us with an explanation of the economic rationale behind excise taxes on alcohol consumption and how the problems of pricing in the externalities caused by alcohol can be framed (see figure 10.2). By externalities, it is meant the costs that are generated by the activity but not paid for in the price of the product. An economically efficient approach is to internalise externalities in most cases.

FIGURE 10.2 TREASURY ADVICE TO LAW COMMISSION ON ALCOHOL EXCISE TAXES

ALCOHOL EXCISE TAXES

This note provides a high-level discussion of the economic rationale behind excise taxes on alcohol consumption and how the problems of pricing in externalities can be framed.

CURRENT EXCISE TAX SYSTEM

Excise taxes currently raise significant revenue for the Government and are levied on goods with two distinct characteristics: negative externalities as a result of excessive consumption, and inelastic demand properties. Levying excise taxes on goods with these characteristics make the excise regime an economically efficient and sustainable component of the current tax base.

Given these properties, and given a preference for taxes on immobile bases rather than the mobile bases (as articulated in the Treasury's Medium Term Tax Advice), there may be scope to increase excise tax rates, including the alcohol excise, to increase Government tax revenue in a way that is less costly than by raising other taxes.

PIGOUVIAN TAXES* AND NEGATIVE EXTERNALITIES

There are unquestionably negative externalities as a result of the over-consumption of alcohol. These include increased incidence of injury and criminal activity, long-term health effects for individuals, lost productivity in the economy

and effects on families and children. Research has shown both small positive and negative effects from moderate consumption. These external costs and benefits are in addition to the significant internal benefits, such as personal enjoyment, that are reflected by the willingness of individuals to pay for and consume alcohol.

Given the characteristics of alcohol consumption in New Zealand, alcohol consumption is likely to be beneficial in net terms for the majority of consumers consuming a moderate amount, with most of the associated costs accruing to the minority who over-consume.

Given the associated negative externalities as a result of the over-consumption of alcohol, there is scope for Government intervention in the market. Using Pigouvian taxes is one potential method to correct for market failures. In the case of alcohol, there would be a justification under a Pigouvian framework for excises on alcohol when the social benefits of alcohol consumption are outweighed by the social costs. From a first principles theoretical economic perspective, such a tax system would be most successful if taxes were levied progressively based on consumption levels. However, within the information constraints of the current tax system it is impossible to discriminate based on an individual's level of alcohol consumption.

Within existing constraints then, the best proxy for a progressive Pigouvian tax is an alcohol excise that equates to the net costs of the consumption of alcohol for society as a whole. Due to the nature of alcohol consumption in New Zealand, as discussed briefly above, it is likely that such a system will lead to an over-taxation of the majority of consumers and an under-taxation of the minority of heavy consumers when viewed from a Pigouvian perspective. However, increasing the excise rate to eliminate under-taxation on heavy consumers will lead to inefficient levels of over-taxation on the majority.

OPTIMAL PRACTICAL RATE OF ALCOHOL EXCISE

A 2002 study** published by the Treasury concluded that the \$580 million in revenue collected from the alcohol excise in 1999/00 was roughly equivalent to the mid-point of the study's estimated bound of external tangible costs of alcohol (\$608 million). Since this study was published, the alcohol excise has adjusted in line with the CPI each year. For 2008/09 the amount of tax raised from excise (including excise equivalent taxes) was forecast at \$830 million. If it is assumed that the external tangible costs of alcohol consumption have also increased in line with the CPI, then the current excise rates for alcohol remain justifiable on externality grounds.

We note that given the 2002 study used 1999/00 data, there is scope to update this study to see whether/how the costs of alcohol consumption have changed during that period. Updating this study may be particularly useful given that the data in the last study would not have taken into account the reduction in the drinking age in New Zealand from 20 to 18.

The 2002 study noted that “as total external costs include a number of other intangible costs the total external costs are likely to be significantly more than the revenue collected. A case to increase the excise would need to show that these costs are significant and that tax was the best tool to address these costs.”

IMPORTANCE OF STRATEGIC TAX POLICY FRAMEWORK

There are broader considerations in tax design than simply a framework that looks at one tax in isolation. The Treasury’s position is that New Zealand should be looking for broader bases and lower rates for taxation, and increasingly needs to be aware of the need to tax immobile factors higher than factors that are mobile or potentially mobile between states. That means there is a case to move from taxes on labour and capital income towards taxes on consumption and property. Final decisions on excise taxes need to be informed by these broader principles.

* A Pigouvian tax is a tax levied on a good or service to correct the market outcome. Such a tax is economically desirable when the market price of the good or service does not fully take account of all the costs and benefits to wider society of its consumption. The name ‘Pigouvian’ taxes arose from the work of economist Arthur Pigou, who was instrumental in developing the concept of economic externalities.

** F Barker *Consumption Externalities and the Role of Government: The Case of Alcohol* (New Zealand Treasury Working Paper 02/25, 2002).

10.34 The Treasury advice is helpful in the sense that it makes it clear that excise tax is economically justifiable and there may be a need to increase it. That is advice that the Law Commission accepts. The question then becomes to what extent are the externalities generated by excessive consumption of alcohol reflected in the current excise tax. Clearly if the legitimately attributed costs are as high as some of these estimates indicate, the case for increasing the tax is strong. The problem is that the categorisation of what can be properly reflected will be highly contested. Exactly how strong the case is cannot be analysed conclusively in this issues paper. The Law Commission will need to embark on a detailed study for its final report.

DR BRIAN EASTON’S ADVICE

10.35 The Law Commission also commissioned the independent economist Dr Brian Easton for his advice on the excise tax and attributable social costs issue. We find his analysis helpful. The Executive Summary of his report is set out in figure 10.3.

FIGURE 10.3

DR BRIAN EASTON ADVICE TO LAW COMMISSION ON ALCOHOL EXCISE TAXES

OVERVIEW

- On the whole, much alcohol consumption is benign or even socially beneficial, but some generates very great social harm;
- This harm may be reduced by various interventions, but their effectiveness is limited because of the need to allow consumption which is benign and socially beneficial;
- A specific tax on alcohol is a means of reducing the harm through internalisation of an external cost (the efficiency gain), and compensating those who suffer harm from others' drinking (the equity gain). However neither objective can be precisely attained.
- The New Zealand system of an excise duty on absolute alcohol has much to commend it. However more attention could be given to the minimum purchase price of absolute alcohol.

1. THE POLICY FRAMEWORK

The Sale of Liquor Act 1989 was based on the premise that most consumption of liquor was benign or even beneficial but that some was extremely harmful in comparison to most products. Rather than control everything, which had been the broad practice before 1989, the aim was to target consumption which was markedly harmful.

It involved a marked liberalisation of the supply of liquor, moving from 'quantity licensing' (the number of outlets) to quality licensing (anyone could set up an outlet, providing they met certain quality standards). At the same time there were associated measures to reduce certain kinds of harm, including more vigorous pursuit of drink-driving.

The Sale of Liquor Act was one of the most successful social reform of its times, vastly improving access to liquor for moderate drinkers, transforming and enlivening inner cities with a plethora of small bars and restaurants. There is no evidence that harm rose – indeed the downward trend of absolute consumption per adult continued until 1998.

In recent years there has been some evidence of rising harm in some areas including:

- increasing teenage drinking; increased evidence of binge drinking;
- new forms of alcohol; and
- evidence of the magnitude of the social harm from alcohol, which is substantial.

2. THE HARM FROM ALCOHOL

There have been two major attempts to provide estimates of the social costs of alcohol misuse. While their exact estimates may be challenged, each brings together the existing available data on social harm and assigns values to them. They show that there is substantial harm caused by the misuse of alcohol.

The harm can be divided into three components.

- the additional costs to the public purse;
- the material (or 'tangible') costs which are borne by the private sector;
- the human (or 'intangible') costs covering the loss of quality of life and early mortality.

A major issue is the degree to which these costs are 'internalised', that is, taken into account by the person who purchases or imbibes.

External costs are a major justification for excise duty on alcohol, insofar as the drinker fails to take them directly into account when they make the consumption decision.

3. RATIONAL AND IRRATIONAL DRINKERS

What costs are included in a drinker's decision is an empirical matter. Economists' default position assumes 'rational economic man' who takes into consideration all the costs of a consumption which impact on him but none of the costs which impact on others.

Some economists treat the notion of rational economic man as a useful analytic device for want of a better hypothesis; others treat the notion as a fundamental economic assumption which may not be challenged. The difference leads to a major difference as to what is or is not included in social costs.

There is hardly any direct evidence that 'rational economic man' is a realistic account of how humans make decisions. In recent years an alternative framework has begun to evolve around 'behavioural economics' which is characterised by close attention to psychology's research and theories. It is much less an a priori approach than that upon which rational economic man is based.

Relevant to this report is 'time inconsistent' decision making, which is the notion that even without any new information a person may regret a decision which earlier had been made rationally. The time inconsistency arises because the discounting of decisions through time differs from that which is assumed for rational economic man. It leads to the conclusion that drinkers who suffer from it will retrospectively welcome a tax on their consumption since it limits the

excessive drinking which subsequently they will regret. That means some consumption is not (subsequently) valued by the consumer, and therefore is an externality and a contributor to social costs.

4. THE CASE FOR TAXING ALCOHOL

It is clear from the evidence that alcohol consumption causes considerable harm which is not always taken into consideration when individuals make decisions to imbibe. Public policy has introduced a range of interventions which aim, one way or another, to internalise the decision, so that the drinker takes into consideration more of the harm which the drinking causes.

In practice it has not been possible to eliminate all the social harm by education, private arrangements and statutory and regulatory interventions. It has been a standard practice to use specific taxes on alcohol to deal with the remaining social harm.

There are two channels by which this may work – modification of drinking patterns and compensation for social harm; one is an efficiency gain, the other is an equity gain.

It is generally assumed that the demand for alcohol is largely price inelastic. However, it is believed that the main groups whose consumption is sensitive to changes in prices are:

- the young;
- binge drinkers; and
- heavy drinkers.

Any reduction in the quantities they drink will reduce social harm to some extent. Thus a specific tax will increase the efficiency of the system. Where there is time inconsistent decision-making the tax will make such drinkers better off in the long run, and they will welcome it from this perspective. It is assumed that the impact on the quantities drunk by moderate (time consistent) drinkers is zero. Insofar as the tax is not recycled back to them, they may be worse off in real income terms (although even then they may be better off from lower social harm).

It is not possible to state with any precision the exact winners and losers of a specific tax on alcohol, except that non-drinkers will be beneficiaries since irrespective of whether they receive any of the recycled tax revenue, they will pay none of it, and they will (probably) benefit from reductions in personal harm. Under certain conditions there will be overall reductions in social costs from higher specific taxes, the aggregate gains (including the reductions in social costs) of the winners will be greater than the losses of the losers; there will be a net social gain from the efficiency gains.

There is a strong argument that there is an injustice when non-drinkers and moderate drinkers pay for the harm of others. It could be argued there is justice in specific alcohol tax transferring some of the burden of these costs from the non-drinkers and moderate drinkers to the drinkers who are generating the harm. Such compensation improves the equity of the system.

5. THE TAXATION IMPLICATIONS FOR NEW ZEALAND

When the price of alcohol goes up, many people have the option of maintaining their absolute alcohol consumption for the same cost, by reducing the quality of what they drink. However drinkers on the cheapest form of absolute alcohol do not have the option of reducing the quality of their consumption following a price hike. Some of the most harmful drinking occurs in these circumstances. Insofar as the aim is to use taxation to regulate absolute alcohol consumption with the objective of reducing harm, attention should be paid to the price of absolute alcohol levels, particularly where they are cheapest.

The New Zealand alcohol taxation regime is particularly suitable for this purpose since it is levied on the basis of absolute alcohol content.

There is a general acceptance that the aggregate revenue from the excise duty should at least cover the fiscal costs. The compensation principle suggests it might also cover the social cost to the non-drinker. In practice it is likely that the cost recovery would not be complete and that some harm would not be compensated – even crudely – through the tax system.

An alternative approach arises from the focus on modifying drinking patterns. *Taxing Harm* recommended that the excise duty should be set to target some minimum price of absolute alcohol.

In summary the two gains from a specific tax on alcohol – the efficiency gain from moderating harmful drinking, and the equity gain from compensating for the harm – give slightly different recommendations for the level of an excise duty on absolute alcohol. It seems likely that, whether the purpose is to ensure the minimum price of absolute alcohol discourages harmful drinking or whether the purpose is to adequately compensate for the harm, the current excise duty is too low.

Tax rates need always to be set with the possibility of avoidance in mind.

OVERVIEW OF ALCOHOL EXCISE TAXES

- 10.36 The tentative conclusion we have reached is that mechanisms to raise the price of alcohol are among the most potent instruments in reducing alcohol-related harm in New Zealand. On this basis, there is a case for increasing the excise tax given the nature and degree of alcohol-related harm outlined in Part I of this paper.

- 10.37 However, precise facts have to be more closely analysed before a conclusion can be reached. Moreover, considerable work is still needed on what the size of an increase might be, particularly if it is to be used as an instrument of cost recovery. The benefits of alcohol must be given due weight in this process.
- 10.38 There is also a case to reduce the tax on low-alcohol products in order to encourage their marketing and consumption against products with higher alcoholic contents. Consumption of low-alcohol beer is much lower in New Zealand than in Australia, and the alcohol content of New Zealand beer has been increasing in recent years. The Law Commission is interested in views on the appropriate definition of “low-alcohol” in this context.
- 10.39 As to the structure of excise tax generally in New Zealand, the Law Commission is of the view that it is efficient and easy to collect as well as being hard to avoid. But the Law Commission is aware of criticisms concerning the structure of the tax. It has been suggested it should be levied on the basis of actual alcohol volume for all alcohol categories. Furthermore, boutique brewers seek exemption from it. The Law Commission will examine this whole issue in its final report and seek submissions on it.

MINIMUM PRICE

THE PURPOSE OF MINIMUM PRICING

- 10.40 Minimum pricing schemes set a minimum price below which alcohol products cannot be sold by retailers. They have been proposed as a way of reducing the consumption of cheap alcohol products which tend to be favoured by young and heavy drinkers. Minimum pricing affects both on-licence and off-licence premises, but in the New Zealand context it would have a much greater impact on the latter, given that alcohol products are generally cheaper at off-licences than on-licences.
- 10.41 Internationally, minimum price schemes are not common. The most notable instances are in several Canadian provinces. Nevertheless, minimum price is an approach that is gaining increased support, led mainly by the medical fraternity. The current Scottish Government has stated its intention to proceed with a minimum price as a means of reducing alcohol-related harm and is currently working on the implementation details.²⁹ Earlier this year, Professor Sir Liam Donaldson, the Chief Medical Officer for the United Kingdom, also recommended that a minimum price model be adopted based on research carried out by The University of Sheffield.³⁰
- 10.42 The minimum pricing mechanism itself is relatively simple. To illustrate, if the minimum price per unit of alcohol was set at 13 cents per gram of alcohol, a 12-pack of 330ml cans of beer with 5% alcohol (a total of 120 grams of alcohol) could not retail for less than \$15.60.³¹
- 10.43 The key benefit of a minimum price system is that it would lift the retail price of the alcohol products that provide the cheapest form of absolute alcohol. As noted in Dr Easton’s report, some of the most harmful drinking occurs from high levels of consumption of very cheap alcohol. Unlike an ‘across the board’ increase in excise tax which impacts on all consumers (although, as noted, the impact is greater for heavy drinkers than for moderate drinkers), minimum

pricing is a specialised tool directly targeted at some of the most harmful drinking. Moreover, a minimum price does not face the difficulty of product substitution. The drinkers it affects are those that already purchase some of the cheapest forms of alcohol available.

- 10.44 Another important factor in minimum pricing is that it overcomes the problems that can occur with an excise tax increase not making its way through to the final retail price. Because the minimum price applies at the retail end, there is no opportunity for its effect to be diluted as a consequence of commercial dealings between producers, wholesalers, distributors and retailers.
- 10.45 There are several other factors to consider. First, the minimum price model is designed to raise the price of the cheapest forms of alcohol on the basis that this is the source of much of the harmful drinking in society. It is true that not all people who purchase cheap alcohol drink in a harmful manner. So a pensioner who enjoys the occasional drink, for example, may have to pay more for their alcohol. Nevertheless, the additional amount they pay will not be large, assuming they do not fall into the category of a heavy drinker.
- 10.46 Second, unlike an excise tax which generates revenue for the government, additional revenue generated from a minimum price will be kept within the alcohol industry (a minimum price is not a tax). This has the benefit of clearly identifying minimum pricing as a measure targeted at harmful drinking, rather than a form of indirect government taxation. It is possible that this additional revenue could in turn be spent on stimulating consumer demand for alcohol in other ways, for example through increased advertising. But while the per unit levels of profitability might be higher, there would be fewer units of cheap alcohol actually sold under a minimum pricing model. Thus, whether minimum pricing would actually deliver the industry *increased* revenue would depend on the impact minimum pricing would have on levels of consumption.
- 10.47 Third, in the case of drinkers who drink predominantly cheap alcohol products, substitution to harmful non-alcoholic products may occur (for example, illicit drugs, glue or cleaning products).

PRACTICAL CONSIDERATIONS

- 10.48 The enforcement of a minimum retail price scheme could be achieved through the licensing system. Adherence to minimum prices could be a condition of a liquor licence. If the licensing authority was satisfied that a retailer had offered alcohol products below the specified minimum price, that operator could be liable to a licence suspension or revocation.
- 10.49 Before a minimum price system could be established, careful consideration would need to be given to the means by which the unit price of alcohol was set. This would require a balance between, on one hand, harm reduction goals, and on the other hand, the principle that intervention in commercial markets should occur only to the extent that can be reasonably justified. Mechanisms for reviewing and adjusting the minimum unit price would also need to be considered.

10.50 Overall, the minimum pricing model has considerable merit, particularly in a commercial environment where there is a risk of excise tax increases not being fully reflected in the retail price. Provided a workable regime can be devised, minimum pricing would raise the price of low-priced alcohol products often associated with harmful drinking. The Law Commission is very interested to hear public views on this. It will continue to examine minimum pricing as the proposal is further developed in Scotland and will report on it again in the final report.

ADVERTISING

CURRENT PRACTICE ON ALCOHOL ADVERTISING

10.51 The Advertising Standards Authority (ASA) has responsibility for self-regulation of all advertising in all media. The ASA oversees the standards for advertising content and the development of codes of practice for the advertising industry, including the Code for Advertising Liquor. This Code provides that all advertising must adhere to certain principles. These are listed in figure 10.4.

FIGURE 10.4 CODE FOR ADVERTISING LIQUOR

- **Principle 1:** Liquor advertisements shall neither conflict with nor detract from the need for responsibility and moderation in liquor consumption.
- **Principle 2:** Liquor advertisements shall observe a high standard of social responsibility.
- **Principle 3:** (1) Liquor advertisements shall not depict or imply the consumption of liquor in potentially hazardous situations or include any unsafe practices. (2) Liquor advertisements shall not offer motor vehicles or boats as prizes in any competition;
- **Principle 4:** (1) Liquor Advertisements shall be directed to adult audiences. (2) Liquor advertisements shall not be directed at minors nor have strong or evident appeal to minors in particular. (3) Liquor advertisements shall not be shown on television between 6.00am and 8.30pm. (4) Liquor advertisements shall not use or refer to identifiable heroes or heroines of the young. (4) Broadcasters must take care to avoid the impression that liquor promotion is dominating the viewing or listening period when broadcasting liquor advertisements, including liquor sponsorship advertisements and/or liquor sponsorship credits taking into account the context of the programme.
- **Principle 5:** Sponsorship advertisements and sponsorship credits shall clearly and primarily promote the sponsored activity, team or individual. The sponsor, the sponsorship and items incidental to them, may be featured only in a subordinate manner.
- **Principle 6:** Liquor Advertisements shall not by any means, directly or by innuendo, contain any misleading description, claim or comparison about the product advertised, or about any other product, or suggest some special quality which cannot be sustained.

- 10.52 The Code also sets out guidelines for interpretation of the Principles, which must also be complied with.
- 10.53 Any person can complain about any advertisement in any media they consider to be in breach of the Code. The ASA funds a separate self-regulatory body called the Advertising Standards Complaints Board that adjudicates on complaints received about advertisements that may be in breach of the codes of practice.³² The Complaints Board has eight members, four from the industry and four public representatives with no connection to the media or advertising industries.³³
- 10.54 If the Complaints Board upholds a complaint, the advertiser is requested to voluntarily immediately withdraw the advertisement.
- 10.55 The Association of New Zealand Advertisers is responsible for administering the advertising industry's voluntary system of pre-vetting all liquor advertisements. The Liquor Advertising Pre-Vetting system (LAPS) was introduced at the time liquor advertising on broadcast media was approved. Advertisers participating in LAPS have agreed not to run consumer or trade advertisements unless the LAPS adjudicator first approves them. Products, including those with advertising already approved in overseas markets, are required to have their advertising pre-vetted by LAPS. The objective of LAPS is to ensure that liquor advertising and liquor sponsorship promotion meet all the standards prescribed by the self-regulatory codes administered by the ASA.
- 10.56 A range of other general statutory provisions, for example the Fair Trading Act 1986 and the Unsolicited Electronic Messages Act 2007, also apply to alcohol advertising.

ADVERTISING ALCOHOL

- 10.57 The alcohol industry in New Zealand spends millions of dollars annually on alcohol advertising through print, broadcast, new media and sponsorship.³⁴ The industry would not spend this money if it did not encourage profitability.
- 10.58 Yet the precise link between alcohol promotion and consumption is nevertheless complex. Babor and others noted that the results of studies examining the link between exposure to alcohol promotion messages and individual levels of consumption are mixed.³⁵ The research is more conclusive as to the way in which advertising of alcohol generally (as distinct from individual alcohol brands and products) can link alcohol to values and aspirations to which many people, and especially young people, aspire: sophistication, happiness, success, confidence and desirability. Of course, the use of advertising to foster links between a product and positive feelings is used for many products. But what makes the practice of particular concern in the case of alcohol are the consequences of its misuse.
- 10.59 In New Zealand tobacco advertising is prohibited outright. Some people have suggested this prohibition should also include alcohol advertising, given the harms associated with its misuse. While restrictions on advertising alcohol products are a widely used demand reduction measure, blanket

alcohol advertising prohibitions are rare in countries that permit the sale of alcohol. France – a country synonymous with wine – has a system that is close to prohibition. Known as *Loi Evin*, no alcohol promotion is permitted on television, cinema, or through sponsorship of cultural or sporting events. Marketing of alcohol at youth is explicitly prohibited. The limited advertising that is permitted in printed media, on billboards, and on radio broadcasts must be limited to messages that provide information directly related to the product, for example product origin or method of manufacture. Under *Loi Evin*, advertising gives information rather than selling values.

SELF-REGULATION

- 10.60 Industry self-regulation is much more common internationally than prohibition or near-prohibition regimes. As noted, it is the system used in New Zealand based on the Code for Advertising Liquor. The self-regulation system of alcohol advertising is widely complied with. It is also a very efficient system to run given the LAPS pre-vetting mechanism.
- 10.61 In Australia the system of self-regulation is very similar to that used in New Zealand. An industry body issues the 'Alcoholic Beverages Advertising Code' to which all alcohol advertisements are required to comply.³⁶ A pre-vetting system is also run, and possible breaches of the Code are heard by a separate complaints board.
- 10.62 It is possible that a regime that relies on complaints may not prevent irresponsible advertising. One particular concern is that while self-regulatory systems are capable of blocking alcohol advertisements that would breach the strict wording of voluntary codes, they may not filter out advertisements that appear at odds with the underlying spirit of the restrictions. Criticisms of this ilk have, for example, been made in Australia by the Australian Drug Foundation.³⁷
- 10.63 Arguably, these same criticisms could be made in this country. Consider that in New Zealand the Code for Advertising Liquor requires that advertisements not be "sexually provocative or suggestive or suggest any link between liquor and sexual attraction or performance".³⁸ While recognising the humorous context, the central feature of a recent advertising campaign for a well known beer brand was the physical attractiveness of the female 'employees' featured in the set of advertisements. In this way, self-regulatory systems can permit promotions that connect alcohol products with aspirational values or underlying messages in a way that a more prescriptive regime, such as *Loi Evin*, would not.

RESTRICTIONS ON PRICE ADVERTISING

- 10.64 A specialised form of advertising regulation that might be considered in the New Zealand context is a prohibition on the advertising of the *price* of alcohol products. As discussed, one of the primary means by which many operators compete in the post-Laking regulatory environment is price. Profitability on low-margin alcohol products (that is, where the difference between what the retailer pays for a unit of alcohol and the price it is sold to the customer is small) can be achieved through large volume of sales. Low margins, or even negative

margins (where a unit of alcohol costs a retailer more than what it sells for), can also be sustained on the basis that the customer will purchase other retail items while in store, thereby 'making up' for the low or negative margins on the alcohol products themselves.³⁹

- 10.65 A prohibition on price advertising could limit the ability of retailers to compete for alcohol sales on price. Customers would no longer be enticed to a particular store because of price advertisements. This would mean that the central premise of the low-margin sales model – namely high volumes of sales – may become unsustainable in the long term. The ability to use cheap alcohol products to attract customers into stores to spend money on other products would also be hampered. Retailers may instead shift their selling strategies away from low price/high volume models to using quality of product and service, or information and advice to create a point of difference in the market.
- 10.66 As discussed below in relation to the New Zealand Bill of Rights Act 1990, there are important commercial freedoms that would need to be taken into account when contemplating a prohibition on price advertising. The practical implications of a ban on price advertising would also need to be considered. For example, the restriction could not extend to within a store itself because at some point shoppers would need to know the price of items when making their purchasing decisions. There is also an issue as to whether the restriction should prohibit words or messages that convey low or discounted prices for alcohol products (for example, "The home of great alcohol deals"). The position of internet-based liquor retailers would also need to be considered, given the only way customers can know the price of their alcohol products is if it is provided on a web page or email.

ADVERTISING AND THE NEW ZEALAND BILL OF RIGHTS ACT 1990

- 10.67 Any restriction on advertising will raise an issue of consistency with section 14 of the New Zealand Bill of Rights Act 1990, which protects the right to freedom of expression (including the freedom to seek, receive, and impart information and opinions of any kind in any form). The right to freedom of expression has been interpreted to extend to all forms of communication which attempt to express an idea or meaning, including commercial speech such as advertising.⁴⁰ However, Courts in overseas jurisdictions have tended to treat limitations on freedom of expression which impinge on commercial expression as being easier to justify than limitations on other forms of expression, such as artistic or academic expression.⁴¹
- 10.68 Where a Bill is prima facie inconsistent with a right or freedom, it may nevertheless be found to be consistent with the Bill of Rights Act 1990 if the inconsistency is considered to be a reasonable limit, which is justified under section 5 of that Act. Put simply, the inquiry under section 5 is a two-step one: does the limitation serve an important and significant objective; and is there a rational and proportionate connection between that objective and the provision in question?⁴²

- 10.69 How this test works in practice is well illustrated by the report to Parliament by the Attorney-General in relation to the recently introduced Liquor Advertising (Television and Radio) Bill. That report found that the Bill was inconsistent with section 14 of the Bill of Rights Act.⁴³ The Attorney-General considered that the objective of limiting the exposure of persons of all ages to broadcast liquor advertising, with the aim of reducing social approval of liquor and reducing liquor-related problems was an important and significant one. Notwithstanding a paucity of evidence about the link between bans on liquor advertising and liquor consumption, the Attorney-General was able to find a sufficient connection between the level of exposure to liquor advertising and the level and patterns of liquor consumption.
- 10.70 However, the Bill was found to fail the proportionality part of the section 5 test on the basis that it was not possible to show that the broadly cast ban on the broadcast of liquor advertising is or is likely to be more effective than lesser restrictions which targeted particular advertising content.
- 10.71 It is clear, therefore, that any limitation on liquor advertising will need to be proportionate in terms of its adverse effect on freedom of expression. This reality will have to be factored in to any future discussion on proposals to strengthen restrictions on alcohol advertising. It will be necessary to aim at specific targets where the harm is clear.

PROMOTIONS

CURRENT PRACTICE ON ALCOHOL PROMOTIONS

- 10.72 The Code for Advertising Liquor does not cover non-advertising forms of promotion, such as packaging, product names, merchandising, sponsorship or promotions.
- 10.73 The significant operators in the alcohol industry are signatories to the Naming Packaging and Products Merchandising Guidelines introduced in June 2000, and administered by ALAC. There is however no complaints system or enforcement mechanism for these.
- 10.74 There is also a National Protocol on Alcohol Promotions, which sets out the activities considered acceptable and unacceptable in light of section 154A of the Sale of Liquor Act 1989. That provision deals with promotions and activities “intended or likely to encourage persons on the licensed premises to consume alcohol to an excessive extent”.
- 10.75 At the time of publication of this Issues Paper, the ASA was consulting on a new Code for the Naming, Packaging and Promotion of Liquor.⁴⁴ The purpose of the draft code states that it is to:
- Ensure that liquor marketing and promotions will be conducted in a manner that is not inconsistent with the need for responsibility and moderation, and minimises their appeal and exposure to minors.
- 10.76 It is anticipated that there will be a new independent liquor promotion complaints board to deal with complaints arising under the new code, with appeals to the Advertising Standards Complaints Appeal Board, and that there will be a pre-vetting system similar to the LAPS process. The Law Commission will watch this process with interest and report further on it in its final report.

INTERNATIONAL DEVELOPMENTS

- 10.77 The United Kingdom Government has a new strategy under development that includes alcohol promotions.⁴⁵ The aim is to promote sensible drinking. The strategy is discussed in further detail in chapter 11.
- 10.78 In the context of alcohol promotions, one of the proposals is to introduce a mandatory licensing condition that prohibits irresponsible promotions, such as “All you can drink for £10”, speed drinking competitions, or any promotions that encourage the consumption of large quantities of alcohol and the rapid consumption of alcohol that could increase the risk of alcohol-related crime and disorder, public nuisance, and cause a risk to public safety. In this way, alcohol promotions can be managed through the licensing system.
- 10.79 An alternative to using the licensing system to better regulate alcohol promotions is to adopt a system similar to that which exists in New South Wales. The Liquor Act 2007 gives the Director of Liquor and Gaming the power to prohibit undesirable alcohol promotions. A promotion may be deemed undesirable if, for example, it is likely to have special appeal to minors, or if it creates an incentive for patrons to consume alcohol more rapidly than they otherwise might.⁴⁶ The Director also issues guidelines that indicate the kinds of activities or promotions he or she considers undesirable.⁴⁷

CHAPTER 10 ENDNOTES

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- 2 *Expert Committee on Problems Related to Alcohol Consumption* (World Health Organisation, Geneva, 2007) 26-28 [*World Health Organisation*].
- 3 See, for example, E Weitzman, T Nelson, and H Wechsler "Taking Up Binge Drinking in College: The Influences of Person, Social Group, and Environment" (2003) 32 *Journal of Adolescent Health* 26-35.
- 4 Thomas Babor *et al Alcohol: No Ordinary Commodity* (OUP, New York, 2003) 110 [*No Ordinary Commodity*].
- 5 *No Ordinary Commodity*, above n 4, 110-111.
- 6 For example, rather than buying a \$20 bottle of wine at 12% alcohol, a person might buy a \$15 bottle of wine at 12% alcohol.
- 7 *No Ordinary Commodity*, above n 4, 110-111.
- 8 *World Health Organisation*, above n 2, 27.
- 9 *Tax Review 2001* (Wellington, 2001) (available at <http://www.treasury.govt.nz/publications/reviews-consultation/taxreview2001/taxreview2001-report.pdf>) [*McLeod Review*].
- 10 *McLeod Review*, above n 9, 41.
- 11 *McLeod Review*, above n 9, 41.
- 12 Cabinet Policy Committee (No. 3) 8/4: "Excise Duty on Alcohol: Amendment to the Customs and Excise Act 1996."
- 13 D Young and A Bielinska-Kwapisz "Alcohol Taxes and Beverage Prices" (2002) 55 *National Tax Journal* 57-73; Donald Kenkel "Are Alcohol Tax Hikes Fully Passed Through to Prices? Evidence from Alaska" (2005) 95 *American Economic Review* 273-277.
- 14 James Hall "Sainsbury Puts the Squeeze on Alcohol Suppliers" (26 April 2009) *The Daily Telegraph* London (available at <http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/5225429/Sainsbury-puts-the-squeeze-on-alcohol-suppliers.html>).
- 15 See "Annual Increase in Excise Tax" (Morning Report, Radio New Zealand National, 1 July 2009).
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- 17 Brian Easton *The Social Costs of Tobacco Use and Alcohol Misuse* (Department of Public Health, Wellington School of Medicine, 1997) (available at [http://www.ndp.govt.nz/moh.nsf/pagescm/1011/\\$File/socialcoststobaccoalcohol.pdf](http://www.ndp.govt.nz/moh.nsf/pagescm/1011/$File/socialcoststobaccoalcohol.pdf)).
- 18 N Devlin, P Scuffman and L Blunt (1997) 92 "The Social Cost of Alcohol Abuse in New Zealand" *Addiction* 1491-1505.
- 19 F Barker *Consumption Externalities and the Role of Government: The Case of Alcohol* (New Zealand Treasury Working Paper 02/25, 2002) (available at <http://www.treasury.govt.nz/publications/research-policy/wp/2002/02-25/twp02-25.pdf>).
- 20 Business and Economic Research Limited (BERL) *Costs of Harmful Alcohol and Other Drug Use* (Report prepared for the Ministry of Health and Accident Compensation Corporation, Wellington, 2009) 61.
- 21 Amounts includes a portion of the costs jointly attributable to the use of 'alcohol and other drugs'.
- 22 P Anderson and B Baumberg *Alcohol in Europe* (A Report for the European Commission London: Institute of Alcohol Studies, 2006).
- 23 D Collins and H Lapsley *The Costs of Tobacco, Alcohol and Illicit Drug Abuse to Australian Society in 2004/05* (Commonwealth of Australia, Canberra, 2008).
- 24 Anderson and Baumberg, above n 22.

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- 26 Based on Statistics New Zealand retail sales by industry (actual) (GST exclusive) 2008 covering retail sales by specialist liquor retailers, cafes and restaurants, pubs and clubs, supermarkets and grocery, and accommodation. Estimates of the proportion of alcohol sales were based on industry advice to the Law Commission.
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- 31 \$0.13 x 120 grams of alcohol = \$15.60 (each individual can of beer contains 10 grams of alcohol, giving a total of 120 grams of alcohol).
- 32 Sections 8(2) and (3) of the Broadcasting Act 1989 acknowledge the jurisdiction of the Advertising Standards Complaints Board.
- 33 See Ministry of Culture and Heritage *Briefing to the Incoming Minister* (2008) (available at <http://www.mch.govt.nz/publications/bim2008/arts.html>).
- 34 *Report of the Steering Group for the Review of the Regulation of Alcohol Advertising* (2007) 33 (available at <http://www.ndp.govt.nz/moh.nsf/indexcm/ndp-publications-reportsteeringgroupalcoholadvertising>).
- 35 *No Ordinary Commodity*, above n 4, 173-188.
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- 38 *Code for Advertising Liquor*, principle 2.
- 39 This practice is often referred to as 'loss-leading'.
- 40 *Irwin Toy Ltd v Attorney-General (Quebec)* [1989] 1 SCR 927 (SCC).
- 41 See for example *Markt Intern and Beerman v Germany* (1989) 12 EHHR 161.
- 42 *Ministry of Transport (MOT) v Noort* [1992] 3 NZLR 260; *R v Hansen* [2007] 3 NZLR 1.
- 43 *Report of the Attorney-General Under the New Zealand Bill of Rights Act 1990 on the Liquor Advertising (Television and Radio) Bill*, presented to the House of Representatives pursuant to section 7 of the New Zealand Bill of Rights Act and Standing Order 261 of the Standing Orders of the House of Representatives (2 July 2009).
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- 46 Liquor Act 2007 (NSW), s 102(2).
- 47 Liquor Act 2007 (NSW), s 102(4).