

ALCOHOL IN OUR LIVES

AN ISSUES PAPER ON THE REFORM OF NEW ZEALAND'S LIQUOR LAWS







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The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

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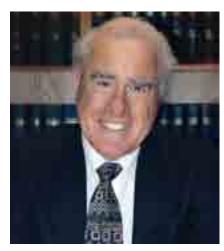
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Cover photo: A young man sleeps on a park bench on Oxford Terrace, Christchurch over the road from 'The Strip' in the early hours of Sunday morning after the Crusaders versus Bull's rugby semi-final. (Peter Meecham, The Press, Christchurch, 21 May 2006).

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FOREWORD



Geoffrey Palmer, President

The Law Commission project to review the law on the sale and supply of liquor aims to examine the whole scene from top-to-toe for the first time since Sir George Laking and his committee reported in 1986.

It took until 1989 for the recommendations of the Laking committee to be examined, modified and enacted. As the Minister of Justice at that time, with the lead responsibility for designing, introducing and passing the Sale of Liquor Act 1989, it is a fascinating experience for me to examine the issues afresh after 20 years.

There have been such profound changes over the intervening period that in liquor terms New Zealand is now another country.

The law passed in 1989 was further liberalised following a review conducted by Sir John Robertson and his committee. Beer went into supermarkets. The age of purchase was reduced from 20 to 18. Sunday trading was extended.

What the current Law Commission's review has found so far is that liquor has become

a serious source of social problems in New Zealand. New Zealand Police have demonstrated, through research based on their Alco-link data, that a disproportionate use of police resources are required to clean up scenes of disorder, offending, and saving intoxicated people from themselves.

This issues paper is designed to paint a picture of how liquor is used in New Zealand now. The picture has in part been constructed by using some of the techniques of participant observation. In 17 locations members of the Law Commission team have been out at night in various parts of New Zealand to observe the scenes that the police deal with.

Most New Zealanders never become aware of these scenes because they are tucked up in bed and councils clean up the mess before they wake up. The police are left to shoulder the unpleasant burdens of these excesses. The dedicated doctors and nurses who staff our emergency facilities at the hospitals also see first hand the damage that is wrought. And they have to deal with it.

Research that has been done since 1986 demonstrates beyond doubt that alcohol is no ordinary commodity. It is a drug. It needs to be treated with caution and controlled by the law. Used to excess, alcohol is a potent producer of serious health hazards. Private choices to consume alcohol excessively have important and costly public consequences.

Indeed, the costs that the excess use of alcohol imposes on society through law and order costs, health costs, accident compensation costs and individual harm costs are high. Not everyone drinks in a manner that is harmful. But the consequences of harmful drinking affect us all.

The reality is however that there are severe constraints on what can be done about these problems by the law. Every law has to pass the test of public acceptability. The use of alcohol in moderation has many positive features. It promotes sociability, friendship, entertainment, fun, relaxation and many things that New Zealanders enjoy.

The use of alcohol will continue in New Zealand without question. Keeping its baleful influences in check must be the aim of the law. It is a question of balance.

The Law Commission is not trying to bring about some return to 'wowserism' that was once such a factor in fashioning our liquor laws. Nevertheless, in the view of the Law Commission, the time has come to consider revising the policy settings to reduce the excesses and curb the harm.

This paper aims to outline the problems that our research has disclosed. The paper also outlines the range of options that appear to be available to deal with the problem and give some indication of our preliminary ideas. These views are tentative at this juncture. We need to receive submissions and carry out further consultations.

The Law Commission is independent of the Government. Its power is only to recommend measures to the Government. And we will make recommendations on the basis of what the evidence shows. Our first report on liquor was tabled in Parliament in May 2009. It suggested that it would be preferable for alcohol Bills to be voted on in Parliament on the basis of standard party based voting rather than the conscience vote.

Geoffrey Palmer

PRESIDENT
July 2009

TERMS OF REFERENCE

- To examine and evaluate the current laws and policies relating to the sale, supply and consumption of liquor in New Zealand.
- 2. To consider and formulate for the consideration of Government and Parliament a revised policy framework covering the principles that should regulate the sale, supply and consumption of liquor in New Zealand having regard to present and future social conditions and needs.
- 3. To deal explicitly with a number of issues, including:
 - the proliferation of specific outlets and the effect this has on consumption;
 - how the licensing system should be structured and who should be responsible for which aspects of licensing decisions;
 - revising the licence renewal and fee framework to consider whether risk can be more appropriately managed and to ensure that the funding of the licensing and enforcement regime is adequate;

- to ensure that unnecessary and disproportionate compliance costs are not imposed by the licensing system;
- · the age at which liquor can be purchased;
- the responsibility of parents for supervising young members of their family who drink;
- the influence of excise tax on alcohol and how pricing policies can minimise harm from alcohol consumption;
- advertising of liquor and whether there should be restrictions on discounting alcohol or advertising discounts;
- the relationship between the Sale of Liquor Act 1989, the Resource Management Act 1991 and the Local Government Act 2001;
- the relationship between the Sale of Liquor Act 1989 and the liquor-related offences in the Summary Offences Act 1981;
- the application of competition law to the sale of liquor;

- the need to ensure the appropriate balance between harm and consumer benefit;
- the health effects of alcohol use and the ways to ameliorate these adverse effects;
- the effects of alcohol use on the level of offending in the community and consideration of measures to minimise such offending; and
- enforcement issues in relation to liquor, including penalties, bans, measures to control alcohol related disorder and to deal with intoxicated people, and methods for preventing the use of fake proof-of-age identification.
- 4. To prepare an issues paper for publication and take submissions on it, and to engage in extensive public consultation.
- 5. To prepare a final report, including the proposed new policy framework and draft legislation, so that people can judge accurately the precise effects of what is proposed.

WE WELCOME YOUR FEEDBACK

The deadline for submissions is 5pm, Friday 30 October 2009.

Public Consultation: 31 July – 30 October 2009

This Issues Paper is intended to help define the nature and extent of alcohol-related harm in New Zealand, and provide a springboard for public debate of the issues. You can download *Alcohol in Our Lives* at www.talklaw.co.nz or www.lawcom.govt.nz

We are particularly interested in your feedback and comments on the *Framework for Regulating Liquor* and the accompanying questions set out in chapter 12.

The Law Commission will produce its final report in 2010.

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Official Information Act 1982

The Law Commission's processes are essentially public, and it is subject to the Official Information Act 1982. Thus copies of submissions made to the Commission will normally be made available on request and the Commission may mention submissions in its reports. Any request for withholding of information on the grounds of confidentiality or for any other reason will be determined in accordance with the Official Information Act.

HOW TO GIVE US YOUR FEEDBACK



Email: Email your submission to liquor@lawcom.govt.nz

Submission form: Download the submission form online at www.talklaw.co.nz



Website: We invite you to sign up to www.talklaw.co.nz, make an online submission or participate in the forum discussions and answer our quick surveys. Please feel free to access our news, videos, FAQs and library sections for further information.

You can present your feedback in any format.

However, in presenting your views, please identify the number of the question or the particular issue you are addressing. Your submission must contain your full name and contact details in order to be formally considered.

Submit your comments via:



Public consultation meeting: Come along to a public consultation meeting that will be held in a city near you during August-September 2009. Dates to be finalised, check our website for details.



Post: Write your submission and post to the address below: Liquor Project Coordinator Law Commission PO BOX 2590 Wellington 6140

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THE SEEDS OF THE REVIEW

For a significant proportion of us, alcohol will have been an important ingredient in the summer's entertainment: from the backyard BBQ and beers at the beach, from the five o'clock gin and tonic to the night out on the town: alcohol is deeply embedded in our sporting, social and home life.

KEY FACT AT A GLANCE

Commission staff have joined frontline police and licensing inspectors in late night and early morning shifts in 17 different locations around the country ensuring they are well acquainted with the different drinking cultures and problems confronting communities from the far North to Dunedin.

INTRODUCTION

NAVTEJ SINGH ____

9.00pm 7 June 2008, Riverton Drive, Manurewa, South Auckland

At first it seemed the injury was not fatal. Navtej Singh lay quietly on his side behind the counter, waving away offers of water from his wife, Harjinder, while they waited for the police and ambulance to arrive. Customers, dressed for a night out and oblivious to the shooting, came and went, some leaving cash on the counter for their drinks. The only visible sign of the robbery, a few bottles knocked from the shelves as, moments earlier, the assailants had grabbed boxes of liquor from the neatly stacked displays. Their selection included boxes of fruit-flavoured ready-to-drinks (RTDs) and bottles of spirits. The cash drawer and the day's earnings of a few thousand dollars were also taken.

Shortly before the police arrived, the 30 year-old university graduate from Punjab asked for help to stand and walked to the toilet, refusing offers of assistance with, "I'll be fine." But when Navtej emerged he collapsed to the liquor store's floor, vomiting blood. His friend, Sandeep Verma, relayed Navtej's worsening condition to the ambulance crew, who were still waiting for police clearance. Sandeep was instructed to apply pressure to the wound to staunch the bleeding. At last, the police and ambulance arrived. Navtej Singh was taken to Auckland's Middlemore Hospital, where he received 24 units of blood. But his injuries were too severe.1

Manurewa liquor store owner Navtej Singh.



The banal exchange of Navtej Singh's life for a few dozen RTDs and the day's takings prompted over a thousand Manurewa residents to take to the streets in support of his young widow and three young daughters, and in defence of their own maligned community. And despite the fact that for many New Zealanders Riverton Drive, Manurewa, was a world apart, Navtej's Singh's death provided the spark to reignite New Zealand's century old debate about alcohol² and its impact on our lives.

This time, as in the past, one of the questions most strongly debated was whether this shooting, and many other violent incidents like it, was really about alcohol, or whether it was about a more fundamental malaise in our society which has its roots in dysfunctional families and a litany of other social ills.

Regardless, nobody was suggesting events in Riverton Drive that night were typical of most New Zealanders' Saturday night. On the same night Navtej Singh was gunned down in his store, tens of thousands of law abiding New Zealanders were gathered around televisions in private homes, clubs and bars celebrating the All Blacks' hard fought victory over Ireland 21-11 at a freezing Westpac Stadium in Wellington. At Auckland's North Harbour stadium New Zealand Māori took on Tonga, beating them 20-9. A polar blast was making its way up the country bringing

snow and sleet to much of the South Island and trapping many travellers in their cars.

No doubt the cold kept numbers down in the country's 7,574 licensed premises that weekend, but, come January, hundreds of thousands of New Zealanders would be out enjoying our thriving entertainment and hospitality sector and the many festivals, concerts and sporting events which have become part of our summer.

For a significant proportion of us, alcohol will have been an important ingredient in the summer's entertainment: from the backyard BBQ and beers at the beach, from the five o'clock gin and tonic to the night out on the town. Alcohol is deeply embedded in our sporting, social and home life.

And thanks to the 1989 Sale of Liquor Act and its subsequent amendments, we now have a highly competitive industry offering consumers unprecedented choice and access to alcohol – some of it at prices lower than we pay for milk and bottled water.

Alcohol is a multi-billion dollar industry and our burgeoning wine sector alone is estimated to have contributed \$1.5 billion to the country's gross domestic product in 2008.³

However, the misuse of alcohol is also associated with a significant amount of social harm in this country. According to Police statistics, in almost a third of all recorded crimes in this country the offender has consumed alcohol before committing the offence.⁴

So the question the Law Commission and the New Zealand public have been asked to consider is whether the pendulum has perhaps swung too far: whether we have struck the right balance between the benefits consumers have enjoyed from the liberalisation of the laws regulating the sale and supply of alcohol and the harms associated with the abuse of alcohol.

More specifically, the Law Commission has been asked whether the lowering of the minimum purchase age, the proliferation of liquor outlets and the ready availability of cheap liquor at all hours of night and day is contributing to unacceptably high levels of alcohol-related crime and injury in our country.

These questions were being debated in communities as diverse as Queenstown and Paihia long before Navtej Singh's death. In fact, the roots of this review lie less in headline-grabbing homicides and more in communities around the country frustrated by their inability to influence decisions about how and where alcohol is sold and consumed in their neighbourhoods. Along the way, many discovered that under the current legislative framework, local communities have little or no legal standing in the process for granting or declining liquor licences.



Courtesy of Alcohol Advisory Council New Zealand.

This Issues Paper is intended to help define the nature and extent of alcohol-related harm in this country and to provide a springboard for public debate.



At the same time, police and doctors working in the country's Accident and Emergency departments have been expressing growing concern at the level of alcohol-related violence and injury associated with the burgeoning nighttime economy which has developed in many of our towns and cities around licensed premises' extended trading hours. Accompanying all this has been a steady stream of media reports on the latest alcohol-fuelled incident ranging from out of control school 'after-ball' parties and orientation events, to pregnant women with multiple drink driving offences and, most recently, the 13 year-old snowboarder in an alcoholic coma after drinking a bottle of Jagermeister.

As this catalogue of harms illustrates, the misuse of alcohol does not result in one simple problem, but a whole set of problems, some of which affect the health and wellbeing of the individual drinker, some of which impact on those with whom the drinker comes in contact, and some of which impact on the community at large. Drinkers and non-drinkers, moderate drinkers and heavy drinkers – we all have a stake in reducing alcohol-related harm.

Fourteen government agencies have a direct interest in reducing alcohol-related harm, including the New Zealand Police, the Ministry of Health, Te Puni Kokiri, the Ministry of Youth Development and the Accident Compensation Corporation.

All these agencies are contributing to the review of our liquor laws. Police, Justice, Health and the Alcohol Advisory Council have also provided the Law Commission with secondees to assist with the review. Their expertise has been invaluable in the preparation of this issues paper.

As part of its preliminary consultation, the Law Commission's liquor review team has also met with a wide cross section of stakeholders, including representatives of New Zealand's major liquor producers, retailers, the hospitality industry, local bodies, licensing inspectors, alcohol researchers, and medical experts (see Appendix 4). While there are differing views about what is causing the problems, and where the answers may lie, there is a good deal of agreement that the harmful use of alcohol needs to be reduced.

Acknowledging the criticism that policy and law-makers need to move beyond the 'Chardonnay sipping' Wellington beltway, Commission staff have joined frontline police and licensing inspectors in late night and early morning shifts in 17 different locations around the country, ensuring they are well acquainted with the different drinking cultures and problems confronting communities from the far North to Dunedin.

This issues paper is intended to help define the nature and extent of alcohol-related harm in this country and to provide a springboard for public debate. It is a preliminary view of the problem, drawing together the evidence of researchers and analysts working in the justice and public health sector with direct observations from the Commission's field work and the personal stories of ordinary New Zealanders reflecting on the role of alcohol in their lives.

The paper is divided into two parts. Part I provides an overview of our drinking habits, the risks associated with them, and a preliminary view of the major impacts harmful drinking is having on levels of crime, injury and health in this country.

Part II considers ways in which alcohol-related harm might be addressed.
Under the three areas of supply control, demand reduction and problem limitation, the current legislative provisions and some of the measures used internationally are considered. Part II then presents a package that the Law Commission is tentatively considering recommending in its final report to Government due next year. This package of preliminary ideas has been included to help focus public debate. Because they are high level policy options they have not

FACTS AT A GLANCE

Alcohol is a multi-billion dollar industry and our burgeoning wine sector alone is estimated to have contributed \$1.5 billion to the country's gross domestic product in 2008.³

Fourteen government agencies have a direct interest in reducing alcohol harm, including the New Zealand Police, the Ministry of Health, Te Puni Kokiri, the Ministry of Youth Development and the Accident Compensation Corporation.

been subjected to a regulatory impact statement. This will be included in the final report and recommendations in 2010. A preliminary view of the regulatory impact issues is included in Appendix 3.

We are not tackling these issues in isolation. Scotland has embarked on a major campaign to reduce alcohol-related harm, spearheaded by Scottish physicians. Australian federal and state governments have also embarked on a range of measures aimed at reducing alcohol harms including a proposed tax on RTDs. European nations, including France, are also introducing measures to tackle binge drinking among their youth populations.

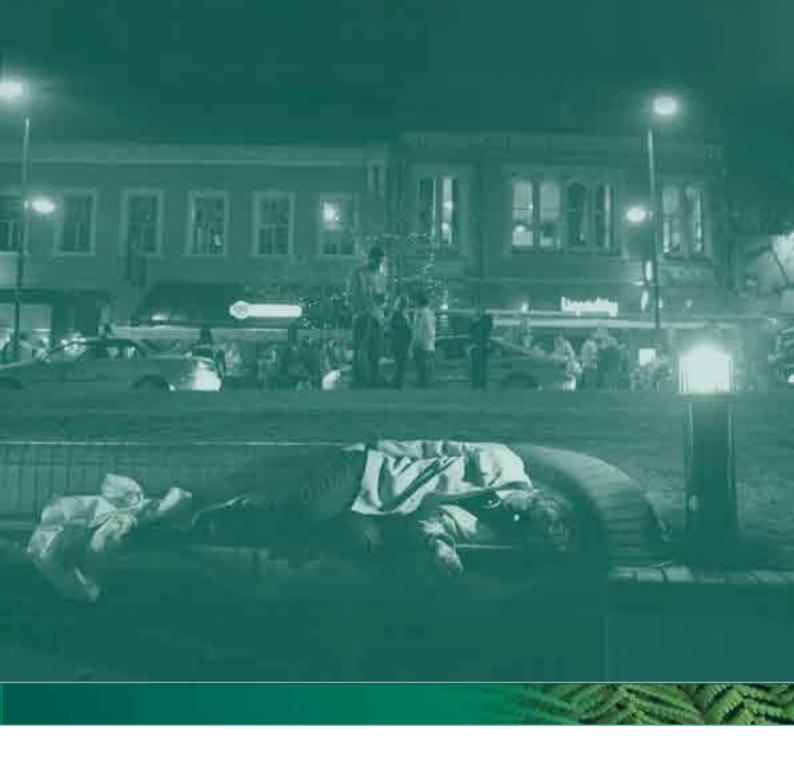
This issues paper offers an opportunity for New Zealanders to help shape our own solutions to the problems associated with harmful drinking.

INTRODUCTION ENDNOTES

- Account of Navtej Singh's death as relayed to Cate Brett in an interview with Sandeep Verma (Manurewa, November 2008).
- 2 This paper uses the term alcohol (generally preferred in common usage) interchangeably with liquor. By the term 'liquor' it is meant any fermented, distilled, or spirituous liquor (including spirits, wine, ale, beer, porter, honeymead, stout, cider, and perry) that is found on analysis to contain 1.15 per cent or more alcohol by volume. This is the definition contained in the Sale of Liquor Act 1989.
- 3 New Zealand Institute of Economic Research Economic Impact of the New Zealand Wine Industry: An NZIER Report to the New Zealand Winegrowers (Wellington, 2009) (available at http://www.nzwine.com).
- 4 New Zealand Police *National Alcohol Assessment* (Wellington, April 2009) 7

 (available at http://www.police.govt.nz).

Thanks to the 1989 Sale of Liquor Act and its subsequent amendments we now have a highly competitive industry offering consumers unprecedented choice and access to alcohol – some of it at prices lower than we pay for milk and bottled water.



PART I



A BRIEF HISTORY OF LIQUOR LEGISLATION IN NEW ZEALAND

THE SIX O'CLOCK SWILL

"They are three or four deep, and drinking not as human beings, but often like animals, fighting to get it, and passing handles over each other's heads."

"In many cities the crowd around the bar is so thick that instead of filling glasses from the old-fashioned beer pumps, the hotel staff **take the beer to the glasses by long plastic hoses** – a dreadful sight to those unused to it."²

KEY FACT AT A GLANCE

Introduced in 1917 as a wartime measure, six o'clock closing was finally abolished after a public referendum in October 1967.

LOOKING BACK IN TIME

CHAPTER 1

LESSONS FROM THE PAST

These descriptions refer not to the Wellington Sevens or a University Orientation event, but to some of our grandparents' and great-grandparents' behaviour in public bars fifty and sixty years ago. Specifically, they describe the drinking culture that was associated with six o'clock closing, a distinct feature of New Zealand's liquor laws which survived for half a century.

Introduced in 1917 as a wartime measure, six o'clock closing was finally abolished after a public referendum in October 1967. As historian Dr Paul Christoffel argues in his doctoral thesis "Removing Temptation: New Zealand's Alcohol Restrictions, 1881-2005", 3 part of the explanation for the endurance

of six o'clock closing lay in our deep ambivalence towards alcohol and politicians' nervousness at upsetting the delicate equilibrium between the so called 'wets' and 'dries':4

Once instituted, early closing proved difficult to undo despite the fact that the law was widely evaded and gave rise to an unpleasant institution that became known as the six o'clock swill. With regular licensing polls showing significant residual support for prohibition, MPs were nervous of liberalising drinking laws.

While that particular chapter in our drinking history is long closed, there remains a remarkable circularity to our national debates about alcohol since it was first introduced to the indigenous

population by the whalers in the early 1800s. Although the context for this current review of our liquor laws is different from that in which previous reviews have taken place, many of the issues – and mooted solutions – are remarkably similar.

Interestingly too, the original Licensing Act 1881, which provided the foundation for our liquor laws for a century, contained many features which remain to the present day, including the basic legal requirement that no one may sell liquor without a licence and that there be a minimum purchase age.

The Act also contained some curiosities, such as restrictions on various forms of entertainment on licensed premises including dancing, listening to music

Witnesses to the 1945 Royal Commission on Licensing gave evidence on the impact of trading hours on drunkenness; the number of licences and conditions attached to them; and the relationship between hours and outlet numbers on levels of intoxication, public disorder and the disturbance of 'domestic harmony'.



Vote 6 o'clock closing. Alexander Turnbull Library, Wellington, N.Z.

and eating, in the belief that to associate such pleasurable activities with alcohol was to encourage drinking. In 1910, this puritanical thinking reached its zenith with a law banning the employment of new barmaids, because it was feared "an attractive, pleasant mannered barmaid... was considered to be one way in which publicans enticed numbers of men, particularly young men, into public bars". 5 The ban was not rescinded until 1962.

Today, licensing conditions positively specify that food must be integral to the business of selling liquor with the aim of creating the type of environment conducive to moderate and civilised drinking. But in other important respects the present thrust for legal reform takes us back to the principles of that 1881 Act which placed the control of licensing decisions in the hands of local communities.

Under the 1881 Act, locally elected licensing committees controlled the issuing and renewal of licences. The total number

of licences in an area could only increase if agreed to by voters in a local poll, and between 1893 and 1918 voters even had the power to close all the liquor outlets in their electorate. In 1911 the triennial licensing poll on National Prohibition was introduced and this continued as a defining feature of our system of liquor regulation right up until 1987.

More than a century after the principle of local control was first enshrined in law, a Parliamentary select committee is once again debating the role local councils and their communities should play in determining the number, placement and hours of trading of licensed premises in their communities as it considers the provisions of the Sale and Supply of Liquor and Liquor Enforcement Bill.

A central tenet of liquor regulation then was the simple contention that the greater the availability of liquor in society, the more people will drink and the greater

the incidence of all manner of harms from drunkenness to dependence. Commonly described today as the availability theory, it posited that restricting access to alcohol in society would reduce consumption and with it the levels of harm.

Restricting, or, at its most extreme, prohibiting access to alcohol altogether was at the heart of New Zealand's prohibition movement. This movement was at its most influential throughout the late 1800s and early decades of last century. The country came close to adopting prohibition in 1919, before a doubling of liquor taxes in 1921, followed by the Great Depression, sent alcohol consumption to its lowest historical levels in the early 1930s.

The following decades were marked by an uneasy truce between the liquor industry and the temperance movement, both of which had a shared interest in continued restrictions. From the industry's point of view, restrictions on the issuing of licences protected them from competition, while the temperance supporters believed they protected the public from increased harm.

However, by the end of World War II pressure for change was mounting and in 1945 a Royal Commission on Licensing was set up to address some of the worst aspects of years of restrictive licensing and local control. These included the drastically uneven distribution of bars around the country and the poor drinking practices and facilities associated with this lack of competition.

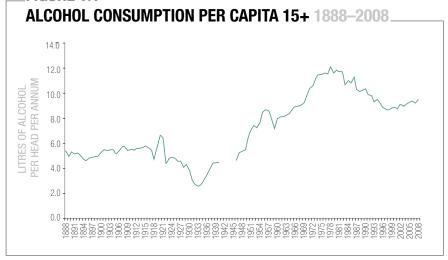
The issues canvassed during the hearings of that 1945 Commission underscore the timelessness of our concerns about alcohol: witnesses gave evidence on the impact of trading hours on drunkenness; the number of licences and conditions attached to them; and the relationship between hours and outlet numbers and levels of intoxication, public disorder and the disturbance of 'domestic harmony'.6 Submitters also petitioned the Commission about the moral perils alcohol posed for women, young people and Māori – all groups regarded as requiring the special protection of the state when it came to regulating their drinking,7 and all singled out some sixty years later in

less paternalistic terms as 'at risk' groups by some of today's policy makers:8

Witnesses to the Royal Commission routinely commented on the problem of increasing numbers of women drinking in bars, and the policy of some hotels to eject women from lounge bars by 5pm was greeted with universal approval. The prevailing view appeared to be that home rather than the bar was where women should be, to be joined by her breadwinning husband as soon as possible after he finished work.

Although the Royal Commission proposed loosening restrictions on trading hours with the introduction of some evening drinking, the politicians preferred to put the issue to a public referendum in 1949. The public opted to retain six o'clock closing.

It was another decade before the reforms began with the licensing of restaurants and the introduction of barmaids and 'taverns'. Then in 1967, 50 years after its introduction, a public referendum finally brought six FIGURE 1.1



Source: Statistics New Zealand. Note that data is unavailable for the period of World War II.

o'clock closing to an end. The liberalisation process accelerated over the next two decades after a second Royal Commission in 1974 ushered in further reforms resulting in thousands of sports bars being granted licences, hundreds of restaurants being granted BYO licences and big increases in licensed restaurants.

As figure 1.1 shows, alcohol consumption had been rising since the end of World War II and peaked at over 12 litres of pure alcohol per head per annum in 1978, as the bulk of baby boomers moved through their late teens and 20s.

Members of the baby boomer generation who went on to become part of the

Alcohol consumption had been rising since the end of World War II and peaked at over 12 litres of pure alcohol per head per annum in 1978, as the bulk of baby boomers moved through their late teens and 20s.

Customers of the Porirua Tavern drinking inside the pub on the last day of 6 o'clock closing, Evening Post 1967, Alexander Turnbull Library, Wellington, N.Z. PADL-000185.



Photographer: Gary Blackman. Photo courtesy of Museum of New Zealand Te Papa Tongarewa. O.030385.

reformist 1984 Labour Government took the opportunity to totally overhaul the country's liquor laws, establishing the Working Party on Liquor, chaired by Sir George Laking. In its final report the Laking committee explicitly rejected that century-old tenet linking alcohol harm to availability.9 The Laking committee acknowledged the problems associated with alcohol abuse in New Zealand but was not persuaded that the solution lay in continued restrictions on the number of liquor outlets – despite the submissions of many groups arguing to the contrary:10

We find the evidence of a direct relationship between the level of consumption on the one hand and the number of outlets and the other elements of availability such as trading hours on the other, unconvincing.

Although price and the affordability of alcohol are also regarded as core components of availability, and have been consistently shown to influence consumption levels both in New Zealand and internationally, the Laking committee regarded the matter of price and tax as "well beyond" its terms of reference. 11 Instead the committee concluded that the liquor laws should focus on fostering safe drinking environments and implementing a licensing system focused on the suitability and accountability of licensees.

In the resulting Sale of Liquor Act 1989, both the licensing system and the criteria for granting a licence were radically simplified. Most significantly, licence applicants were no longer required to satisfy the licensing authority that the establishment of a liquor outlet was "necessary or desirable", often described as the 'needs test'. 12

Provided an individual had no criminal convictions and their premises satisfied local government and resource management requirements, the granting of a licence became almost automatic. In their commentary on the Act, the authors of *Brooker's Sale of Liquor* noted:¹³

A succinct statement of the philosophy behind the Sale of Liquor Act 1989 may be to say that liquor licences will be easier to get, easier to lose, and that the legislation has only a limited role to play in controlling liquor abuse.

In keeping with the liberalising principles underpinning the Laking report, the 1989 Act also allowed supermarkets to sell wine and mead.

The 1989 Act's stated objective was to establish "a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the

reduction of liquor abuse so far as that can be achieved by legislative means". 14
However, the Laking committee had modest expectations of the law's ability to modify drinking behaviours – particularly as roughly 59 per cent of all liquor was estimated to be consumed away from licensed premises. 15
Changing drinking cultures was best tackled through public education rather than liquor laws in the committee's view. 16

Ten years on, after a further review chaired by Sir John Robertson,¹⁷ the lucrative retail beer market (although not spirits) was also opened up to supermarkets.¹⁸ The 1999 Act also lowered the minimum purchase age from 20 to 18, while imposing greater host responsibility obligations on licensed premises.

The Robertson review offered a largely optimistic assessment of the impact of liquor liberalisation in New Zealand, suggesting the reform of the licensing system in particular was responsible for promoting healthy and safe drinking environments and so contributing to a more mature and sophisticated drinking culture.



Vote for six as closing time. Alexander Turnbull Library, Wellington, N.Z.

CHAPTER 1 ENDNOTES

- 1 A witness gives evidence to the 1945 Royal Commission describing the scene in some Wellington bars: Proceedings of the Royal Commission on Licensing (1945) 1379-1380.
- 2 Leslie Hobbs The Wild West Coast (Whitcombe and Tombs, Christchurch, 1959) 37.
- **3** Paul Christoffel "Removing Temptation: New Zealand's Alcohol Restrictions, 1881-2005" (PhD Thesis, Victoria University of Wellington, 2006).
- 4 Christoffel, above n 3, 165.
- 5 Anthony Grigg "Prohibition and Women: The Preservation of an Ideal and a Myth" (1983) 17 New Zealand Journal of History 144, 148.
- **6** Christoffel, above n 3, 133-206.
- **7** Christoffel, above n 3, 133-206.
- 8 Christoffel, above n 3, 150.
- 9 Report of the Working Party on Liquor "The Sale of Liquor in New Zealand" (October 1986) 18 [Laking Report].
- 10 Laking Report, above n 9, 18.
- 11 Laking Report, above n 9, 45.
- **12** See Sale of Liquor Act 1962, ss 74-78.
- **13** Alan Dormer, Alastair Sherriff and John Crookston *Brooker's Sale of Liquor* (Brookers, Wellington, 1990) 1-2(b).
- **14** Sale of Liquor Act 1989, s 4.
- 15 Laking Report, above n 9, 36.
- 16 Laking Report, above n 9, 48.
- **17** Report of the Advisory Committee "Liquor Review" (1997) 9-12.
- 18 Sale of Liquor Amendment Act 1999.



IN ERA OF DIVERSITY AND COMPETITION

Our alcohol industry is a multi-billion dollar sector spanning a wide range of economic activities from growers, who produce the raw inputs (for example, hops, apples, grapes and whey); to the wineries, breweries, and distillers who manufacture the alcohol; right through to the liquor retailers and the thousands of cafes, restaurants, bars and clubs which make up the hospitality sector.

KEY FACT AT A GLANCE

In 2008, alcohol producers and importers made 486.4 million litres of alcoholic beverages available for consumption in New Zealand (i.e. excluding alcohol exports but including imports).

THE INDUSTRY TODAY

CHAPTER 2

INTRODUCTION

On one level history has vindicated the Laking Committee. Thanks to the Sale of Liquor Act 1989 and subsequent amendments, we now have a highly competitive industry offering consumers unprecedented choice and access to alcohol.

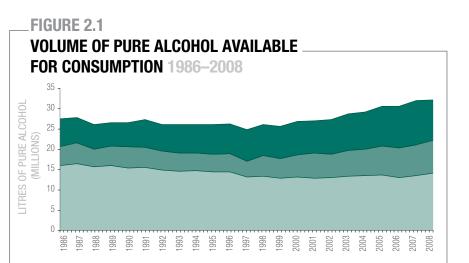
In the past two decades the number of liquor licences has more than doubled from 6,295 in 1990 to 14,183 in June 2009.¹ And while this proliferation is regarded as problematic by some, it is also a sign of the very diversification intended by the 1989 Act.

In place of the vast booze barns of the 1970s and 80s marooned in sprawling car parks, we now have a plethora of bars, cafes and restaurants. And alongside these, more than 4,000 off-licences, dominated by the two large supermarket chains, Australianowned Progressive Enterprises and the New Zealand cooperative, Foodstuffs, and encompassing a wide range of retail outlets ranging from boutique wine shops to cut-price warehouses.

And while the total amount of *pure* alcohol available for consumption has increased by 25 per cent since 1988², volumes remain significantly lower than in the late 1970s, prior to liberalisation.

Our per capita consumption of pure alcohol, while initially tracking down following deregulation, has increased nine per cent in the last 10 years.³

In 2008, alcohol producers and importers made 486.4 million litres of alcoholic beverages available for consumption in New Zealand (that is, excluding alcohol exports but including imports). This was the largest volume in 20 years.⁴ The amount of pure alcohol contained in these litres of alcoholic beverages was 32.1 million litres in 2008, amounting to 9.5 litres of pure alcohol per person (aged 15 years and over)⁵ – the highest volume since 1994.



Source: Statistics New Zealand.

THE SIZE AND VALUE OF THE INDUSTRY

Our alcohol industry is a multi-billion dollar sector spanning a wide range of economic activities from growers, who produce the raw inputs (for example, hops, apples, grapes and whey); to the wineries, breweries, and distillers who manufacture the alcohol; right through to the liquor retailers and the thousands of cafes, restaurants, bars and clubs which make up the hospitality sector. It is also a highly interconnected sector, with extensive linkages between companies in different beverage areas, across different industry sectors, as well as global connections.

New Zealanders spent an estimated \$4 to \$5 billion in 2008 on retail alcohol sales – roughly \$85 million per week. In 2008, retail sales from specialist liquor stores amounted to \$1.2 billion, with sales of wine and beer in supermarkets estimated at over \$1 billion. In addition, in the same year, alcohol sales in bars and clubs was estimated at nearly \$1 billion, cafes and restaurants \$1.3 billion, and \$0.3 billion in accommodation.⁶

This level of retail expenditure is much larger than survey data based on household expenditure, which estimates that New Zealand householders spent, on average, \$19 per week on alcoholic

beverages in 2006/07 (with approximately \$6.50 on beer and \$8.00 on wine).⁷ This is about the amount we spend on fruit and vegetables in a week and equates to roughly two per cent of households' weekly expenditure, with the proportion of income spent on alcohol increasing as household income rises.

WINE SPIRITS AND SPIRITS-BASED BEER

The size of this expenditure underlines the value many of us place on alcohol and the role it plays in our nation's cultural, sporting and social life. As this chapter will discuss, in the past two decades many New Zealanders have also adopted wine as an important complement to food and entertainment. The pleasure and sociability connected with drinking is clearly a major social benefit derived from alcohol.

The alcohol industry also employs a large number people, spread across manufacturing, hospitality and retail sectors. The hospitality sector is the biggest employer with an estimated 62,140 people (many part-time) employed in pubs, cafes and restaurants and 9,680 people employed in clubs in 2006.8 The fastest growing sector has been employment in the cafes and restaurants, growing by 19 per cent between 2001 and 2006, compared to growth in pubs, taverns and bars of 11 per cent and clubs of 16 per cent.9

Another 7,270 were employed in alcohol manufacturing in 2008 (an increase of nearly 50 per cent since 2000), mainly in the wine industry which has experienced a 72 per cent growth in employment since 2000. Overall, the numbers of fulltime staff in the wine industry (including grape growing) is estimated at 5,940 people.

The meteoric growth of New Zealand's wine industry, and the shift in our drinking preferences away from beer in favour of wine, is one of the defining features of the industry in the two decades since liberalisation.



Our alcohol industry has followed the trend internationally towards greater globalisation¹² with internationally recognised beer and spirit brands, increased vertical integration (companies owning or controlling the manufacturing, distribution and point-of-sale) and growing integration across products (for example, wineries being bought by distillers or breweries).

WINE

The meteoric growth of New Zealand's wine industry, and the shift in our drinking preferences away from beer in favour of wine, is one of the defining features of the industry in the two decades since liberalisation. Over this period the number of wineries grew from 250 to around 600 in 2008, with approximately 30,000 hectares in cultivation.¹³

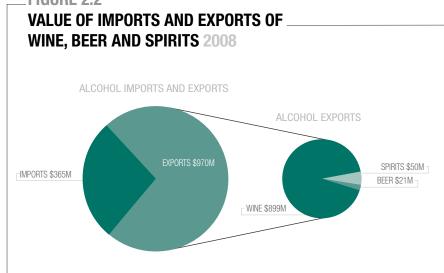
Wine exports have averaged 24 per cent growth per year for the past two decades and in 2008 were valued at \$900 million, accounting for 2.2 per cent of our total exports in 2008, ranking as New Zealand's 12th largest goods export item.¹⁴

A 2009 report, commissioned by the New Zealand Winegrowers, estimated the wine industry, with 613 wineries, now contributes \$1.5 billion to the country's gross domestic product.¹⁵

As figure 2.3 shows, the amount of wine available for consumption in New Zealand has nearly doubled since 1984 to 94 million litres of wine in 2008. Since 1989, our consumption of wine has increased from 25 to 37 bottles per capita (15 years plus).

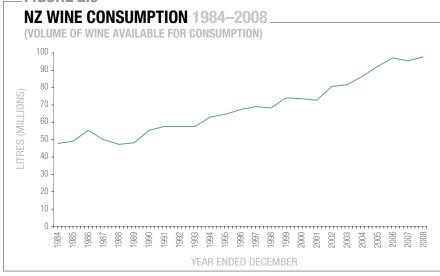
This growth in wine production is mirrored in our consumption habits with an estimated 79 per cent of drinkers reporting drinking wine at least once during the past 12 months according to the *Alcohol Use in New Zealand* survey. ¹⁶ The report found women between the ages of 18 and 65 years reported drinking wine more than any other drink

FIGURE 2.2



Source: Statistics New Zealand.

FIGURE 2.3



Source: Statistics New Zealand.

at least once a week and this was most pronounced for those aged over 25 years. The percentage of males drinking wine at least once a week also increases after the age of 25.

The wine industry is also gaining increasing importance in both domestic and international tourism. The New Zealand Institute of Economic Research estimated that 225,000 international wine tourists visited New Zealand in 2006, spending around \$907 million in New Zealand in 2006,¹⁷ staying in the country longer and spending more per night than 'average' tourists.

FACTS AT A GLANCE

New Zealanders spent an estimated \$4 to \$5 billion in 2008 on retail alcohol sales – roughly \$85 million per week.

In 2008 wine exports were valued at \$900 million, accounting for 2.2 per cent of our total exports in 2008, ranking New Zealand's 12th largest goods export item.¹⁴

FACT AT A GLANCE

Higher strength beer now accounts for 32 per cent of total beer consumed – up from 11 per cent in 1998.

BEER

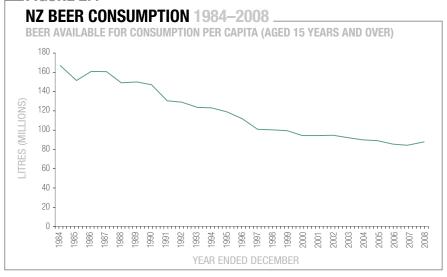
Beer is still our most popular alcoholic beverage in terms of total volume, but the amount of beer we drink has been decreasing over the past 20 years. Figure 2.4 illustrates that in this period the amount of beer available for consumption has fallen from 151 litres to 95 litres – a 37 per cent decline. Put another way, the amount of beer we drink has declined from around 38 dozen 330ml cans a year in 1989, to 24 dozen cans per capita (15 years plus) in 2008. The rate of decrease has slowed since the 1990s, and in the last 10 years beer consumption decreased by 11 per cent.

While the market for standard strength beer¹⁸ has been in decline, there has been a growth in the consumption of specialty and premium beers, often with higher levels of alcohol. Higher strength beer¹⁹ has grown significantly in the last 10 years – from 11 per cent of total beer consumed in 1998 to 32 per cent in 2008, (as illustrated in figure 2.5).

Beer brewing in New Zealand is dominated by two international companies: Lion Nathan and Dominion Breweries (DB).²⁰ The demand for premium or craft beers has also seen the emergence of 'micro-breweries' located across New Zealand in towns such as Nelson, Arrowtown, Levin and Kawerau, through to boutique producers in the major cities. There are estimated to be around 50 independent boutique breweries, with more than half founded since 2000.²¹

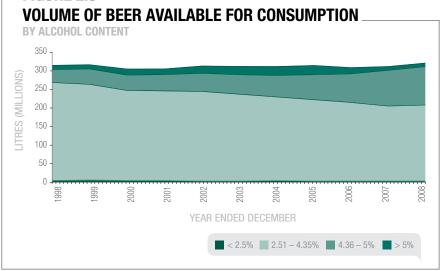
Low-alcohol beers²² have remained a very small segment of the New Zealand market, certainly much less than in countries such as the United States and Australia. Low-alcohol beer represents

FIGURE 2.4



Source: Statistics New Zealand.

FIGURE 2.5



Source: Statistics New Zealand.

about one per cent of the beer market, declining from 1.6 per cent of the beer available for consumption in 1998. Although Australia has also seen a decline in the consumption of low strength beer (classified as less than 3.0 per cent), it constitutes about 10 per cent of that country's beer market.²³

THE PLEASURE AND SOCIABILITY CONNECTED WITH DRINKING IS CLEARLY A MAJOR SOCIAL BENEFIT DERIVED FROM ALCOHOL.

Exports of beer have been growing slowly to \$21m in 2008 (up 16 per cent from 2000).

SPIRITS

The advent of light-spirits,²⁴ also known as pre-mixed or ready-to-drinks (RTDs) has been the other significant product development in the past decade and now represents one of the fastest growing segments of the Australasian alcohol industry.

While the volume of traditional spirits available for consumption annually has remained fairly stable at around 10 million litres annually, the volume of spirit-based drinks has trebled to 59 million litres in 2008²⁵ (see figure 2.6). Spirits and spirits-based drinks now represent 25 per cent of the amount of *pure alcohol* available for consumption in New Zealand.

RTDs have established a wide adult consumer market. They have also become especially popular with young people. The *Alcohol Use in New Zealand* survey found young females aged between 12 and 17 years reported drinking slightly more RTDs than any other drink. It appears from other alcohol use surveys that RTDs are increasingly popular among young people aged 12-24 years, ²⁶ particularly young women.²⁷

The Australasian RTD market is dominated by the privately-owned manufacturer and distributor Independent Liquor,²⁸ which is estimated to have about 60 per cent of the New Zealand and 30 per cent of the Australian RTD markets. It has production facilities on both sides of the Tasman and has some of the top-selling RTD brands. The other two main New Zealand industry players in the RTD market are Lion Nathan and Beam Global.²⁹

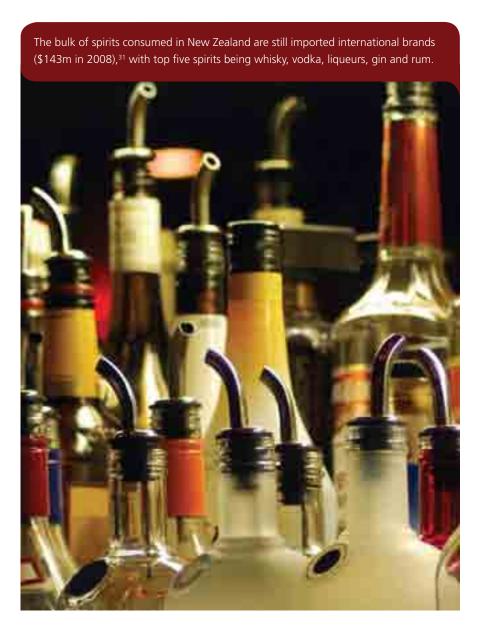
Exports of spirits have also increased in recent years with the development of brands such as 42 Below (vodka), with spirit exports valued at around \$50m in 2008 (up 21 per cent from 2000).³⁰ However, the bulk of spirits consumed

VOLUME OF SPIRIT-BASED DRINKS AND SPIRITS AVAILABLE FOR CONSUMPTION 1998–2008 ORDER 1.0 ORDER 1

SPIRIT-BASED DRINKS

SPIRITS

Source: Statistics New Zealand.



in New Zealand are still imported international brands (\$143m in 2008),³¹ with top five spirits being whisky, vodka, liqueurs, gin and rum.

THE ALCOHOL RETAIL SECTOR

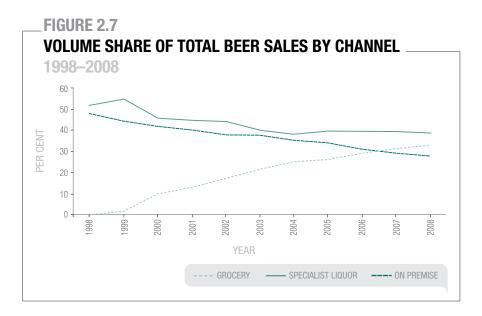
OFF-LICENCE

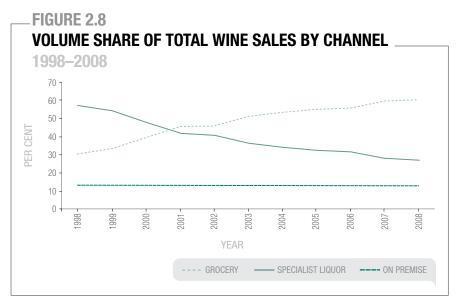
Since the Sale of Liquor Act 1989 relaxed the criteria for granting licences to sell alcohol, the number of retailers licensed to sell alcohol for consumption off-premise has increased from 1,675 to 4,199.³²

And while the growth in liquor licences per se and proliferation of suburban liquor stores in particular have been the focus of community concern in recent times, a large proportion of alcohol is actually sold by just half a dozen major retailers dominated by the two main supermarket chains.

The 1989 Act gave supermarkets the right to sell wine. Ten years later amending legislation extended this to beer.³³ Since that time, alcohol sales have become both an important revenue stream for the two supermarket chains and a lever in their battle for market share.

Although the total contribution that alcohol sales make to these companies' profits is not known, beer and wine sales in supermarkets are estimated to have been worth about \$1 billion in 2008.³⁴ As shown





Taken overall, alcohol has become more affordable since 1989, but there have been different impacts for different types of alcohol beverage. Wine's affordability has increased most markedly.

in figures 2.7 and 2.8, grocery stores and supermarkets are now a key channel for retail alcohol sales of beer and wine, with up to 30 per cent of off-premise beer sales now via grocery stores and supermarkets and 60 per cent of wine sales (by volume).³⁵

The purchasing power of the two primary supermarket chains and their growing market share has been identified by commentators as a key factor in the development of the highly competitive off-premise liquor retail market. The cheaper pricing of wine and beer products, in both supermarkets and discount liquor retailers, has lead to allegations of discount pricing and loss leading (that is, selling a product below cost) in alcohol to attract customers.

Advice provided to the Law Commission in the course of its preliminary inquiries is that alcohol sales and price promotions have been an effective tool in the contest for market share between the two supermarket chains. For example, the Commission understands weekend alcohol specials not only increase volumes of alcohol sold by the supermarkets but also increase *total* sales as they drive increased total foot traffic into the store.³⁶

The number of specialist liquor retailers has also grown, up 37 per cent since 2000 to nearly 650 retailers in 2008.³⁷
These retailers are generally part of a much larger chain operations, for example, Liquorland, The Mill, Super Liquor, Liquor King, Glengarry, or Liquor Centre. Some of these chains are operated by larger companies in the alcohol or grocery industry, for example, Liquor King is owned by Lion Nathan, while Liquorland, Henry's, Duffy & Finn's and Gilmours are owned by Foodstuffs.

Alongside these large liquor store chains and supermarkets are a plethora of small suburban liquor stores which rely either on specialist markets or on extended trading hours and the convenience of their location to attract business. In some instances these small outlets may collaborate to form a buyers' co-op (for example, Liquor Centre Group) or be supplied by a wholesaler who buys

One of the most visible signs of this growth can be seen in the expansion of what is often referred to as the 'night-time economy' in many of our main centres and tourist destinations.



BEFORE THE 1989 ACT, TRADING HOURS WERE MUCH MORE RESTRICTED THAN THEY ARE TODAY.

in bulk from the producers and then supplies to the independent retailers.

The Law Commission has been told that the level of price competition established by the supermarket chains and budget retailers like The Mill, means that in some instances even large franchise retailers will source some heavily discounted stock directly from supermarkets rather than their established wholesale suppliers.³⁸

ON-LICENCE

Since the Sale of Liquor Act 1989 was passed the number of establishments with licences to sell liquor for consumption on their premises has more than trebled from 2,423 to 7,574. Since 2000 there has been a 26 per cent growth in the number of pubs,

taverns and bars, and a 37 per cent increase in cafes and restaurants. Over the same period there was a five per cent decline in the number of clubs (hospitality).³⁹

One of the most visible signs of this growth can be seen in the expansion of what is often referred to as the 'night-time economy' in many of our main centres and tourist destinations such as Queenstown. Before the 1989 Act, trading hours were much more restricted then they are today. The new Act opened the way for extended trading with many inner city bars and clubs now catering for customers well into the early morning.

An analysis of the trading hours stipulated in liquor licences issued by

the Liquor Licensing Authority shows that of the 7,574 on-licences in force in July 2009, 590 currently permit the sale of liquor "at any time on any day", and a further 2,095 permit the sale of liquor after 2 am. 40

The impact of deregulation

As this chapter has illustrated, the 1989 Act succeeded in providing the legal framework for a far more competitive and diverse alcohol industry. But has deregulation also made alcohol more affordable?

'Affordability' is a measure which takes into account both the income of the consumer and the relative impact of price rises on the various demands on that

income. For instance, if the price of alcohol rises at the same rate as income, alcohol may still become more affordable if the price of other goods have risen at a lower rate, leaving more disposable income. Conversely it will be less affordable if other prices have risen more quickly. Other combinations of movement in prices and income theoretically increase or decrease affordability.

Taken overall, alcohol has become more affordable since 1989, but there have been different impacts for different types of alcohol beverage.

Over the last 20 years our average weekly earnings rose by 82 per cent, while the price of alcohol rose by 76 per cent.⁴¹

Over the same period, general prices (measured by the 'all goods' component of the Consumer Price Index) rose only by 65 per cent. Consumers benefitted by the increase in income exceeding alcohol and general price rises and the smaller increase in general prices left more discretionary income that could be spent on alcohol if the consumer desired it.

However, there have been some substantial variations in the affordability of different alcoholic beverages in that period. The first is that the affordability of wine increased much more markedly.⁴² By comparison, the affordability of beer actually declined through the 1990s.⁴³ But in the relatively good economic times since 1999, beer became more affordable (although still less affordable than it was in 1989). Spirits likewise declined in the 1990s, but are now more affordable than in 1989.

There has also been a substantial variation in the changes in the price of alcohol for consumption at on-licensed premises compared to alcohol sold for consumption elsewhere since 1999. By the end of 2008, the prices for alcohol consumed at on-licence premises had increased by 47 per cent, whereas the price for alcohol consumed from off-licence premises had only increased by 20 per cent.⁴⁴

These differences point to the likelihood that some parts of the beer, wine and spirits markets may have experienced very different price changes. For instance, some types of beer bought for consumption at off-licensed premises may be more affordable than it was twenty years ago, with beer bought for consumption at on-licensed premises being less affordable.

The price of alcohol has always been more costly in a bar or restaurant than at an off-licence premise because of the higher overheads and additional services provided (staff, entertainment, location, food, capital costs and leases). More recently, increased labour costs and higher property rentals may all have contributed to the increased differential.

OVERALL ALCOHOL HAS BECOME MORE AFFORDABLE SINCE 1989, BUT THERE HAVE BEEN DIFFERENT IMPACTS FOR DIFFERENT TYPES OF ALCOHOL BEVERAGE.

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Another explanation for the widening gap in prices between on and off-licence premises is the large price discounts supermarkets and liquor retailing chains can achieve because of their larger customer base and rate of product turnover. In contrast to the corporate dominated off-licence sector, the on-licence sector is made up of smaller, independent owner operators (although often with alliance arrangements with key producers). The smaller scale operations in on-licensed premises naturally limits the extent to which operators can negotiate volume-based discounts

At the time of the Laking Committee it was estimated that 59 per cent of alcohol was consumed away from licensed premises. 45 The most recent Alcohol Advisory Council Alcohol Monitor puts this figure at 68 per cent. 46 As we will discuss later in this report, this trend towards consumption away from controlled environments has implications for strategies aimed at reducing alcohol-related harm.

FACTS AT A GLANCE

Over the last 20 years our average weekly earnings rose by 82 per cent, while the price of alcohol rose by 76 per cent.

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New Zealand's wine industry has grown rapidly over the past two decades and was estimated to contribute \$1.5 billion to the country's gross domestic product in 2008.



SUMMARY CHAPTER 2 THE INDUSTRY TODAY

The alcohol industry is a multi-billion dollar sector comprising growers, manufacturers, distributors, retailers and the hospitality/service sector.

In 2008, importers and manufacturers made 9.5 litres of pure alcohol available for consumption for every person aged 15 years and over – the highest volume since 1994. Per capita consumption of pure alcohol has increased 9 per cent in the last 10 years.

New Zealand's wine industry has grown rapidly over the past two decades and was estimated to contribute \$1.5 billion to the country's gross domestic product in 2008. In the same year wine exports were valued at \$900 million, accounting for 2.2 per cent of our total exports last year and ranked as New Zealand's 12th largest goods export item.

Since deregulation under the 1989 Act, the industry has become more diverse and competitive with the number of liquor licences more than doubling from 6,295 in 1990 to 14,183 in June 2009.

New Zealanders spend an estimated \$85 million a week on alcoholic beverages or \$4-\$5 billion annually.

New Zealanders' preferences have changed: we now drink significantly less beer, although beer remains our drink of choice. Consumption of premium and higher strength beers have increased. Our wine consumption has increased significantly as has the consumption of spirit-based drinks (RTDs) which now comprise one of the fastest product growth sectors in Australasia.

Since gaining the right to sell wine (1989) and beer (1999) supermarkets have become a major force in the alcohol retail trade. Alcohol sales in supermarkets are estimated to be worth over \$1 billion a year.

Supermarkets and grocery stores now account for approximately 60 per cent of all retail wine sales (by volume) and 30 per cent of beer sales (by volume).

Overall, alcohol has become more affordable since 1989. Of all beverage types, wine has seen the greatest improvement in affordability.

Alcohol purchased from off-licences is relatively more affordable than alcohol purchased from on-licences.

CHAPTER 2 ENDNOTES

- 1 Information provided to the Law Commission by the Liquor Licensing Authority (18 June 2009): These numbers include some disused licences. These are made up of 7,574 licences to sell liquor for consumption on-premise (up from 2,423 in 1990), 4,199 licences to sell liquor for consumption off-premise (up from 1,675 in 1990), and 2,410 club licences (up from 2,197 in 1990). These numbers include some disused licences.
- 2 Statistics New Zealand Infoshare; (Table ref. ALCO16AA) Alcohol Available for Consumption (year ended December).
- **3** Statistics New Zealand *Infoshare;* Alcohol Available for Consumption (year ended December).
- 4 Statistics New Zealand Infoshare; (Table ref. ALCO11AA) Alcohol Available for Consumption (year ended December).
- 5 Statistics New Zealand Alcohol and Tobacco Available for Consumption (Year Ended December 2008).
- 6 Statistics New Zealand Retail Trade Survey December 2008 Quarter.
 These figures are exclusive of GST and cover 2008. They include \$1.2 billion for specialist liquor retailers, \$1.3 billion for bars/clubs, \$3.9 billion for cafes and restaurants, and \$2.6 billion accommodation. The proportion of retail sales that were alcohol beverages were estimated based on advice from the industry.
- 7 Statistics New Zealand Household Economic Survey: Year Ended 30 June 2007. For some types of expenditure (including alcohol), the estimated amount for all private households is less than that reported from other data sources. Reasons for this include: (1) expenditure by overseas visitors is excluded; (2) survey respondents forget or omit some types of purchases (alcohol is susceptible to under-reporting); and (3) there is a bias associated with non-response that affects some statistics.
- 8 A Whiteford and M Nolan An Employment Profile of the Hospitality Industry: A Report to the Hospitality Standards Institute (Infometrics Ltd, Wellington, 2007) Table 1,7.
- 9 A Whiteford and M Nolan, above n 8, 8.
- **10** Statistics New Zealand *Business*Demography Tables Enterprise and

 Employee Counts by Industry (ANZSIC

- 96) Products and Services Table Builder (available at http://www.stats.govt.nz/default.htm).
- 11 New Zealand Institute of Economic Research Economic Impact of the New Zealand Wine Industry: An NZIER Report to the New Zealand Winegrowers (Wellington, 2009) [Winegrowers report]. Employment calculations from 2006 Census with 'direct employment impact' (fulltime equivalents) estimated at 5,940.
- 12 The global alcohol industry is dominated by a few very large companies. The 10 largest beer companies (by volume) account for an estimated 66 per cent of the global market share in 2006, and the 10 largest distillers account for nearly 60 per cent of the international market. The 26 largest companies had a net turnover of USD\$155 billion in 2005, with beer companies dominating: D H Jernigan The Global Alcohol Industry:

 An Overview (2009) 104 Addiction 6-12.
- 13 Winegrowers report, above n 11, 8.
- 14 Winegrowers report, above n 11, 8.
- **15** Winegrowers report, above n 11, 7.
- 16 Ministry of Health Alcohol Use in
 New Zealand: Analysis of the 2004
 New Zealand Health Behaviours Survey
 Alcohol Use (Public Health Intelligence
 Occasional Bulletin 40, Wellington, 2007),
 13 [Alcohol Use in New Zealand].
 This report provides information on
 alcohol consumption and drinking
 patterns, as well as problems relating to
 one's own or someone else's drinking.
 The report also presents results about
 youth drinking, and supply of alcohol to
 youth. Differences in alcohol use between
 males and females, Māori and non-Māori
 and across age groups are reported.
- 17 Winegrowers report, above n 11, 10.
- **18** 'Standard strength beer' in New Zealand is classified as 2.5-4.35 per cent alcohol content by volume.
- **19** 'Higher strength beer' is classified here as 4.36-5.0 per cent alcohol, as well as those beers that are over 5.0 per cent alcohol.
- **20** Lion Nathan, which has been listed on the Australian stock exchange since 2000, is owned by the Japanese beer producer Kirin (which currently owns 46 per cent but is awaiting shareholder approval for full ownership later in 2009). Lion's major

- competitor, DB, has been privately owned since 2004 by Asia-Pacific Breweries (jointly controlled by Heineken and Fraser and Neave of Singapore) who bought a majority shareholding in DB Group in 1993.
- **21** Rob Stock "Local Brew" (26 April 2009) Sunday Star Times, Auckland.
- **22** Less than 2.5 per cent alcohol content by volume.
- 23 Australian Bureau of Statistics Apparent Consumption of Alcohol Australia 2007-08, table 2 (available at http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4307.0.55.001).
- **24** Those with less than 23 per cent alcohol content.
- 25 Statistics New Zealand, above n 2.
- **26** Alcohol Use in New Zealand, above n 16, 14.
- **27** Alcohol Use in New Zealand, above n 16, 53.
- 28 Founded in Auckland in 1987, Independent Liquor was jointly acquired for \$1.25 billion in 2007 by Pacific Equity Partners (PEP) and Hong Kong-based Unitas Capital (formerly CCMP Capital Asia, rebranded January 2009).
- 29 Formerly Maxximum, a global alliance arrangement for distribution and sales of leading spirit brands, was launched in 1999. The alliance included The Edrington Group, Beam Global Spirits & Wine and Rémy Cointreau (exited 2006), and joined in 2001 by Vin & Spirit Group (exited 2007 following Pernod Ricard's purchase). On 1 April 2009 the Beam-Edrington joint venture arrangement was launched and continues to operate in 24 international markets. In New Zealand, Beam Global (NZ) Ltd is the representative.
- **30** Statistics New Zealand *Overseas Trade Exports and Imports* (available at http://www.stats.govt.nz/default.htm).
- 31 Statistics New Zealand, above n 30.
- **32** Liquor Licensing Authority, licence numbers (as at June 2009).
- **33** Sale of Liquor Amendment Act 1999, s37(3)(f).
- **34** Information provided to the Law Commission by industry sources.

- **35** Information provided to the Law Commission by industry sources, based on *Nielsen* data and market knowledge.
- **36** Information provided to the Law Commission by industry sources.
- **37** Statistics New Zealand, above n 10.
- **38** Information provided to the Law Commission by industry sources.
- **39** Statistics New Zealand, above n 10.
- **40** Analysis provided to the Law Commission by the Liquor Licensing Authority (8 July 2009). These figures exclude licences granted to boats, trains and aircraft.
- **41** 'Affordability' analysis is based on Statistics New Zealand Infoshare data of the CPI for all alcoholic beverages, the CPI for all goods, and average weekly earnings.
- **42** The price of wine only increased by 42 per cent, compared to a 76 per cent rise in total alcohol prices: Statistics New Zealand CPI data (available at http://www.stats.govt.nz/default.htm).
- **43** During the 1990s, beer prices rose by 38 per cent compared to a 26 per cent increase in income and a 28 per cent rise in all other goods (Statistics New Zealand CPI data and average weekly earnings).
- **44** Statistics New Zealand Infoshare data, CPI alcohol consumed off licensed premises and on licensed premises. The CPI time series for these two categories began in 1999.
- **45** Report of the Working Party on Liquor "The Sale of Liquor in New Zealand" (October 1986) 36.
- **46** S Palmer, K Fryer and E Kalafatelis *ALAC Alcohol Monitor Adults & Youth: 2007-08 Drinking Behaviours Report* (Alcohol Advisory Council of New Zealand, Wellington, 2009) Wellington, 13.



A LOOK AT WHAT'S CHANGED – AND WHAT'S STAYED THE SAME

"I loved the idea of cracking the top off a small, cold, green glass bottle. Chk-hiss. Beer is just lovely when you're thirsty and you've been working hard. It's not bad even when you haven't."

"Yes, drink turns me into a repetitive, sentimental, indiscreet, over-confident, lecherous bore. But that's only what other people and my conscience tell me the next day. At the time I'm amazing."

KEY FACT AT A GLANCE

About a quarter of New Zealand's drinking population still drinks heavily when they drink.

HOW WE ARE DRINKING

CHAPTER 3

INTRODUCTION

Our law reformers hoped that one of the outcomes of liberalising the liquor market might be to remove the lingering taboo associated with alcohol and migrate to a more European or 'wet' drinking culture characterised by more moderate drinking centred on wine and food.

As the preceding chapter on the industry shows, many of us have happily embraced the new restaurant and café culture associated with our burgeoning wine industry, and added wine to the weekly supermarket shop, benefiting from the changes ushered in by the 1989 Act.

But this has not necessarily displaced our traditional heavy drinking culture. Instead, as we will see, the evidence suggests about a quarter of the drinking population still drinks heavily when we drink.¹

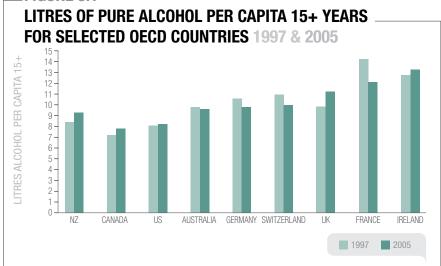
As we will discuss in the next chapter, the prevalence of heavy drinking is a problem not in some moral sense, but rather because of the risks it poses and harm it causes to both the individual drinker and to society as a whole.

This chapter drills down into the global 'alcohol available for consumption' figures cited earlier, explaining *how* this alcohol is being consumed, by whom, and what changes have been seen in consumption patterns.

THE WAY WE DRINK

Figure 3.1 compares New Zealand's alcohol consumption rates in 1997 and 2005 to a broader set of OECD countries. It shows that New Zealand's per capita consumption rates are significantly lower than the European countries but are higher than the US and Canada. It also shows a slight increase in consumption levels for New Zealand, Canada, UK, Ireland and the United States for the years 1997 and 2005, compared to a relatively sharp downward movement between these two years for France, Switzerland and Germany.

FIGURE 3.1



Source: Alcohol Advisory Council of New Zealand, using Organisation for Economic Co-operation and Development (OECD) data.

Over 80 per cent of the adult population of 2.98 million drink at least occasionally.² The latest figures show that in 2008 there were 9.5 litres of pure alcohol available for consumption for every New Zealander over 15 years of age, the highest volume since 1994.³

However, the total amount of alcohol available for consumption in any given year provides only one broad indicator of drinking trends in a country. It tells us nothing about how we drink, and as this paper will explain, how we drink is a key determinant of how much alcohol-related harm we experience as individuals and as a nation.

From a harm perspective, there are two important dimensions to how we drink: the *quantity* we usually consume when we drink and the *frequency* with which, on average, we drink over our lifetime. Putting the two together describes the volume of alcohol consumed.

How *much* alcohol we consume when we drink determines the risk of causing or suffering an immediate harm, such as an accident or injury. How often we drink and how much (the volume consumed) determines the cumulative effects of alcohol on our bodies over a lifetime and, therefore, the risk of suffering longer-term harms such as alcohol-related cancers or alcohol use disorders.

In the next chapter we will discuss how alcohol affects the brain and organs, and why quantity and frequency matter, but first we will summarise what we know about our national drinking habits.

In New Zealand we obtain information about our drinking habits from a range of national and regional surveys funded variously by the Ministry of Health, the Alcohol Advisory Council of New Zealand (ALAC) and the Health Research Council.

Invariably, because of the different objectives and methods used in different surveys there is some inconsistency in both the measures used to quantify how much we drink and the adjectives applied to those who drink at those volumes. For example, many of us associate the term 'binge drinking' with those drinkers who consume very large quantities of

Women's alcohol consumption has been increasing over time across all ages but particularly among young women.



FACTS AT A GLANCE

Over 80 per cent of the adult population of 2.98 million drink at least occasionally.²

Younger people tend to drink at higher volumes but with less frequency, while older drinkers tend to drink at lower volumes but with greater frequency.¹⁵

Women still drink with less frequency than men with 37 per cent (34.3-38.3) of female drinkers drinking less than once a week compared with 24 per cent (22.2-26.2) of male drinkers.²²

alcohol in a relatively short space of time, often with the intention of becoming intoxicated. However according to ALAC a quarter of adult drinkers in New Zealand can be categorised as 'binge drinkers'.4

ALAC defines binge drinking as a session in which a person consumes seven or more standard drinks.⁵ One of the reasons ALAC's definitions catches so many drinkers lies in the difference between a 'standard drink' and what most consumers count as a drink.

One standard drink contains 10 grams of pure alcohol. Because drinks have different amounts of alcohol in them, the number of standard drinks in each bottle, can or cask will be different. A 330ml can of beer at 4 per cent alcohol contains one standard drink so anyone who consumes seven cans in a sitting meets ALAC's criteria for a 'binge drinker'. A 750 ml bottle of red wine at 14 per cent alcohol contains 8.3 standard drinks so anvone who consumes a bottle of wine in the course of an evening is a binge drinker. Similarly, a person who consumed four 335ml bottles of pre-mixed spirits at 8 per cent alcohol (2.1 standard drinks) would be classified as a binge drinker.6

ALAC's latest Alcohol Monitor estimated that 86 per cent of the adult population of 2.98 million drink at least occasionally, and of these a quarter can be categorised as 'binge drinkers' because they reported drinking seven or more standard drinks on the last occasion on which they drank, or on any occasion in the last two weeks.

Massey University's Centre for Social and Health Outcomes Research and Evaluation (SHORE), directed by internationally renowned alcohol policy researcher Professor Sally Casswell, has played a major role in the collection and analysis of robust drinking data over several decades. Because of its significance as an indicator of harmful drinking, SHORE researchers have been monitoring the proportion of the total alcohol consumed in New Zealand that is drunk in heavier drinking sessions since 1995. A "heavy drinking session" was defined as one in which a woman

ALAC DEFINES BINGE DRINKING AS A SESSION IN WHICH A PERSON CONSUMES SEVEN OR MORE STANDARD DRINKS.

reported consuming six or more drinks and a man eight or more drinks.⁷

Rather than using the official measure of a standard drink which is not well understood by consumers, SHORE researchers used survey participants' own definition of a drink, namely a decent glass of wine, a can of beer, or a premixed drink.⁸

Using this more generous measure, together with data collected by SHORE in the 2004 *Alcohol Use in New Zealand* survey, SHORE researchers calculated that

44 per cent of all alcohol available for consumption in this country was consumed in "heavier drinking occasions".⁹

ALAC is also interested in the attitudes and behaviours which we have towards drinking. ¹⁰ Using the results of an earlier 2004 survey, *The Way We Drink* ¹¹ and 2001 census data, ALAC estimated that about 785,000 drinkers over 18 years of age (29 per cent of adult drinkers) could be categorised as "uninhibited binge drinkers", ¹² meaning they usually drank Continued on page 34



Source: Alcohol Advisory Council of New Zealand.

THE STUDENT

The following are extracts from the Orientation Week diary of a 22 year-old Otago University student in his second year of study. The student describes his drinking habits as fairly typical of his peer group but points out the drinking tempo drops — in frequency if not in quantity—as the academic year gets underway and the margin for blinding hangovers reduces.

Tuesday 24 Feb 2009

Worked as a barman at our local tonight. Finish up around 9pm and we head to Countdown (open 24 hours) and pick up a bottle of wine (\$6.99) for the girl who is with us and a cask of medium white wine for me. My choice is based on the cheapest variety with the highest alcohol content. \$16.99 for 30 standard drinks. Im generally not a wine fan and so buy a 4-pack of Lift Plus to sweeten the taste and get a bit of an energy boost to get in the mood.

We head to a friends flat for a catch-up and from there into town, around //pm. I am eager to make up for lost time having been at work, so scull my first few glasses to get buzzing. I estimate I would have consumed about 7 standard drinks within about 45 minutes...with every new drink, now including gin and Black Sambuca shots, I try to encourage everyone around me to drink with me and go to the next bar for a dance. My recollection from about 12.15 until bed is a little fuzzy. According to my friends and my bank statement I was home in bed around 2am. I had made several purchases which I have no recollection of at all, totalling \$75.00.

Wed 25 Feb

Wake the next morning still drunk. When the effects have worn off an hour or so later I feel horrible, thinking Kill me now. My heads sweet but my gut is achy and I cant imagine eating anything. At 5 pm I have to be back at work and it takes all this time to feel ok again. I am in contact with my friends who are at a buddys flat up the road from my own. Everyone is there, including my girlfriend, and Im eager to join them. When I finish work I head home to get changed, pick up whats left of my cask from the night before, and more Lift Plus to mix. Upon arrival at my mates flat I am greeted with a beer bong to get me started - 2 beers in a funnel downed in a matter of seconds (2 standards in 2 seconds). Its a guick fire and relatively painless way to get the ball rolling. Before heading out, I estimate I consumed about 10 - 15 standard drinks from the remainder of my cask. From the flat we head into xxx Bar, known for its ridiculously cheap alcohol, some nights as low as \$3\$ for anything. We begin ordering rounds of shots, while the others hit the dance floor. Must have consumed at least 5 - 6 shots within an hour, plus 2 Redbull and vodkas. Again, my memory is completely blank from this point on. But I was told the next morning we headed up the road to the xxxx for a more upmarket cocktail lounge, only to find it closed. After a routine trip to the 24-hour dairy for greasy drunk food its home to bed, around 3am.





Today I feel like absolute death. I do not have the luxury of waking up drunk; instead I have a serious case of the dries. But being 0-Week and the fact I dont have to work tonight, I decide to have the boys around for an all day drinking session. It is a beautiful day so we sit outside and play drinking games. Cask and energy drink has served me well in the week until now and so I continue with the same poison (a cask is a very popular choice with students, more bang for your buck). By 3pm Ive finished a little under two thirds of my cask (I gave away around 4 drinks) and decide for a change so head to the liguor store up the road for a top up. I have a bottle of Canadian Club at the flat and so buy a bottle of L and Pto mix and a further box of 12 x bourbon KTDs in case I need more for later (\$21.99 for 12 x 8%, this is considered guite expensive but being 0-Week ${\cal I}$ dont mind splashing out). We continue drinking steadily for the next few hours (estimate I consumed around 20 standard drinks over the course of the day). My memory begins to blackout in patches but I remember having an almightily spew in the garden of a flat along the way to a mates place. Everyone has a good laugh at me, but I assure everyone it is only a tactical spew so that I can continue drinking and last the night. I am not worried

about having been sick; this is nothing out of the ordinary at all. No one cleans it up and everyone forgets about it within about 20 metres. This is the last thing I remember of this night,

but again am told I was home by midnight.

FRIDAY



Extremely hung-over today, 3 days catching up on me, my gut is not processing the alcohol from the day before at all well. Lay in bed most of the day feeling very sorry for myself. I then head to a friend of a friends flat around 7pm to watch the cricket, but by 10pm Im still not feeling well and so head home back to bed. I had approximately 4 beers over the 3 hours but was not feeling it at all.

Saturday 28 Feb



Crate day! My former flatmate hosts a favourite event of our drinking calendars, a self-proclaimed crate day. Everyone shows up at the designated flat at a particular time with their own swappa crate (12 x 745 mls for \$25.00, this is approximately 28 standard drinks). Although there is a poor turnout, only 5 of us, we decide to sit outside and begin the day. We spot some couches left out on a nearby flats front lawn so we go right ahead and borrow these for the day. We all crack open the first bottle at the same time, 11.30am. The first few bottles are a huge struggle but by a bout the 6th or 7th everyone is getting a little rowdy and somewhat competitive.

There is one other guy winning by one bottle so I decide to catch up using the beer bong, and down my final 3 bottles in about an hour, taking out the victory. No prizes for winning, only the respect and honour from everyone in attendance (haha). As soon as I have downed my last bottle I pretty much say goodbye and head for the door. This is because I didnt want the others to see me spew; I get about 3 houses down before what felt like 3L of beer came flying back up. I remember having a little laugh with a random guy across the road that saw the whole thing, I told him about my win and he just laughed and congratulated me. I then headed home to inform the flatties and girlfriend, all of whom were already drinking. My memory is again a little patchy, however I do remember heading to the xxxx for some more cheap drinks. ttowever according to my bank balance I didnt actually purchase anything, this was my last memory of the night.



Sunday 29th Feb, Day

Wake up in bed with the girlfriend a little mad because I was meant to meet her in town but apparently never made it. Feeling like absolute death again, both my head and guts have had enough of me. I spend the entire day indoors, moving as little as possible.

Continued from page 31

seven or more standard drinks in a sitting, drank regularly (often daily) mainly to unwind, and for the 'buzz' and enjoyment. Another 23 per cent of drinkers were defined as "constrained binge drinkers", that is they drank seven or more standard drinks at least once a week but restrict the number of sessions because of work or family commitments.¹³

On the other hand, the Alcohol Use in New Zealand survey defines someone who drinks large amounts of alcohol as a man who drinks more than six standard drinks or a woman who drinks more than four standard drinks on a typical drinking occasion.¹⁴

By this measure the *Alcohol Use in New Zealand* survey found:

- 25 per cent (23.6–25.8) of New Zealand drinkers aged 12 to 65 years consumed large amounts of alcohol on a typical drinking occasion.
- as did 54 per cent (50.3–57.9) of 18 to 24 year-old drinkers.

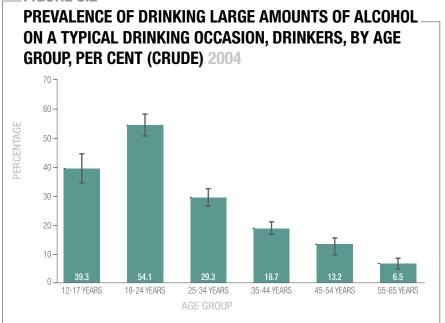
Despite the differences in measures, these surveys consistently show that about half the drinkers under 25 years of age drink large quantities when they drink, as do about 25 per cent of all adult drinkers.

The Alcohol Use in New Zealand survey allows us to drill down to more detailed information about how gender, ethnicity and age influence how we drink. Not surprisingly, younger people tend to drink at higher volumes but with less frequency, while older drinkers tend to drink at lower volumes but with greater frequency. These different patterns of drinking play an important part in determining the different types of alcohol-related harm experienced by younger and older drinkers. The following provides a brief overview of our drinking patterns based on the 2004 survey results.

AGE

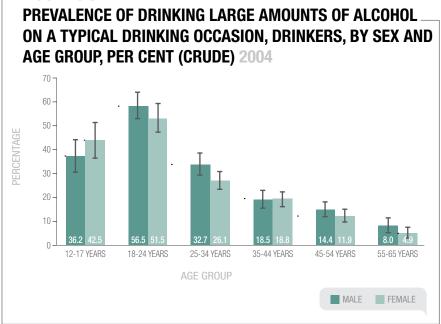
Figure 3.2, taken from the *Alcohol Use* in *New Zealand* survey illustrates the relationship between heavy drinking and age.

FIGURE 3.2



Source: Ministry of Health Alcohol Use in New Zealand survey. 19

FIGURE 3.3



Source: Ministry of Health Alcohol Use in New Zealand survey.²⁰

JUST OVER A THIRD OF MALE DRINKERS AGED 18 TO 24 REPORTED DRINKING ENOUGH TO GET DRUNK AT LEAST ONCE A WEEK.²⁰

The figure shows the proportion of drinkers who consumed large amounts of alcohol on a typical drinking occasion decreases with age but a significant proportion of older drinkers were still drinking large volumes.

Young adults aged 18 to 24 are twice as likely as the general drinking population to drink large amounts of alcohol at least once a week: 34 per cent compared with 15 per cent of all adult drinkers. 16

The *frequency* of drinking also varies with age: 56 per cent (51.8–59.7) of 12 to 17 year-olds reported that they had consumed alcohol in the last 12 months but over half (59 per cent; 54.1 – 63.3) drank less than once a week, while almost one-third (31 per cent; 26.3–35.1) consumed alcohol one to three times a week.¹⁷ At the other end of the spectrum over 80 per cent of 55 to 65 year-olds reported drinking in the last 12 months. They had the highest frequency of drinking with

26 per cent (22.1–29.6) drinking seven or more times a week compared with around 14 per cent of 18 to 44 year-olds who drank at that frequency.¹⁸

GENDER

Men are more likely to be drinkers than women (82.5 per cent; 80.9 - 84.0 compared to 78.4 per cent; 76.8 - 80.0) and to drink greater volumes when they drink: 20 per cent (18.1 - 21.4) of all male drinkers reported drinking large volumes at least once a week compared with 11 per cent (9.7 - 12.5) of women drinkers.¹⁹

Men are also much more likely than women to report drinking enough to feel drunk at least once a week. The survey shows just over a third of male drinkers aged 18 to 24 and 17 per cent of male drinkers between the ages of 25 to 34 reported drinking enough to feel drunk at least once a week. This compared with

16 per cent of females aged 18 to 24 and seven per cent of females aged 25 to 34.²⁰

Women's drinking habits are also changing. While not drinking as often as men, when they do drink women are drinking quantities that more closely mirror men's. This is illustrated by figure 3.3 showing heavier drinking by sex and age.²¹ In this figure large amounts are defined differently for men (6 drinks) and women (4 drinks) to take into account gender differences in the way alcohol affects the body.

Women still drink with less frequency than men with 37 per cent (34.3 - 38.3) of female drinkers drinking less than once a week compared with 24 per cent (22.2 - 26.2) of male drinkers.²²

ETHNICITY

Māori are significantly less likely to be drinkers than non-Māori (in 2004 only 74.2 per cent (72.8-75.7) of Māori had consumed alcohol in the last month compared to 81.3 per cent (80.0-82.6) of non-Māori). Those Māori who do drink also drink less often than non-Māori, with 40 per cent (38.2-42.1) of Māori drinkers drinking less often than once a week compared with just 29 per cent (27.5-30.5) of non-Māori.

But Māori are significantly more likely to drink large volumes when they do drink (50 per cent (48.1 – 52.4) compared to 23 per cent (22.0 – 24.6) of non-Māori). Results of the *Alcohol Use in New Zealand* survey also showed that there were no significant differences between Māori males and females in the proportions drinking large amounts on a typical drinking occasion.²³ This general trend is consistent with the results of a 2003 nationwide survey commissioned by ALAC.²⁴

As with the adult population, Māori aged 12 to 17 years were less likely than non-Māori (excluding Pacific youth) to be regular drinkers, but more likely to drink large amounts than other New Zealand youth when they do drink.²⁵ Pacific youth aged 12 to 17 years are more likely than any other youth to be non-drinkers but the majority of those who do drink, drink to harmful levels.²⁶

Continued on page 38

ALAC estimated that about 785,000 drinkers over 18 years of age (29 per cent of adult drinkers) could be categorised as "uninhibited binge drinkers", meaning they usually drank seven or more standard drinks in a sitting, drank regularly (often daily) mainly to unwind, and for the 'buzz' and enjoyment.



THE PROFESSIONAL

When he took a nine-month break from alcohol, Wellington lawyer Ben Fairweather* found himself swimming against the tide.

We used to have Friday drinks at work, at around five pm. Wine o'clock. Beer o'clock. It was intended to inculcate a spirit of comradeship I suppose – a cheap way for management to buy a little loyalty and enthusiasm. It worked fairly well.

I never much enjoyed it as a social occasion; the conversation was too often monopolized by the office bores who'd become even more detailed in their dissections of tort law. But I still loved the sight of the bottles lined up on the meeting-room table. I loved the idea of cracking the top off a small, cold, green glass bottle. Chk-hiss. Beer is just lovely when you're thirsty and you've been working hard. It's

Expectation is half the pleasure. The 5 pm clink of the drink delivery is like rain on a tin roof; the gurgle of merlot is like waves on a shore. The Pavlovian responses stayed with me for the full nine months that I stopped drinking. It didn't matter that I didn't plan to join not bad even when you haven't. in. The sounds alone announced day's end and the promise of pleasure.

There had to be a reason. In any given week there was always someone taking a break. One was off the sauce until he could see his What I said when people noticed I wasn't drinking feet again; another was detoxing, and there was always someone trying for a baby (including men, ever since scientists told us what

That British newspaper article about women in their late thirties suddenly suffering total liver failure after decades of apparently booze does to sperm vigour). harmless heavy drinking caused a ripple. But often enough it was just a week off the piss after a week excessively on the piss.

So all I had to do was be a bit vague.

"I'm, um, doing a thing," I'd say. "Till May next year."

"Um, just to see if I can ..." I'd say, which is only a half-lie, and sufficiently dull that they'd already be tuning out. An incredulous look. Really? Why?

The truth? My wife is an alcoholic 'in recovery', which means she's an alcoholic who has decided she will never drink again. It's been Why I really stopped drinking

That doesn't mean I can't drink. Even her addiction counsellors agree I shouldn't deprive myself of one of life's basic pleasures, just over a couple of years now.

But last year I joined her on the wagon, starting soon after her return home from months in residential rehab, which itself came after a because it's one that was killing her.

The idea was that it would help reduce, by just the tiniest fraction, the risk of a relapse; newly sober alcoholics can do without being near drinkers, or people who come home smelling of beer. My adventure in abstinence was a modest attempt to be supportive.

The thing I missed most

Yes, drink turns me into a repetitive, sentimental, indiscreet, over-confident, lecherous bore. But that's only what other people and my conscience tell me the next day. At the time I'm amazing. Drink unlocks my otherwise buttoned-up enthusiasm and emotions. It Being drunk... liberates my well-suppressed hedonist, and makes me realize I don't really give a shit about whatever's bugging me at work.

The Professional Page 1 of 2

* Name has been changed.

The third, fourth and fifth drinks never repeat the euphoric uplift of the first two, but weren't those first two great? And if you can soldier on through the boring drinks in the middle, there's something quite marvelous about the out-of-body experience of being truly pissed. Standing on a table in restaurant is its own reward, but the recklessness, heightened senses and the loss of reasonableness that come with true intoxication are best shared with another drunk. Nine months off the sauce

"You must be feeling incredibly healthy," said a friend, as she inched her way through a hungover morning.

Well, sort of. I didn't miss hangovers, but I certainly didn't wake up each morning thinking 'hallelujah, by body is a temple and I am full of energy and health'. I woke up sluggish and grumpy and gradually got better as the day went on -- just like I have all my life, whether

Giving up alcohol for most of a year would have been far tougher if I'd been in my 20s. Then, getting drunk at home or at the pub was a leading pastime. But I've not been a big drinker ever since I had kids in my early 30s. Parenthood decimated my disposable income, so drinking in bars and restaurants has long been a rare treat. More importantly, hangovers clash horribly with early-rising children.

But there is a big difference between cutting down on drinking and cutting it out completely. The other time I missed drink most was when I was cooking at home, especially for guests. There's a recipe for it: Chop onions and garlic. Pour glass of red wine. Heat oil in pan. Gently fry onion and garlic. Chop, sip, slice. Pour second glass. Stir, taste, sip. Pour third glass. Sit down for a meal, warmly half-

A few months into my dry spell, I went to a restaurant with a large crowd of people I knew pretty well. I'm not especially shy, but for no particular reason, I had an attack of the acute social discomfort of the kind that fills your teenage years: I felt twitchy, unable to concentrate, full of dread. I worried I was being boring. I found other people boring. I was starting to feel sick from drinking sweet soft drinks, and I had no appetite. I wanted to run from the room, but that would have been impolite. And I knew the cure for my ills was just to hand: a couple of glasses of wine would have knocked off the edges, turned up the volume and stopped me jiggling my leg under the table. I wasn't 'gasping for a drink'; I just recognized the potential for self-medication. But it seemed quite important to stick to my word. So as the laughs around the table grew louder, the gestures less restrained, I shuffled the food on my plate to make it look Mainly, I just avoided that kind of thing altogether.

What I learnt about alcohol.

I have lived with an alcoholic for 10 years. I have sat in numerous group therapy sessions with addicts struggling to rescue themselves. I've read a lot about the science and the spirituality of trying to treat it. Yet the motivations of people who find themselves unable to stop drinking, even as it kills them, remain deeply mysterious to me, and my adventure in abstinence gave me only fragmentary insights of what it might be like to be an addict in a world that is kept afloat by your poison.

I discovered that not drinking can make you envious of the people who have a taste in their mouth and a warmth in their veins that you

I noticed how booze fills supermarkets and other people's fridges, how pictures of it cover walls and screens and pages and sports uniforms, and how John Hawkesby manages to fill five minutes of Nine to Noon's airtime with mellifluous drivel about wine-matching.

I noticed how intricately our lives are threaded with alcohol, and I saw that cutting yourself off from it makes you a sort of non-The end

Sobriety in the Alcoholics Anonymous sense is all about time: AA members start counting from the minute they take their last drink, and celebrate their 'birthday' on each anniversary of the day they stopped drinking for good. The nine months that my whole family went teetotal felt like a sort of firebreak between the pre-rehab drinking days and the present days of my wife's sobriety. It made my family feel safer. It made me feel strong. I'm glad I stopped drinking. It was a relief to start again.

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Continued from page 35

The Way We Drink also found that Pacific people appeared to be polarised between those who were non-drinkers and those who were relatively heavier drinkers. While Pacific people were more likely to be non-drinkers than the general population, when they did drink, they were more likely to drink to harmful levels. This was confirmed by a study that specifically surveyed Pacific people on their alcohol use. The study found that Pacific drinkers drank two to three times per week, Pacific men drank 9 drinks on an occasion, and women 6 drinks.²⁷

SOCIO-ECONOMIC STATUS

Setting aside differences in drinking patterns that are related to age, gender and ethnicity, lower socio-economic status independently predicts heavier drinking. Drinkers in lower socio-economic groups tend to drink more on a typical occasion, while higher socio-economic groups tend to drink more frequently.²⁸

DRINKING TRENDS

As shown in chapter 1, there has been an increase in total alcohol available for consumption in New Zealand in recent years, although as noted levels were higher during the 1970s and 1980s. Our per capita consumption of pure alcohol has increased nine per cent in the last 10 years.²⁹ Increases in consumption of this magnitude have been associated with increases in alcohol-related harm overseas,³⁰ so we need to look more closely at the changes in drinking patterns that have occurred over that time for various populations.

It is important to know whether the prevalence of youth drinking is changing because of the risks associated with early onset of drinking. Several different surveys ask questions aimed at finding out how many people aged under 18 years drink alcohol and when they start drinking. However, different surveys ask the question in different ways or of different groups of young people and so come up with quite different findings.

It is clear that young people's drinking patterns have changed in recent years towards greater per occasion consumption.



A recent study of 112,000 young people surveyed in 2003 found the onset of drinking rises steeply from the age of 12. It found that people in their forties and older reported starting drinking at about 16 years, and those aged under twenty four said they started drinking about 14 years. The onset of alcohol use was earlier for younger cohorts, with those aged 16 to 24 years being 2.7 times more likely to have begun using alcohol by a given age than those aged 65 years or older.³¹

ALAC's Youth Alcohol Monitors tracked the number of young people aged 14 to 18 years-old who had tried alcohol and the number that currently drink. In 1997 80 per cent of young people had tried alcohol. By 2000, this figure had climbed to 86 per cent.32 More recent ALAC Alcohol Monitors have reported that over one-half of young people aged 12 to 17 reported that they drank alcohol. In 2005/06, 53 per cent, and in 2007/08, 52 per cent, of young people drank.33 This is reasonably consistent with findings from the Alcohol Use in New Zealand survey that 55.7 per cent (51.8 - 59.7) of 12 to 17 year-olds drank alcohol in the last 12 months.34

The Youth 2000³⁵ and Youth 2007³⁶ surveys reported on secondary school students that were 'current drinkers' (that is students who continue to drink past their first experiences with alcohol). In 2000, 69 per cent were drinkers; in 2007, 60 per cent were drinkers.

While measures of prevalence are inconclusive as to the nature of any changes in recent years, it is clear that young people's drinking patterns have changed towards greater per occasion consumption. Between 1995 and 2004 the proportion of young people who reported drinking more than six drinks on a typical occasion increased from:³⁷

- 14 to 25 per cent among 14 to 15 year-old drinkers.
- 25 to 36 per cent among 16 to 17 year-old drinkers.
- 31 to 40 per cent among 18 to 19 year-old drinkers.

By 2000, males in the 16 to 17 year age group were consuming eight drinks on a typical drinking occasion and their female peers were consuming nearly six drinks per occasion.³⁸

THE LEAGUE CLUB TREASURER

The treasurer of a North Island rugby league club describes the night that changed his views about his club's drinking culture.

We were almost at the point of closing our club rooms. Partly because we just can't afford them. Our patrons are very badly behaved: minor assaults on the premises, drink driving, gross intoxication on the premises – all of which has been condoned by the club and by me. The authorities were coming down very hard on us.

This family, quite a well known family, they were associated with the club, and they wanted to hire the club out for their mum's 70th They put \$8,000 on the bar and they wanted to make it \$10,000. Our prices are fairly cheap and I said "we've never sold that much booze in a night, we've just never done it." They were thinking about 200 people.

I did the first shift. It started at 2 pm and was fairly frantic. I stopped about 8 pm Then I got a call about 9.30 pm to say there was trouble. As I was driving to the club I saw the police chopper over the rooms. A gang of kids had gate-crashed the party and the police had arrived. And there was an altercation: you don't mess with this family. The kids started throwing bottles. So there were about 50 or 60 quite drunk people and a dozen cops with shields and another dozen cops in the background.

Well, I went in and it was as if a bomb had gone off. There were people lying on the floor; there were tables over-turned; there were kids crying; old people slumped in their chairs. We knew there'd have been hell to pay if the cops had set foot inside.

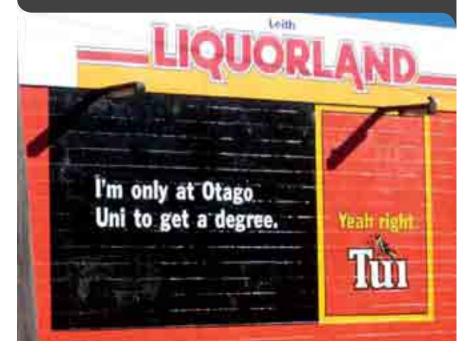
But it was the money: \$10,000 turnover that meant a \$5,000 profit. We needed that money to keep the club running. It was irresponsible. In the end we put in place new policies about how much bar tabs should be. We're told the culture of sports clubs is unhealthy, but the reality is that sports clubs get no funding. They rely on gaming machine money and the sale of liquor so how else are they going to survive?

The clubs certainly have a booze culture and kids were inculcated with that by us, their parents. What's changed our attitudes? Well that night had something to do with it. I was stunned.





Young adults aged 18 to 24 are twice as likely as the general drinking population to drink large amounts of alcohol at least once a week: 34 per cent compared with 15 per cent of all adult drinkers.



There have also been changes in women's drinking patterns. Women's consumption has been increasing over time across all ages, but particularly among young women. The most marked increases were seen between 1995 and 2000 for females aged 16 to 17, 18 to 19 and 20 to 24 years (with each age group increasing from four to six drinks on a typical drinking occasion).³⁹ An analysis of data from 1995 and 2000 showed women aged 20 to 39 were drinking larger quantities and women 40 years or over were drinking more often.⁴⁰

Comparisons of the New Zealand Health Surveys between 1996/97 and 2006/07 show that the proportion of New Zealanders who drank alcohol in the last 12 months increased from 81.8 per cent (80.6 – 82.9) to 83.9 per cent (83.0 – 84.7) over this period.⁴¹ In the past Māori have had higher rates of abstention than the rest of the population, but this is quickly changing. The proportion of Māori drank alcohol in the last 12 months increased among men from 77.5 per cent (72.8 - 82.2) to 87.5 per cent (85.4 - 89.7), and among women from 70.3 per cent (65.9 – 74.7) to 78.1 per cent (75.6 – 80.6) between 1996/97 and 2006/07. In terms of drinking patterns, there were some changes

in AUDIT scores (a diagnostic tool used to screen for hazardous and harmful drinking) within some age groups. For example, the prevalence of potentially hazardous drinking among women aged 25 to 34 increased from 13.9 per cent to 18.2 per cent and among men aged 35 to 44 from 25.5 per cent to 29.0 per cent.⁴² The surveys comparison also suggested a shift towards more frequent consumption, with around twice as many Māori drinking four or more times a week in 2006/07 compared to 1996/07. However, there were few other changes in patterns of consumption over this period.⁴³

In the past Māori have had higher rates of abstention than the rest of the population, but this is quickly changing. The proportion of Māori who did not drink alcohol in the last 12 months decreased among men from 22.5 per cent (17.8 – 27.2) to 12.5 per cent (10.3 – 14.6), and among women from 29.7 per cent (25.3 – 34.1) to 21.9 per cent (19.4 – 24.4) between 1996/97 and 2006/07. The surveys comparison also suggested a shift towards more frequent consumption, with around twice as many Māori drinking four or more times a week in 2006/07 compared to 1996/97.

SUMMARY CHAPTER 3 HOW WE ARE DRINKING

Over 80 per cent of the adult population of 2.98 million drink at least occasionally.

44 per cent of all alcohol available for consumption in this country was consumed in "heavier drinking occasions" at the time of the 2004 Alcohol Use in New Zealand survey.

About half of drinkers under 25 years of age drink large quantities when they drink, as do a quarter of all adult drinkers.

Over a third of male drinkers aged 18 to 24 and 17 per cent of male drinkers between the ages of 25 to 34 drink enough to get drunk at least once a week.

785,000 drinkers over 18 years of age (29 per cent of adult drinkers) could be categorised as "uninhibited binge drinkers", meaning they usually drank seven or more standard drinks in a sitting, and often drank daily according to an ALAC survey.

Another 23 per cent of drinkers were defined as "constrained binge drinkers" meaning they drank seven or more standard drinks at least once a week.

How we drink can be influenced by age, gender, ethnicity and socio-economic status.

Young people aged 14 to 19 are drinking more alcohol when they drink.

Women's alcohol consumption has been increasing over time across all ages but particularly among young women.

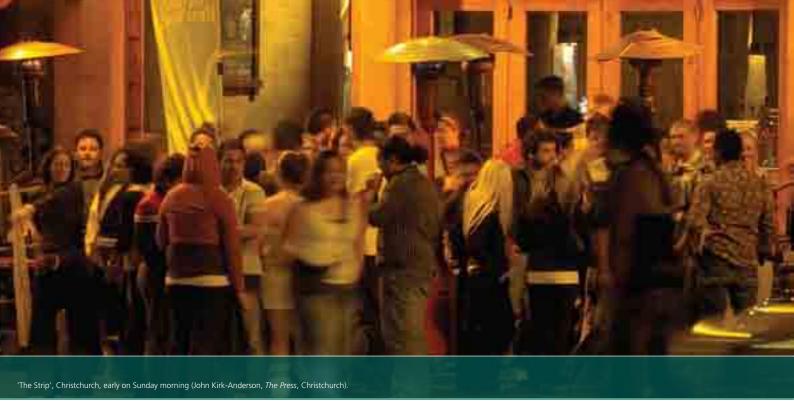
In the past Māori have had higher rates of abstention than the rest of the population, but this is quickly changing.

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TWO SIDES OF THE ALCOHOL COIN

NO ORDINARY COMMODITY

"...alcoholic beverages are items of consumption with many customary uses, and are also commodities important to many people's livelihood. But social customs and economic interests should not blind us to the fact that alcohol is a toxic substance. It has the potential to adversely affect nearly every organ and system in the body. No other commodity sold for ingestion, not even tobacco, has such wide-ranging adverse physical effects. Taking account of alcohol's potential for toxicity is therefore an important task for public health policy." 1

KEY FACT

Happiness, confidence, relaxation, sociability and a sense of belonging: this list illustrates the fundamental nature of the benefits we associate with drinking.

ALCOHOL — THE RISKS AND THE BENEFITS

CHAPTER 4

INTRODUCTION

Every year about 1,000 New Zealanders die from alcohol-related causes.²

About half of these deaths are due to accidents and another quarter will be alcohol-related cancers.

In addition, hundreds of New Zealanders will be injured in alcohol-related road trauma. Hundreds more will be admitted to hospitals around the country to be treated for an array of conditions ranging from gross intoxication and alcohol poisoning, to facial fractures and wrist and hand injuries resulting from accidents and

assaults. Some will be the innocent victims of other people's drunken behaviour, others will be perpetrators and some will have been both victim and perpetrator.

Experts have suggested that if alcohol were to be categorised on the same risk basis as illicit drugs, it would merit a Class B classification. This is the same classification as opium and ecstasy, and higher than cannabis.³

The World Health Organisation's International Agency for Research on Cancer recently classified alcoholic beverages as 'carcinogenic to humans', in the same hazard category as agents such as asbestos, formaldehyde and tobacco.⁴

For those of us who enjoy the benefits of moderate drinking with no apparent harm, these types of statement may appear extreme. Perhaps even alarmist. Illicit drugs are associated in our minds with violent rampages, broken lives and raging addiction. Alcohol is associated with sociability, enjoyment and for some, even a sense of cultural and national identity.

Not surprisingly we struggle when asked to think of alcohol as a 'risky drug' on the

one hand, and on the other as a product enjoyed by many of us as an ordinary commodity, as readily available as bread and cheese – and often at lower prices.

However in the view of our Police Commissioner Howard Broad, and frontline officers from Invercargill to the Far North, too many of us are using alcohol in a way that is injurious both to ourselves and the wider community, resulting in unacceptable levels of violent offending, injury and disorder.

Judges sitting in the District, Family and Youth courts have echoed the Police's concerns, telling the Law Commission that alcohol is an underlying factor in a disturbingly large proportion of the cases that come before their courts each week and must be tackled if we wish to stem the tide of criminal offending.⁵

Similarly our frontline emergency staff and medical doctors are increasingly concerned at the impact alcohol is having on our already strained health budget and medical services. In a rare move, the 13 Presidents of the Medical Colleges in New Zealand have placed on record "their collective concerns about the pervasive medical harms that continue to occur as a result of alcohol intoxication, abuse and dependency." 6

The next two chapters, 'Alcohol, Crime & Antisocial Behaviour' and 'Alcohol, Health, Injury and Wellbeing' attempt to summarise the evidence of alcohol-related harm in our community. The chapters draw on the input of New Zealand doctors and alcohol researchers, judges, police and those working to enforce the current liquor laws.

HOW ALCOHOL WORKS

But to understand how alcohol can contribute to this wide range of harms, we need first to understand alcohol as a substance and its effects on the human body and how these effects account both for the *pleasure* and the *risks* associated with drinking.

ALCOHOL'S EFFECTS ON THE BODY⁷

After drinking, alcohol quickly moves across cells and distributes throughout the body.

Alcohol causes intoxication mainly through its effects on the brain. It affects several different parts and processes of the brain, which account for the variety of subjective experiences and behaviours that result from drinking. Alcohol affects the activity of several chemicals in the brain (for example, serotonin, dopamine and opioid peptides) that contribute to the feelings of euphoria and pleasure. Some of the physiological processes are similar to those of morphine and heroin. Alcohol also affects chemicals and areas of the brain that have a role in seeking rewards (one of the dopamine pathways), which is how alcohol can be addictive. Very small amounts of alcohol interfere with a chemical that affects memory (glutamate), and at higher doses may produce memory blackouts.

Alcohol's effects on another brain chemical (gamma-aminobutyric acid or GABA) are to sedate the brain mildly, which explains some of the cognitive changes experienced after drinking (for example, slowed reaction time, difficulty concentrating, reduced responsiveness

to social expectations, talkativeness and social disinhibition, and impaired judgment). Alcohol also affects brain processes that are involved in a range of physiological functions including:

- mood regulation (for example, sadness, happiness and anger)
- sleep (even small amounts of alcohol can cause sleepiness or sedation, awaking during the night, and suppression of the dreaming phase of sleep)
- body temperature (alcohol reduces body temperature, which is perceived as a feeling of warmth)
- appetite
- sexual responses
- aggression
- the development of tolerance to the subjective effects of alcohol and
- · withdrawal symptoms

As blood alcohol levels increase with continued drinking, the effects on the brain increasingly lead to impaired balance and movement, drowsiness, slower reaction time, impaired judgement, emotional changes and reduced responsiveness to social expectations. These effects increase the chance of accidents, injuries, risky

BENEFITS

It will surprise none of us to know that alcohol's roles as a 'social lubricant' and a 'relaxant' feature strongly in our responses when we are asked to explain why we drink. Of those participating in an ALAC survey on our attitudes towards alcohol:⁸

- 68 per cent said that drinking alcohol helped them to wind down and relax
- 27 per cent said they felt more confident when they drank
- 24 per cent said everything seemed happier when they drank

- 39 per cent agreed that alcohol helped them to get to know people
- 45 per cent said they enjoyed the buzz they got when they drank
- 32 per cent said having a drink with friends and family gave them a sense of belonging

Happiness, confidence, relaxation, sociability and a sense of belonging: this list illustrates the fundamental nature of the benefits we associate with drinking. Two American academics have gone so far as to suggest drinking may be associated with individual financial benefits.⁹

behaviour (for example, unplanned sex) and violence. Higher levels of blood alcohol can lead to nausea, vomiting, unconsciousness, reduced breathing and death

The presence of food in the stomach reduces the absorption of alcohol into the blood stream and slows the increase in blood alcohol level. The liver works at a fixed rate (around one standard drink per hour depending on the person) to remove alcohol from the blood. Alcohol reduces the production of a hormone that usually ensures the kidneys absorb enough water. This leads to increased urine production and dehydration.

Like any drug, when misused, alcohol has the potential to harm. Immediate harms, like alcohol poisoning and accidental injury or assaults, occur at the time of consumption and are typically the result of intoxication. Longer term or chronic health harms are associated with the cumulative effects of the volume of alcohol consumed over a lifetime and include a range of cancers, cardiovascular disease, liver disease, high blood pressure, depression, anxiety disorders, and alcohol dependence.

Some of the medium to long-term effects of alcohol are shown in figure 4.1.

Figure 4.1. Some short and long-term effects of alcohol on the body. Mental health conditions including Cognitive impairment. dependence, depression, anxiety especially to developing disorders, suicide and self-harm brains, and dementia Skin damage and infections Cardiovascular disease Cancers of the oral cavity, pharynx, larynx, oesophagus, liver, colorectum and breast Liver diseases including Nutrition-related hepatitis and cirrhosis conditions Overweight, obesity and diabetes Sexual dysfunction and infertility Risks to unborn Wasting of limb muscles babies including miscarriage, stillbirth and fetal alcohol spectrum disorder Source: Adapted from Australian Guidelines to Reduce Health Risks from Drinking Alcohol (2009).

The authors note a positive correlation between drinking and individual earnings and hypothesise this may be explained by social drinkers accruing more social capital, including larger social networks, which in turn are associated with better earning opportunities. As discussed in the introduction to this paper, drinking is an important accompaniment to many of our family, social, sporting and cultural lives, and the benefits we derive from its use are reflected in the billions of dollars we expend on alcohol each year. We return to these personal benefits in chapter 7.

But in addition to the psychoactive benefits of drinking there have been broadly cited studies indicating that moderate alcohol consumption (as opposed to abstention or heavy drinking) may also be associated with a reduced risk of death from coronary heart disease. 10 Consistent with this, surveys have shown that about one in three drinkers in New Zealand think drinking is good for their health. 11

Recently some epidemiologists have questioned these protective effects

because of methodological problems with the studies in the area, ¹² and because the levels of alcohol consumption purported to be protective for heart disease may lead to increased risks for other health problems. ¹³ University of Otago alcohol research specialist Dr Jennie Connor explains: ¹⁴

The people who are trying to look after their health are being sold a faulty message: that they're doing a good thing by drinking moderately.

A similar caution was sounded in a 2005 *Lancet* article:¹⁵

Do not assume there is a window in which the health benefits of alcohol are greater than the harms – there is probably no free lunch.

The tentative conclusion appears to be that there may not be any overall health benefits from drinking and that if any health benefits do exist they probably have been overstated. Debates on the effects of alcohol on coronary heart disease are just one example of why 'sensible limits' are particularly complex. As with assessing all health risks, an individual's personal preferences (for example, balancing their interest in improving their health status with their enjoyment of drinking) and characteristics (for example, age, other health problems and medications) will determine what level of alcohol consumption, if any, is acceptably 'safe'.16

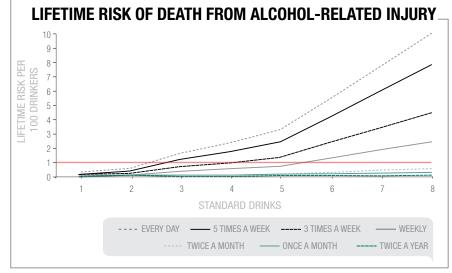
RISKS

In chapter 3 it was established that while the majority of New Zealanders drink moderately, a substantial minority, some 25 per cent, drink heavily. We also established that *how* we drink, the quantity and frequency, determines the risks we face of various harmful outcomes.

For example, a person may only drink once a month. But if, when they do drink, they drink large quantities, they face a significantly increased risk of immediate alcohol-related harm such as injury. Another person may drink on average two glasses of wine a day (the equivalent of three standard drinks) and face an increased risk of longer-term harm such as cancer or liver disease.

In the past two decades the understanding of alcohol's effects on the human body and brain has improved, leading to constant revisions of what constitutes 'safe' levels of consumption. Australia's National Health and Research Council recently published its new evidence-based guidelines to reduce health risks from drinking alcohol. The guidelines contain some blunt messages about the relative risks of both immediate and longer term harm from

FIGURE 4.2



Source: Australian Guidelines to Reduce Health Risks From Drinking Alcohol (2009).

what many of us might consider moderate drinking:

Immediate harm:

 Those who consume more than four standard drinks on a single occasion more than double their risk of injury over the next six hours and the more they drink the further the risk increases.¹⁷

Longer term harm:

- For healthy men and women, the lifetime risk of death from alcoholrelated disease or injury remains below 1 in 100 if no more than two standard drinks are consumed on each drinking occasion, even if the drinking is daily
- However, above two standard drinks a day, the risk rises to just above 1 in 100 and continues to rise as average daily consumption increases.¹⁸

The relationship between consumption patterns (frequency and quantity) and the lifetime risk of death from alcohol-related injury for Australian males is illustrated in figure 4.2. The pattern for females is similar.

The Law Commission asked the Ministry of Health to reanalyse data from the *Alcohol Use in New Zealand* survey to calculate the proportion of New Zealand drinkers who

typically consume more than four standard drinks in a session.¹⁹ It found that one in five drinkers over 12, and nearly half of drinkers aged 12 to 24, usually drink more than this, at least doubling their risk of injury in the six hours after drinking.²⁰

Similarly, the Ministry analysed the proportion of New Zealand drinkers who were drinking on average *more* than two

FACTS AT A GLANCE

Every year about 1,000 New Zealanders die from alcohol-related causes.²

In an ALAC survey on our attitudes towards alcohol 24 per cent said everything seemed happier when they drank.8

Those who consume more than four standard drinks on a single occasion more than double their risk of injury over the next six hours and the more they drink the further the risk increases.¹⁷

Nearly one in three drinkers drink on average more than two drinks a day.²¹

standard drinks a day and so faced a greater than 1:100 risk of dying of an alcohol-related disease or injury. The results showed that nearly one in three drinkers over 12 drink on average more than two drinks a day – including a quarter of drinkers aged 35 to 64.²¹

How the risk of alcohol-related harms is assessed depends on what benchmark is being used and the type of harms being considered. Nothing in life is risk free and as individuals we constantly weigh the risks and benefits of our decisions.

However, while a well-informed adult is able to weigh their long-term risks of, for example, contracting cancer against the benefits they gain from moderate daily drinking, this may not be the case for all drinkers in all circumstances. This is particularly so given alcohol's impacts on judgement and cognitive functions.

For example, important new research has found that young people experience more harm per standard drink than older drinkers.²² The highest risk is for those under 15 years, but there is still an elevated risk of harm per drink for young

THE HIGHEST RISK IS FOR THOSE UNDER 15 YEARS, BUT THERE IS STILL AN ELEVATED RISK OF HARM PER DRINK FOR YOUNG PEOPLE UP TO THE AGE OF 25 YEARS.

people up to the age of 25 years.²³ This is one of the factors that has led Australian and UK experts to recommend no drinking before the age of 15, and to delay and limit drinking among 15 to 17 year-olds.²⁴

There are also a range of harms specific to young people's drinking that do not affect adults in the same way or to the same extent. Early initiation of drinking in adolescence is associated with immediate and later alcohol-related health and social problems. ²⁵ New Zealand research has found that early exposure to alcohol (defined as multiple occasions before the age of 15) is associated with a range of poor adult outcomes including substance dependence,

criminal convictions, herpes infection and failure to achieve educational qualifications.²⁶ Heavy drinking among teenagers and young adults is associated with poorer brain functioning, particularly in terms of attention and visuospatial skills,²⁷ and alcohol has detrimental effects on adolescents' liver, hormones, bone density and brain structure.²⁸

Significantly too, the risks associated with alcohol misuse are not limited to the individual drinker. One of the reasons for this review of the sale and supply of liquor was the increasing concern regarding the extent of alcohol-related harm in the community.

The Law Commission's terms of reference required the Commission to explicitly consider, among other things:²⁹

- The effects of alcohol use on the level of offending in the community and consideration of ways to minimise such offending
- The health effects of alcohol use and ways to ameliorate those adverse effects
- Whether we have achieved the appropriate balance between alcohol harms and consumer benefits in society.

CAUSE AND EFFECT

Alcohol's role in social and health harms is usually contributory. That is to say, alcohol is one of a number of risk factors responsible for the harm. Those other factors may include existing health status, other health risk behaviours and exposures, genetic make up, gender, ethnicity, socio-economic

Important new research has found that young people experience more harm per standard drink than older drinkers.²⁴



Source: Alcohol Advisory Council of New Zealand.

status, personality type, peer group and environmental and cultural influences.

To determine whether a disease is partially or wholly attributable to alcohol, researchers consider a range of criteria including consistent correlations and plausible biological pathways. On this basis, the World Health Organisation has determined that alcohol directly contributes to over 60 different disorders and a range of injuries³⁰ and has classified it as "carcinogenic to humans".³¹

Measuring alcohol's contribution to social problems is often more complex.

The precise nature of the relationship between alcohol and crime, for example, is the subject of a vast international literature – including some New Zealand studies. The reasons why one individual will become violent after drinking and another not, are thought to lie in a complex mix of pharmacological, cultural, gender, socio-economic and environmental factors.

There is overwhelming evidence implicating alcohol in aggressive and violent behaviour, with alcohol's ability

to 'cause' aggression dependent on a number of individual and environmental variables including the social setting. Experimental laboratory research has shown a biological mechanism linking alcohol to aggressive behaviour. In other words alcohol itself promotes risk-taking and aggressive behaviour independent of other factors such as gender or socio-economic status.

Outside the laboratory setting, a study by Professor David Fergusson and John Horwood, from the Christchurch School of Medicine, examining the association between alcohol abuse and juvenile offending in a birth cohort of over 1,000 young New Zealanders between the ages of 15 and 21 found similar effects for alcohol on aggression and criminal offending.³² Using complex statistical modelling, the study was able to isolate the specific contribution alcohol played in rates of offending, as distinct from other risk factors such as deviant peers and social disadvantage.

Controlling for these factors, the study concluded that alcohol abuse was

significantly related to both violent and property offending:³³

The conclusion that alcohol abuse is associated with increases in rates of crime appears to be generally consistent with the results of laboratory-based research, which has suggested that increasing consumption of alcohol is associated with corresponding increases in antisocial behaviour and particularly aggression...These parallels between the findings of longitudinal research and laboratory research clearly reinforce the view that statistical linkages between alcohol abuse and crime, in part at least, reflect a cause and effect association in which the heavy consumption of alcohol increases risks of criminal behaviours.

While this conclusion may seem unremarkable to emergency workers and police officers who work in the real-world laboratory (where the only evidence which counts is that which piles up in the watchhouse for processing every Saturday and Sunday morning), it is nonetheless significant when it comes to shaping alcohol laws.

Put simply, it suggests that if we can reduce alcohol consumption – independent of other factors like socio-economic status – then we may stand some chance of reducing the levels of violent offending in society.

Harmful alcohol consumption is a modifiable risk factor, and reducing harmful consumption can reduce the harms of alcohol caused to others (assaults, sexual offending, family violence and road trauma) as well as improving individual health mortality and morbidity outcomes.

In the following chapter the link between alcohol and crime is explored in greater detail. Chapter 6 then examines the relationship between alcohol and health, injury and wellbeing. These harms often overlap and intersect. For example, in the course of a night's drinking an intoxicated person may become both victim and offender and may feature in crime, hospital and accident records at the same time. But both areas must be examined separately.



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eter Meecham The Press Christchurch

CONFRONTING THE PUBLIC FACE OF PROBLEM DRINKING

District Court judges estimate a significant proportion of defendants coming before the criminal courts have alcohol or other drug abuse or dependency issues: alcohol is the drug of choice in three quarters of these cases.

"I often comment when I am sitting in Youth Court that if I only had to deal with young offenders who offended whilst sober, I would have very, very little work to do. That is a **chilling statement** to make when most of the young people I see are 14 and 15 years of age."

Judge McMeeken (Christchurch Family Court and Youth Court Judge).

KEY FACT AT A GLANCE

In 2007/08 at least 31 per cent of all recorded crime involved an offender who had consumed alcohol prior to committing the offence.

ALCOHOL, CRIME & ANTISOCIAL BEHAVIOUR

CHAPTER 5

INTRODUCTION

Alcohol abuse contributes to a significant amount of crime and antisocial behaviour in this country. Police data shows that in 2007/08 at least 31 per cent of *all* recorded crime involved an offender who had consumed alcohol prior to committing the offence. District Court judges estimate a significant proportion of defendants coming before the criminal courts have alcohol or other drug abuse

or dependency issues: alcohol is the drug of choice in three quarters of these cases.² These figures are mirrored in the Department of Corrections' estimates of the number of inmates who have had drug and alcohol problems in their lives.³ Each year thousands of New Zealanders are also harmed by other people's drinking and many more are intimidated or made to feel unsafe in their environment.

This chapter discusses each of these aspects of alcohol-related harm.

Over the past seven months the Law Commission accompanied police and liquor licensing inspectors on late night and early morning shifts in 17 different towns and cities around the country. The case studies which appear in this chapter are the Law Commission's accounts.

CASE STUDY DOWNTOWN AUCKLAND

Nothing good happens after 3 am. That's the verdict of Auckland's Senior Sergeant Ben Offner, and one shared by dozens of long serving police officers around the country grappling with our burgeoning night-time economy. Offner's base in downtown Auckland stares down the throat of Fort Street, a narrow alley with pretensions as an upmarket night club zone. From 1 or 2 am most Saturday and Sunday mornings a sea of people in various states of intoxication funnel down Queen Street into this "hot zone."

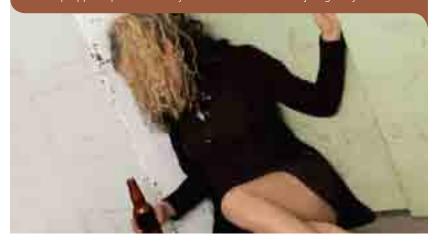
Like an amoeba, the scene mutates minute by minute: at 2.35 am Offner is attempting to ascertain whether the distressed young woman propped up in a doorway has been assaulted or is just grossly intoxicated; two minutes later a man behind him is dropped to the pavement, his beer glass shattering. Bouncers descend on the group and the victim's friends surge towards Offner clamouring to give their version of events. The testosterone levels are palpable as people spill out into the alleyway jostling for ringside position. A wrong look, a real or imagined insult, it takes very little to earn an unprovoked punch at this hour in the morning in Auckland's CBD.

Offner's beat cops, many of them British recruits who have policed cities like London and Birmingham, offer unflattering comparisons when asked to describe their experiences policing Auckland city's CBD in the early hours:

"I have been lucky enough to visit cities all over the world and no other city I have been to is as violent as High Street and Fort Street at 4 am over the weekend. The aggression and abuse from intoxicated people has to be seen to be believed. Girls are sitting in the gutter smashed out of their brains with their underwear on show and their friends nowhere to be seen. Nobody looks after each other and the police are left to pick up the pieces."

Mute evidence to back this ugly assessment is captured each night on a bank of TV screens streaming continuous footage from dozens of strategically positioned CCTV cameras around the city. If 24-hour licensing is supposed to be an essential ingredient in making Auckland a competitive 'world class' city, you have to wonder what competition it is hoping to win.

At 2.35 am Offner is attempting to ascertain whether the distressed young woman propped up in a doorway has been assaulted or is just grossly intoxicated.



Before the mayors and tourist bodies leap to the defence of their cities, this chapter is not about moderate, sociable drinking: it is not about the vibrant and diverse bar and restaurant sector which has sprung up in towns and cities all over the country, contributing employment and significant rates revenue to local bodies.

It is about the contribution alcohol is making to crime, antisocial behaviour and victimisation in our country. It is about the fact that on 21,263 separate occasions in the year 2007/08,⁴ our police officers became nursemaids and taxi drivers, picking up from the streets and taking to safety people who were so intoxicated they were judged to be a risk to themselves or others.

When asked which drug caused the most problems for Police, Police Commissioner Howard Broad's response was alcohol – by some margin.⁵ The Commissioner's statement is backed by a significant new report, the Police's *National Alcohol Assessment*, which draws on 15 Police data sets to identify trends in alcohol-related offending throughout the country. That report shows that of all recorded offences in the year 2007/08 *at least* 31 per cent involved an offender who had consumed alcohol prior to committing the offence.⁶

The harmful use of alcohol and drugs was estimated recently to have cost the combined Justice sector, that is, police, courts, prison and probation service, \$716.5 million in the year 2005/06.7 According to the same report alcohol-related offending consumed \$172.2 million, or 18 per cent of the Police's 2005/06 budget.8

In the seven months between November 2008 and June 2009, members of the Law Commission's review team accompanied police and liquor licensing inspectors by foot and in patrol cars on weekend shifts spanning late evening to early morning in the Far North, Auckland, Manukau, Tauranga, Rotorua, New Plymouth, Gisborne, Napier, Palmerston North, Wanganui, Porirua, Upper Hutt, Lower Hutt, Wellington, Nelson, Christchurch and Dunedin. The objective was to gain first-hand knowledge of the issues confronting businesses, liquor licensing inspectors, territorial authorities, public health units and the police in relation to our current liquor laws.

In the course of this field work the Law Commission has been exposed to a small sample of offending, deliberately skewed towards the times and locations where alcohol-related offending peaks, between 9 pm Friday evening and 3 am Saturday morning, and between 6 pm Saturday evening and 3 am Sunday morning.⁹

Not surprisingly the very significant differences that now exist between north and south, provincial and urban and high and low socio-economic status areas in this country were reflected in what the Law Commission saw and heard. But the problems associated with alcohol, while clearly exacerbated by poverty and criminality, transcend socio-economic and geographic boundaries.

 In Whangarei, a sergeant called to assist his colleagues contain a street fight received a serious head injury and was knocked unconscious as partygoers turned on police, hurling rocks from the safety of a house. The Law Commission was told violence and abuse directed at police by drunken youths were regarded as a weekend norm. And while this particular assault which led to the officer being hospitalised and off work was still deemed newsworthy, the goading and verbal abuse to which police are subjected by intoxicated people were routine throughout the country.

- In Wellington's Jervois Quay, police picked up a man with a severely lacerated face who told them he had been involved in a fight with four others after leaving a Courtenay Place bar. He appeared not to know who his attackers were or why they had assaulted him. Police took the man to hospital but like many such victims his own level of inebriation discounted him as a witness.
- In Palmerston North, police broke up a fight between a group of girls brawling in the main street after someone exiting a bar threw an insult: the most abusive girl was taken back to the cells, but it is impossible to distinguish victim from perpetrator in these types of situations where all parties are intoxicated. Similar scenes, many of them involving young women, are played out all over the country each Friday and Saturday night. The lack of reliable witnesses and conflicting evidence is a common problem with alcohol-related interpersonal violence.
- In Porirua, children as young as 12 were found unsupervised milling around the local mall waiting for some 'action' between the local street gangs. Police enforcing liquor bans encountered 15 and 16 year-old girls drinking from wine bladders cut out of wine casks in an effort to evade detection. Wine bladders featured in a number of locations as a means of disguising liquor.

CASE STUDY CHRISTCHURCH _ CENTRAL

Fast forward a few months to another island, another New Zealand and the scene is different, but the same.

Christchurch's Oxford Terrace, a strip of relatively upmarket bars by day: too often a tourist no-go-zone by midnight. It's just after 2 am and Sergeant Al Lawn is dressing down the duty manager of a popular bar who doesn't look old enough to manage a paper-run let alone a pumping student bar. Lawn wants to know how a grossly intoxicated young man who moments earlier staggered from the bar and deposited his last few drinks at our feet in a torrent of vomit – cheered on by his university mates – had been allowed entry in the first place.

A few blocks east the mood is turning ugly as intoxicated patrons, many of whom appear to have tanked up on liquor before hitting town, are turned away by bouncers with a keen nose for trouble. Instead 'trouble' stays on the streets and migrates to the next bar where they try their chances again. As Lawn explains, this tribal behaviour of intoxicated young men from different social networks drifting from venue to venue adds to the volatility of the city streets in the early hours of the morning.

Before dawn breaks some will end up in the police cells and some will end up over-loading the city's stretched emergency department. By Monday others will have bumped elective surgery patients from the South Island's specialist Oral and Maxillofacial Surgery services after having their jaws broken and eye sockets shattered in fights and car accidents. ¹⁰

Some will be innocent victims of other's drunken aggression: others will have been both aggressor and victim within the same night.

A Porirua community constable
 told the Law Commission he regularly
 takes youths involved in minor
 offending or who are intoxicated
 home, only to find the parents anxious
 to "abdicate responsibility". In some
 instances he has been given the
 business card of the youth's
 social worker. Frontline police
 around the country reported it is
 not uncommon to be unable to
 locate a responsible adult to take
 custody of an intoxicated minor.

COMMON THEMES

A number of common threads emerged from these police escorted visits.

'PRE-LOADING'

Bars are not legally permitted to serve customers who are intoxicated,¹¹ nor can they allow a person to become intoxicated¹² or behave in a drunk or disorderly manner.¹³ Indeed, it is an offence for a licensee or manager even to allow an intoxicated person to be on a licensed premise.¹⁴ Yet despite these laws, drunkenness and associated antisocial behaviour were commonplace in many of the entertainment precincts visited.

There is some evidence to suggest that the price differential between alcohol purchased from on-licences and off-licences discussed in chapter 2 is contributing to this problem as people begin drinking in private venues before going into inner city entertainment areas. A recent survey of 1,061 bar and restaurant goers in Albany and Takapuna on Auckland's North Shore commissioned by ALAC found over 60 per cent of respondents said they had drunk before going out. Of these just over half had consumed three or fewer drinks but 12.5 per cent said they had had 10 or more drinks before going out.15 Young men aged 18 to 20 years had the highest rate of drinking before heading out (71 per cent).16

These findings were mirrored in an informal survey carried out by police of



330 patrons queuing for admission to two high profile bars in the Auckland CBD.¹⁷ This survey was conducted on a Wednesday evening in May 2009 when the central city bars were targeting student drinkers. The survey found 65 per cent of those arriving at the two inner city venues on a Wednesday night reported drinking prior to their arrival, and of these the average number of drinks consumed was six.18 A quarter reported drinking 10 or more standard drinks before their arrival at the bars. 19 Sixty-four per cent had purchased their alcohol from an off-licence – the majority shortly before they began drinking.20 Just under 40 per cent of those surveyed showed signs of being moderately or extremely intoxicated on the Police's behavioural guide.21

This phenomenon, described as 'pre-loading' or 'front-loading', may well be contributing to the amount of low level violence and disorder observed in many of our centres. Recent research examining the incidence of alcohol-related harm among young people attending city nightlife venues in North-west England found significantly worse outcomes for those who pre-loaded compared to those who did not.²² The researchers found that young people who drink before going out were four times more likely to drink 20 or more standard drinks on a usual night out,

and twice as likely to be involved in a fight in the city or to be sexually assaulted, than those who did not drink beforehand.

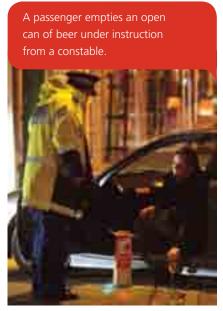
A person who is intoxicated is not legally allowed to be served by a bar. But those who are rightly turned away by security staff may become aggressive or attempt to gain entry at other bars. It was also clear that under-age drinkers, many of whom had alcohol in cars or on their person, frequently congregated around the urban bar areas.

The Law Commission was told that many student bars in Dunedin struggled during Orientation Week in 2009 as the widespread availability of cheap alcohol from supermarkets and other retailers meant many people now went to bars to dance, not necessarily to drink. They spoke of a new culture whereby students went into town with the aim of spending no money.

LIQUOR BANS

It was also evident that police are expending a large amount of time and resource attempting to enforce local body liquor bans which are increasingly being used as a crime prevention and management tool by city and district councils and police.

A review of liquor bans undertaken for this Issues Paper found a 29 per cent increase in the number of territorial



Source: Dean Kozanic, The Press, Christchurch.

authorities imposing liquor bans since 2005. As at 17 April 2009, all of the 16 city councils and 52 of the 57 district councils had at least one liquor ban in place.

Logically, the increased use of liquor bans has translated into increased apprehensions for liquor ban offences, up from 5,050 in 2003/04 to 9,359 in 2007/08.²³ Each of these incidents consumes considerable amounts of police time and diverts resources away from other crime.

As with all crime, breaches of liquor bans have a major flow-on effect on the courts and the Collections Unit of the Ministry of Justice. Data from the Ministry of Justice shows that of the apprehensions in 2007/08 for breach of liquor ban, 83 per cent (7,762 cases) proceeded to court.²⁴

POLICE 'IN LOCO-PARENTIS'

An especially striking aspect of street policing in these central city entertainment areas was the extent to which police were being placed in loco-parentis (in the position of a parent) for people at risk of becoming victims of crime.

While licensees and bar managers can be fined for serving liquor to an intoxicated person,²⁵ under current law it is not an

offence for an individual to be drunk or intoxicated in a public place.²⁶ However under section 36 of the Policing Act 2008, Police have the power to intervene when someone is found in a public place intoxicated to the point where they are a risk either to themselves or others.

In the absence of community detoxification facilities, Police's options are limited to either taking the drunk person home (if the intoxicated person is able to give an address), or placing them in police custody. Neither event is recorded as an offence since individuals are not arrested but detained until sober enough to be released.

FACTS AT A GLANCE

On 21,263 separate occasions in the year 2007/08,⁴ our police officers became nursemaids and taxi drivers, picking up from the streets and taking to safety people who were so intoxicated they were judged to be a risk to themselves or others.

Bars are not legally permitted to serve customers who are intoxicated,¹¹ nor can they allow a person to become intoxicated¹² or behave in a drunk or disorderly manner.¹³

POLICE ARGUE THAT NOT INTERVENING CREATES A SIGNIFICANT RISK BOTH TO THE INTOXICATED PERSON AND TO THOSE AROUND THEM.

In 2007/08 Police recorded 21,263 occasions when they either placed a person in custody or drove them home.²⁷ Almost 50 per cent of these incidents (10,417 occurrences) were logged by six locations.²⁸ The largest number of incidents was recorded in Christchurch, where 2,671 occurrences were recorded.

An Auckland police officer summarised the problem for the Law Commission in these terms:²⁹

Young people, who are too young to get into the bars and clubs, come into town drunk and unsupervised. They seem to leave their houses late at night to wander the streets and their parents and caregivers seem unconcerned about the level of danger they are putting themselves in. Just recently I had to take two

14 year-olds home at about 4.30 am. They were in town alone and intoxicated. When we called their parents to tell them we had found them in the city in the middle of the night, they wouldn't make the effort to drive into town to pick them up. So, to ensure they made it home safely, we had to take them. This leaves the city with less officers to deal with other issues while we act as parents to children who shouldn't be in town alone in the first place.

This crime prevention activity involves the diversion of significant police resources and also exposes police to significant risk. Police cells are not intended as detoxification or sobering up facilities and Police have no professional expertise in assessing the level of intoxication that

"Young people, who are too young to get into the bars and clubs, come into town drunk and unsupervised. They seem to leave their houses late at night to wander the streets and their parents and caregivers seem unconcerned about the level of danger they are putting themselves in." (Auckland constable.)



poses a medical risk to an individual. On the other hand, Police argue that not intervening creates a significant risk both to the intoxicated person and to those around them. Depending on their level of intoxication a person may be at risk of road injury or a violent or sexual assault – or they may inflict injury on others.

While only a portion of the young people taken to safety are under 18 years of age, Police Commissioner Howard Broad believes these statistics raise important questions about where parental responsibility begins and ends, and asks whether police officers are being forced to deal with something of which parents have absolved themselves.³⁰

THE NIGHT-TIME ECONOMY

Many frontline officers spoken to by the Law Commission expressed a view that since the 1989 Act removed standardised trading hours, opening the way for 24-hour trading, the levels of alcohol-related offending had increased. The observations of one police officer who the Law Commission had accompanied on night patrols in Dunedin earlier this year epitomised this view:³¹

"...when I walked out of the station at 05.30hrs Great King Street was still awash with drunks...band music from Bath Street still pumping out and the town still fully humming....it makes me sick actually and I couldn't help but think that these people would not be there at that hour, in that state, if bars shut at a reasonable hour."

An analysis of the trading hours stipulated in liquor licences issued by the Liquor Licensing Authority shows that of the 14,183 licences in force, 1,002 currently permit the sale of liquor "at any time on any day", and a further 2,466 permit the sale of liquor beyond 2 am.³²

A comprehensive Police study of the impact of 24-hour licensing on criminal offending and victimisation in Auckland city concluded that there was a strong correlation between extended trading and violence and disorder offences.³³ An analysis of Auckland central city Alco-Link (discussed shortly) data in 2007 showed just under half (49.8 per cent) of arrests for violence-related offences

FACTS AT A GLANCE

Researchers found that young people who drink before going out were four times more likely to drink 20 or more standard drinks on a usual night out, and twice as likely to be involved in a fight in the city or to be sexually assaulted, than those who did not drink beforehand.

Under current law it is not an offence for an individual to be drunk or intoxicated in a public place.²⁶ However under section 36 of the Policing Act 2008, Police have the power to intervene when someone is found in a public place intoxicated to the point where they are a risk either to themselves or others.

involved an offender affected by alcohol as did 78 per cent of arrests for disorder offences.³⁴ In an introduction to the report the authors noted:³⁵

Whilst a majority of licensed premises in Auckland appear to be reasonably run and managed, Police believe that the 24-hour availability of alcohol policy adopted by Auckland City Council through its District Plan encourages licensees to seek commercial opportunities through operating for longer hours and attracting a late night clientele. To do this, they adopt competitive management practices which attract violent offending and victimisation to their geographic location as the violence that occurs is mainly occurring in public places and not in licensed areas.

The challenge of policing the night-time economy is not unique to New Zealand. Police and local authorities in many countries, including Australia and the United Kingdom are struggling to resource and respond to a similar phenomenon. A recent study of the night-time economy in England and Wales identified two

major concerns regarding alcohol consumption, namely "the exacerbation of long-standing traditions of heavy sessional drinking and... an increasingly favourable attitude towards drunkenness amongst British youth".³⁶

The researchers, quoting other studies, go on to suggest that these shifts have been "facilitated by the statutory deregulation of licensing laws and entrepreneurial agendas of local economic regeneration".³⁷ They write:³⁸

Young adults aged 16-35 years represent core consumers of commercial urban leisure and it is towards them that the contemporary branding and marketing practices of the drinks and leisure industries have been most obviously directed... The potential for violence, disorder and low-level antisocial behaviour amongst young people has been an important conduit of this process of expansion in the night time economy.

There can be no doubt that a significant driver of Police concern relates to the fact that frontline police and emergency services have been left to shoulder the social consequences of alcohol-related harm generated by the expansion of the night-time economy.

However, given the social changes explored in the preceding chapter, it is clearly wrong to lay the blame for all antisocial behaviour at liquor's door. While some of the behaviours exhibited in public places today may be more extreme, and the attitudes towards police less respectful, drunkenness and violence are certainly not new features of our society. Young people going back many generations have pushed the boundaries around alcohol and risk taking – just as successive generations of parents have got in a moral panic about what their offspring do after dark. So is this problem really new?

Patrons celebrating a Canterbury Crusaders win queue for admission to a Christchurch bar.

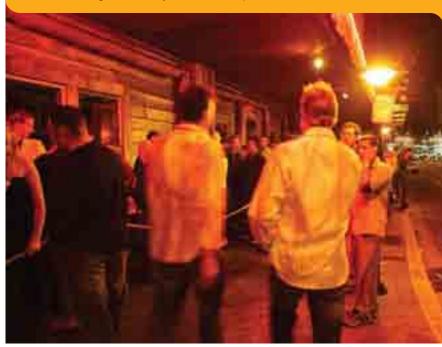


Photo: Peter Meecham, The Press, Christchurch.

SAME PROBLEM, DIFFERENT GENERATION?

Police Commissioner Howard Broad readily concedes that no, our problems with alcohol are not new. In some respects he believes the behaviour around alcohol of people in his generation was worse – just much less visible.³⁹

Up until 1981 it was an offence to be drunk in a public place in this country,⁴⁰ a law which provided the police with what the Commissioner indicated was often used to pre-empt further offending. But the relatively low levels of public drunkenness said little about how people drank in private and on licensed premises:⁴¹

In some regards it was hugely hypocritical in that we didn't tolerate public drunkenness but everyone was drunk everywhere else. And there was tacit approval of this by the corporate world: banks and lawyers and insurance companies had huge parties – the police had them.

While 10 o'clock closing meant city streets were usually quiet by midnight,

social historians have noted it was not uncommon for patrons to retreat to the lounge bar where they would carry on drinking as guests of the house. Nor was it uncommon for patrons to get into their cars and drive home after a night's drinking, something which was widely tolerated by the community despite being against the law. Internally, Police culture around alcohol mirrored that of New Zealand society and police bars in the 1970s and 1980s were often the focal point of after-hours socialising. Bars for journalists, politicians, rugby clubs and many other work places were no different.

Evidence presented to the Commission of Inquiry Into Police Conduct led by Dame Margaret Bazley in 2004/05 suggests the behaviour and drinking patterns associated with Police bars in that era were often no worse but also no better than those seen in the wider community at that time.⁴² Commissioner Broad says the culture has been transformed, partly as a result of a determined effort by Police leadership and partly under the influence of generations of new young police recruits, many of them women, who have different attitudes and lifestyles.⁴³

CASE STUDY TAKANINI, SOUTH AUCKLAND

Dusk and only minutes into the evening shift the first aggravated robbery is called in: a liquor store in Challen Close, Takanini, Auckland. The Police dog team pursues the armed offender who has decamped down the railway track.

Word has spread and the security guards at the neighbouring Manuroa liquor stores are vigilant. The feeble street lighting adds to the sense of ill ease as police flood the area. Four liquor stores within the space of 250 metres. Most have iron bars across their windows and graffiti-tagged steel roller doors: one was the target of an armed robbery the week before and remains shuttered up – a window of opportunity for competitors to increase their turnover until the owners get back on their feet.

Residents emerge from their houses as the dog handlers move through their back yards in pursuit of the offender. But business continues as usual at the liquor stores: customers come and go by foot and by car, many walking away with what Manukau Sergeant Gavin Campbell describes as the classic South Auckland buy: two cans of Woodstock (bourbon and cola) for \$5.

"It runs at eight per cent per volume so that guy just bought two cans at \$4.90, that's a fairly good whack. Typically, the purchaser will consume that drink at a bus stop or in a park within a few hundred metres of the shop and before the night's over there will be an altercation of some sort."



Photo credit: Photo courtesy of New Zealand Police.

ALCOHOL AND CRIME

Police Commissioner Howard Broad says that to understand why reducing alcohol abuse in New Zealand has become such a strong focus for Police, we need to go back two decades to the beginning of strategic planning within the New Zealand Police. It was then that Police developed their first crime prevention strategy:⁴⁴

Before 1992 Police did not take ownership of crime prevention.
But as soon as we began to focus on crime prevention it became abundantly clear that alcohol was a major driver of offending and in particular of violent offending, both within families and in our communities.

Alcohol had been recognised as an 'aggravator' of a range of social problems as far back as the late 1980s but once Police began measuring and recording alcohol's involvement in offending its significance came into stark relief. While acknowledging that alcohol is one of many factors contributing to crime in this country, Commissioner Broad argues that alcohol is often a

common ingredient running right through the chain of offending:⁴⁵

We know alcohol plays a part in making a family unit dysfunctional and we know that a dysfunctional family produces kids who are more likely to grow up and commit crime....and we know that alcohol is a cause of family violence and sexual violence. And those two things alone are by far and away the greatest cost because of the impact on both the victim and offender over the course of a lifetime.

The Police Commissioner's view of alcohol's contribution to offending is strongly supported by some of our District Court judges who in a preliminary submission to the Law Commission estimated that "at least 80 per cent of defendants coming before the criminal courts have alcohol or other drug dependency or abuse issues connected with their offending."46 Of those cases, the judges estimated 80 per cent involved alcohol.⁴⁷ Based on an analysis of people appearing in the District and Youth Courts around the country in one week (commencing 4 May 2009), the judges estimated that approximately 3,800 people presented with alcohol-related offending.

In the judges' submission, Judge McMeeken (Christchurch Family Court and Youth Court Judge) states that "the cost in financial, criminal and social terms of alcohol abuse and dependency amongst the young is absolutely astronomical":⁴⁸

I often comment when I am sitting in Youth Court that if I only had to deal with young offenders who offended whilst sober, I would have very, very little work to do. That is a chilling statement to make when most of the young people I see are 14 and 15 years of age.

In an average Youth Court List in Christchurch of approximately 30-35 young people, at least 70 per cent of them are drunk when they offend. That proportion is much higher in respect of young people who commit serious acts of violence. When reviewing the files of these young people I find that most of them are not at school and that in many, many cases they have been excluded from school because of factors that directly relate to their abuse of alcohol. They either truant because they are hung-over, they steal from pupils and teachers because they need money, they are irritable and aggressive because they are hung-over or withdrawing and they are uninterested or unable to learn because they have inadequate sleep and nutrition as a result of their drinking.

The Police's National Alcohol Assessment⁴⁹ published in April 2009 provides strong corroboration of both the Commissioner's and the District Court judges' estimation of alcohol's involvement in offending and victimisation in this country.

Among the 15 different Police data sets used to compile this report is a system called Alco-Link, used by arresting officers as they complete custody/charge sheets. In use since 2005/06, Alco-Link provides a powerful tool in measuring the impact of alcohol on criminal offending in this country.⁵⁰

The following summary of alcoholrelated crimes provides an overview of the key categories of offending as well as estimates of the level of alcoholrelated victimisation. Like all statistics, these crime statistics need to be treated with some caution - crime is recorded where Police resources are expended. For example, the increased emphasis on enforcing drink driving laws may have led to an increase in the number of individuals apprehended for drink driving. It does not necessarily follow from this that more people are offending than previously. Rather, it may simply be that more people are being detected. Similar caveats apply to trend data around family violence statistics, another area of increased Police focus in recent

years. None of this belies the actual level of offending being recorded.

ALCOHOL-RELATED VIOLENCE

The link between alcohol and offending is complex and involves many environmental and individual variables. However, as discussed in chapter 4, New Zealand and international research shows that alcohol is strongly implicated in aggressive and violent behaviour – implying that the levels of violent crime we are experiencing as a society might be reduced if levels of alcohol abuse were reduced.

This association between alcohol and violent crime in this country is illustrated by the fact that in at least one-third (20,447) of the violence offences committed in 2007/08 the offender had consumed alcohol prior to committing the offence.⁵¹ Peak times for recorded violence offences occurred between 9 pm on Friday evening and 3 am Saturday morning, and from 6 pm on Saturday evening to 3 am Sunday morning.⁵²

- In half (49.5 per cent) of the 489 homicides recorded between 1999 and 2008 either a suspect or a victim was under the influence of alcohol at the time of the incident.⁵³
- 241 of these homicides were classified as family violence-related homicides,⁵⁴ and 37 per cent (89) of these involved either a suspect or victim being under the influence of alcohol at the time of the incident.⁵⁵

FACT AT A GLANCE

In 2007/08 over 20,000 violence offences were committed by an offender who had consumed alcohol prior to the offence.

 In 2007/08 there were 19,388 recorded victims of assaults associated with family violence.⁵⁶ In 34 per cent of incidents the alleged offender had consumed alcohol.⁵⁷

In their submission to the Law Commission, the District Court judges observed that intoxication was commonly a feature in cases coming before the Family Violence Courts. They have cited a recent survey of cases in the North Shore Family Violence List which revealed approximately 90 per cent of cases over a nine-month period involved alcohol.⁵⁸

ALCOHOL AND SEXUAL ASSAULTS

One in five of the 3,652 sexual offences recorded in 2007/08 involved an offender who had consumed alcohol prior to the offence being committed.⁵⁹

In fact, Police believe this figure is conservative given the frequent delay in identifying and apprehending alleged sexual offenders. ⁶⁰ As a consequence, in half the cases it is not possible to ascertain whether or not alcohol was involved. Police estimate that approximately one in three offenders are under the influence of alcohol when they sexually offend. ⁶¹

A UN report on violence against children identified alcohol abuse as a risk factor and recommended policies that limit access to and reduce demand for alcohol in the community.

VICTIMS

- Intoxication can lead both to offending and becoming a victim sometimes for the same individual. Analysis of research conducted by Auckland Police suggests that moderate and extreme intoxication is frequently associated with violent offending. In addition, they cite research that intoxication is associated with becoming the victim of an offence.⁶²
- The 2006 National Crime and Safety Survey asked victims of assaults and threats to indicate whether their offender had been "affected at all by alcohol". 63 Of those assaulted in public, 47 per cent said their attacker(s) was under the influence of alcohol. Of those assaulted in private places, 31 per cent said their attacker(s) was affected by alcohol. The survey also identified that a notable proportion of victims of violence in public places were themselves drinking at the time (23 per cent), compared with 10 per cent of victims in private places. 64
- In a recent report on the costs of harmful alcohol and drug use, the health costs of providing treatment to victims of crime in the year 2005/06 were estimated to be \$97.8 million.⁶⁵ Lost income and pain and suffering were not included in this estimate.
- Information on the harm experienced as a result of other people's drinking was also collected as part of the *Alcohol Use in New Zealand* survey. This survey found 16.6 per cent of 18 to 24 year-olds had been physically assaulted in the preceding 12 months by somebody who was drinking; 12 per cent had been sexually harassed and 4.8 per cent had been involved in a motor vehicle accident as a result of somebody else's drinking.⁶⁶
- For all age groups, just under six per cent of respondents aged 12 to 65 reported having been physically assaulted by someone who was drinking and
 5.3 per cent had been sexually harassed.

An Environmental Science & Research (ESR) study in New Zealand was undertaken in relation to over 500 drug-related sexual assaults between 2002 and 2008.⁶⁷ The study found that in more than 80 per cent of the cases the victims were affected by alcohol.

CHILD ABUSE AND ASSAULTS AGAINST CHILDREN

Between 1995 and 2004, 51 children under five years of age died in this country as a result of assault. Our rates of child death resulting from assault or maltreatment are among the highest in the developed world. Nearly one child under five years of age is hospitalized every week as a result of assault.

These facts are cited in a recent report commissioned by the Office of the Children's Commissioner. The report examines the latest international literature on death and injury in children under five.⁶⁸ It finds that there are multiple factors which place children at risk, including maternal age, poverty, ethnicity (often a marker for poverty) and the presence of a non-biological father. Alcohol abuse is often a confounding factor. One Canadian study cited in the report found that alcohol consumption was 'present' in the fatality report of 31 per cent of deaths

of children under five years of age in British Columbia. ⁶⁹ The report also cited research showing that the:⁷⁰

likelihood of serious child abuse is increased six to eightfold if the child's mother was engaged in hazardous drinking around the time of conception (OR=6.2) or in the first trimester of pregnancy (OR=8.2). Barraclough and Harris (2002) report that for male perpetrators within the family, substance abuse with or without mental illness was more likely.

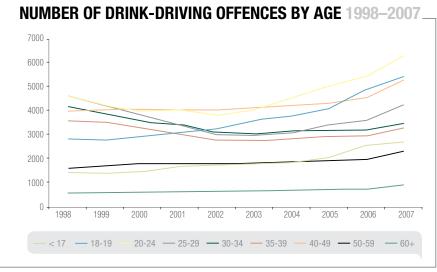
A recent UN report on violence against children also identified alcohol abuse as a risk factor and recommended policies that limit access to and reduce demand for alcohol in the community.⁷¹

ALCOHOL & DRIVING OFFENCES

There have been substantial increases in the number of alleged offenders aged under 20 and over 40 apprehended for drink driving offences. As illustrated in Figure 5.1, the greatest increases can be seen from 2002 to 2007.⁷²

Many more males are convicted for drink driving than females, as shown in figures 5.2 and 5.3. However, the conviction numbers for women have increased sharply over the last four years.⁷³

FIGURE 5.1



Source: TENF Provisional Database, New Zealand Police.

Repeat offenders

In 2008 there were 29,739 drivers who received one or more convictions for drink driving. Of these, 18,924 (64 per cent) had only one drink driving conviction in 2008 and in the 10 years prior. A further 6,973 drivers (23 per cent) had one conviction in 2008 and one other prior drink driving conviction either in 2008 or the 10 years prior. Another 2,594 drivers (9 per cent) had three drink driving convictions, at least one in 2008 and two more in the preceding 10 years.⁷⁴

Section 65 of the Land Transport Act 1998 allows for the indefinite disqualification of drivers' licences for recidivist drink (and drug) drivers if they have multiple convictions.

To be eligible to regain their licence, offenders have to undertake an assessment to determine whether they have adequately addressed their alcohol or other drug (AOD) misuse and are fit to reapply for their driver's licence. Currently there are over 12,000 people who have been indefinitely disqualified and have not been assessed.⁷⁵ Many of these people will continue to drive.

OFFENDER ANALYSIS AND FUTURE TRENDS

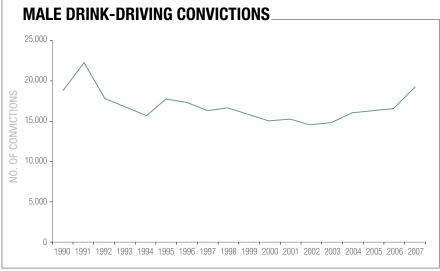
Young males dominate our alcohol-related offending, with over half of alleged offenders who consumed alcohol prior to offending in 2007/08 being under 25 years of age. ⁷⁶ Women make up less than 20 per cent of alcohol-related offenders. Offending peaks between ages 17 and 20. ⁷⁷ Across all age groups, however, the number of people arrested where alcohol was consumed prior to offending is increasing, with the greatest increase seen in the 20 to 24 year age group – up by 30 per cent per 10,000 head of population in three years. ⁷⁸

A disproportionate number of offenders are also Māori and Pacific Isle: in 2007/08 Europeans accounted for 43 per cent of all alcohol-affected offenders, Māori 36 per cent and Pacific Island ethnic groups 10 per cent.⁷⁹ The percentage of apprehensions where alcohol was

Between 2002 and 2007 there were substantial increases in the number of alleged offenders aged under 20 and over 40 apprehended for drink driving offences.⁷²

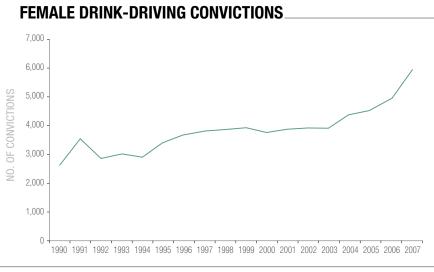
Photo: Ross Setford, NZPA, 14 December 2007.

FIGURE 5.2



Source: Statistics New Zealand.

FIGURE 5.3



Source: Statistics New Zealand.

CASE STUDY

DUNEDIN - ORIENTATION WEEK 2009



Photo: Craig Baxter, Otago Daily Times.

Home to the "Pride of the South"

- Speight's Brewery – and to
New Zealand's oldest university.
A city of 120,000 residents, swollen
by around 18,000 students each
February, 80 the majority revelling in their
new found freedom away from home.

This year student orientation week made national news after the traditional toga party left a trail of destruction and disgruntled councillors, retailers and residents in its wake. Even the student newspaper's editor, Amy Joseph, wrote a scathing editorial to her fellow students citing a "toga parade, which degenerated from traditional rite of passage to troglodytes evacuating passages on drunk, disoriented freshers".81

The Law Commission's visit coincided with the end of 'O week': the weather was still warm, front lawn gatherings armed with the obligatory dozen beers and the funnel for rapid consumption of beer. Small flats with little outdoor space host groups of people balanced precariously on the tin veranda over the courtyard – issues of safety were not foremost in the mind. Tenants do, however, fear being called into the

Proctor's office on Monday morning: it seems the recently adopted Code of Conduct for students has provided the university with the ability to hold students more accountable for their actions.

In Castle St, a bulletproof young man boldly chugged down a funnel of Stella Artois – then began worrying that he was breaching the liquor ban. Another youth is aimlessly walking down the centre of the street but wants to get directions (or a ride) to his hostel (which is 100m away). Other students are boosting each other up a power pole, looking suspiciously like they are soon to purloin the street sign for their flat's honour board. The police have a proactive and engaging role - but you can't help but feel they are fulfilling a parental, rather than a policing, role. To their credit, these students are polite and eager to talk to the police they clearly respect.

Dunedin Police were already preparing for the Hyde Street party in March: an annual party in a street with about 30 houses, which are mostly student flats. The University and Police staff put rigorous 'rules of engagement' in place for the safe management of this event, including face-to-face meetings with tenants in Hyde Street, but Police were expecting a big event.

The crowd peaked at 1000 people in the early evening, having started drinking kegs of beer and 'Icebreaker' (vodka and lemonade) at about 10 am (a 50 litre keg, typically used by caterers, costs around \$150 for the vodka mixer and \$225 for beer.) Police put in 26 staff over the course of the day. Ambulances were set up at the end of the street, treating cut feet and other drunken injuries, including someone who jumped off a roof and put her knee through her jaw (despite a rule that no-one was to be on the roof of property). The Fire Service was unable to gain access to the crowded street but fire extinguishers were provided to police. Despite a no couch burning edict from the Proctor, a couch was set alight in front of an old wooden villa with flames reaching 15 feet high at its height.82 Not the most sensible decision of the night from New Zealand's future doctors, lawyers and pharmacists.

While the focus is on Dunedin here, the issues related to the student population are not unique to Dunedin. The University of Canterbury has 18,000 students per annum, of which 73 per cent live with in a 5 km radius of the university, but bring in an estimated \$1.5 billion per annum to the city, which the University's Students' Association president colloquially described as the "ghettoisation of Upper Riccarton and Ilam".83 Massey, Victoria University of Wellington, University of Auckland and Waikato University all have issues related to alcohol and their campuses.

consumed prior to offending has increased by 18 and 24 per cent respectively for Māori and Pacific Island ethnic groups between 2005/06 and 2007/08.⁸⁴

The National Alcohol Assesment predicts that serious violence offences, such as homicides, will continue to have a high incidence of alcohol involvement by the offender.⁸⁵ Given the amount of Police resource already consumed by alcohol-related offending, Police Commissioner Howard Broad asks whether the public will be content to see this diversion of resources continue or perhaps escalate in the next decade:⁸⁶

There is a very real future fiscal risk for the Police in having to double or treble the number we have out at night dealing with this sort of thing (alcohol-related offending) because you can't just do it in South Auckland because it is happening absolutely everywhere.

ALCOHOL AND ANTISOCIAL BEHAVIOUR

be tough enough at the best of times, but imagine beginning your day by cleaning up puddles of urine that have drained into your workplace. That's the situation for many businesses in the CBD, and for some the situation has gone too far, as they find themselves cleaning up not only urine, but faeces, yomit and used condoms.⁸⁷

I am not a killjoy nor a wowser

— I love the life and energy of
living where I do — I just wish
drunks would stop puking and
peeing on our doorsteps and
do it inside the bars where
they load up.88

George Street retailers were unimpressed with the debris left behind after an annual student Orientation Week event got out of hand.

Photo: Craig Baxter, Otago Daily Times, Dunedin 24 February 2009.

LOCAL COUNCILS ARE FREQUENTLY REQUIRED TO MEDIATE BETWEEN THE COMPETING INTERESTS OF INNER CITY RESIDENTS AND THOSE OF ENTERTAINMENT BUSINESSES.

Urinating, defecating and vomiting in public places are not regarded as acceptable behaviour by most New Zealanders and can be prosecuted under the general umbrella of offensive behaviour.⁸⁹

However the following discussion is less about individual criminal offences, and more about social norms – and more specifically whether the social norms which apply during daylight hours now hold less sway after dark in many of the country's entertainment districts, creating a significant environmental problem for retailers, private residents and councils.

Ratepayers all over the country are picking up the tab for cleaning up what Queenstown's Mayor Clive Geddes refers to as the "wet spots". 90 In the affluent Auckland suburb of Howick the council was forced to contract a biohazard cleaner at a cost of approximately \$1,000 per night to clean up the blood, urine and faeces left behind by bar patrons. 91 This continued for two years until the bar in question was persuaded to change its practices resulting in a significant improvement in the area.

Members of Wellington's *Inner City Residents and Business Association* are in regular contact with their local body representatives seeking action over an array of issues from noise control to vandalism, intimidation, and pollution. Some residents suggested a council safety initiative to improve lighting in Blair Street had backfired and turned the street into an all night party zone:⁹²

The notion of party in this part of the city, as I am sure most councillors now appreciate is a bunch of mainly young [people] binge drinking at bars, clubs, on the street and in their cars, leaving their filth and broken bottles behind them... A considerable part of Sunday is spent cleaning the street - this involves several vehicles as well as a bunch of men. The cost of cleaning up after another night of alcohol abuse in the city must be significant. Increased numbers are actually drinking in the street and there is violent and aggressive behaviour right through to 7 am and later. Accordingly the amount of urine and vomit in our doorway has increased...it appears that we have virtually no rights in this issue.

Local councils are frequently required to mediate between the competing interests of inner city residents and entertainment businesses exercising their legitimate business rights, conferred by their liquor licences, to remain trading until 5, 6 or 7 am. The question arises though, as to whether the current licensing regime is capable of giving sufficient weight to these competing interests – including the interests of other business owners.

Police work to reduce the impact of alcohol-related crime in the central city business area but the effects of alcohol misuse extend well beyond the immediate victims and are also felt by business owners and inner city residents who regularly clean blood and other bodily matter from the surrounds of their building and who are fearful of walking along the street after 11 pm.

Neighbourhoods around the country have to contend with local parks and pavements littered with glass on Saturday and Sunday mornings, bus shelters, fences and car windows smashed.



Photo: Kirk Hargreaves, The Press, Christchurch.

THE EFFECTS OF ALCOHOL MISUSE EXTEND WELL BEYOND THE IMMEDIATE VICTIMS AND ARE ALSO FELT BY BUSINESS OWNERS AND INNER CITY RESIDENTS.

The impact which alcohol abuse is having on the wider public's enjoyment of our cities was also reflected in the findings of the 2008 Quality of Life Survey. The survey, which measures the perceptions of over 8,000 residents living in the country's largest cities, found alcohol and drug problems featured strongly in the reasons people gave for not feeling safe in our main centres.⁹³

At the other end of the spectrum, and far less likely to attract the attention of councillors and media, are the neighbourhoods around the country which do not have the protection of

liquor bans. They have to contend with local parks and pavements littered with glass on Saturday and Sunday mornings, and bus shelters, fences and car windows smashed.

In the South Auckland suburb of Randwick Park for example, where liquor store owner Navtej Singh was shot, the local Life Church, lead by pastor Lui Ponifasio, routinely deploy working parties to pick up broken bottles and glass from neighbourhood parks and footpaths in the aftermath of weekend street drinking.⁹⁴ The volume collected often requires a special council glass collection.

SUMMARY CHAPTER 5 ALCOHOL, CRIME & ANTISOCIAL BEHAVIOUR

Alcohol is associated with an increased risk of aggressive behaviour and interpersonal violence.

At least 31 per cent of all types of recorded criminal offending in this country in 2007/08 was committed by a person who had consumed alcohol prior to committing the offence.

In 2007/08 over 20,000 violence offences were committed by an offender who had consumed alcohol prior to the offence.

Young males under 25 are most likely to be apprehended for these offences.

There is evidence to suggest that most patrons entering clubs and bars late at night and in the early morning have consumed alcohol purchased from an off-licence before going out.

This phenomenon, known as pre-loading, combined with the extended trading hours of many inner city clubs and bars is believed to be linked to high levels of intoxication in public places and associated offending.

The prevalence of intoxication in public places and the behaviours or offending associated with it are making significant demands on our Police and diverting resources away from other crime.

The harmful use of alcohol and other drugs is imposing significant costs on our criminal justice sector, including our courts and prison service.

The harmful use of alcohol also creates large numbers of victims and can interfere with other citizens' enjoyment of their communities and public places.

CHAPTER 5 ENDNOTES

- 1 New Zealand Police *National Alcohol Assessment* (Wellington, April 2009) 7
 [*National Alcohol Assessment*]
 (available at http://www.police.govt.nz).
- 2 Judge John Walker, on behalf of the Chief District Court Judge, to the Law Commission "The Extent of Alcohol Related Offending" (29 May 2009) letter [full text of letter set out in Appendix 1.
- 3 Department of Corrections Strategy to Reduce Drug and Alcohol Use by Offenders 2005-2008 (Wellington, 2004) (available at http://www.corrections.govt.nz/_data/assets/pdf_file/0005/256955/doc-strategy-to-reduce.pdf).
- **4** National Alcohol Assessment, above n 1, 26, recording incidents of Police exercising powers now located in section 36 of the Policing Act 2008.
- 5 Commissioner Broad's response to a question asked by then Associate Health Minister Jim Anderton in a meeting for the Ministerial Committee on Drug Policy in July 2008 (available at http://www.ndp.govt.nz/moh.nsf/pagescm/559/\$File/mcdp-minutes-28jul08.pdf).
- **6** National Alcohol Assessment, above n 1, 7.
- 7 Business and Economic Research Limited Costs of Harmful Alcohol and Other Drug Use (Report prepared for the Ministry of Health and Accident Compensation Corporation, Wellington, 2009) 61 [BERL report]. The Government departments have checked the data contributing to the calculations from BERL cited here and are confident that their data has been used in a robust manner.
- 8 BERL report, above n 7, 49.
- **9** National Alcohol Assessment, above n 1, 79.
- 10 Of the 2,581 patients who presented at Christchurch hospital with facial fractures between 1996 and 2006, 49 per cent were alcohol-related injuries: Kai Lee and Leslie Snape "Role of Alcohol in Maxillofacial Fractures" (2008) 121

 New Zealand Medical Journal, 15, 16.
- **11** Sale of Liquor Act 1989, s 166.
- **12** Sale of Liquor Act 1989, s 167.
- 13 Sale of Liquor Act 1989, s 168(1)(b).
- **14** Sale of Liquor Act 1989, s 168(1)(a).

- 15 Louise Kirkwood Analysis of Waitemata District Alcohol Behaviour Survey (Report prepared for the Alcohol Advisory Council of New Zealand (ALAC), 2009) 22.
- **16** Kirkwood, above n 15, 24.
- 17 New Zealand Police "Survey of Patrons Drinking Before Arrival at Central City Venues Wednesday 13 May 2009" (Unpublished research, 2009) [Police Patron Survey].
- **18** Police Patron Survey, above n 17, 7.
- 19 Police Patron Survey, above n 17, 8.
- 20 Police Patron Survey, above n 17, 9.
- **21** Police Patron Survey, above n 17, 10.
- 22 K Hughes, Z Anderson, M Morleo and M Bellis "Alcohol, Nightlife and Violence: The Relative Contributions of Drinking Before and During Nights Out to Negative Health and Criminal Justice Outcomes" (2008) 103 Addiction, 60.
- **23** National Alcohol Assessment, above n 1, 20.
- 24 Of those that went to court, 336 cases (4 per cent) were administratively withdrawn by leave, 811 cases (10 per cent) were withdrawn by leave, due to the offender completing Police diversion, and 4,647 cases (60 per cent) resulted in a fine (Data request provided to the Law Commission by the Ministry of Justice, 8 June 2009) email.
- 25 Sale of Liquor Act 1989, s 166.
- **26** Although a person under 18 years can be issued with an infringement offence for drinking in a public place: under s 38 of the Summary Offences Act 1981.
- **27** *National Alcohol Assessment*, above n 1, 26.
- 28 These locations were Christchurch city, Wellington, Rotorua, Auckland Central, Hamilton and Manurewa. (Data request provided to the Law Commission by New Zealand Police, 8 May 2009, email).
- **29** Personal communication of anonymous Constable, Auckland Downtown Police, to the Law Commission (16 June 2009), email.
- **30** Meeting with Howard Broad, Commissioner of Police (Cate Brett, Wellington, 7 April 2009) [Howard Broad meeting].

- **31** Senior Sergeant Jason Guthrie, Dunedin Police, to the Law Commission (17 March 2009) email.
- **32** Analysis provided to the Law Commission by the Liquor Licensing Authority (8 July 2009).
- **33** New Zealand Police "24 Hour Licensing Hours in Auckland City" (A paper prepared by Senior Sergeant Ben Offner, Sergeant Bryce Law and Barry Hyde, May 2008) [24 Hour Licensing].
- **34** 24 Hour Licensing, above n 33, 33.
- 35 24 Hour Licensing, above n 33, 6.
- **36** P Hadfield and F Measham "England and Wales" in Phil Hadfield (ed) Nightlife and Crime: Social Order and Governance in International Perspective (OUP, Oxford, 2009) 17, 17.
- 37 Hadfield and Measham, above n 36, 17.
- 38 Hadfield and Measham, above n 36, 18.
- **39** Howard Broad meeting, above n 30.
- **40** This offence was contained in the Police Offences Act 1927 and was repealed by the Summary Offences Act 1981.
- 41 Howard Broad meeting, above n 30.
- 42 Margaret Bazley Report of the

 Commission of Inquiry into Police

 Conduct (Wellington, 2007) 287

 (available at http://www.cipc.govt.nz/
 cipc.nsf/wpg_URL/Agency-Commissionof-Inquiry-into-Police-Conduct-Report-ofthe-Commission-of-Inquiry-into-PoliceConduct?OpenDocument).
- **43** Howard Broad meeting, above n 30.
- 44 Howard Broad meeting, above n 30.
- **45** Howard Broad meeting, above n 30.
- **46** Judge John Walker, above n 2.
- **47** It should be noted that judges see cases where changes are laid and proceed through to sentence, including those where an alcohol or other drug assessment has been sought to assist in appropriate sentencing.
- 48 Judge John Walker, above n 2, 5.
- **49** National Alcohol Assessment, above n 1.

- 50 The alleged offender is asked whether they consumed alcohol prior to offending by the arresting officer. Alcohol is recorded as a factor if the alleged offender informs Police that they consumed alcohol prior to offending, and if unresponsive, the arresting officer judges alcohol involvement based on physical and behavioural cues. The alleged offender is also asked where their place of last drink was consumed prior to offending and at what time they had a drink prior to offending. Police also assess the extent to which a person is affected by alcohol by using guidelines based on speech, coordination, appearance and behaviour at the time of arrest. This data is entered into Police's National Intelligence Application (NIA) enabling statistical reports to be provided at a national level or at a Police District, Area or Station level to inform either policy work or tactical or proactive policing.
- **51** National Alcohol Assessment, above n 1, 23.
- **52** National Alcohol Assessment, above n 1, 76.
- **53** National Alcohol Assessment, above n 1, 41.
- **54** Family violence-related homicide incidents are assessed differently to other family violence-related occurrences defined by Police. For further information, refer to *National Alcohol Assessment*, above n 1, 92.
- 55 National Alcohol Assessment, above n 1, 42.
- **56** National Alcohol Assessment, above n 1, 40.
- 57 National Alcohol Assessment, above n 1, 41.
- 58 Judge John Walker, above n 2.
- 59 National Alcohol Assessment, above n 1, 24.
- **60** National Alcohol Assessment, above n 1, 24.
- **61** National Alcohol Assessment, above n 1, 26.
- **62** 24 Hour Licensing above n 33, 20 and 34.
- **63** P Mayhew and J Reilly Community
 Safety: Findings from the New Zealand
 Crime and Safety Survey 2006 (A report
 prepared for the Ministry of Justice,
 Wellington, 2007), chapter 2 (available
 at http://www.justice.govt.nz/pubs/
 reports/2007/crime-safety-survey-2006/
 community-safety/chapter-2.html).
- 64 Mayhew and Reilly, above n 63, chapter 2.
- 65 BERL report, above n 7, 158.

- 66 Ministry of Health Alcohol Use in New Zealand: Analysis of the 2004 New Zealand Health Behaviours Survey – Alcohol Use (Public Health Intelligence Occasional Bulletin No. 40, Wellington, 2007) 37.
- **67** D Kappatos "Sexual Assault Toxicology: The New Zealand Experience" (Presentation given to Sexual Assault workshop, hosted by Environmental Science and Research, March 2008).
- 68 M Duncanson, D Smith and E Davies

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 Children Aged Under 5 years in Aotearoa
 New Zealand: A Review of International
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 Commissioned by the Office of the
 Children's Commissioner, 2009) (available
 from http://www.occ.org.nz/_data/assets/
 pdf_file/0016/6343/OCC_Deathand_
 seriousinjury2009_040609.pdf).
- **69** Duncanson, Smith and Davies, above n 68, 11.
- **70** Duncanson, Smith and Davies, above n 68, 11.
- 71 UN General Assembly "Report of the Independent Expert for the United Nations Study on Violence Against Children" (29 August 2006) A/61/299, 20, 30 (available at http://www.violencestudy.org/ IMG/pdf/English-2-2.pdf).
- 72 National Alcohol Assessment, above n 1, 53.
- 73 Analysis based on data extracted from Statistics New Zealand 'Table Builder' (available at http://www.stats.govt.nz/default.htm).
- 74 For the purposes of this document, a repeat conviction has been counted only when it has occurred within the 10 years prior to 2008. This means people with a longer time period between convictions (for example one at age 20 and another at age 50) are not counted as repeat offenders. Data provided by Transport Monitoring, Ministry of Transport, to the Law Commission (June 2009), email.
- **75** Data provided to the Law Commission by the Ministry of Transport (June 2009) email.
- **76** National Alcohol Assessment, above n 1, 63.
- **77** National Alcohol Assessment, above n 1, 87.

- **78** *National Alcohol Assessment*, above n 1, 87.
- **79** National Alcohol Assessment, above n 1, 59.
- **80** Based on the average of the total student population from 2003 (available at http://www.otago.ac.nz/about/quickstats. html#student).
- **81** Amy Joseph "Critic Editor Slams 'Disgusting' Toga Display" (4 March 2009) *Otago Daily Times* Dunedin.
- **82** Sergeant Wayne Pitcaithly, Liquor Licensing Officer, Dunedin Police, to the Law Commission (2 April 2009) telephone conversation.
- **83** Steve Jukes "Integration Not Imposition: Canterbury's Approach to Anti-social Drinking" (Paper presented to the 2009 ALAC Working Together Conference, Wellington, 14 May 2009).
- **84** National Alcohol Assessment, above n 1, 88.
- **85** National Alcohol Assessment, above n 1, 61.
- **86** Howard Broad meeting, above n 30.
- **87** Mark Hathaway "9 Local News" (5 March 2009) *Channel* 9 Dunedin (available at http://www.ch9.co.nz/node/11110).
- **88** Personal correspondence to the Law Commission from a member of the *Wellington Inner City Residents* and Business Association (May 2009).
- **89** Vomiting in a public place would not necessarily be caught under this law without intent.
- 90 Clive Geddes "The Challenges in Planning for Alcohol in Our Community" (Paper presented to the 2009 ALAC Working Together Conference, Wellington, 15 May 2009).
- **91** Personal correspondence to the Law Commission from a liquor licensing inspector (25 May 2009) email.
- **92** Communication between a resident and Wellington City Council provided by the author to the Law Commission (25 May 2009), letter.

- 93 Nielsen Research "Quality of Life Survey 2008 National Report" (Wellington, 2009) 6 (available at http://www. qualityoflifeproject.govt.nz/pdfs/ Quality_of_Life_2008.pdf).
- **94** Meeting with Lui Ponifasio (Cate Brett, November 2008).



HOW HARMFUL DRINKING AFFECTS OUR HEALTH

Few people would immediately think of cancers as one of the major harms from alcohol.

However, cancers are responsible for around one quarter of alcohol-attributable deaths and seven per cent of the burden of disease from alcohol in New Zealand.

For every 100 alcohol or drug impaired drivers killed in crashes, 54 of their passengers and 42 sober road users die with them.

KEY FACT AT A GLANCE

Consuming just four standard drinks on a single occasion doubles the risk of injury over the next six hours and that level of risk continues to increase as the quantity of alcohol consumed increases.¹

ALCOHOL, HEALTH, INJURY AND WELLBEING

CHAPTER 6

INTRODUCTION

In chapter 5 we looked at alcohol harms through the lens of criminality and antisocial behaviour. In this section we assess the impact of the harmful use of alcohol on the health and wellbeing of the population. To some degree the distinctions are artificial: those involved in alcohol-related offending will sometimes end up in our Accident and Emergency departments, while those with alcohol abuse and dependence disorders will sometimes end up in our courts and police cells.

Alcohol is a toxic substance with the potential to cause both immediate health harm, such as alcohol poisoning, and longer-term health harms, such as alcohol dependence, liver disease and a range of cancers.

Alcohol's effect on the brain at the time of drinking also increases the risk of accidents and injury. Consuming just four standard drinks (for example, two full-strength beers or half a bottle of wine) on a single occasion doubles the risk of injury over the next six hours and that level of risk continues to increase as the quantity of alcohol consumed increases.¹

One in four drinkers over 12, and nearly half of drinkers aged 12 to 24, usually drink more than this, at least doubling their risk of injury in the six hours after drinking.² The consequences of this are graphically illustrated in the internationally high rates of death and injury experienced by our young people.

For older drinkers, who tend to drink lower quantities on a typical occasion but with greater frequency, the major concern is the cumulative effect of drinking over a lifetime.

Туре	Verdict	Subcategory	Cause Circumstances	
			swept into the sea beach while unde influence of alc	TO THE RESIDENCE OF THE PARTY O
Inquest Unnecessary	Medical Cause/s	Alcohol	Confluent lobula due to alcoholis contributing alc cardiomyopathy.	findings illustrate the various ways in which alcohol can contribute to mortality.
Inquest	Other	Aspiration of vomit	Inhalation of ga due to alcohol a poisoning.	Information courtesy of Coronial Service Ministry of Justice May 2009
Inquest	Other	Alcohol	Positional asphyxia associated with alcohol ingestion.	
Inquest	Drowning	Alcohol	Drowning whilst under the combined influences of alcohol, Codeine and Promethazine.	
Inquest	Suicide	Overdose	Ingestion of prescription drugs and alcoholafter drinking a mixture of vodka and orangewould have had a depressant effect on his central nervous systemdeath having been self inflicted was depressed.	
Inquest	Other	Alcohol	Death occurred in her bed at her home after she had been drinking a large amount of alcohol to the extent that her blood alcohol level was 277mg/100ml. Cause of death was found to be consistent with asphyxiation while in a state of suppressed consciousness.	
	Medical Cause/s	Alcohol	Acute heart failure due to or as a consequence of chronic alcohol abuse.	
	Motor Vehicle Accident	Loss of control of m/v	Severe injuries including limb fractures, rib fractures with low pneumothorax and brain contusion sustained in a mvscollided with a treehe having a blood alcohol level of 206mg/100ml.	
	Motor Vehicle Accident	Struck by	Multiple injuries when struck by a m standing in the Is highway. At the t	n/v while one of a

FIGURE 6.1 DRINKERS DRINKING AN AVERAGE OF MORE THAN TWO DRINKS PER DAY 50 PER CENT OF DRINKERS 40 30 20 10 55-64 12-17 18-24 25-34 35-44 45-54 AGE GROUP (YEARS)

Source: Alcohol Use in New Zealand survey.

The latest evidence-based guidelines from Australia show that the life-time risk of dying from an alcohol-related disease or injury is below 1 in 100 for those who drink an average of no more than two standard drinks a day. That risk of death increases with higher levels of average daily consumption, for example 4 in 100 with four standard drinks (half a bottle of wine) a day.³

One in three New Zealand drinkers (29.4 per cent: based on 95 per cent confidence intervals, 28.2 per cent – 30.7 per cent) drink on average more than two standard drinks a day, including a quarter of drinkers aged 35 to 64, as shown in figure 6.1.⁴ This is a significant portion of the population and is likely to be reflected in death rates from a range of alcohol-related diseases and injuries.

The following discussion covers:

- immediate effects: alcohol-related death and injuries
- long-term effects: alcohol-related diseases and disorders.

ALCOHOL-RELATED DEATHS

In May 2009, Christchurch Coroner Richard McElrea conducted an inquest into the death of a 23 year-old science student who died in September 2008 after a day's drinking. The Coroner released his report to the Law Commission and the Minister of Justice "as an extreme example of the consequences of alcohol abuse".⁵

While the consequences described in the report were extreme, the circumstances of the young man's death were not so extraordinary. He had been at the Riccarton races during the day and was socialising with his friends in the evening. His friends gave evidence that he had been "on the losing end" of a couple of drinking games. He had fallen off his chair at some point. Eventually his friends realised there was something seriously wrong and called an ambulance. In his post-mortem the young man's blood alcohol levels were four times the legal driving limit. On the basis of the

medical and external post mortem examination the Coroner ruled that intoxication was the overriding factor in his death. His airway had been obstructed by vomit, leading to

respiratory and cardiac arrest.

In his report the Coroner noted the anguish this young man's death had caused his family and friends, quoting a statement from his parents:⁶

It is extremely difficult to accept [our son's] death at just 23 years, 10 months. He was a lovely young man, he was a good friend to his brothers and as parents we had a great rapport with him, he was a good and decent person, and his death is indescribably cruel for us, his extended family and his friends. We remember him with much love and respect for the valuable person he was.

The Coroner concluded:7

Sadly this is yet another case of the facts of an untimely and premature death, speaking for themselves. This young man was drinking alcohol to excess, with friends, including participating in "drinking games". His death resulted from his own actions.



"SADLY THIS IS YET ANOTHER CASE OF THE FACTS OF AN UNTIMELY AND PREMATURE DEATH, SPEAKING FOR THEMSELVES."

Coroner Richard McElrea

Such deaths are rare enough to attract media attention in New Zealand – but still too common. Two months before this Christchurch death, on a freezing Sunday morning in July 2008, the body of a 14 year-old boy was found in the grounds of the Taupo Hockey Club. The promising young sportsman and much loved son died as a result of consuming large quantities of pre-mixed bourbon and colas with a 12 per cent alcohol content at home with friends.

On that occasion the Coroner, Dr Wallace Bain, noted that the death of this "outstanding and promising young man" was symptomatic of a much wider problem with alcohol among Taupo youth.⁸ Drawing on the evidence presented by the Police Dr Bain commented on the extent to which young people were becoming very heavily intoxicated drinking pre-mixed spirits or RTDs:⁹

They are sweet. They mask the amount of alcohol in them. It is heavy liquor... they are marketed in a package that is named, labelled, sized and coloured to attract young people. They do not taste like liquor.

In March 2008, a 19 year-old horticultural student at Napier's Eastern Institute of Technology died of acute intoxication trying to win a drinking trophy. He had told his flatmates he wanted to be the "champion of the night". The Coroner heard his death

came after five hours of drinking a mix of beer and spirits.

In September 2005, a 19 year-old student's monthly get-together with his mates at a favourite Palmerston North student bar ended in his death after a night of heavy drinking and a fatal 10-man game of 'bull rush'. The Coroner heard evidence of the number of rounds of double bourbon and colas consumed over the course of this riotous evening which ended when the young man was knocked unconscious and later died.¹⁰

Each year it is estimated about 1,000 deaths in this country are directly attributable to alcohol. 11 By definition, these deaths are preventable. About half are due to injuries, including road trauma, accidents and self-inflicted injuries.

Internationally, New Zealand does not compare well in relation to avoidable deaths, particularly among our young people. For example, we have:

- the highest death rate in the OECD for accidents and injuries among young people under the age of 19.¹²
- the 4th highest rate of deaths from suicide among under 25 year-olds in the world.¹³
- the 12th highest rate of road deaths among under 25 year-olds in the world.¹⁴

"They are sweet. They mask the amount of alcohol in them. It is heavy liquor... they are marketed in a package that is named, labelled, sized and coloured to attract young people. They do not taste like liquor."9

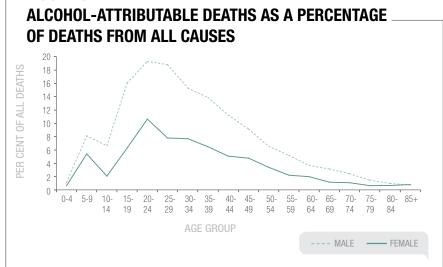
– Coroner Dr Wallace Bain



- a high rate of death by drowning compared to similar countries,¹⁵ and studies have found between 28 and 40 per cent of those deaths were among people who had consumed alcohol.¹⁶
- a high proportion of fire fatalities, (58 out of 131 or 44 per cent) involving alcohol either directly or indirectly. One study found that a third of victims died as a consequence of their own intoxication, while a further 11 per cent of victims lived with, or were in the care of, alcohol affected persons. Alcohol was a factor in 70 per cent of fire fatalities among adults over the age of 17 years.¹⁷

The high toll of alcohol-attributable deaths on our young (and particularly male) population is illustrated in figure 6.2.¹⁸ It shows that of those who die at a given age, a high proportion of deaths among young people and males are from alcohol-related causes.





Source: NZHIS and Collins & Lapsley (2008) 2001-2005.

ALCOHOL-RELATED ROAD DEATHS AND INJURIES

LEVEL OF RISK AND BLOOD ALCOHOL LEVELS

Many studies show that the risk of being involved in a crash increases as blood alcohol level increases. In New Zealand the blood alcohol level for driving is 80 milligrams of alcohol per 100 millilitres of blood (often referred to as .08). Figure 6.3 shows the relative risk of having a fatal crash by blood alcohol level. 19 The increase in risk starts at low levels of blood alcohol. The graph also shows that the risk is greater for those under 30 years of age.

While there has been considerable reduction in alcohol-related fatal crashes since the 1990s, road safety progress has stalled in recent years. Both the proportion of total crashes that are alcohol-related, and the number of alcohol-related crashes have risen for both fatal crashes and injury crashes.

In 2007, there were 128 deaths from crashes with driver alcohol or drugs as a causal factor.²⁰ For every 100 alcohol or drug impaired drivers killed in crashes, 54 of their passengers and 42 sober road users die with them.

In addition to the 128 deaths in 2007, there were 559 alcohol-related serious injuries and 1,777 minor injuries, and injury rates are increasing.

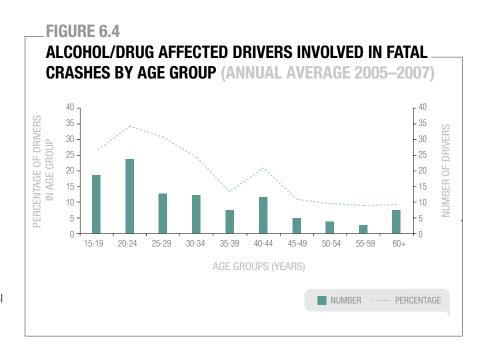
Over 83 per cent of the alcohol/drug affected drivers in fatal crashes are male.²¹

Young drivers

Of all drivers involved in fatal crashes in 2007, the 20 to 24 year-old (34 per cent) and 25 to 29 year-old (31 per cent) age groups were the most likely to be affected by alcohol, followed by 15 to 19 year-olds (26 per cent). Above the age of 29, alcohol and drugs as a contributing factor in fatal crashes decreases, although as Figure 6.4



FIGURE 6.3 RELATIVE RISK OF FATAL CRASH BY BLOOD ALCOHOL LEVEL 200 180 160 NCREASE IN RISK 140 120 100 80 60 40 20 90 100 BAC (MG/100ML) — AGE 30+ ----- CURRENT NZ BAC LIMIT - AGE 20-29 -



shows, rates persist through the 30 to 44 year-old cohorts.²²

Rural drivers

More road users are killed or injured through drink-drive crashes on rural roads (defined as any road with a speed limit over 70km per hour) than urban roads every year. Between 2004 and 2006, there were 2,568 urban crashes that involved alcohol, which resulted in 120 deaths and 771 serious injuries. In contrast, although there were fewer recorded crashes on rural

roads (1,926), these crashes resulted in a greater number of fatalities (242), as well as 834 serious injuries. Between 2005 and 2007, 245 people died in alcohol-related crashes on rural roads. This makes up about 70 per cent of all alcohol and drug-related crashes.²³

How we rate internationally

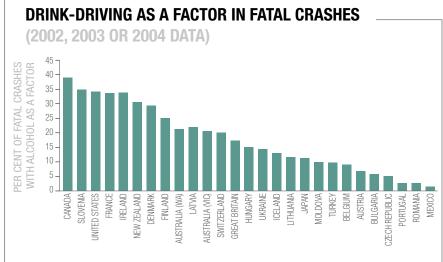
New Zealand does not compare well with other countries when considering drink driving crashes as a proportion of total fatal crashes (figure 6.5). Approximately 30 per cent of fatal crashes in New Zealand are alcohol related,²⁴ while in Australian states (.05 BAC) the proportion is closer to 21 per cent, and in Britain (.08 BAC), 17 per cent.²⁵

In Scotland (.08 BAC), with a population of 5.1 million, there were 314 road fatalities in 2006. In New Zealand, with a population of 4.3 million, there were 387 (a record low). However, while just 30 of those fatalities were alcohol related in Scotland, in New Zealand 109 were alcohol related.

More road users are killed or injured through drink drive crashes on rural roads than urban roads every year.



FIGURE 6.5



Note: Austria: the figure (7%) is largely underestimated. This is due to the fact that in Austria it is not permitted to check alcohol levels on a dead person.

Portugal: data are largely underestimated, since not all drivers are checked.

Source: Unpublished data from: Working group on achieving ambitious road safety targets: responses to the survey on road safety performance, Joint OECD/ECMT Transport Research Centre, 2005.

FACTS AT A GLANCE ___

Of all drivers involved in fatal crashes in 2007, the 20-24 year (34 per cent) and 25-29 year (31 per cent) age groups were the most likely to be affected by alcohol.

Between 2004 and 2006, there were 2,568 urban crashes that involved alcohol, which resulted in 120 deaths and 771 serious injuries.

Between 2005 and 2007, 245 people died in alcohol-related crashes on rural roads.

Alcohol-related crashes accounted for 30 per cent of our total road toll in 2007.

For every 100 alcohol or drug impaired drivers killed in crashes, 54 of their passengers and 42 sober road users die with them.²¹

Approximately 30 per cent of fatal crashes in New Zealand are alcohol related,²⁴ while in Australian states (.05 BAC) the proportion is closer to 21 per cent, and in Britain (.08 BAC), 17 per cent.²⁵

ALCOHOL, SUICIDE AND SELF-HARM

Depending on the age group and gender, up to 30 per cent of deaths from suicide and self-inflicted injury are estimated to be attributable to alcohol, ²⁶ making suicide and self-harm a leading cause of alcohol-related mortality in this country. Alcohol's relationship with suicide and self-harm is complex. Experts point to a range of individual and environmental factors contributing to suicidal behaviour, the most significant of which is mental illness:²⁷

Evidence shows that the majority of those dying by suicide have a recognisable mental health problem and that mental health disorders are a factor in up to 70 per cent of suicides and suicide attempts.

Alcohol's contribution to increased suicide risk works in two ways: alcohol abuse can exacerbate an *existing* mental illness and heavy drinking can facilitate suicidal behaviour in those already at risk, possibly by increasing impulsivity and aggression.²⁸ At the same time those with alcohol use disorders, including dependence, are at increased risk of suicidal behaviour.

Internationally there is also evidence of a link between suicide rates and patterns of drinking, with more 'explosive' (for example, irregular, heavy drinking occasions) drinking cultures linked to a higher incidence of suicide.²⁹

In New Zealand, males aged 20 to 39 are the group most at risk of suicide.³⁰

Māori are also at increased risk, with the rates of Māori youth suicide approximately one and a half times higher than those of non-Māori, although the reasons for the higher rate of suicide amongst young Māori are not clearly understood.

But while Māori and young males dominate the suicide statistics, Dr Annette Beautrais warns against the view that suicide is solely a male problem:³¹

ALCOHOL ABUSE CAN EXACERBATE AN EXISTING MENTAL ILLNESS AND HEAVY DRINKING CAN FACILITATE SUICIDAL BEHAVIOUR IN THOSE ALREADY AT RISK.

In fact when the spectrum of suicidal behaviours in the population is examined, females emerge as being more prone to suicidal behaviour than males. For example, findings from the Christchurch Health and Development Study have suggested that females report suicidal thoughts at 1.3 times the rate of males and make suicide attempts at almost twice the rate of males. These trends are also evidenced in hospitalisation statistics. In 1999/2000, for example, 63 per cent of all admissions to hospital in NZ for suicide attempts were females.

As well as the use of more lethal methods by males, another suggested explanation for the difference in successful versus attempted suicide rates between young men and women is the higher prevalence of alcohol abuse among males.³²

The New Zealand Suicide Prevention Action Plan identifies the reduction of alcohol abuse as a key suicide prevention measure in this country: ³³

This clinical evidence is supported by the finding that suicide rates are positively associated with per capita alcohol consumption in several OECD countries...There is also some evidence that policies to reduce total alcohol consumption may contribute to reducing suicide rates. An example is the 34.5 per cent reduction in suicide rates observed between 1984 and 1988 following the introduction of heavy restrictions on alcohol sales in the former Soviet Union...Accordingly, public health policies that encourage safe drinking, the avoidance of drug use, and harm minimisation have a key role in the area of suicide prevention.

FACTS AT A GLANCE

Depending on the age group and gender, up to 30 per cent of deaths from suicide and self-inflicted injury are estimated to be attributable to alcohol. ²⁶

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ACCIDENTS AND INJURY

While preventable deaths are one important measure of alcohol harm, the incidence of non-fatal alcohol-related injuries in this country is of even greater significance. Acute injury is one of our most significant health issues in relation to alcohol as each year thousands of New Zealanders are injured as a result of their own or somebody else's drinking.

Injury accounts for over a third of alcohol's total contribution to the global burden of disease and disability³⁴ and, because the young are overwhelmingly represented in both the alcohol-related injury and death statistics, about 72 per cent of the years of life lost due to alcohol in New Zealand.³⁵

A recent analysis of national hospital admission data for 15 to 24 year-olds showed the broad spread of alcohol's involvement in illness and injury.36 A total of 5,413 young people were hospitalised with alcohol-related admissions between 2002 and 2006. Admissions were considered alcoholrelated if alcohol was listed in the national database as being one of the first 15 diagnoses, or one of the first 10 external causes of the admission. This approach is likely to significantly underestimate the total number of admissions. This figure also does not include patients that were only seen in an emergency department.

Of the 5,413 admissions, 34.7 per cent presented with injuries, 28 per cent with mental health problems and 11 per cent intoxication.³⁷ Of the injury cases, about 20 per cent were as a result of self-harm, 20 per cent as the result of an assault, and the remaining 60 per cent roughly equally divided between falls, motor car accidents and glass injuries. Admissions among young people living in the most deprived areas were more than three times more common than admissions among those from the least deprived areas. Admissions were twice as likely to be males as females.

"You can imagine the disruption to people's lives when they are told their long planned surgery has had to be cancelled in order to accommodate these acute alcohol cases." – Surgeon Kai Lee.



ACUTE INJURY IS ONE OF OUR MOST SIGNIFICANT HEALTH ISSUES IN RELATION TO ALCOHOL.

The impact of alcohol on our tertiary health services, and in particular the extent to which alcohol-related injuries divert resources away from other health needs, was graphically demonstrated in a study of patients treated at Christchurch Hospital's specialist Oral and Maxillofacial Surgery Service over an 11 year period. Of the 2,581 patients who presented with facial fractures between 1996 and 2006, almost half of the injuries (49 per cent) were alcohol-related. Males accounted for 88 per cent of these, and 78 per cent of the alcohol-related fractures were due to interpersonal violence.³⁸

Surgeon Kai Lee, who was one of the research authors, told the Law Commission injuries sustained in alcohol-fuelled violence most frequently involved fractures of the lower jaw or cheek bones. Depending on the

severity of the facial fractures, surgery may last anywhere from under an hour to three or more hours and may involve wiring of the jaw and the insertion of plates and screws. Patients are typically off work for two weeks and unable to take part in sport for six weeks. Some suffer nerve damage and scarring, and in more severe cases require cosmetic or orthodontic work. These costs are borne by the taxpayer via the Accident Compensation Corporation (ACC).

Patients waiting for elective oral and maxillofacial surgery were also affected if the surgeons were unable to find the theatre time required for the acute alcohol injury cases. Dr Lee states:

You can imagine the disruption to people's lives when they are told their long planned surgery has had to be

FACTS AT A GLANCE

Injury accounts for over a third of alcohol's total contribution to the global burden of disease and disability.³⁴

ACC estimates that that up to 22 per cent of all ACC claims had alcohol as a contributing factor, suggesting that alcohol-related claims to ACC alone cost around \$650 million each year. 41

A total of 5,413 young people were hospitalised with alcohol-related admissions between 2002 and 2006.³⁶

Of the 2,581 patients who presented with facial fractures between 1996 and 2006, almost half (49 per cent) were alcohol-related.³⁸

cancelled in order to accommodate these acute alcohol cases. These people are going out, getting drunk and ending up in a fist fight. And the public health system is picking up the pieces at the end of the night.

He believes oral and maxillofacial surgeons who are dealing with the impact of alcohol-related violence on an almost daily basis have an important role to play in raising public awareness about the need to change our drinking culture.

Doctors working in our hospitals' accident and emergency (A&E) departments have also become increasingly vocal about the impact of alcohol on their workload and the knock-on effects for other people needing access to emergency services, particularly on weekends.

Because most people presenting at A&E departments are treated and discharged without being admitted to the hospital

they are not currently captured in hospital statistics such as those cited earlier.

And because we have a no-fault accident compensation system, the costs to the public purse of treating and rehabilitating people who present with alcohol-related injuries are less visible.

A number of studies have, however, provided a snap-shot of alcohol's impact on various emergency departments around the country. An Auckland hospital study in December 2000 found 30 per cent of injured patients reported having consumed alcohol prior to sustaining their injury. This was a high proportion compared with overseas research. Males, and those under 30 years, were overrepresented in both alcohol-related and non alcohol-related injury cases.³⁹

In May 2008, a study in the Hawke's Bay Regional Hospital Emergency Department found that alcohol contributed to 18.2 per cent of injury presentations, rising to 67 per cent of injury presentations between midnight and 6 am. The alcoholrelated injuries were more serious than the injuries that were not alcohol-related.⁴⁰

Wellington Hospital Emergency Medicine specialist, Dr Paul Quigley, estimates that between 60 and 70 per cent of his department's injury-based work on the weekend is alcohol-related, and 80 per cent of hand injuries are due to alcohol-related violence. The impacts of these injuries on people's working lives are far reaching and can mean loss of livelihood - and a significant cost to the taxpayer in earnings related compensation and rehabilitation. ACC estimates that that up to 22 per cent of all ACC claims had alcohol as a contributing factor, suggesting that alcohol-related claims to ACC alone cost around \$650 million each year. 41

Dr Paul Quigley estimates that 80 per cent of hand injuries on a weekend are due to alcohol-related violence.



Dr Quigley has also raised concerns about the "small but significant increase" in the number of under 18 year-olds presenting intoxicated and in particular the escalation in the number of intoxicated women. In a retrospective assessment of patient records between 2004 and 2007, he found that of the 410 presentations at Wellington Hospital where intoxication was the sole diagnosis, 30 per cent involved patients under 20 years of age:

Of those arriving at our emergency department with a primary presentation of intoxication, women now slightly outnumber men. They often arrive in an immensely vulnerable state... we end up subsequently referring a significant number of them to the sexual assault unit for follow up.

A TOTAL OF 5,413 YOUNG PEOPLE WERE HOSPITALISED WITH ALCOHOL-RELATED ADMISSIONS BETWEEN 2002 AND 2006.



Source: Alcohol Advisory Council of New Zealand.

Dr Quigley says wine is a common cause of intoxication and he suspects women may be unaware of the volume of alcohol they are consuming in non-standard wine glasses: "Girls who are drinking a glass of wine to their mate's glass of beer are actually drinking up to 50 per cent more alcohol, so no wonder they are falling over... I find that very concerning."

Analysis of these Wellington intoxication cases also revealed that the majority of patients came from mid to higher socioeconomic suburbs: "Some had sourced their alcohol from their parents' liquor cabinets, but the majority had come from private parties where the liquor was supplied by older peers or siblings."

Grossly intoxicated patients are a significant drain on resources often requiring one-on-one nursing and monitoring at a time when the hospital is at its lowest staffing levels.

The link between heavy drinking and the level of acute harm described in this chapter is well established in the research literature. It is also reflected in a recent survey of patrons arriving at bars on Auckland's North Shore who were asked about their drinking behaviours. Of the 972 survey participants responding to a question about injury, 30 per cent said they had been injured as a result of drinking. For those who reported they had come out that night with the intention of getting drunk injuries increased to 41 per cent.⁴²

HARMFUL EFFECTS OF ALCOHOL ON SEXUAL BEHAVIOUR

Unrestrained drinking is frequently described as a victimless activity, but research suggests a significant amount of unreported harm is experienced, including unwanted and unprotected sexual activity. A recent study by researchers at the University of Otago Medical School's

Injury Prevention Research Unit on the harmful effects of alcohol on sexual behaviour found that of the 1,564 students sampled:⁴³

- 25 per cent reported risky sexual behaviour as a result of drinking alcohol in the last 3 months
- 15 per cent of males and
 11 per cent of females reported having unprotected sex
- 19 per cent of males and
 16 per cent of females reported having sex they later regretted
- almost one third reported experiencing an unwanted sexual advance as a result of others' drinking alcohol.

An analysis of Dunedin sexual assault data by Doctors for Sexual Abuse Care (DSAC) over the past 20 years shows that 56 per cent of assaults occurred between midnight and 8 am, and in 60 per cent of these assaults, alcohol had been involved, sometimes in extraordinarily large amounts.⁴⁴

Personal correspondence between the Law Commission and Dr Jill McIlraith also indicated a link between alcohol and sexually transmitted diseases (mainly chlamydia).⁴⁵



It's how we're drinking campaign poster, courtesy Alcohol Advisory Council of New Zealand.

FACTS AT A GLANCE

Of the 972 survey participants responding to a question about injury, 30 per cent said they had been injured as a result of drinking.

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Of the 410 presentations at Wellington Hospital where intoxication was the sole diagnosis, 30 per cent involved patients under 20 years of age.

ALCOHOL AND DISEASE

The long-term health effects of alcohol contribute directly to over 60 different diseases and conditions including breast cancer, gastro-intestinal conditions, mental and fetal disorders

Epidemiologists measure the impact of these diseases on a population's health by the years of healthy life lost due to premature death and living with impaired quality of life as a result of an alcohol-related disease or injury. For example, a person who sustains severe brain injury in a collision with a drunk driver may have both a shortened life expectancy and a significantly diminished quality of life.

In addition to the approximately 1000 alcohol-attributable deaths a year, epidemiologists estimate that alcohol is responsible for 7.4 per cent of the years of healthy life lost by New Zealanders (10 per cent for men and 4 per cent for women). 46

Just over half of these years of healthy life lost are attributed to the long lasting and debilitating effects of a range of alcohol-related neuropsychiatric disorders including alcohol dependence or alcoholism.

In the remainder of this section we focus on three of the most significant alcohol-related diseases and disorders where changes in alcohol consumption could lead to marked reductions in health harms:

- Alcohol use disorders
- Alcohol-related cancers
- Fetal alcohol spectrum disorder.

The long-term health effects of alcohol contribute directly to over 60 different diseases and conditions.

ALCOHOL USE DISORDERS

Most New Zealanders tend to think an alcoholic is someone asleep under a dirty blanket on Lambton Quay or under Grafton Bridge. This is convenient but misleading. The best definition I've ever come across is someone whose drinking is causing problems and keeps on causing them problems. – Sports broadcaster and recovering alcoholic, Murray Deaker

Over 120,000 of us currently suffer from a clinically diagnosable alcohol use disorder.⁴⁷

The term most frequently used to describe an "alcohol use disorder" is alcoholism. In fact there is a range of conditions caused by the effects alcohol has on the human brain. These include depression, anxiety disorders and psychosis through to alcohol abuse and dependence or alcoholism.

While often used loosely to describe the harmful use of alcohol, "alcohol abuse" is a clinically recognised disorder, classified under the Diagnostic and Statistical Manual of Mental Disorders. 48 To meet the criteria for an alcohol abuse disorder a person must be using alcohol in a manner which is leading to "clinically significant impairment or distress" manifested by a range of specified outcomes including:

 recurrent alcohol use resulting in a failure to fulfil major role obligations at work, school, or home (for example, repeated absences or poor work performance related to alcohol use; alcohol-related absences, suspensions, or expulsions from school; neglect of children or household);

OVER 120,000 OF US CURRENTLY SUFFER FROM A CLINICALLY DIAGNOSABLE ALCOHOL USE DISORDER.

- recurrent alcohol use in situations in which it is physically hazardous (for example, driving an automobile or operating a machine);
- recurrent alcohol-related legal problems (for example, arrests for alcohol-related disorderly conduct); and
- continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol (for example, arguments with spouse about consequences of intoxication, physical fights).

In one year, an estimated 83,000 New Zealanders – equivalent to nearly twice the population of Nelson – meet the diagnostic criteria for this disorder. ⁴⁹ Of this number, more than 53,000 are aged between 16 and 24 years of age, comprising just over 7 per cent of the total population in this age group.

Over the course of a lifetime an estimated 11.4 per cent of us will have met the criteria for alcohol abuse. Another 40,300 New Zealanders meet the more severe criteria for alcohol dependence or alcoholism.

As with abuse, those diagnosed with alcohol dependence according to the Diagnostic and Statistical Manual of Mental Disorders must be using alcohol in a way that is "leading to clinically significant impairment or distress", as manifested by a range of symptoms including:

- alcohol tolerance, as defined by either
 a need for markedly increased amounts
 of alcohol to achieve intoxication/the
 desired effect or markedly diminished
 effect with continued use of the same
 amount of alcohol;
- withdrawal, as manifested by either the characteristic withdrawal syndrome for alcohol or the same (or a closely related) substance is taken to relieve or avoid withdrawal symptoms; and
- alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been

caused or exacerbated by the substance (for example, continued drinking despite recognition that an ulcer was made worse by alcohol consumption).

Both alcohol abuse and dependence disorders are more common among younger people, males, Māori and Pacific people, and people who have fewer qualifications, lower household incomes and who live in areas of higher deprivation.⁵⁰

As described in the preliminary submission to the Law Commission on behalf of the Chief District Court Judge, alcohol use disorders are having a profound effect on the cases coming before our Youth Courts. ⁵¹ These courts deal with offenders aged 14 to 16 and judges working in these courts note that the "very large number of young people whose offending has alcohol consumption as an underlying cause reflects the now normalised behaviour of 'binge drinking': ⁵²

Young people in the Youth Court have little idea that their drinking is even problematic because their drinking is the same as all those around them. Serious dependency does not stand out in this crowd and often goes untreated until very well established. A significant number come into the Youth Court with this well established alcohol dependency. It is not uncommon for the use of alcohol by these young people to have started when they were children. This early use is documented in the AOD (alcohol and other drug) assessments provided to the youth court when dependence has been identified.

The Chief District Court Judge's preliminary submission cites "typical extracts" from recent alcohol and drug assessments provided to the Youth Court in relation to young people (under 17) appearing before them:

M now states she first got drunk at age 12 years on vodka. She has continued to follow a binge pattern of use that is limited only by availability. She admitted she would drink more and daily if she could get it. Her drinking increased this year with an increase in tolerance especially over the last six months. She will consume a case between

FACTS AT A GLANCE

Over 120,000 of us currently suffer from a clinically diagnosable alcohol use disorder.⁴⁷

Both alcohol abuse and dependence disorders are more common among younger people, males, Māori and Pacific people, and people who have fewer qualifications, lower household incomes and who live in areas of higher deprivation.⁵⁰

herself and another person spending \$40-50 per week as her contribution.

S said that she first tried alcohol with friends at age 13 and at this time drank 5% refreshers. She began regular use at the start of this year, drinking with friends. She regularly drinks on the weekends, Friday and Saturday nights, drinking four cans of 12% spirits. S described herself as "fine" with this amount however that she is unable to stop if offered more to drink and at this point begins to black out. S described binge drinking for a week, day and night, and said that she had begun to sell things to purchase alcohol. She said that she experiences blackouts every few weeks when binging.

People with alcohol use disorders have a high prevalence of other mental health disorders, substance use disorders and physical health problems, and have much higher use of health services than the general population.⁵³ There is still significant unmet need for treatment for substance use disorders.⁵⁴

Reducing the prevalence of alcohol use disorders among the young could make a significant contribution to reducing the rates of youth offending and the criminalisation of segments of the young population.



ALCOHOL CONSUMPTION HAS LONG BEEN KNOWN TO INCREASE THE RISK OF CANCERS OF THE ORAL CAVITY, PHARYNX, LARYNX, OESOPHAGUS AND LIVER.

ALCOHOL AND CANCERS

Few people would immediately think of cancers as one of the major harms from alcohol. However, cancers are responsible for around one quarter of alcoholattributable deaths and 7 per cent of the burden of disease from alcohol in New Zealand. 55 Alcohol consumption has long been known to increase the risk of cancers of the oral cavity, pharynx, larynx, oesophagus and liver.56 More recently the World Health Organization's International Agency for Research on Cancer has concluded that alcohol consumption also increases the risk of breast cancer and colorectal cancer, two of the most common cancers worldwide.57 Based on the strength of evidence of its contribution to these cancers, the

International Agency for Research on Cancer has classed alcohol as a Group 1 carcinogen, that is, there is enough evidence to be sure that the substance or exposure is "carcinogenic to humans".⁵⁸

Since the mid 1990s there has been a significant increase in experts' understanding of the effects of alcohol on cancers.⁵⁹ The new evidence has led the World Cancer Research Fund International to alter its previous advice and to state plainly that "from the point of view of cancer prevention, the best level of alcohol consumption is zero".⁶⁰ This is based on evidence that the risk of cancer increases with increasing alcohol consumption, rather than beginning above some threshold level of drinking.⁶¹ The Fund recommends that if alcohol is

consumed, it should be limited to no more than two drinks a day for men, and one drink a day for women, and that children and pregnant women should not drink alcohol at all.⁶²

Alcohol affects the risk of cancer through several biological mechanisms. One of the steps when the body metabolises alcohol is transforming the alcohol into a chemical compound called acetaldehyde. Acetaldehyde itself is a known carcinogen and one of the components of car exhaust and tobacco smoke.⁶³ Acetaldehyde from drinking interferes with normal DNA processes and can lead to tumour development.⁶⁴ It also impairs other normal processes in the cells of various body tissues causing cell damage and abnormal immune responses.⁶⁵ After drinking, acetaldehyde

The International Agency for Research on Cancer has classed alcohol as a Group 1 carcinogen, that is, there is enough evidence to be sure that the substance or exposure is "carcinogenic to humans".⁵⁸



FACTS AT A GLANCE_

People with alcohol use disorders have a high prevalence of other mental health disorders, substance use disorders and physical health problems, and have much higher use of health services than the general population.

Over the course of a lifetime an estimated 11.4 per cent of us will have met the criteria for alcohol abuse. Another 40,300 New Zealanders meet the more severe criteria for alcohol dependence or alcoholism.

concentrations are particularly high in the saliva, mouth, oesophagus, intestines and colon.⁶⁶ This is one of the mechanisms by which alcohol is thought to cause cancers of the oral cavity, oesophagus and colorectum.

Other ways alcohol can cause cancer include:

- changing estrogen levels, which influences breast cancer;
- affecting the development of abnormal growths in the colon that can develop into colon cancer;
- impairing saliva flow and damaging cell walls, thereby increasing the ability of carcinogens (for example, tobacco smoke) to enter cells;
- increasing the activity of an enzyme that has a role in generating free radicals that damage cells in the liver and upper aerodigestive tract, and that helps convert some chemicals into products that can cause cancer;
- creating or exacerbating vitamin and mineral deficiencies (including

- folate, vitamin E, iron, zinc, selenium, and vitamin A) that contribute to the development of cancers; and
- altering immune responses, including reducing the ability of the immune system to control the development and growth of tumours.⁶⁷

Men have higher mortality rates from alcohol-attributable cancers than women. For women, breast cancer is the single largest cause of alcohol-attributable death.⁶⁸ The incidence of breast cancer in New Zealand has been increasing over the last few decades, but mortality rates have remained stable or in slight decline, reflecting improvements in diagnosis and treatment.⁶⁹ Women's drinking has increased since 1990 and is likely to contribute to the increase in breast cancer incidence that is expected over the coming years.⁷⁰

Alcohol-attributable cancers are likely to be placing a significant burden on the health system but this is not well quantified. Much cancer treatment is provided in outpatient settings, but the extent of these costs has not been estimated.

FETAL ALCOHOL SPECTRUM DISORDER

Drinking during pregnancy can lead to miscarriage, stillbirth, low birthweight and Fetal Alcohol Spectrum Disorder (FASD). The risk is higher for heavier drinkers but there is no known safe level of consumption in pregnancy. FASD is a major cause of behavioural, cognitive and learning difficulties, sensory disabilities and developmental impairments. There is little information about the prevalence of FASD in New Zealand because there have been no population-based prevalence studies and it is rarely diagnosed, therefore unrecognised in official statistics and cost estimates of the harms from alcohol. The task of raising a child who is avoidably disabled by alcohol consumption during pregnancy places a huge burden on families and the health and education systems and may have later impacts on workplaces, courts and prisons.

The prevalence of FASD could be quite high given the high acceptance of drinking during pregnancy and the large numbers of women who drink during pregnancy. Fifty-five per cent of women still believe it is okay to drink during pregnancy,71 contrary to official advice from the Ministry of Health and ALAC. A survey of midwives found that 36 per cent of pregnant clients, and 82 per cent of pregnant teenage clients, drank during their pregnancies.72 The burden of disease from FASD may not be as large as other causes but it is significant because people generally have greater concern about potential risks to child development than about risks to adults.

Drinking during pregnancy can lead to miscarriage, stillbirth, low birthweight and Fetal Alcohol Spectrum Disorder (FASD).



FACTS AT A GLANCE_

Fifty-five per cent of women still believe it is okay to drink during pregnancy.

A survey of midwives found that 36 per cent of pregnant clients, and 82 per cent of pregnant teenage clients, drank during their pregnancies.

WHO'S AT RISK?

Because of their drinking patterns, and a greater propensity to take risks, young New Zealanders aged between 15 and 29 bear the heaviest burden of alcohol-related harms.⁷³ Māori, and Pacific Islanders, both of whom have a greater proportion of young in their populations, are also disproportionately affected

YOUNG PEOPLE

Children are our future

Outcomes for the current generation of children and young people will determine the future success or failure of the community and society as a whole. The relatively short periods of time which gestation, infancy, childhood and adolescence occupy, have more power to shape the individual than much longer periods of time later in life. Providing the best possible environment for children to grow to maturity is a key goal for every community.74 – Dr Nick Baker

One of the greatest challenges we confront around alcohol is how to reconcile new evidence of the risks alcohol presents to young people with our cultural norms. Drinking is commonly seen in our society as a rite of passage, and drinking to intoxication is not only socially accepted, but expected.

New research has found that young people experience more harm per standard drink than older drinkers.⁷⁵ The highest risk is for those under 15 years, but there is still an elevated risk of harm per drink for young people up to the age of 25 years.⁷⁶

Early initiation of drinking in adolescence is associated with immediate and later alcoholrelated health and social problems.⁷⁷ New Zealand research has found that, regardless of prior conduct disorder, early exposure to alcohol (defined as multiple occasions before the age of 15) is associated with a range of poor adult outcomes including substance dependence, criminal convictions, herpes infection and failure to achieve educational qualifications.⁷⁸

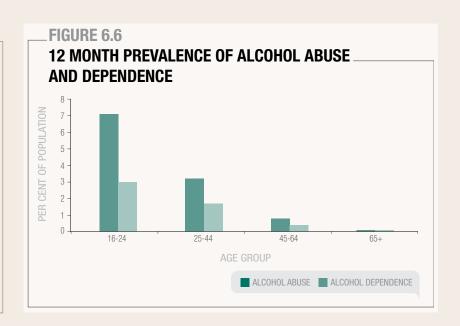
Heavy drinking among teenagers and young adults is associated with poorer brain functioning, particularly in terms of attention and visuospatial skills, 79 and alcohol has detrimental effects on adolescents' liver, hormones, bone density and brain structure. 80

Alcohol abuse disorder begins when people are relatively young, with 25 per cent of cases having experienced the disorder by age 16, 50 per cent by age 19 and 75 per cent by age 25.81 The prevalence of substance use

FACTS AT A GLANCE

New research has found that young people experience more harm per standard drink than older drinkers.⁷⁵

The 18 to 29 age group has the highest rates of alcohol-related mortality as a proportion of all-cause mortality, the highest rates of hospital presentations for alcohol-related injuries, ⁸⁵ and other injuries, and the highest rates of offending after consuming alcohol. ⁸⁶



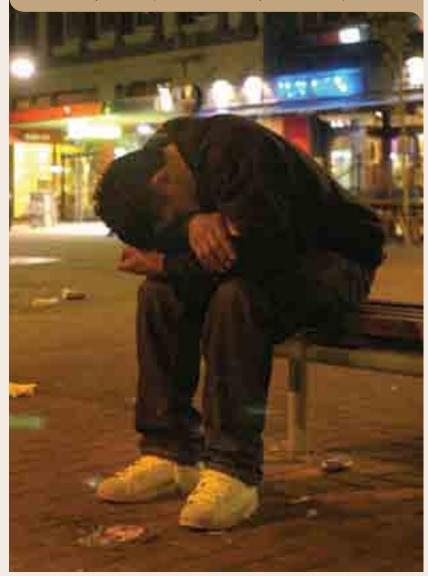
YOUNG NEW ZEALANDERS AGED BETWEEN 15 AND 29 BEAR THE HEAVIEST BURDEN OF ALCOHOL-RELATED HARMS.

disorders may also be increasing: the chance of having experienced disorder by a given age is much higher among younger than older cohorts.⁸² The higher prevalence of alcohol disorders among younger age groups is shown in figure 6.6.

Younger drinkers experience much higher rates of social harms: a national survey in 2004 that asked about problems linked to drinking found that in comparison to the total drinking population, 12 to 17 year-old drinkers were more likely to have experienced almost every alcoholrelated problem, including being between two and six times more likely to have had unprotected sex, had sex and later regretted it, got into a physical fight, been arrested or detained in a police station, and been sexually assaulted.83 Young people aged 12 to 17 and 18 to 24 also experience higher rates of some harms resulting from other people's drinking than other age groups, including physical assault, sexual harassment, motor vehicle accidents and other accidents.84

Harms to youth (aged under 18 years) are of concern, but even more significant are the harms experienced by people aged 18 to 29. For example, this is the age group that has the highest rates of alcohol-related mortality as a proportion of all-cause mortality (see figure 6.6 above), the highest rates of hospital presentations for alcohol-related injuries, ⁸⁵ and other injuries, and the highest rates of offending after consuming alcohol. ⁸⁶

A national survey in 2004 that asked about problems linked to drinking found that in comparison to the total drinking population, 12 to 17 year-old drinkers were more likely to have experienced almost every alcohol-related problem.



John Kirk-Anderson, The Press, Christchurch.

In comparison to other countries, young New Zealanders have very high rates of suicide, 87 sexually transmitted infections, 88 teenage pregnancies, 89 and motor vehicle accident fatalities. 90

Alcohol is implicated in rates of all these problems, so interventions to reduce harmful alcohol consumption could reduce the burden of these problems on young New Zealanders.

MĀORI

Pre-colonisation, Māori were one of the very few societies that did not use psychoactive substances as part of their culture.⁹¹

Along with the alcohol the colonialists brought their homeland's conflicted attitudes towards drinking: temperance versus binge drinking. Alcohol was a cheap and accessible anaesthetic in a tough new environment – and another tool for the settlers in their negotiations with Māori.

By the 1890s, Māori drinking levels matched those of the settlers.

The colonial government's approach to alcohol and Māori reflected a combination of paternalism, discrimination and hypocrisy.

Various pieces of legislation were introduced with the aim of 'protecting' Māori from the ravages of alcohol including a law prohibiting Māori from drinking in public bars – a law that remained on the statute books until 1948.

However, at the same time, attempts by Māori leaders to minimise the impact of alcohol on their own communities were often undermined by the settlers and those with an interest in establishing the liquor trade. This extract from a 1930 text on temperance in New Zealand by Reverend J Crocker illustrates the sentiments and contradictions of the time:⁹²

It is well for the future of our young New Zealand nation that the native race is such an excellent type, both physically and intellectually. To-day there are but some 65,000 Māoris and half-castes. The arch enemy

ALCOHOL WAS A CHEAP AND ACCESSIBLE ANAESTHETIC IN A TOUGH NEW ENVIRONMENT.

of the Māori race has been, and is, the traffic in intoxicating liquor. All observers, both teetotallers and drinkers, agree that indulgence in intoxicants means ruination to the Māori. The natives themselves early recognized this and when the King Country was finally opened to Europeans, one of the outstanding conditions insisted upon by the Māori chiefs was that no intoxicants should be sold in that area.

Crocker goes on to describe the various means by which "illegal and discreditable trading by Europeans" and direct political lobbying, sought to undo the pact and undermine Māori self-regulation in the King Country:93

With periodical insistence, the liquor trade and Europeans desiring easy access to liquor in the King Country, have endeavoured to persuade successive Governments to alter the conditions existing there with regard to intoxicating liquor.

Similar themes emerge today in some of the discussion about the impact the proliferation of liquor outlets is having on communities with high proportions of Māori. A recent consultation in Manukau City, in which researchers from the University of Waikato canvassed community views on the effects of the liberalisation of liquor laws on Māori, drew the following response from Todd Bell, Kaiwhakatairanga Hauora, Health

Promotion Advisor with Alcohol Healthwatch:94

When we're talking harms against our whakapapa, it's starting from those early days, and it has its roots in that alcohol coming in. Alcohol is interfering with our whakapapa. Someone gets injured, someone dies - the family has to pick up the pieces. There's that lost potential of whakapapa. We've got young girls having unsafe and sometimes unwanted sex, to which alcohol has contributed and sometimes induced – and that all is part of our whakapapa. You know... the displacement of wairua that happens in those instances.

FACTS AT A GLANCE

By the 1890s, Māori drinking levels matched those of the settlers.

Alcohol-attributable deaths are responsible for approximately 8 per cent of all deaths among Māori, including 3.9 per cent of deaths among Māori females and 11.3 per cent of deaths among Māori males.⁹⁷

Māori are approximately twice as likely to have alcohol use disorders.

"ALCOHOL IS INTERFERING WITH OUR WHAKAPAPA."

That's harming our whakapapa. This is how far-reaching this is.

And then we have this Act in 1989 that says: "Well, let's put one on every corner and let's advertise it to our young people and let's make special sweet drinks". And this we take in our mouth and our judgment goes out the door. We haven't got a society or culture that drinks very well. What we're asking for is leadership from our politicians, and from our policy makers that have allowed this to happen.

They don't live in these communities. We do. And we bear the brunt. Those are the harms. They're allowing us to be experimented on – "Let's try how much alcohol we can put in this community, and then we'll come in and research it, and then we'll try and diddle daddle our way around actually doing something".

The Māori population has a higher proportion of non-drinkers and abstainers than the non-Māori population. However, the pattern of consumption among those who do drink is also different from the general population.

A 2003 study analysing these differences found that in all age groups and in men and women, non-Māori were more likely to be drinkers and to drink with greater frequency than Māori. However, the relative volume consumed on a typical drinking occasion by Māori was 40 per cent more than for non-Māori, and this was so for both sexes and in each age group.⁹⁵

As we have discussed, heavy sessional drinking carries increased risk of a range of alcohol-related harms and this is borne out in the actual rates of harm experienced by Māori.

As with many health statistics, Māori suffer a disproportionate burden of alcohol-related harm in comparison to

other New Zealanders, including alcoholattributable mortality rates, burden of disease, and years of life lost.⁹⁶

Alcohol-attributable deaths are responsible for approximately eight per cent of all deaths among Māori, including 3.9 per cent of deaths among Māori females and 11.3 per cent of deaths among Māori males.⁹⁷ This makes alcohol a significant cause of avoidable death for Māori, particularly given that such a high proportion of alcohol-attributable deaths occur among young people.

Māori males are over represented in suicide deaths. Between the years 2002 and 2005, the suicide rates for 15 to 24 year-olds was 17.2 per 100,000 for Europeans compared with 39.6 for Māori, 25.4 for Pacific and 7.7 for Asian.98

As shown in figure 6.7, Māori are approximately twice as likely as non-Māori to have alcohol use disorders even taking into account age, sex, education and income.⁹⁹

A quarter of all New Zealand children are now Māori. By 2021 close to 30 per cent of all children under 14 will identify as Māori. The wellbeing of our country will be greatly influenced by the well being of Māori.

FACTS AT A GLANCE

The relative volume consumed on a typical drinking occasion by Māori was 40 per cent more than for non-Māori, and this was so for both sexes and in each age group.⁹⁵

Between the years 2002 and 2005, the suicide rates for 15 to 24 year-olds was 17.2 per 100,000 for Europeans compared with 39.6 for Māori, 25.4 for Pacific and 7.7 for Asian.⁹⁸

PACIFIC PEOPLE

Pacific people are diverse, comprising at least 13 different language and cultural groups. They are a fast growing and youthful component of the New Zealand population.

Nearly a third of New Zealand's Pacific peoples live in Manukau City, and two thirds of the total Pacific population live within the greater Auckland region.

Different Pacific ethnic groups have different patterns of alcohol use but as with all migrant populations there is often tension between traditional cultural practices and values around alcohol and those of the adopted nation. This issue was explored by participants in a forum on liquor outlet density conducted by the University of Waikato's Population Studies Centre in Manukau last year: 100

In terms of exposure... the people who have lived in the islands until maybe their late teens or early twenties and then they come to this very western environment and they're exposed to the rituals and cultures that are embedded here in New Zealand. Work environments... New Zealand has a reasonably unhealthy culture around alcohol. Friday afternoon after work. So [Pacific Peoples] become, in order to fit in, to become part of, to reduce that feeling of difference – they become part of those things and where people haven't been used to that then very quickly things can spin out of control if they're not used to the environments and the amount of alcohol that they're drinking. It puts a lot of pressure on... In terms of adopting that low self worth, they

PACIFIC YOUTH DRINKERS AGED 12-17 YEARS WERE THE ONLY ETHNIC GROUP NOT TO REPORT PARENTS AS THEIR PRIMARY SUPPLIER OF ALCOHOL.

perhaps feel locked out of ways that they would have had of dealing with those issues, of pastoral relationships and the church or family and that leads to more isolation and they go back to the source again [alcohol] of what helps relieve that sense of distance and experience. And they go back to what's accessible... and let's face it – alcohol works in the short term. (Angela Claridge – Counsellor, *Care NZ*)

The report also suggested that the harmful use of alcohol was one of a number of factors holding back Pacific communities: 101

While many Pacific people migrated with their families to Aotearoa for education and for better life and work opportunities, for a significant number those dreams remain unrealised as families struggle with issues of alcohol-related harm, poverty, unemployment, and high rates of criminal offending, each of which contributes to the disintegration of strong family structures.

A 2003 ALAC commissioned survey found that Pacific people appeared to be polarised between those who were non-drinkers and those who were relatively heavier drinkers. ¹⁰² That is, while Pacific people were more likely to be non-drinkers than the general population, when they did drink, they were more likely to drink to harmful levels.

This was confirmed by a study that specifically surveyed Pacific people on their alcohol use. 103 The study found that Pacific drinkers drank two to three times per week, Pacific men drank nine drinks, and women six drinks.

Pacific youth aged 12 to 17 years are more likely than any other youth to be non-drinkers but the majority of those who do drink, drink to harmful levels.¹⁰⁴

Pacific youth drinkers aged 12 to 17 years were the only ethnic group not to report parents as their primary supplier of alcohol. Instead, these youth most frequently reported accessing their alcohol from friends aged 18 years or over (27 per cent), with less than one-quarter reporting their parents as a "usual" source.¹⁰⁵

The Government's draft National Alcohol Action Plan noted that:¹⁰⁶

Pacific people prefer to drink in groups rather than on their own. Group drinking patterns were evident in research by McDonald and colleagues (1997), who looked at alcohol consumption in the Cook Islands, Fiji, Kiribati, Samoa, the Solomon Islands, and Tonga in the mid-1990s. Studies by Graves (1982) and the Alcohol Advisory Council of New Zealand (ALAC) (1997) support the suggestion that Pacific people drink in groups and drink until they are intoxicated. This type of drinking behaviour may have been integrated into the lifestyle of New Zealand-based Pacific people.

SUMMARY CHAPTER 6 ALCOHOL, HEALTH, INJURY AND WELLBEING

About 1,000 deaths a year in this country are directly attributable to alcohol. By definition, these deaths are preventable. About half are due to injuries, including road trauma, accidents and self-inflicted injuries, and a quarter to cancers.

Of even greater health concern are the thousands of New Zealanders injured as a result of their own or somebody else's drinking each year.

The risks of immediate harm from alcohol are related to the amount of alcohol consumed on a typical occasion. Nearly half of drinkers aged 12 to 24 drink quantities that put them at significant risk of injury in the six hours after drinking.

This is translating into high rates of alcohol-related accidental deaths and injury among those aged 12 to 29. Among the leading causes are alcoholrelated road crashes, which account for 30 per cent of the road toll, and alcohol-related suicides.

Alcohol also contributes directly to over 60 diseases and disorders including cancers and alcohol dependence/ alcoholism.

The risks of dying from an alcoholattributable disease relate to the cumulative effects of lifetime consumption of alcohol. The higher the average daily intake of alcohol the higher the risk.

One in three New Zealand drinkers, including 25 per cent of 35 to 64 year-olds, are drinking at average daily levels which increase their risk of dying of an alcohol-related disease or injury to more than one in one hundred.

New Zealand's youth, Māori and Pacific Island populations bear a disproportionate amount of alcohol-related harm.

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One in three New Zealand drinkers, including 25 per cent of 35 to 64 year-olds, are drinking at average daily levels which increase their risk of dying of an alcohol related disease or cancer to more than one in one hundred.



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SOCIAL CHANGE AND LIQUOR LAWS

"The process of solving the public health problem of underage alcohol use begins with an examination of our own attitudes toward underage drinking — and our recognition of the seriousness of its consequences for adolescents, their families and society as a whole."

Acting Surgeon General U.S. Department of Health and Human Services 2007.

KEY FACT AT A GLANCE

The most compelling evidence of alcohol-related harm in this country is found in our crime and injury statistics.

A CASE FOR CHANGE?

CHAPTER 7

INTRODUCTION

The catalogue of alcohol-related harms described in the preceding chapters range from the extreme and highly visible, such as drink driving fatalities and alcohol-fuelled violence, to the less visible cumulative effects of alcohol on our health.

We have seen that new research about alcohol's toxicity is leading to constant reassessments of what constitutes 'safe drinking' levels and this may well have implications for how we 'future proof' any new regulatory framework for the sale and supply of alcohol.

At present though the most compelling evidence of alcohol-related harm in this

country is found in our crime and injury statistics. And the most compelling conclusion to be drawn from these statistics is that heavy drinking and drinking to get drunk are at the root of many of our alcohol-related problems.

In the final chapter of Part I we look at some of the individual and social factors influencing our drinking culture and ask whether there is now a case for a new approach.

We begin with perhaps the most fundamental question, why is heavy drinking and drinking to get drunk still a significant feature of our drinking culture?

WHY DO WE DRINK THE WAY WE DRINK?

the pursuit of intoxication [is] a practice which seems universal within human communities 199

Pre-European Māori and Inuit cultures are two known exceptions to this statement, a fact, which some argue, helps explain the devastating impact alcohol has had on some indigenous populations.²

Here we can only skim the surface of the numerous theories which try to explain human behaviour around alcohol but clearly the factors which influence our drinking defy simple formulas such as the ratio of liquor outlets per head of population.

As discussed in chapter 3, the beneficial effects we associate with drinking are many and varied, ranging from enjoyment of the flavour of alcoholic beverages and the rituals associated with their consumption, through to a sense of increased wellbeing, sociability and cohesion.

These latter effects relate to the neurocognitive changes associated with drinking, ranging from mild to extreme intoxication.

Like many Anglo-Saxon countries with so called 'dry' drinking cultures founded on long histories of moral and religious disapproval, our tendency has been to drink larger amounts in single sessions followed by periods of abstinence.

Arguably, changes in our drinking preferences over the past two decades, and the rapid expansion of the restaurant and café sector might indicate a shift away from this 'dry' drinking culture towards a more Mediterranean-style culture, focused on food and wine. However, this paper shows that for about a quarter of New Zealand drinkers, heavy drinking is still the norm. As a society we also have a reasonably high tolerance of drunkenness, with a 2005 ALAC survey suggesting one-quarter of all people 12 years or over (27 per cent) agree with the statement: "It's OK to get drunk as long as it's not every day".3

For some drinkers 'getting drunk' is the *point* of drinking rather than an incidental by-product.

ALAC's most recent *Drinking Behaviours Report* found that overall 12 per cent of all adult drinkers in 2007-08 reported that, in their opinion, they got drunk on their last drinking occasion. Nine per cent of these people reported that they had planned to get drunk on that occasion.⁴

Among 'binge drinkers' the percentage of determined drunks was much higher: 37 per cent reported getting drunk on the last occasion they drank and more than one-quarter (29 per cent) said they planned to get drunk on that occasion. 6

Changes in our drinking preferences and the expansion of the restaurant and café sector might indicate a shift toward a more Mediterranean-style culture, focused on food and wine.



A 2008 ALAC survey of alcohol behaviours and attitudes among a sample of 1,061 patrons attending bars and restaurants on Auckland's North Shore found over 37 per cent of the men and 29 per cent of the women stated they had gone out planning to get intoxicated. This was most marked among those aged under 25.7

'Getting drunk' is what the young professional, whose story appears in chapter 3 of this report, missed most when he gave up alcohol for nine months in solidarity with his recovering alcoholic wife. Former secondary school teacher and sports broadcaster Murray Deaker believes that heavy drinking is deeply ingrained in the New Zealand psyche and that a man's ability to "hold his piss" remains an important marker of Kiwi masculinity. As a recovering alcoholic Murray Deaker says he found little or no understanding of alcohol's potentially devastating effects as a drug: "I am one of the 10 per cent who can't drink alcohol. Alcoholism is a well recognised and diagnosable disease internationally, but in this country, alcoholism is often viewed as a weakness of character."8

"...I THINK SOME PEOPLE [GET DRUNK] ON PURPOSE, SO IT'S LIKE AN EXCUSE FOR DOING IT."

FACTS AT A GLANCE

A recent Auckland study examining drinking in the context of women's changing social position, reported that participants strongly identified our culture with our capacity to drink.

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drunk on that occasion.⁴

While the clichéd representation of New Zealand as nation that could be summed up in three words, "rugby, racing and beer" may be less potent for younger generations, some still regard alcohol as central to our national identity.

Young people taking part in a focus group discussion facilitated by the Ministry of Youth Development told the Law Commission they felt that New Zealanders' capacity for heavy drinking was a defining national characteristic: "It's become who we are as a people...[the fact we can outdrink other nationalities] is acknowledged in a praising sort of way...'Wow you guys can really drink'."

Similarly, a recent Auckland study examining drinking in the context of women's changing social position, reported that participants strongly identified our culture with our capacity to drink.¹⁰

This study also found that "being able to drink a lot" was regarded as a positive skill to possess and that while female participants did not drink as much as males overall, they did engage in heavy drinking sessions: "Their binge drinking and drunkenness was part of having fun with friends and enjoying a night out, and having shared experiences and stories to tell later." 11

"IF I HAD THE LIVES OF SOME OF THE PEOPLE THAT SIT IN FRONT OF ME I'D DRINK TOO!"

The idea of conformity and having a shared point of reference with peers is also reflected in the comments of the 22 year-old Otago University student whose account of Orientation Week drinking appears in chapter 3:12

"Why do it? Why not? It is very much a culture thing within my group of friends to drink ourselves silly on a weekly basis. It is almost a peer pressure thing I think, if you are not going out and being social you are considered boring and a loser, you have to keep up appearances. I understand that this may sound stupid but I feel this is a reality in Dunedin. Being such a small and confined 'studentville' wherever you go out you always run into people you know, most of whom will also be drinking. This encourages me to drink more."

At the other end of the spectrum for those living on the margins of society and with multiple problems, alcohol can be a cheap and effective anaesthetic as described by Auckland alcohol and drugs counsellor Angela Claridge:13

"Alcohol, in my experience it's often used as a soother, an escape, a depressant...to dull down feelings. And let's face it – some people's lives are fairly shoddy. Some people are struggling. Some people are living in poverty. A lot of people are living in poverty. They are living in environments that are really awful and so we need to be not just looking at one section of this...in terms of our policy around control. We need to be looking at the bigger picture. Focusing on one area is not going to change the underlying current of what drives the people we see to drink. If I had the lives of some of the people that sit in front of me, I'd drink too!"

And for our young, grappling with issues of identity, acceptance and relationships, alcohol is often part of both the problem and the solution as this young Victoria University student explains: "I know so many people who have sex they regret cos they were drunk...they all come to complain to me about it...I think some people [get drunk] on purpose, so it's like an excuse for doing it." 14

As these passages illustrate, alcohol is often used as a 'gateway' or 'facilitator' of some other outcome – sex, oblivion, entertainment, human connection, or escape.



Ross Giblin, Dominion Post

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WHAT CAN INFLUENCE OUR DRINKING?

While the motivations behind our drinking may be deeply embedded in our culture, and consistent from one generation to the next, drinking patterns clearly *do* change, both across an individual's lifetime and across society as a whole over time.

How we drink tends to change as we get older and our lifestyles, priorities, tastes and incomes change. As the stories of the student drinker and the Wellington lawyer in chapter 3 illustrate, personal circumstances and peer groups can be strongly influential in how we drink.

Alongside these individual factors influencing how we drink, are a raft of external or environmental factors which impact on our drinking. These external factors might include the overall state of the economy, changes in the laws governing the sale of alcohol (such as the lowering of the purchase age), changes

briefly examine just a few of the external factors which may be influencing drinking trends today, beginning with changes to our alcohol laws and the alcohol-driven night-time economy.

The influence of the industry and liquor laws

This paper began with a brief overview of New Zealand's liquor laws, tracing the colourful history of successive generations' attempts to exert control over drinking in our country. While still based on a strict licensing system, the laws governing the sale of liquor today are more liberal than at any time in our modern history. As discussed in chapter 2 of this paper, the 1989 Act has resulted in a more diverse and competitive industry offering consumers a far greater range of entertainment, drinking and dining options than had previously existed. In the space of just a



The Mill advertisment, The Dominion Post, 19 May 2009

HOW WE DRINK TENDS TO CHANGE AS WE GET OLDER AND OUR LIFESTYLES, PRIORITIES, TASTES AND INCOMES CHANGE.

in the alcohol industry and alcoholic products, and changes in society itself. Any and all of these can influence the demand for alcohol at a population level.

For example, during the Great Depression in the early 1930s alcohol consumption in New Zealand reached an all-time low at less than a third of today's levels. ¹⁵ Conversely the impact of the final third of the baby boomer generation hitting their late teens and 20s in the 1970s, coinciding with a rapid expansion of liquor licences, saw alcohol consumption peak in the mid to late 1970s.

In other words, the way we drink and the problems associated with it are a complex product of individual and external influences. In the following discussion we few decades we have become a nation of wine drinkers.

The introduction of 24 hour licensing and the development of the alcoholdriven night-time economy have also had a significant impact on many of our cities, contributing much to these cities' rates revenues and vibrancy but also, as discussed in chapter 5, leading to significant issues around violent offending and antisocial behaviour.

As well as becoming more available, alcohol has also become more affordable in the past two decades. This has been particularly marked in the highly competitive retail sector and has led to alcoholic beverages being sold for as little as a dollar or less per standard drink.

There is evidence to suggest that the marked difference in price between alcohol purchased at retail and alcohol purchased for consumption on licensed premises is contributing to a trend whereby people drink or 'pre-load' before going out. This in turn is seen to be contributing to the number of intoxicated people arriving at bars and clubs and the levels of antisocial behaviour in some late-night entertainment precincts.

Finally, the lowering of the minimum purchase age from 20 to 18 in 1999 made alcohol more accessible to younger New Zealanders.

These changes in the alcohol market have coincided with changes in the drinking patterns of some sections of the population. Because drinking is a social activity influenced by a range of factors it is impossible to establish a direct causal link between these changes and the liberalisation of the supply of alcohol. Nonetheless there are some reasonable inferences to be drawn.

Our per capita consumption of pure alcohol has increased nine per cent in the last 10 years.¹⁶

The evidence suggests that the availability of cheap alcohol and the lowering of the minimum purchase age have coincided with both the earlier onset of drinking and heavier consumption levels by minors. A study of 112,000 people surveyed in 2003 found that people in their forties and older reported starting drinking at about 16 years, and those aged under twenty four said they started drinking at about 14 years¹⁷, suggesting that young people are drinking from an earlier age, a trend which may have predated the lowering of the age purchase.

And as discussed in chapter 3, comparisons between national drinking surveys in 1995 and 2004¹⁸ show there have been significant increases in the proportion of 14 to 19 year-olds drinking larger volumes when they drink.¹⁹

By 2000, males in the 16 to 17 year age group were consuming eight drinks on a typical drinking occasion and their female peers were consuming nearly six drinks per occasion.²⁰

There appears to be a link between cheap alcohol products and heavier drinking sessions.²¹ There is also strong evidence to show young people in particular are more price sensitive than other population groups so it is plausible that increases in the amount they drink has been influenced by the availability of cheap alcohol.²² The implications of this are discussed in more detail in Part II of this paper.

There have also been changes in women's drinking patterns. Women's consumption has been increasing over time across all ages, but particularly among young

women. The most marked increases were seen between 1995 and 2000 for females aged 16 to 17, 18 to 19 and 20 to 24 years (with each age group increasing from four to six drinks on a typical drinking occasion). ²³ An analysis of data from 1995 and 2000 showed women aged 20 to 39 were drinking larger quantities and women 40 years or over were drinking more often. ²⁴

SOCIAL CHANGE

But to understand changes to the way women and young people are drinking we need to look beyond our liquor laws and changes in the alcohol industry. The law, and how the alcohol industry operates within it, are just two of the external factors influencing how we drink. Neither operates in a vacuum. New Zealand is a very different place in 2009 than it was twenty years ago when the 1989 Act came into force. Many of the changes we have experienced as a society will be impacting not only on how we drink but also on the types of alcohol-related harm we are experiencing.

To understand changes in how we are drinking and the harms arising from drinking, we need to understand changes in society.

Women's consumption has been increasing over time across all ages but particularly among young women.



Justin Mcmanus, The Age, Melbourne

THE LAW, AND HOW THE ALCOHOL INDUSTRY OPERATES WITHIN IT, ARE JUST TWO OF THE EXTERNAL FACTORS INFLUENCING HOW WE DRINK. NEITHER OPERATES IN A VACUUM.

For example, changes in the way women are drinking need to be understood in the broader context of changes in women's lives. Women's participation in tertiary education and the workforce have increased markedly over the past two decades.²⁵ Even more critically, young women are delaying childbearing, or opting not to have children. Thirty years ago the most common age for a woman to have a child was 20 to 24. Today it is 30 to 34.

Men and women in their 20s and 30s have reached adulthood in very different circumstances from previous generations. This generation has attained higher educational qualifications than previous generations but they are also the first to have incurred large personal debts as a result of the introduction of user-pays education. Prior to the current recession, exponential increases in housing costs resulted in falling rates of home ownership for this cohort and longer economic dependence on parents. Sociologists have coined the phrase 'extended adolescence' to describe this combination of social and economic factors impacting on this cohort.

This generation is also the first for whom parental divorce has become commonplace. Young adults whose parents married in the early 1980s will find a third of these parents will have divorced before their silver wedding anniversary (25 years).²⁶ In the late 70s just 10 per cent of all families in this country with dependent children were one-parent: by 2006 that number had tripled to just under 30 per cent – or 145,032 of 515,841 families.²⁷

Home ownership, marriage and parenthood have traditionally represented key markers with knock-on effects for levels of independence, disposable income and life style. Instead for many young men and women the 20s and 30s are now decades without dependents, or mortgages, allowing greater emphasis on careers and leisure and entertainment.

This segment of the drinking population has been an important target of the new night-time economy, characterised by the Prior to the current recession, exponential increases in housing costs resulted in falling rates of home ownership for this cohort and longer economic dependence on parents.



growth in the number of bars and clubs operating extended trading hours in many of New Zealand's main cities and tourist areas.

Similarly, when considering the impact of changes in the way young people are drinking, we need to be aware of factors beyond the law. To begin with, there are simply more young people in the population now than there were 20 years ago. While our population is ageing overall, right now we are experiencing the impact of a baby-blip resulting from unusually large birth cohorts between the mid 1980s and 1992. Statistics New Zealand's population data shows that in 2008 there were nearly 20,000 more young people in the 18 to 25 cohort than there were in 1991.

There have also been significant increases in the number of newly legalised drinkers since the minimum purchase age was lowered from 20 to 18 in 1999. In 2008, there were 10,000 more 18 year-olds and 9,000 more 19 year-olds eligible to buy alcohol than there were in 1999.

And a greater proportion of these young people are now staying on at secondary school to complete Year 13. This trend towards extended secondary education combined with the lowering of the minimum purchase age to 18 means a higher proportion of students at school are legally able to access alcohol – for their own and their underage peers' consumption.

Problems associated with tertiary student drinking also need to be seen in the context of the exponential growth in the student population in the past two decades. In 1989 when the Sale of Liquor Act was passed, there were 141,315 students enrolled in formal tertiary education in this country. In 2007, enrolments had grown to 484,104, including 39,960 international students.²⁸

Tertiary providers have proliferated in this time with 33 public tertiary institutes competing with private providers and many with multiple campuses around the country. The student populations at many of the country's major universities have grown significantly. University of Otago's student population, for example, has doubled since 1989, and in 2008 stood at 20,752.²⁹

But perhaps the most far reaching change in the past two decades has been the advent of the internet and the quantum leap in communication technologies.

Both have revolutionised the way people – and in particular young people – organise their social lives and communicate.

Along with the huge benefits of these technologies have been some unlooked-for social problems. The phenomenon of the teenage party which ends in a street riot, or worse, owes as much to texting and social networking sites as it does to binge drinking. Parental supervision is often a poor match for this technology.

Arguably too the internet and functions such as photo texting have helped promote binge drinking as a form of entertainment and social acceptance within segments of the young population. Social networking sites are used to share extreme drinking exploits. This has helped make visible to parents and the media drinking behaviours that in previous generations would have remained within the immediate peer group.

At the same time alcohol marketing has become increasingly sophisticated in response to new technology and the emergence of global markets and brands. In New Zealand this period has been characterised by privatisation of broadcast

media and removal of government regulation of alcohol advertising.³⁰

Modern marketing campaigns frequently utilise the full ambit of communication platforms to reach specific consumer segments. As a consequence many alcohol brand and promotional campaigns may remain invisible to all but the target market. The most successful often involve wrap-around media utilising a combination of traditional broadcast and outdoor media alongside social networking sites and mobile phone technology.

Recent examples include a New Zealand campaign for vodka which replicated many of the features of on-line gaming communities, setting up a dedicated website and recruiting consumers as 'secret agents' who would be sent on various 'missions'. The campaign was credited with a 29 per cent growth in the brand's average sales per month year on year and according to a report published in the *National Business Review* "pushed it to the top of the adored brand list among 18 to 24 year-olds in both the vodka full strength market and the total RTD market."³¹

A recent beer campaign used Facebook and iPhone technology to notify consumers of bars offering free beers, and allowed them to download free beer vouchers and tickets to events. The promotional material for the campaign explained the rationale behind using new media in this way:³²

By connecting with consumers through mediums that are an integral part of their social networking and around social events that inspire them,

THE TEENAGE PARTY WHICH ENDS IN A STREET RIOT OWES AS MUCH TO TEXTING AND SOCIAL NETWORKING SITES AS IT DOES TO BINGE DRINKING.

FACTS AT A GLANCE

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Beck's has shifted the marketing paradigm from talking at consumers to inviting them into the brand...

Venues competing for the youth market are also using popular social networking sites such as Facebook and Bebo to advertise promotions including student mid-week specials.

While none of these marketing tools can be said to 'cause' the harmful use of alcohol, the highly creative and allpervasive use of popular culture to build connections between personal identity and brands is a powerful new environmental factor seeking to influence individual choice around alcohol use.

A CASE FOR CHANGE?

History suggests that each time we review our liquor laws we also conduct a sort of social and moral stocktake, asking ourselves questions about the contribution that changing values and parenting styles and levels of social dysfunction are making to our problems with alcohol.

And it is clear the levels of alcohol-related harm we have set out in this paper are not simply a product of more liberal liquor laws. As this chapter has discussed they are likely to be the product of a host of demographic, social, cultural and environmental changes. Problems associated with youth drinking cannot be explained simply by the lowering of the minimum purchase age or the development of cheap RTDs. Factors as simple as the growth in the youth population and as complex as how our schools and families are functioning may form part of the answer.

The levels of crime and injury we are experiencing have many complex and interrelated causes. Alcohol is just one contributory factor. However, unlike many of the other contributory factors, alcohol is a modifiable risk factor. Indeed the harmful use of alcohol emerges as a leading modifiable risk contributor to the burden of disease and injury in this country.33

In the two decades since our liquor laws were liberalised, evidence about the nature and level of risk associated with alcohol has increased significantly, leading to constant revisions of what constitutes safe drinking. The World Health Organisation's International Agency for Research on Cancer recently classified alcoholic beverages as "carcinogenic to humans" in the same hazard category as agents such as asbestos, formaldehyde and tobacco.34

Applying the latest evidence-based Australian Guidelines designed to reduce health risks from drinking, the Law Commission has been told that nearly half of drinkers in this country aged 12 to 24 usually drink enough on a typical drinking occasion to at least double their risk of injury in the six hours after drinking.35 And that one in three drinkers drink on average more than two standard drinks a day and so face a greater than 1:100 risk of dying of an alcoholrelated disease or injury – including a quarter of drinkers aged 35 to 64.36

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In the two decades since our liquor laws were liberalised, evidence about the nature and level of risk associated with alcohol has increased significantly, leading to constant revisions of what constitutes safe drinking.

One in three drinkers drink on average more than two standard drinks a day and so face a greater than 1:100 risk of dying of an alcohol-related disease or injury.

But arguably of greatest significance is the new evidence about the increased risks associated with young people's drinking. New Zealand research has found that early exposure to alcohol is associated with a range of poor adult outcomes including substance dependence, criminal convictions, herpes infection and failure to achieve educational qualifications.37 Heavy drinking among teenagers and young adults is associated with poorer brain functioning, particularly in terms of attention and visuospatial skills,38 and alcohol has detrimental effects on adolescents' liver, hormones, bone density and brain structure.39

The stark submission from some of our District and Youth court judges gives added weight to this research and highlights the extent to which binge drinking and alcohol abuse disorders in our youth population are contributing to poor educational outcomes and setting a section of our young up for a lifetime of offending.

In the United States where the legal drinking age is 21, alcohol abuse has emerged as a serious health issue among the young leading to the issuing of the US Surgeon General's Call to Action to



In the two decades since our liquor laws were liberalised, evidence about the nature and level of risk associated with alcohol has increased significantly, leading to constant revisions of what constitutes safe drinking.



NEW ZEALANDERS NEED TO DECIDE WHERE THE BALANCE SHOULD LIE BETWEEN THE BENEFITS WE DERIVE FROM ALCOHOL AND THE HARMS BEING EXPERIENCED BY INDIVIDUALS AND SOCIETY AT LARGE.

FACT AT A GLANCE

Heavy drinking among teenagers and young adults is associated with poorer brain functioning, particularly in terms of attention and visuospatial skills, 38 and alcohol has detrimental effects on adolescents' liver, hormones, bone density and brain structure. 39

Prevent and Reduce Underage Drinking. In a foreword to this 2007 publication, the Acting Surgeon General Kenneth P Moritsugu wrote: 40

Because environmental factors play such a significant role (in adolescent alcohol use) responsibility for the prevention and reduction of underage drinking extends beyond the parents of adolescents, their schools and communities. It is the collective responsibility of the Nation as a whole and of each of us individually.

The process of solving the public health problem of underage alcohol use begins with an examination of our own attitudes toward underage drinking – and our recognition of the seriousness of its consequences for adolescents, their families and society as a whole. Adolescent alcohol use is not an acceptable rite of passage but a serious threat to adolescent development and

health, as the statistics related to adolescent impairment, injury and death attest.

The terms of reference for this review require the Law Commission "to consider and formulate for the consideration of Government and Parliament a revised policy framework covering the principles that should regulate the sale, supply and consumption of liquor in New Zealand having regard to present and future social conditions and needs".⁴¹

The extent to which the harmful use of alcohol is preventing our young people and sections of the Māori and Pacific Island population from realising their potential as productive and healthy citizens of this country is a matter of concern to all New Zealanders. Nor can we insulate ourselves from the impacts of other people's harmful drinking: we share the same accident and emergency departments, the same police force,

the same roads, the same footpaths.

And we all share the bill for alcoholrelated harm through our taxes and rates.

While the law cannot change human nature, it can alter the environment in which individuals make choices about how they use alcohol, and in doing so make that environment more, or less, supportive of moderation.

In Part II of this issues paper we look at how the current law is operating and what additional legal measures are available to combat alcohol-related harm. It concludes with the Law Commission's preliminary view of these measures and a package of reforms which may prove effective in helping reduce harm. It also includes questions for debate.

In the end the New Zealand public needs to decide where the balance should lie between the benefits we derive from alcohol and the harm being experienced by individuals and society at large.

SUMMARY CHAPTER 7 A CASE FOR CHANGE?

Heavy drinking and drinking to get drunk remain strong features of our drinking culture.

How that culture manifests in the drinking habits of different generations is influenced by a combination of social and economic factors operating in conjunction with the regulatory environment in which liquor is sold and supplied.

Since the liberalisation of our liquor laws under the 1989 Act, alcohol has become more affordable and more widely available.

There is evidence to suggest young people are drinking from an earlier age and drinking larger quantities when they drink.

Social change, including rates of participation in education and the workforce, home ownership and child bearing all influence our leisure patterns and drinking habits.

Increases in the number of young people in our population and increases in the student population may be influencing consumption patterns and levels of alcohol-related harm in this cohort.

The last decade has also seen a revolution in communications technologies. These technologies have facilitated new ways of social interaction and created unprecedented access to consumers for marketers and advertisers - including the liquor industry.

These changes have occurred against a backdrop of growing evidence about the risks associated with alcohol and in particular the risks to young people.

New Zealand research has found that early exposure to alcohol is associated with a range of poor adult outcomes including substance dependence, criminal convictions, herpes infection and failure to achieve educational qualifications.

The young, Māori and Pacific people are disproportionately affected by alcohol-related harm.

While alcohol is only a contributory factor to many of the harms experienced by individuals and the community, the harmful use of alcohol emerges as a leading modifiable risk contributor to the burden of disease and injury in this country.

CHAPTER 7 ENDNOTES

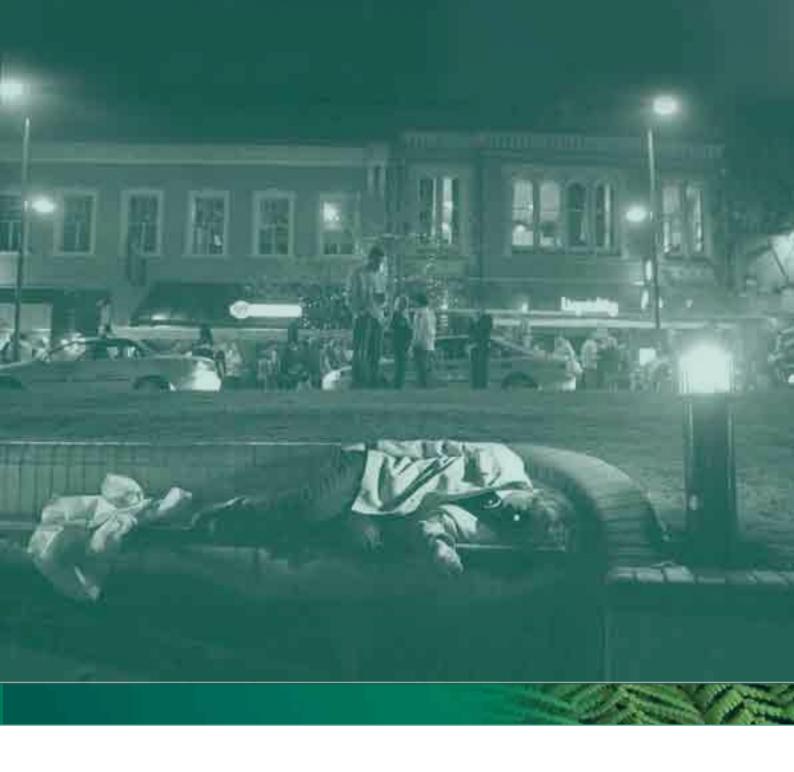
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PART II



THE SEARCH FOR **SOLUTIONS - SOME TENTATIVE DIRECTIONS**

The law sits alongside societal attitudes and individual responsibility as a mechanism for bringing about a reduction in alcohol-related harm. The law forms a crucial part of the harm reduction equation because it provides the legal framework under which producers, retailers, and consumers of alcohol operate.

THE LAW AND HARM REDUCTION

CHAPTER 8

INTRODUCTION

- Part I of this paper has painted a picture of alcohol in our lives. It has defined the problem. The solutions are more difficult and controversial. The Law Commission cannot offer definitive solutions at this stage of its work.
- What we do in Part II of this Issues Paper is to provide some analysis and tentative directions towards solutions developed as a result of the preliminary consultation.
- In respect to many of the issues, especially those around the licensing system, a great deal of detail must be analysed before final recommendations are offered. At present we are merely making an indication of what a framework could look like. The detailed recommendations will come in our final report after we have had the benefit of submissions and further consultation.

THE THREE POLICY LEVERS

- The law sits alongside societal attitudes and individual responsibility as a mechanism for bringing about a reduction in alcohol-related harm. The law forms a crucial part of the harm reduction equation because it provides the legal framework under which producers, retailers, and consumers of alcohol operate. In particular, the law can implement a variety of measures aimed at harm reduction that can be grouped under three policy 'levers'.
- First, the law may reduce the retail availability of alcohol. Such *supply controls* are premised on the assumption that reduced availability will mean less alcohol consumption and fewer alcohol-related harms. As noted in Part I, this principle is encapsulated in what is known as the availability theory and is discussed in the following chapter. Supply controls can include such measures as limits on the number of outlets in a particular area, restrictions on which premises can sell alcohol, and a minimum alcohol purchase or drinking age.
- Second, the law may seek to influence consumer behaviour by seeking to reduce people's desire to purchase alcohol through demand reduction measures. These include measures that increase the retail price of alcohol products, for example through excise taxes or minimum pricing, and restrictions on alcohol advertising, sponsorship and promotions.
- Third are problem limitation measures. Problem limitation measures do not attempt to alter the demand or supply of alcohol as such, but are designed to reduce the harm that can result from its consumption. For example, a requirement that a licensee make food available for sale to patrons is a problem limitation measure, as are enforcement measures, laws against drink driving, and the provision of alcohol treatment services.

A RANGE OF SOLUTIONS

- The development of any package of measures requires a range of solutions from each of these three areas of:
 - · supply controls;
 - · demand reduction; and
 - problem limitation measures.

These subjects occupy chapters 9, 10 and 11 of Part II.

- It is important to ensure that the balance between these three policy levers is right. Unfortunately there is little research to guide us on the mix or combination of policies that will produce the best result. It is also important to achieve the right balance between the minimisation of alcohol-related harm and the benefits to the economy and society of the availability of alcohol.
- 8.10 The central pillar of the existing framework is the Sale of Liquor Act 1989. The most lengthy analysis is in chapter 9 around the Sale of Liquor Act itself. Research and experience suggests that some of the mechanisms that are needed to effectively tackle alcohol-related problems can be achieved by changing aspects of that law.

- 8.11 Demand measures (chapter 10) revolve around price, including tax and minimum price. Advertising and promotional activity also fall in this category.
- Problem limitation (chapter 11) deals with product labelling, serving sizes, enforcement and penalties, transport measures and treatment.
- 8.13 Chapter 12 offers a summary of the Law Commission's preliminary ideas on the elements of a package to revise New Zealand's liquor laws, and offers some questions for public debate.
- 8.14 Chapter 13 contains a scheme of options that resulted from preliminary consultation. It may be of assistance to people making submissions.



WHAT CAN BE SOLD - TO WHOM, WHERE AND WHEN

Supply control measures are designed to limit the availability of alcohol. They are based on the theory that increased availability results in increased levels of consumption and alcohol-related harm (the availability theory). The availability theory has been the subject of considerable research in recent times.

SUPPLY CONTROLS

CHAPTER 9

INTRODUCTION

- 9.1 Under New Zealand law nobody may sell liquor unless they have a licence to do so. This requirement is set out the Sale of Liquor Act 1989.
- Because licensing is the fundamental means of controlling the sale of liquor, the criteria for securing a licence and the conditions that can be imposed on a licence become matters of great importance. The scope and content of the Act are therefore extremely important in deciding whether the balance in our existing law is correct.
- In this chapter, we analyse the principles that underpin licensing systems, including the central assumption that restricting the availability of alcohol through changes to supply controls, such as licensing, will mean less alcohol consumption and alcohol-related harm.

- The chapter begins with an overview of the current law, and then moves on to consider the following aspects of supply control:
 - · Availability theory: the influence of liquor outlet numbers, outlet density, hours of sale and price on consumption and alcohol-related harm;
 - · Licensing criteria: the adequacy of the current criteria used for granting a licence, and options for expanding those criteria, including examples from Australian states:
 - · Types of off-licence premises: restrictions on the types of premises permitted to sell alcohol for consumption away from the premises, and the range of alcohol products available for sale;
 - · Licence conditions: the range of conditions currently available and possible expansion of these;
 - · Prohibited days: prohibitions on the sale of alcohol on specified days and whether there is a case for change;
 - · Hours: whether hours of sale should remain discretionary, or whether an alternative approach might be considered;
 - · District Licensing Agencies: their role, and ways to enhance this;
 - · The Liquor Licensing Authority: its role and the case for expanded functions:
 - · Liquor licence notification requirements, renewals and fees: the adequacy of the current system and options for change;
 - · Minimum purchase age/drinking age: the situation under the current law and options for change; and
 - Licensing trusts: ownership and control: the future of licensing trusts.

REGULATORY **SCHEME**

SALE OF LIQUOR ACT 1989

- The primary instrument for controlling the sale of liquor in New Zealand is the Sale of Liquor Act 1989 (The Act). The fundamental means by which control is achieved by the Act is the requirement to have a licence in order to sell liquor.1
- Acts are driven by their purpose, and it is the custom in modern statutes to include a purpose provision. The Act sets out its object in section 4:
 - (1) The object of this Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.
 - (2) The Licensing Authority, every District Licensing Agency, and any Court hearing any appeal against any decision of the Licensing Authority, shall exercise its jurisdiction, powers, and discretions under this Act in the manner that is most likely to promote the object of this Act.
- It can be seen from that object that the aim of the legislation is to contribute to the "reduction of liquor abuse". That, of course, remains an important aim. But it does appear to the Law Commission that some more specific objectives

- could be included. Bearing in mind the harm outlined in Part I of this issues paper, the Commission has proposed a more specific object provision, which is described in chapter 12.²
- 9.8 The structure and logic of the current Act need to be understood in any effort to reform it. The underlying principle of the Act, laid out in section 6, is:

The sale of liquor to the public or any member of the public requires a licence.

- 9.9 The Act goes on to specify four kinds of licence that can be granted:
 - On-licences (which authorise the sale and supply of liquor for consumption on the licensed premises, for example in bars and restaurants);³
 - · Off-licences (which authorise the sale or delivery of liquor on or from the premises described in the licence for consumption off the premises, for example a bottle store or supermarket);⁴
 - Club licences (which authorise the sale and supply of liquor for consumption on the club premises to club members, their guests, or members of other clubs);⁵ and
 - Special licences (which authorise the holder of the licence to sell and supply liquor for consumption on the premises to any person attending any particular occasion or event or series of occasions or events).⁶
- 9.10 The Act also envisages that two or more licences of different kinds could be issued in respect of the same premises.⁷
- 9.11 Part 1 of the Act deals with on-licences. An on-licence is needed to sell alcohol to people for consumption on the premises where the sale is made, for example bars and restaurants).8 Part 1 sets out who may hold a licence.9 It deals with applications, objections and reports that must be given before a decision can be made.10 It also sets out the criteria and conditions for on-licences11 in some detail, together with provisions relating to variations of conditions,12 duration of on-licences,13 and their renewal.14 There are special provisions relating to BYO restaurants.15
- 9.12 Part 2 deals with off-licences¹⁶ and the pattern of the legislative provisions follows broadly the pattern established for on-licences but with some differences.
- Part 3 of the Act deals with club licences. A club is defined in section 2 of the Act. These licences authorise the holder to sell and supply liquor for consumption on the premises as described in the licence, to any member of the club or any person who is a guest of, or who is accompanied by, a member of the club, and to any member of any other club with which the holder of the licence has an arrangement for reciprocal visiting rights.¹⁷ Permanent club charters that were in force under the Sale of Liquor Act 1962 continue in force notwithstanding the 1989 Act, and the holders can continue to sell and supply liquor in accordance with the charter without the necessity to obtain a new licence.¹⁸

- 9.14 The application of the Act also exempts the House of Representatives, Police canteens, canteens established for the officers of any penal institution, canteens established by the New Zealand Fire Service Commission, and canteens established by the Defence Force.¹⁹
- 9.15 Special licences are the fourth category of licence, and are provided for in Part 4 of the Act. A special licence authorises the holder of the licence to sell and supply liquor on the premises or conveyance described in the licence to any person attending any occasion or event or series of occasions or events described in the licence.20
- 9.16 These licences are in the nature of a temporary right to sell liquor for special occasions. The law sets out who may hold a special licence,²¹ how it is applied for²² and the criteria which apply to them.²³
- 9.17 The licensing provisions are administered through institutions known as the Liquor Licensing Authority (Licensing Authority) and the District Licensing Agencies (DLAs). The Licensing Authority is presided over by a District Court Judge, who is appointed as its chairperson. Other members can be laypersons and there shall be no more than four persons on the Licensing Authority.²⁴ Members are appointed by the Governor-General for a specified term. ²⁵ The Licencing Authority has the powers of a Commission of Inquiry.
- 9.18 The functions of the Licensing Authority are to:²⁶
 - · consider and determine applications for the grant of, and renewal of, on-licences, off-licences, and club licences as may be referred to it by any DLA:
 - · consider and determine applications for the granting and renewal of Manager's Certificates; and
 - determine appeals from DLA decisions.
- 9.19 The Licensing Authority also has legal power to investigate and report on such matters for the exercise of its powers or functions under the Act²⁷ and there are some coercive powers in respect of such investigations.
- 9.20 The Licensing Authority has a close relationship with the DLAs. The functions of a DLA are to:28
 - · consider and determine applications for the grant of, and renewal of, licences, where these are not required to be determined by the Licensing Authority;
 - · consider and determine applications for temporary authority;
 - grant applications for renewal of Manager's certificates;
 - · conduct enquiries to make reports as may be required by the Licensing Authority under section 95.

- 9.21 The Act designates the Chief Executive of each local authority as the Secretary of the DLA;²⁹ however, the local authority may delegate any powers, duties or discretions to any committee as it considers necessary.³⁰ The DLA must appoint at least one licensing inspector to hold the powers conferred under the Act.³¹
- 9.22 DLAs consider and determine unopposed licence and licence renewal applications.³² Any applications that are the subject of an adverse report by either the police, a licensing inspector or a medical officer of health,³³ or are the subject of an objection by a qualifying member of the public,³⁴ are referred to the Licensing Authority for consideration.³⁵
- 9.23 The Act also provides that any party dissatisfied with a DLA decision can appeal to the Licensing Authority.³⁶
- 9.24 Where the Licensing Authority refuses any application for the grant or renewal of any licence or any Manager's Certificate on the ground of the suitability of the applicant or cancels or suspends any licence or Manager's Certificate on the ground of suitability of the licensee or manager, there is a full appeal to the High Court.³⁷
- 9.25 For other matters there is an appeal to the High Court on questions of law only.³⁸
- 9.26 Part 8 of the Act deals with offences and enforcement. It covers such subjects as:
 - · Sales by unlicensed persons.³⁹
 - · Allowing unlicensed premises to be used for the sale of liquor.⁴⁰
 - Use of unlicensed premises as a place of resort for the consumption of liquor.⁴¹
 - Persons found on unlicensed premises kept as a place of resort for consumption of liquor.⁴²
 - Promotion of excessive consumption of alcohol. This is an important provision that provides:⁴³
 - Every person commits an offence and is liable to a fine not exceeding \$5,000 who, being a licensee or manager of licensed premises, does anything in the promotion of the business conducted on the premises, or in the promotion of any event or activity held or conducted on the premises, that is intended or likely to encourage persons on the licensed premises to consume alcohol to an excessive extent.
 - Selling or supplying liquor to an intoxicated person on behalf of the licensee or manager of any licensed premises.⁴⁴
 - Allowing a person to become intoxicated on licensed premises or allowing drunkenness or disorderly conduct on licensed premises.⁴⁵
 - Being on licensed premises outside the licensing hours.⁴⁶

- The police have powers of entry onto licensed premises⁴⁷ and also have power to demand information.⁴⁸ They can seize samples of liquor.⁴⁹ The Act also deals with matters of evidence in relation to some specialised issues.⁵⁰
- 9.28 Part 9 of the Act deals with licensing trusts. These are specialised community organisations and there are a range of detailed specialised legal provisions concerning their registration, governance, accountability and other issues.⁵¹

OTHER STATUTES

- 9.29 There are a variety of other statutes that are relevant to the sale of liquor. Although these do not deal with supply controls, a number of them are noted below.
- 9.30 Perhaps the most important is the Alcohol Advisory Council Act 1976. The Alcohol Advisory Council of New Zealand (ALAC) is an autonomous Crown entity. Its statutory primary objective is:52
 - the encouragement and promotion of moderation in the use of liquor, the discouragement and reduction of the misuse of liquor, and the minimisation of the personal, social and economic harm resulting from the misuse of liquor.
- 9.31 ALAC's activities are funded by means of a levy on liquor that is imported into or manufactured in New Zealand.53
- 9.32 ALAC is required by its statute to encourage, promote, sponsor and co-operate in research into the use of liquor in New Zealand, the public attitudes towards the use of liquor, the problems associated with the misuse of it, and the means of minimising the harmful effects of it.54 It also has the important function of disseminating information to the public concerning the misuse of liquor.⁵⁵ It is instructed to devise, promote, sponsor, conduct, and encourage and cooperate in the preparation and conduct of educational programmes for the public and for persons who may be at special risk in respect of liquor-related problems.⁵⁶ These functions are to discourage the misuse of liquor, to encourage moderation in the use of liquor, and to promote and encourage responsible attitudes towards the use of liquor.
- 9.33 ALAC has been active in New Zealand for many years on this issue, and its current mission is to lead a change in New Zealand's drinking culture.⁵⁷
- 9.34 The Customs and Excise Act 1996 has important application to the liquor industry, especially in its imposition of excise tax. This will be discussed in chapter 10 of this paper.

The Hotel Association of New Zealand Act 1969 is still in force. The statute used to provide for compulsory membership of every person holding a hotel keepers, tourist house keepers or tavern keepers licence or Manager's Certificate, however that has now been changed. Section 3(2) provides:

Every person (including a body corporate, but excluding a licensing trust and an employee of a licensing trust) who is the holder of—

- (a) An on-licence; or
- (b) An off-licence; or
- (c) A general manager's certificate—

granted under the Sale of Liquor Act 1989 in respect of a hotel, a tavern, or a tourist-house, is eligible to be a member of the Association.

- 9.36 The Association, which is now known as the Hospitality Association of New Zealand, has remarked to the Law Commission in discussions that it believes that this statute is no longer required.
- 9.37 There is a Wine Act 2003, which deals with particular matters relating to the industry. While it is important, it is not of central concern in this review. The Wine Act 2003 concerns the setting of standards for the identity, truthfulness in labelling and safety in wine. 58 It also provides for the minimising and management of risk to human health arising from the making of the wine and ensuring compliance with wine standards. 59 It is concerned to facilitate export of New Zealand wine 60 and the promotion of consultation with industry organisations on regulation to foster efficiency and growth in the industry. 61 It also enables levies to be imposed on winemakers for payment to entities representing their interests. 62
- 9.38 The Commerce Act 1986 has important applications to the sale of liquor. But the rules in the Commerce Act are to some degree and in some respects overridden by the specific provisions in the Sale of Liquor Act itself. This is an important and difficult issue that will require further investigation. Specific attempts to override the Commerce Act should be avoided if at all possible. But where special regulation is needed, the Sale of Liquor Act will set it out.
- It needs to be understood that liquor is also dealt with in a number of other statutes, such as the Local Government Act 2002 (discussed in chapter 11), the Gambling Act 2003, the Civil Aviation Act 1990, the Electoral Act 1993, the Local Electoral Act 2001, and the Māori Community Development Act 1962. These specialised Acts will not figure largely in the considerations of the Law Commission. Further, the Law Commission understands that relevant provisions of the Māori Community Development Act are being reviewed as part of a wider review of the Māori warden scheme by Te Puni Kōkiri (the Ministry of Māori Development).

AVAILABILITY THEORY

- 9.40 Supply control measures are designed to limit the availability of alcohol. They are based on the theory that increased availability results in increased levels of consumption and alcohol-related harm (the availability theory). The availability theory has been the subject of considerable research in recent times. In large part this is because liquor licensing systems in a number of countries, including New Zealand, have shifted to a more liberalised model in which restrictions on such things as the number of outlets, trading hours, and the places where alcohol can be purchased have been relaxed. 63 Researchers have asked whether the increase in availability resulting from liberalisation has led to increased alcohol consumption and alcoholrelated harm.
- 9.41 Researchers examining the links between availability, consumption and harm grapple with multiple variables which apply at both a population level and at the community level. First, availability itself has several different dimensions, including the geographic availability of alcohol, and the hours and the price at which it is sold. These dimensions apply to both on-licence and off-licence premises. Secondly, each of these dimensions influence each other and may have different significance in different environments. For example, the physical clustering (density) of alcohol retailers may promote discounting, promotions and extended trading hours as competing businesses attempt to secure market share. This may contribute to increased consumption and alcohol-related harm in some environments, but not in others. Thus, the aggressive promotion of cheap high-alcoholic volume premixed spirits in communities with high levels of social deprivation and youthful populations may produce risks that are specific to that place.
- 9.42 Also, researchers must consider not just the different impacts of off-licence and on-licence availability at a population level and a community level, but also consider the combined effects of the availability of alcohol from off-licence and on-licence premises. For example, chapter 5 of this paper cites qualitative British and New Zealand research examining the impact of 'pre-loading', or consuming shop bought alcohol before entering bars and clubs.⁶⁴ Pre-loading is driven in part by the significant price differential between the cost of alcohol purchased from on-licence and off-licence premises. The early research suggests individuals who drink before going out may consume larger quantities per occasion and suffer higher levels of alcohol-related harm than those who do not.65 Anecdotally too, police report pre-loading is a contributing factor in the high levels of intoxication and antisocial behaviour among those attempting to gain entry to late night licensed premises.
- The existence of these multiple interacting variables and the difficulties of designing research that allows comparisons between levels of consumption and harm before significant changes in availability and after, makes this a challenging field for researchers. However in the last two decades there have been more than 40 studies published that have found correlations between density of outlets and various types of alcohol-related harm. Some of these studies are cited in the following discussion, which begins with an examination of the link between availability and consumption.

AVAILABILITY AND CONSUMPTION

- At a population level, some studies have shown increased availability of alcohol being matched by an increase in the amounts consumed. Renowned alcohol policy researcher, Dr Paul Gruenewald, for example, found in his 1993 cross-sectional comparison of several US states that the number of retail outlets was directly related to sales of alcohol. Generally, however, the studies on availability and overall consumption have shown mixed results, with a number finding little or no correlation. The relationship appears to be the strongest when there is a sudden and sharp increase in availability. A number of studies from the Nordic countries found statistically significant increases in levels of alcohol consumption when preceded by a dramatic change in availability, for example the introduction of alcohol into previously 'dry' rural areas, and the introduction and then removal of beer from supermarkets in Sweden.
- 9.45 Arguably, the inconclusive nature of the findings is reflected in the long-term trends in alcohol consumption in New Zealand. The point was made in Part I of this paper that the doubling of the number of licensed premises since the Sale of Liquor Act 1989 came into effect did not translate into an immediate increase in alcohol consumption at a population level. In fact, per capita consumption of pure alcohol initially tracked down. It has increased nine per cent in the last 10 years, but remains lower than it was in the late 1970s.⁶⁸
- 9.46 Yet this does not mean there is *no* relationship between availability and consumption. Per capita annual consumption figures provide only a high-level view of drinking patterns. They do not reveal levels of consumption within population sub-groups. For example, the per capita figures say nothing about the increase in the proportion of young people who participate in heavier drinking sessions. ⁶⁹ This trend towards larger quantities per drinking occasion is associated with increased risks of a number of harms including intentional and unintentional injury. Noticeably, this increase has occurred within the context of a more relaxed supply context, including a reduced minimum purchase age and increased price competition.
- While still at a relatively early stage, some studies also suggest that clustering of outlets may increase the levels of consumption amongst groups living in the area or close by. In the view of the World Health Organisation, there are special problems when outlets are tightly clustered, with a particular relationship between outlet density and the extent of underage drinking. Consistent with this observation, a 2007 New Zealand study found that outlet density was associated with the amount of alcohol consumed by teenagers. Another study examining the association between outlet density, and drinking levels and related problems among New Zealand university students from six campuses found higher outlet density, especially within 1 kilometre of university campuses, was associated with higher levels of drinking and related problems. In this context, it is relevant that high outlet density of off-licence premises is associated with cheap alcohol products, which in turn facilitate heavy sessional drinking. In this way, particular forms of concentrated availability in this case high outlet density can potentially influence consumption levels.

This raises the question of whether higher outlet density increases consumer demand for alcohol or simply reflects it. Gruenewald concludes that the answer may be both.⁷³ To some extent, outlets exist because people want to buy alcohol. But in high outlet density areas, particularly once a 'saturation' point has been reached, those outlets generally have to stimulate consumer demand in order to achieve profitability. This can be done through greater outlet specialisation (for example wine bars or nightclubs as distinct from 'ordinary' pubs) and through mechanisms such as lower prices and longer trading hours. In this sense, alcohol markets are dynamic and high outlet density can reflect, as well as stimulate, consumer demand.

AVAILABILITY, OUTLET DENSITY AND HARM

- 9.49 Studies that link increased availability with increased alcohol-related harm, and criminal offending in particular, are more definite. It would be misleading to suggest that the findings of these studies are singularly conclusive. They are not. Those that do show significant correlations are usually subject to various methodological limitations. Nevertheless, the theme that has emerged from this body of studies has become increasingly clear: the higher the density of outlets the greater the likelihood of crime and anti-social behaviour.
- To be clear, these studies do not conclude that outlet density 'causes' alcoholrelated harm. Because of the number of variables involved, such causative links are very difficult, if not impossible, to prove. However, these studies do show strong associations between higher outlet density and alcohol-related harm, suggesting that the former is likely to be an important contributing factor to the latter.
- 9.51 A number of studies have found associations between outlet density and assaults and other physical violence using population samples in Norway,74 California, 75 New Jersey, 76 and Sydney and rural New South Wales, 77 amongst other areas.
- 9.52 A 2003 Californian study found increased self-reported rates of driving after drinking, particularly amongst young people, in high outlet density areas.78 Friesthler and others reported that child abuse and neglect in California were positively correlated with the density of on-licence and off-licence premises.⁷⁹ A 1998 New Orleans study found that outlet density was linked with high-risk sexual behaviour as evidenced by higher reported rates of gonorrhoea.80
- 9.53 Rather than assuming that all outlets are equal, some studies consider the type of outlets (for example, on-licence or off-licence) and the types and strengths of beverages that are typically sold. These studies provide a more detailed insight into the links between outlet density and crime. For example, Roman and others found in their recent study of the District of Columbia that density of on-licence outlets predicted aggravated assaults, but the same was not true for offlicences.81 But concentration of both types of outlet predicted high levels of disorderly conduct.

- A major study conducted by the National Drug Research Institute found that outlet density in Western Australia was strongly associated with assault and drink-driving offences. Again, the type of premises was relevant to the findings, with hotels, taverns and liquor stores proving to be strong predictors of alcohol-related harm, but less so for club licences, restaurants, and nightclubs. In another Western Australian study, longer trading hours for Perth hotels were associated with higher levels of consumption and higher assault rates.
- 9.55 A 2006 New Zealand study found that an increased number of prosecutions of young people for disorder offences, and driving while under the influence offences, coincided with the liberalised regulatory environment brought into effect by the Sale of Liquor Act 1989. However, negative trends were noted for fatal and non-fatal alcohol-related vehicle crashes for all groups. A study by Kypri and others concluded that significantly more alcohol-involved crashes occurred among 15 to 19 year-olds in New Zealand than would have occurred had the minimum purchase age remained at 20 years, rather than being reduced to 18 years. Sea
- 9.56 As noted in chapter 5, a comprehensive police study of the impact of 24-hour licensing on criminal offending and victimisation in Auckland city concluded that there was a strong correlation between extended trading and violence and disorder offences. So In many respects, these correlations are to be expected, given the typical clustering in central city locations of licensed premises with extended operating hours; these alcohol-driven late night entertainment precincts attract patrons from a wide geographic area. While it is plausible that reductions in the total number of licensed outlets or trading hours in a particular area may reduce the level of alcohol-related offending in that area, it is also plausible that the consumption and associated harm would simply be displaced to other locations.
- 9.57 However, the link between high outlet density and harm is likely to be increased by two further factors. First, outlet clustering is often accompanied by long trading hours. In the case of smaller off-licence retailers in particular, this may attract further criminality, as well as 'secondary' harm such as graffiti and property damage. 87 Second, where high outlet density occurs in lower socio-economic areas, some research suggests these areas may be particularly susceptible to an increase in social harms from high outlet density because of community dynamics and environmental factors. 88 This said, the link between outlet clustering and crime may be no less of an issue for towns and cities that have high clusters of on-licence premises in their central business district areas.
- on a geographical basis (the number of outlets per square kilometre) or on a population basis (the number of outlets per head of population).⁸⁹ However, the geographic basis is the most important of the two measurements.

When researchers consider high outlet density, they are concerned with the spatial relativities of liquor outlets to one another, that is to say, a geographic proximity. Per head of population measurements of outlet density do not necessarily reflect this physical 'bunching'. Thus, although the Mackenzie district in the South Island has the highest outlet density in the country, 90 this ranking is driven by the comparatively lower number of people in this region rather than a high number of liquor outlets.

- 9.59 In summary then, while the evidence in New Zealand does not suggest a direct linear relationship between total population consumption levels and gradual changes in physical outlet numbers, the evidence does suggest availability (price, hours, physical access) has an impact on patterns of drinking and levels of alcohol-related harm at a sub-population level. The confounding effect of environmental factors, such as social deprivation or vulnerable population groups, makes it difficult to arrive at universal conclusions in this area. A major research project is currently being undertaken by University of Otago researchers Kypri, Bell and Connor examining the link between outlet accessibility, area deprivation and adult drinking patterns. The study is designed to control for the effects of deprivation and so should assist in identifying the key variables in the availability and harm equation.
- 9.60 From a policy perspective, the key issue is that the current Act is not designed to take into account many of the important variables outlined in the preceding discussion.

LICENSING CRITERIA AND DENSITY

- 9.61 It is significant that the Sale of Liquor Act does not allow a licence to be declined on the basis of the number of existing outlets in an area. Consequently, numerous instances of high outlet density areas exist across New Zealand.
- 9.62 The research outlined above indicates that high levels of outlet density can be linked with increased consumption levels, and that outlet clustering is associated with higher levels of criminal activity. But these are subtle and nuanced relationships depending on a range of circumstances.
- 9.63 Currently, every application for an on-licence, off-licence or club licence must be accompanied by a certificate from the local authority stating that the proposed use of the premises meets the requirements of the Resource Management Act 1991 and the Building Code.
- 9.64 In determining an application for an on-licence, the licensing decision-maker is obliged by the statute to have regard to the following criteria:91
 - (a) The suitability of the applicant;92
 - (b) The days on which, and the hours during which, the applicant proposes to sell liquor;
 - (c) The areas of the premises that are to be designated as restricted⁹³ or supervised areas;94

- (d) The steps proposed to be taken by the applicant to ensure that the requirements of the Act in relation to the sale of liquor to prohibited persons (for example minors or intoxicated persons) are observed;
- (e) The applicant's proposals in relation to:
 - the sale and supply of non-alcoholic drinks and food;
 - · the sale and supply of low-alcohol drinks;
 - the provision of assistance with, or information about, transport from the premises;
- (f) Whether the applicant will be:
 - · selling or supplying other goods besides liquor and food;
 - providing any services other than those directly related to the sale or supply of liquor or food,
 - and, if so, the nature of those goods or services;
- (g) Any matter dealt with in any report on the application by a licensing inspector, the police or a medical officer of heath.
- 9.65 The criteria for off-licences are similar to those in (a) to (d) and (f) to (g) above.⁹⁵
- 9.66 The criteria for club licences are similar to those in (a) to (e) and (g) above, and also include the following:
 - · days on which, and the hours during which, the premises are used for the club's activities; and
 - the proportion of the club members who are minors.96
- 9.67 Before granting a club licence, the DLA or Licensing Authority must be satisfied that the consumption of liquor is not the predominant purpose for which the premises are or will be used.⁹⁷
- 9.68 The criteria for special licences are similar to (a) to (e) and (g) above and also include the nature of the particular occasion or event or series of occasions or events in respect of which the licence is sought.⁹⁸
- Objections to an application may only be made by persons with a "greater interest in the application than the public generally", 99 on basis of the licence criteria listed above. A licence cannot be declined on the basis of the number of existing outlets in an area or because the local community does not wish a new liquor outlet to be established in the area.
- 9.70 The decision-maker must not take into account any prejudicial effect that the grant of the licence may have on the business conducted pursuant to any other licence.¹⁰⁰

ENVIRONMENTAL LEGISLATION

- 9.71 The control of the number of licensed premises was explicitly and transparently provided for in the Sale of Liquor Act 1962. That being so, and the Town and Country Planning Act of the time not being a licensing statute, it was not permissible for local authorities to seek to limit the number of premises which were the subject of a separate licensing regime (for example liquor stores and petrol stations) through the medium of the district plan.
- 9.72 The Resource Management Act 1991 was not therefore drafted in an environment in which planning controls were available to, in effect, operate as a licensing tool.
- 9.73 The suitability of the premises' locality, having regard to neighbouring land use, was removed as a criterion for determining whether to grant a licence in the second draft of the Sale of Liquor Bill. 101
- 9.74 Whereas the Sale of Liquor Act 1989 provides for a licensing regime that incorporates controls over who may obtain a licence to sell, who licensees may sell to, and the hours at which sales may be made, the Resource Management Act is an environmental statute. It does not set up licensing regimes and does not serve as one. 102
- 9.75 Nevertheless, given that the purpose of the Resource Management Act includes enabling "people and communities to provide for their social, economic, and cultural well-being and for their health and safety", 103 it is arguable that controls could be put in place under that Act for the purpose of advancing the health goals of liquor legislation. However, this raises an inherent tension between the two statutes.
- 9.76 Limits on the location of licensed premises can be enforced through the Resource Management Act. The difficulty with using this statute for this purpose is that the environmental focus of the Resource Management Act means it is unlikely to be the best tool for the task. As control of the location of licensed premises is not necessarily for an environmental purpose, it arguably should not be imported into an environmental statute when there is a specific, single purpose licensing Act available.
- 9.77 The apparatus of the Resource Management Act also is not well suited to implementing restrictions on the number or size of licensed premises as an availability control. That Act, and those who administer it, are not well equipped to assess and determine such limits.
- 9.78 One area where the Resource Management Act can influence liquor licences is in relation to trading hours. Restrictions designed to protect the amenities of surrounding neighbourhoods are commonly imposed on many activities pursuant to that Act. Thus, so far as amenity protection is concerned, the Resource Management Act is the mechanism through which these issues are

best addressed. The Licensing Authority does not have particular experience or skills in assessing and determining these issues, although it may impose conditions with on- and off-licences for this purpose.¹⁰⁴

9.79 The criteria relevant to considerations under the Resource Management Act 1991 do not include those relevant to the suitability of liquor licence applicants and do not relate to the manner of operation of particular premises. The focus of the Sale of Liquor Act is the imposition of controls on the sale of liquor and the fixing and maintenance of standards in that regard. Given that, then it is preferable that the necessary powers be conferred by and through an Act dealing with the sale of liquor, rather than an environmentally focussed statute like the Resource Management Act.

NEEDS TEST

- 9.80 Under the 1962 Act, which preceded the Sale of Liquor Act 1989, the Licensing Control Commission determined whether any new licence was "necessary or desirable" and also redistributed existing licences. One vital consideration was an economic one: demand. An important consideration for the Licensing Control Commission was to provide facilities so that "the purchase and consumption of liquor is met but not stimulated". The practical effect of these measures was a strong tendency to protect existing interests.
- 9.81 South Australia is the only Australian jurisdiction to impose a needs test. There, for example, an applicant for a retail liquor merchant's licence, which is similar to our off-licence, must satisfy the licensing authority that the licensed premises already existing in the locality "do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand".¹⁰⁶
- The Law Commission does not favour a return to the test contained in the 1962 Act for the granting of a new licence, nor any similar restriction. This would be too inflexible and would create an artificial value in a licence that would be unnecessarily restrictive. There is merit, however, in empowering the licensing bodies to refuse a licence on wider grounds than at present. To reduce harm arising from outlet density, what is needed is an assessment of the suitability of the particular type of outlet in the particular area, rather than a blunt assessment of the number of outlets. There is also a need for greater community input into decision-making and greater consideration of the local impacts of liquor licences.
- 9.83 Community groups are expressing their concerns about alcohol and its impacts. 107 Communities want more say in decisions about where and how alcohol is sold, supplied and consumed in their neighbourhoods. Local Government New Zealand has stated that there is support in local government for more community input into licensing decisions and the consideration of the wider impacts of alcohol sale and supply in the community. 108

LOCAL ALCOHOL POLICIES

- 9.84 A number of territorial authorities already have local alcohol policies in place, although these are not presently required by law. Local alcohol policies commonly contain:109
 - Reference to district planning rules governing the permitted location and operation of licensed premises;
 - · Guidelines for permitted trading hours;
 - · Information about how applications will be considered; and
 - · An explanation of the DLA's approach to enforcement of the Act.
- 9.85 The licensing decision-makers are not bound by local alcohol policies, but the Licensing Authority has indicated that it does give weight to them. 110 In fact, the Licensing Authority has encouraged territorial authorities to develop such policies. 111 The weight to be attached to a local alcohol policy by the Licensing Authority may be affected by the existence or adequacy of the public consultation that preceded it.112
- 9.86 If a local authority does not have a local alcohol policy, there is very little scope under the present Act for communities to have a say in licensing decisions. The Licensing Authority has itself stated:113
 - If an applicant is suitable and has a valid Resource Management Certificate, a liquor licence is almost inevitable given present legislative provisions. The Act requires us to be satisfied that the applicant is suitable and will uphold the law. Apprehension of problems alone is not sufficient to prevent a suitable applicant, particularly one supported by the District Licensing Agency Inspector and the Police, from exercising rights granted by the local authority.
- One way of facilitating community input into licensing decisions would be to require all local authorities to adopt a local alcohol policy. To reduce the risk of wide variations in alcohol availability in different districts (and associated migration problems), the statute could set out both the matters that must be included in a policy and matters that may be included. Policies could be required to be consistent with the object of any new Act. They could be produced on the recommendation of the relevant DLA, with input from the police and the medical officer of health, and approved by the Council and then by the Licensing Authority. A requirement for final approval by the Licensing Authority would ensure a degree of national consistency and quality control in local alcohol policies.
- 9.88 A further measure to reduce the risk of wild variations and inflexible policies would be for the legislation to require the Licensing Authority to take local alcohol policies into account in decision-making, rather than making the policy supreme and effectively providing for a local veto on all liquor matters. The Licensing Authority is an expert body that is able to bring national experience to bear on licensing decisions. If the Licensing Authority retained the ability to make the final decision on a licence (subject to rights of appeal to the High Court), this would enable a degree of flexibility to allow legitimate exceptions to a local alcohol policy in appropriate cases.

- There is an issue as to whether a local alcohol policy should be adopted by way of the special consultative procedure under the Local Government Act 2002. This procedure is the method prescribed under the Gambling Act 2003 for the adoption of local policies on venues for class 4 gambling (gaming machines). 114 It is a resource-intensive process however, and it would be unwise to impose a greater burden on local authorities than is necessary. It may therefore be better for each local authority to determine the most appropriate means of developing and consulting on its own local alcohol policy. Small local authorities that do not have significant alcohol problems may not need the same level of consultation as may be required in a large metropolitan area. They may also wish to develop joint policies with neighbouring districts. The costs associated with the special consultative procedure must be balanced against the need to ensure sufficient consultation.
- 9.90 In adopting a Class 4 gambling venue policy, a territorial authority must have regard to the social impact of gambling within the territorial authority district. The social impact of alcohol in the district could also be a factor in the development of a local alcohol policy. The local medical officer of health could advise on this.
- 9.91 Much thought will have to be given to the transitions regime if local alcohol plans become compulsory. It is desirable that persons who have already invested in businesses not be adversely affected if, for example, the location of any current licensed premises was contrary to a local policy that was later adopted. One option would be to grandfather current licences, provided they are being appropriately managed and comply with other aspects of the policy, or to grandfather them for a set period of time or until the licence renewal date.

ADDITIONAL LICENCE CRITERIA

Social impact

9.92 Another means of taking into account the effect of the granting of a licence on the local community would be to include in the licence criteria the ability for the licensing decision-maker to decline a licence if it considers that the overall social impact of the licence is likely to be detrimental to the well-being of the local or broader community. Such an assessment could take into account such matters as the proposed site and nature of the premises and the health and social characteristics of the local population.

New South Wales

9.93 Until recently, the New South Wales (NSW) liquor legislation 116 required applicants for a liquor licence to provide a detailed social impact assessment covering a number of specified criteria relating to the location and area for the proposed premises, for example the presence of vulnerable groups. The following factors were taken into account as part of the social impact assessment process: consideration of the local community that is likely to be beneficially or detrimentally affected by granting the application, the number of young persons living in the area as against the number of licensed premises in the area, and a demographic profile of the area.

9.94 A report on the regulatory regime for the sale of packaged liquor in the Australian State of Victoria, 117 found that: 118

There is little indication of how the data collected through the NSW social impact assessment system relates either to the risk of alcohol-related harm or to the decision-making process.

- 9.95 The report also stated that industry groups involved in the NSW packaged liquor market had advised that under the NSW social impact assessment process there was a cost of \$80,000-\$100,000 per application, which can virtually exclude many smaller independent operators and small firms, and that there was a delay of up to two years for an application to be considered.
- 9.96 The NSW social impact assessment requirement has recently been replaced pursuant to a new Liquor Act 2007. Licence applications must now be accompanied by a community impact statement. In the second reading speech for the relevant Bill, the NSW Minister for Gaming and Racing stated that:¹¹⁹

Social impact assessments...have been criticised for being costly, time consuming, subjective, incomplete, and bewildering to residents and other stakeholders...A more efficient, less costly, and better targeted process is needed. The object [of the community impact statement] is to facilitate consideration by the authority [the new Casino, Liquor and Gaming Control Authority] of the impact that the granting of certain applications will have on the local community. It does this by providing a process in which the authority is made aware of the views of the local community, and the results of any discussions between the applicant and the local community about issues and concerns...

Statements will summarise the results of consultation by applicants with local councils, police, health, Aboriginal representatives, community organisations and the public....The Government will examine how community impact statements can be linked into the planning process to reduce duplication as much as possible. No fee will be payable to the licensing authority for a statement.

- 9.97 The community impact statement is essentially a summary of consultation between the applicant and the local community about any issues and concerns with a proposed application. The application will only be approved where the overall social impact will not be detrimental to the well-being of the local community.
- 9.98 Different types of liquor licence applications require different types of community impact statements. Like the previous social impact assessments, there are two types of community impact statements – category A and category B. The key difference between a category A and category B statement is in relation to the stakeholders required to be notified. More stakeholders must be consulted when preparing a category B statement.

- 9.99 A category A community impact statement is required for such things as a packaged liquor licence limited to the sale or supply of alcohol by taking orders over the telephone, fax, mail order or through a website, or for a restaurant to sell alcohol without meals.
- 9.100 A category B licence is required if the application is for such things as a hotel licence, club licence, or packaged liquor licence.
- 9.101 The Casino Liquor and Gaming Control Authority website states that assistance from a consultant or a lawyer is not required, although an applicant may choose to engage professional assistance, for example for complex or contentious applications. 120 A community impact statement must show how stakeholder concerns have been resolved and describe any changes that have been made to the proposal as a result of stakeholder discussions. If there is no resolution of stakeholder concerns, the statement must note the issues raised, and include a brief description of the attempts that were made to resolve these concerns. 121
- 9.102 The Law Commission will be monitoring the effectiveness of the change from social impact assessments to community impact statements in NSW.

Western Australia

- 9.103 In August 2007 the Western Australian Government replaced the public needs test with a public interest assessment requirement, which basically requires the licensing authority to assess whether granting an application is in the public interest, having regard to:¹²²
 - The harm or ill health that may be caused to people (or any group of people) through the use of liquor;
 - · The impact on the amenity of the locality;
 - · Whether offence annoyance, disturbance or inconvenience might be caused to people who live or work nearby; and
 - · Any other prescribed matter.
- 9.104 An applicant must lodge a public interest assessment submission to support an application for a liquor licence. The guidelines for this assessment stress that the assessment is not meant to be a complicated process and does not have to be prepared by lawyers or industry consultants.¹²³

Queensland

9.105 As of 1 January 2009, Queensland has also required community impact statements. 124 There are two types – "standard" and "full". The draft guidelines provide that every applicant for a licence (other than a "community club" or "community other"), a detached bottle shop, or approved extended trading hours will be required to submit at least a standard community impact statement. A full community impact statement will be mandatory for certain

licence categories or styles of venue, such as hotels and nightclubs. A full statement may be requested after receipt of a standard statement if the Chief Executive has concerns in relation to:125

- · The size, nature, location or internal layout of the proposed or existing
- · The number and nature of objections received;
- · The proposed application being located within a low socio-economic area;
- · The proposed application being located within 200 metres of sensitive facilities of concern;
- · The previous trading history of the applicant in licensed premises;
- · The application being the first of its kind in the locality;
- · The application being for an area where there is a high concentration of licensed premises.
- 9.106 A standard community impact statement requires details of the health and social impact of a licence proposal. The submission must address a number of areas and issues and provide any mitigating factors or proposals by the applicant to reduce any negative impacts. It should address:126
 - · The nature and type of facilities to be provided;
 - · The positive and negative impact on the local community as a whole, and in particular, residents and businesses within 200 metres;
 - Details of any sensitive facilities within 200 metres of the site, for example a home for people with psychiatric illness;
 - · Any noise impact or change to the amenity of the local area;
 - · Any cultural, recreational, employment or tourism benefits;
 - · Impact on traffic;
 - · Safety issues in terms of public disorder, vandalism, public drunkenness; and
 - · Whether there would be any impact on, or change to, the character or identity of the local community.
- 9.107 A full community impact statement must contain: 127
 - · Delineation of the local community area;
 - · Social profile of the local community area (in terms of its local character, identity and aspirations, including demographic data on persons aged 15 years and over with no qualifications, aboriginal people; recent migrants from non-English speaking countries, occupied private dwellings with two or more families, households renting, one-parent families with dependent offspring, employed males classified as "labourers and related workers", employed females classified as "labourers and related workers", and tourist numbers and projections);
 - Assessment of community risk;
 - · The likely health and social impacts (positive and negative impacts);
 - · Consultation with residents and businesses within 200 metres of the site;
 - · Consultation via a survey with residents in the local community area;
 - · Consultation with key advisers.

Victoria

9.108 Victoria does not have a social impact requirement. However, a licence application can be declined, even if no objections are lodged, if granting the application would detract from, or be detrimental to, the amenity of the local area, or would be conducive to, or encourage, the misuse or abuse of alcohol.¹²⁸

Possible implications for New Zealand

- 9.109 The Australian states all appear to enable at least some types of licence applications to be turned down on wider grounds than the Sale of Liquor Act 1989. Many of the Australian jurisdictions include considerations that take into account the impact of the proposed premises on the people and amenity of the relevant community. Such a requirement would address the lack of community input in current decision-making under the Sale of Liquor Act.
- 9.110 The costs associated with a full social impact assessment and the associated delays with such a process experienced in NSW point against requiring such assessments in New Zealand. However, there is merit in allowing the decision-maker to take the characteristics and views of the local community into account in decision-making. Again, the medical officers of health could assist with information on population and health outcomes for the relevant community. If medical officers of health were provided with the opportunity to report on all licence applications, rather than just on-licences and club licences, a requirement to consider the social well-being of the community would be more effective. Medical officers of health could also be given the same powers of entry onto licensed premises as licensing inspectors are given, which would allow them to better observe the way in which licensed premises in the area are operating.

Object of the Act

- 9.111 In its Annual Report for the 12 months ended 30 June 1996, the Licensing Authority noted that the Sale of Liquor Act allows: 129
 - A local authority to determine site suitability through zoning mechanisms and the issue of a Resource Management Certificate; and
 - The Licensing Authority to determine the suitability of a licence applicant.

9.112 It stated that:130

Liquor licensing is social legislation; it involves more than planning issues. The wider views of the public, particularly in the proposed area of the licence, need to be considered, case by case. A broader assessment than the mere "suitability" of the applicant and the zoning of the premises is possibly required.

Where an applicant for a licence is not required to obtain a notified Resource Consent, the first opportunity local residents or business people have to make their views known is when the matter comes before the LLA. At that stage the Authority usually listens to the objectors' concerns and responds that it is

powerless to do anything about them because of the very limited and specific criteria that the Authority is directed to have regard to by ss 13, 35 and 55 of the Act. There is no apparent linkage between those criteria and the object of the Act requiring the Authority to exercise its various functions in the manner most likely to contribute to the reduction of liquor abuse. The Authority may have regard to neighbouring land use considerations, but only in determining trading hours.

Since 1 April 1990 neither the LLA nor a Local Authority has been clearly entrusted by Parliament with a discretion to **refuse** the grant of a liquor licence. [emphasis in original].

9.113 There are conflicting judicial decisions on the role of section 4, which contains the object of the Act, in relation to the legislative provisions dealing with the licence and licence renewal criteria. In Re Goldcoast Supermarket Ltd, 131 Wild J confirmed that the Licensing Authority had no power to refuse the grant of a licence to further the aim of the Act, or in response to local opinion on issues that may not be a ground of objection. In his view, the specific licence criteria were the only matters that could be taken into account: 132

Section 4 is not of itself a consideration under s 35(1). There is no requirement on the Authority in s 35(1) in granting an application to achieve a reduction in liquor abuse.

9.114 In the subsequent decision of Walker v Police, Fisher J took a different (and arguably preferable) approach, albeit in relation to the section setting out the licence renewal criteria, rather than the licence criteria. His Honour considered that the words "have regard to" tend to be regarded as more flexible than phrases like "decide on the basis of", and the absence of a requirement to "solely" have regard to the listed criteria was also relevant.

9.115 Fisher J held that: 133

It would be strange if, having stated in s 4 that the Licensing Authority is to exercise its jurisdiction, powers and discretions in the manner that is most likely to promote the stated object of the Act, one then found that the object is treated as irrelevant in exercising the most important discretions arising under such provisions as ss 13, 22, 35.

- 9.116 Fisher J concluded that the criteria for a renewal were not to be interpreted in any narrow or exhaustive sense. 134 In the view of His Honour, the Licensing Authority was permitted to take into account anything that in terms of the statute as a whole appeared to be regarded by the legislature as relevant to licence conditions and the terms of which they should be granted. This included the statutory object in section 4. This did not mean that the object takes priority over the other considerations expressly listed in the section.
- 9.117 A similar approach to that of Fisher J was taken by French J in My Noodle Ltd v Queenstown Lakes District Council in the context of taking into account the provisions of a local alcohol policy when considering licence renewals. 135 In that decision, Her Honour held that the Licencing Authority was entitled to take a local authority's alcohol policy into account when considering applications for

renewals or grants of licences, notwithstanding the absence of any express reference to such policies in the Act. This decision is under appeal to the Court of Appeal.

9.118 In light of the ambiguity in the relationship between the object of the Act and the licence criteria, there is merit in amending the legislation to specifically require the licensing decision-maker to take the object of the Act into account when determining a licence application. This would enable the licence decision-maker to decline a licence application on the basis that granting the licence would be inconsistent with the object of the Act. Such a ground would be further strengthened if the object of the Act was amended to better reflect a harm minimisation focus in the legislation, as is suggested in chapter 12.

TYPES OF OFF-LICENCE PREMISES

- 9.119 Section 36 of the Sale of Liquor Act 1989 restricts the types of premises in respect of which an off-licence may be granted. It is a highly controversial and confusing provision that has been the subject of much case law. The incoherent nature of section 36 is a direct result of the successive and sometimes inconsistent amendments made to the provisions concerning off-licences by way of the conscience vote in Parliament.
- 9.120 The Law Commission's first report on its review of the regulatory framework for the sale and supply of liquor suggested that it is preferable for alcohol Bills to be voted on the basis of standard party based voting rather than using the conscience vote. 136 That report set out in detail the significant changes made to the clauses dealing with off-licences as the Bill progressed through House as an example of how conscience voting can produce incoherent legislation. 137

9.121 Section 36 provides:

36 Types of premises in respect of which off-licences may be granted

- (1) Except as provided in subsections (2) to (5) of this section, an off-licence shall be granted only—
 - (a) To the holder of an on-licence in respect of a hotel or tavern, in respect of the premises conducted pursuant to that licence; or
 - (b) To the holder of a club licence, being a club that is entitled under paragraph (i) or paragraph (j) of section 30(1) of this Act to hold an off-licence, in respect of the premises conducted pursuant to that licence; or
 - (c) In respect of premises in which the principal business is the manufacture or sale of liquor; or
 - (d) In respect of—
 - (i) Any supermarket having a floor area of at least 1000 square metres (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items); or
 - (ii) Any grocery store, where the Licensing Authority or District Licensing Agency, as the case may be, is satisfied that the principal business of the store is the sale of main order household foodstuff requirements.

- (2) The Licensing Authority or District Licensing Agency, as the case may be, may grant an off-licence in respect of any other premises if the Licensing Authority or District Licensing Agency, as the case may be, is satisfied, in a particular
 - (a) That, in the area in which the premises are situated, the sale of liquor in premises of a kind described in paragraph (c) or paragraph (d) of subsection (1) of this section would not be economic; or
 - (b) That the sale of liquor would be an appropriate complement to the kind of goods sold in the premises.
- (3) Nothing in subsection (1) or subsection (2) of this section shall authorise the grant of an off-licence in respect of—
 - (a) Any service station or other premises in which the principal business is the sale of petrol or other automotive fuels; or
 - (b) Any shop of a kind commonly known as a dairy.
- (4) Nothing in subsection (2)(b) of this section shall authorise the grant of an off-licence in respect of any supermarket or grocery store, or any other premises on which the principal business is the sale of food or groceries.
- (5) This section applies subject to sections 51 and 52.
- 9.122 Put simply, an off-licence can only be issued to a person in respect of one of the following types of premises:138
 - · A hotel or tavern;
 - Any club, other than a sports club, that holds a club licence;
 - · Premises in which the principal business is the manufacture or sale of liquor;
 - · Supermarkets having a floor area of at least 1000 square metres;
 - · Grocery stores where the principal business of the store is the sale of main order household foodstuff requirements;
 - · Other premises in an area where the sale of liquor would otherwise be uneconomic; and
 - Other premises where the sale of liquor would be an appropriate complement to the kinds of goods sold in the premises (excluding those where the principal business is the sale of food or groceries);

but not dairies or service stations. 139

DAIRIES AND GROCERY STORES

9.123 One of the most difficult aspects arising from section 36 is how to determine the difference between a dairy (from which alcohol cannot be sold) and a grocery store (from which alcohol may be sold). In its annual report to Parliament for the 15 months ended 30 June 1991, the Licensing Authority stated: 140

With deregulation of shop trading hours on a Sunday and the abolition of restrictions on the type of goods that may be sold by a dairy the distinction between grocery/ superette/dairy is no longer clear.

- 9.124 In the ensuing years, that distinction has become even less clear with the emergence of numerous city convenience stores and with previously traditional "dairies" selling more household-type stock in order to maintain their businesses in the face of stiff competition and even longer opening hours of supermarkets, or to qualify for a liquor licence.
- 9.125 Traditionally, a dairy was a small shop in a suburban area that sold goods such as butter, milk, bread and confectionary. It was able to trade outside normal trading hours. Today, the term "dairy" has different meanings for different people, and there seem to be fewer dairies in the traditional sense still in operation, although many shops still have "dairy" in their trading name. Articulating the difference between a dairy, grocery store and convenience store is not easy. Consequently, the law in this area has become difficult to apply, as evidenced by the number of off-licences issued in respect of premises that many people would call dairies.
- 9.126 The Act attempts to distinguish a grocery store as one where the "principal" business is the sale of "main order household foodstuff requirements". 141 The legislation does not define "main order household foodstuff requirements". The Licensing Authority has interpreted these as "the items the majority of New Zealand families purchase once a week from either a supermarket or a grocery", 142 although that interpretation was relaxed for a period in the early 2000s to reflect changes in the nation's food buying patterns and diet. 143 The legislation also does not make clear how "principal" should be interpreted, for example whether it should be calculated having regard to gross turnover, net revenue, floor space, shelf space, or a percentage of the total number of items sold.
- 9.127 The Licensing Authority has held that "principal" means mainly, first in rank or first in importance. It does not mean total or almost all. 144 The Authority has previously stated that in determining the principal business of any store, it endeavours to apply a broad common-sense approach. Consideration includes matters such as:145
 - Percentages of turnover derived from the sale of main order household foodstuffs;¹⁴⁶
 - The number and range of the items available, with the greater the number and depth of foodstuff items available, the more likely the premises are to be a grocery store;
 - The size of the premises, with larger premises being less likely to be categorised as a dairy;
 - The layout of the premises, with the presence of trolleys and multiple rows of goods assisting categorisation as a grocery store; and
 - · The view of the premises.
- 9.128 Recently, the Licensing Authority has been taking a much stricter approach to the interpretation of what constitutes a grocery store. In *The Woodward Group Limited* the Licensing Authority determined that it would no longer issue off-licences to convenience stores. 147 In that decision the Authority stated: 148

We can only grant an off-licence under that section to a grocery. ... The Act does not say 'grocery or convenience store'. ...

In summary therefore, and after careful consideration, we consider that the Authority's earlier decisions to issue off-licences to convenience stores was contrary to the correct interpretation of the Act, and should no longer be regarded as good law. The current application illustrates the point that the Authority's relaxed interpretation of a grocery store in 2001, has led to unrealistic expectations that inappropriate businesses could qualify for a grocery-style off-licence.

9.129 Similarly, in MK Devereux Limited, 149 the Licencing Authority focused on turnover percentages of household foodstuffs in determining whether the relevant store was a grocery or a dairy, and held that the only items that can be included in the turnover percentages will be "those items that are taken home to be eaten or consumed in the home or to assist with the preparation of forms of food in the home". It stated:150

> In summary we have slowly but inevitably been drawn to the realisation that the way in which certain premises have been licensed must stop. We have been too inclined to accept turnover figures at face value. It seems to us that it has become easy for applicants to include in the percentage figures, items that do not qualify.

- ... we believe that even in a modern context, main order household foodstuffs that are purchased from a grocery are those food items that the majority of New Zealand families purchase to take home for preparation and consumption. They will generally not include impulse purchases of food items such as confectionary.
- 9.130 The law in this area is clearly unsatisfactory, with the result that much time and resources are wasted in litigating what types of premises may be used to operate an off-licence.
- 9.131 One way of dealing with the dairy versus grocery issue would be to define with more particularity what constitutes each type of premises. This would be difficult in practice, however, because of the similarities between the two. One means by which a distinction might be made would be to create a floor size requirement for a grocery store, but this has inherent difficulties. In determining a floor size, there will always be stores that fall just short of the cut off. It is hard to find a principled means of deciding upon the appropriate floor size to adequately capture the difference between the two types of store.
- 9.132 The question must be asked what the prohibition on licences in respect of dairies is trying to achieve in terms of the minimisation of alcohol-related harm. If the concern is the purchase of alcohol by minors, then a floor restriction is unlikely to assist. The Police data on controlled purchase operations for the 2007/08 fiscal year shows that there was only a one per cent difference between medium sized grocery stores and small sized grocery stores (that is, what the public might classify as a dairy) in terms of the percentage of premises that sold alcohol to a minor. 151 Prevention of the sale of liquor to minors is likely to be better dealt with by way of tighter restrictions on management of premises through licence conditions and greater enforcement of the law relating to sales to minors.

- 9.133 If the concern about dairies relates to density of outlets, then this concern may be better dealt with by means of the licence criteria. Prescription around the nature or size of the premises invites making the licensing decisions technical and arbitrary when wider factors are more relevant. It is difficult to see how a dairy would pose a greater threat of alcohol-related harm to its community than a standalone bottle store of a similar size. A better approach may be for the law to avoid stipulating rules about permissible retailers (which are inevitably worked around by some operators) or arbitrary minimum shop size requirements, and instead allow the licensing decision-maker to determine each application on a case-by-case basis using a proper assessment of the risk the particular premises in the particular location poses in each case. Where an application meets the general licence criteria, that may be sufficient. If the licensing bodies had the discretion to refuse licences on more grounds than at present, the need for tight prescription as to the type of premises would fall away. This would be a more flexible and practical approach to licensing, but one that would likely better facilitate the reduction of alcohol-related harm.
- 9.134 Nevertheless, it may be that the risks of harm are considered so significant that the statute should specify certain off-licence restrictions that have universal application. This may be the case, for example, with service stations selling alcohol. This restriction has been in place for some time and was the only restriction on off-licence premises recommended by the Laking Committee. Yet even this has now become complicated. Many supermarkets, most of which are also licensed premises, now operate petrol pumps adjacent to the supermarket buildings. There are also examples of standalone bottle stores operating right beside service stations.
- 9.135 Drink driving is such a problem in New Zealand that any association between alcohol and petrol stations is likely to be abhorrent to most New Zealanders. This is despite the fact that logic would suggest that there is no greater likelihood of a person who drives to a service station and buys alcohol drink driving than a person who drives to a supermarket or other off-licence and buys alcohol.

COMPLEMENTARY GOODS

- 9.136 In *Lopdell v Deli Holdings Ltd*, ¹⁵³ Randerson J in the High Court dealt with the relationship between section 36(2)(b), which allows an off-licence in respect of premises where the sale of liquor would be an appropriate complement to the kinds of goods sold in the premises, and section 36(4), which provides:
 - (4) Nothing in subsection (2)(b) of this section shall authorise the grant of an off-licence in respect of any supermarket or grocery store, **or any other premises on which the principal business is the sale of food or groceries**. [Emphasis added].
- 9.137 Prior to this decision, the Licensing Authority had granted off-licences in respect of delicatessens, where it considered the sale of alcohol to be complementary to the other specialty goods sold. Randerson J clarified that section 36(4) precludes the grant of an off-licence in respect of premises on

which the principal business is the sale of food or groceries, whether or not the business or the premises are similar in nature to a supermarket or a grocery store, and allowed appeals against the issue of licences to a delicatessen and a takeaway pizza parlour.

9.138 It is difficult to see the logic of section 36(4), when the most obvious complement to alcohol is food. There seems to be no reasonable basis for concluding that a delicatessen selling high end alcohol products is more harmful to the community than a supermarket or a stand alone bottle store. In fact, it is likely to be less harmful because of the price of the products sold and the typically "upmarket" layout and design of the premises. Questions may arise concerning takeaway food stores, but again, density concerns may be better dealt with by an assessment of the particular premises in accordance with broader licence criteria.

TYPES OF **PRODUCTS AVAILABLE AT** OFF-LICENCE **PREMISES**

- 9.139 Related to the issue of the type of permitted off-licence premises is the issue of what alcoholic products different types of off-licences may sell.
- 9.140 The Sale of Liquor Act provides that it is a condition of all off-licences held by a supermarket or a grocery store that no liquor be sold other than wine, beer or mead (that is, they cannot sell spirits or spirits-based drinks). 154
- 9.141 From a competition point of view, it would seem fairer if all off-licences were allowed to sell all types of liquor without discrimination. The current restrictions may be said to create an uneven playing field as between alcohol product sectors. It seems unfair that wine and beer with levels of alcohol per volume of up to 14 per cent may be purchased in supermarkets and grocery stores. whereas spirits-based ready to drink beverages with the same or lower alcohol percentages may not. It may also be argued that, like beer and wine, spirits are an adjunct to food and should therefore be available for purchase at supermarkets and grocery stores.
- 9.142 A number of other countries, including some Australian states and the United Kingdom, allow the sale of spirits from supermarkets.
- 9.143 It is difficult to see how allowing supermarkets to sell spirits and spirits-based drinks would lead to greater sales to minors. The Police controlled purchase statistics for the 2007/08 fiscal year indicate that supermarkets have the lowest number of sales to minors among all off-licence premises. 155 The figures for sales to minors by grocery stores over the same period are more than double the rate of supermarkets, but are not significantly higher than the percentage of sales to minors by bottle stores.
- 9.144 The strongest argument against widening the range of alcoholic beverages supermarkets and grocery stores may sell is the relatively low price at which supermarkets have been able to sell wine and beer because of their purchasing power. As discussed in chapter 10, price is a significant demand reduction lever for minimising alcohol-related harm. Enabling the sale of spirits in an environment where their price is likely to fall, may have an effect on consumption rates.

- 9.145 There may be a case for restricting products over a certain alcohol percentage from supermarket sales, rather than restricting types of beverage, as this would be fair to all types of alcohol manufacturers.
- 9.146 Another way of dealing with restrictions on the types of products available at off-licences would be to allow the licensing bodies to impose such a restriction as a condition of a licence. They could therefore take into account the nature of the particular premises and its likely customer base when determining whether a restriction on types of product would be appropriate.
- 9.147 The New South Wales legislation allows regulations to be made to ban undesirable alcohol products. 156 Although there may be no products currently on the market that would warrant banning in New Zealand, new products are continually being developed, and there may be a case to allow the Minister on the recommendation of an expert committee to ban certain products for health reasons where there is evidence to support this in the future.

LICENCE CONDITIONS

- 9.148 A liquor licence permits the licensee to sell alcohol in accordance with the conditions of the licence.
- 9.149 The Act prescribes both mandatory licence conditions (for example it is a condition of every on-licence that the licensee must have a reasonable range of non-alcoholic drinks available for consumption on the premises) and discretionary conditions that the licensing decision-maker may impose. For on-licences, these conditions may relate to the following matters:¹⁵⁷
 - (a) The days on which and the hours during which liquor may be sold;
 - (b) The provision of food for consumption on the premises;
 - (c) Any other matter aimed at promoting the responsible consumption of liquor;
 - (d) The steps to be taken by the licensee to ensure the provisions of the Act relating to minors and intoxicated persons are observed;
 - (e) The designation of the whole or any parts of the premises as a restricted area or supervised area;
 - (f) The persons or types of persons to whom liquor may be sold or supplied.¹⁵⁸
- 9.150 Similar provisions apply to conditions for other types of licences. 159
- 9.151 The range of conditions that may be imposed in respect of a licence under the Sale of Liquor Act is much narrower than under the 1962 Act. Unlike the 1962 Act, the current Sale of Liquor Act contains no provision empowering the licensing body to "impose such conditions not inconsistent with the Act as the [licensing body] thinks fit."

- 9.152 There is merit in allowing the licensing body to impose any reasonable condition on the licence it considers appropriate for the purpose of giving effect to the object of the Act. These conditions could relate to matters such as promotional activities, ensuring availability of free tap water, one-way door policies, and any undertaking given by the licensee. Often a licensee will be asked to, or offer to, give an undertaking about, for example, the control of noise. If the undertaking is breached, the licensee can be brought before the Licensing Authority on the basis that it shows a lack of suitability. However, it would be much more effective if the enforcement application was based on a breach of a condition of the licence.
- 9.153 On the other hand, greater discretion may give rise to greater variances between licence conditions in different areas. Consistency could be facilitated however by the ability to appeal a licence condition imposed by a DLA to the Licensing Authority.

PROHIBITED DAYS

- 9.154 It is a condition of all on-licences held by hotels and taverns (but not other premises such as restaurants) that they may not sell alcohol on Good Friday, Easter Sunday, Christmas Day, or until 1 pm on Anzac Day (the prohibited days), unless the purchaser is living on the premises or is on the premises for the purpose of dining. 160 Off-licences are similarly prohibited from selling liquor on the prohibited days unless an exception applies. 161
- 9.155 These licence conditions are consistent with the requirement under the Shop Trading Hours Act Repeal Act 1990 for almost all shops to be closed on these three and a half days. 162 To maintain that consistency, the prohibited days should continue for off-licences until such time as the general shop laws are changed.
- 9.156 There may be a case for removing the prohibited days for on-licences. The Licensing Authority has reported that: 163
 - In the absence of a contribution to the reduction of liquor abuse, there is no logical reason for prohibiting the sale of liquor in hotels and taverns to persons other than lodgers and diners on 3 1/2 days out of 365, whilst premises such as bar/brasseries, theatres, indoor cricket and ten pin bowling venues, chartered clubs and sports clubs do not have any similar restriction.
- 9.157 It does seem unfair that some types of premises are permitted to serve alcohol on the prohibited days without the dining requirement, while others are not. There should be consistency in this regard. Either all premises should be prohibited from selling alcohol unless purchasers are dining, or the restrictions should be lifted.
- 9.158 Undoubtedly, the prohibited days adversely affect the business of licensed premises. The tourism and travel industry would likely be assisted by their elimination. For many people, rules around the prohibited days are outdated and inconvenient.

- 9.159 On the other hand, many would argue that the remaining sacrosanct days should continue to be respected, and that the three and a half days are the only days on which workers are guaranteed time off to spend with their families. However, these arguments are not so apt for bars that are only open in the evening and early hours of the morning. Although New Zealand is a largely secular society, in the 2006 census, just over two million people affiliated with a Christian religion. Recent attempts to change the general Easter shop trading hours have failed in Parliament.
- 9.160 In relation to alcohol-related harm, data from the Police National Alcohol Assessment indicated that the number of apprehensions during the Easter break was less than for other weekends prior to and following the Easter holiday. There was a lower average number of offences over the four-day Easter period compared to other weekends in March and April. 166
- 9.161 Anzac Day did not show the same decrease in alcohol-related apprehensions however. In 2006/07 there was a peak in apprehensions mid-week during the week of Anzac Day that was not seen in previous weeks. There is some indication that the number of apprehensions over Anzac Day fluctuates depending on what day it falls on.
- 9.162 The restricted sale of alcohol on Christmas Day has also not been reflected in the number of apprehensions where an alleged offender had consumed alcohol prior to offending.
- 9.163 A practical difficulty with the prohibited days is that the Act does not specify the hour at which they begin. In line with the common law, the Licensing Authority takes the view that the prohibited days begin at midnight the previous night. If the prohibited days continue for on-licences, the statute should specify the time at which the prohibition begins, for example 2.00am. This would limit disruption to licensees' businesses on what is effectively the night before the prohibited days, and create certainty as to what the law requires.

HOURS

9.164 Unlike the 1962 Act, the Sale of Liquor Act 1989 does not specify the hours of operation of licensed premises. Hours are dealt with by way of a discretionary licence condition. Factors involved in determining hours include the type and location of the premises, the licensee, the clientele and the style of operation. A local alcohol policy will also be a relevant factor. Previously, the general approach of the Licensing Authority was that where there were residential neighbours to taverns and hotels, a closing time of around 11 pm on week nights and 12 midnight or 1 am the following day on Friday and Saturday nights was often considered appropriate. In other cases for taverns and hotels, closure at 3 am was common. Though 24 hour trading was permitted, it was not generally the norm. This has been changing in recent years however, with 735 on-licences, 265 off-licences, and two club licences currently permitting the sale of liquor at any time, and 2097 on-licences, 352 off-licences and 17 club licences permitted to sell liquor after 2 am. 169

- 9.165 An on-licence for a licensed casino authorises the sale of liquor for consumption in the casino while it is lawfully operated. 170 The Licensing Authority cannot impose other conditions regarding hours.
- 9.166 The trend toward later, and 24 hour, trading of liquor in New Zealand is contributing to increasing disorder and problems for the police. While liberal trading hours may be necessary to give responsible people sufficient time to purchase their liquor requirements, many people have commented to the Law Commission that hours should be more restricted, in particular for off-licences. One possibility is for the statute to set out national restrictions on trading hours for both off-licences and on-licences. Local alcohol policies could reduce, but not extend, those hours. For off-licences, a time of 8 am to 10 pm may be appropriate. This would help to prevent the problem of young people returning to off-licences late at night when they are already intoxicated, and would reduce the opportunity for crime.
- 9.167 For on-licences, a general closing time of 2 am may be appropriate. To minimise the effects on businesses currently able to stay open later, it may be necessary to provide for extensions to the national closing time if the premises can show that they have taken steps to minimise the alcohol-related harm associated with later trading hours. This could, for example, involve assistance with transportation options, greater security presence, and the provision of food after midnight.
- 9.168 There may also be a case for permitting extensions to bars that operate a "oneway" door from a particular time, such as 1 am, as a condition of their licence. The term is used to refer to an intervention where, after an agreed time, patrons in licensed premises are able to remain in the premises, but cannot re-enter the premises or enter another licensed premises after leaving. Some bars in particular areas have volunteered to adhere to such a scheme. A one-way door policy may reduce the number of intoxicated people moving about on the streets, where harm is more likely to occur, and would facilitate a staggered departure from licensed premises.
- 9.169 An evaluation of the Christchurch City 3 am one-way door intervention found that while there was no overall reduction in alcohol-related crime in the inner city, there were reductions in some subsets of crime. 171 That one-way door strategy relied on effective working relationships by all parties, including Police and licensees.
- 9.170 A temporal analysis of violence offences in the Police's National Alcohol Assessment¹⁷² shows that these offences peak between 1 and 1.30am on both Saturday and Sunday mornings, so an earlier one-way door of 1 am may be more effective.

DISTRICT LICENSING AGENCIES

- 9.171 The Sale of Liquor Act provides that each of the 73 territorial authorities has the status of a District Licensing Agency (DLA) for its district. DLAs consider and determine unopposed licence applications and renewals and unopposed manager's certificates and renewals to individuals to enable them to manage premises that hold a liquor licence.
- 9.172 In order to maximise efficiency and use of local knowledge, the licensing system needs to emphasise local reporting and prompt use of local practical knowledge.
- 9.173 Councils vary considerably in population density, socio-economic and economic composition. This diversity means that different councils operate under very different circumstances and with different priorities and resources to address.¹⁷³
- 9.174 In formal terms, the DLA is made up of the elected members of each local council. Extensive delegation to both committees and individuals under both the Sale of Liquor Act,¹⁷⁴ and the Local Government Act 2002, often means that liquor matters receive only delegated attention from the Council as a body corporate. The CEO of the local authority is to be the Secretary of the DLA,¹⁷⁵ which reinforces the need for high level support for the DLAs' work. However, a former member of the Licensing Authority advised the Law Commission that for 6 years during that member's tenure such high level interest was generally little in evidence. Further, the former member reported that in some DLAs, both in main centres and provinces, the Chief Executive showed little interest and declined to meet the visiting Licensing Authority as a body to discuss liquor topics. This may have improved in the ensuring years, but the Law Commission has discerned in its discussions around the country a perception that there is lack of knowledge of local authorities' liquor functions at high levels in some councils.
- 9.175 It has been suggested to the Law Commission that change is needed to improve the flow of significant information while avoiding excessive burdens on senior council officers. In this regard, an ongoing routine flow of data from secretaries of DLAs to the Licensing Authority, particularly prior to visits beyond Wellington, should be facilitated and enhanced.
- 9.176 The Act requires each DLA to appoint one or more inspectors. The inspector is to perform the duties of a statutory officer. Duties of inspectors include reporting on each application, inspecting premises and requiring information from licensees.
- 9.177 Unlike other local government appointments of staff, which are made explicitly by the Chief Executive, inspectors are appointed by the DLA, that is, by the Council as a body. This higher level of appointment is unusual in practice and, as with many other liquor matters, is also commonly delegated.

- 9.178 The result is that in practical terms, although not the legal position, "the DLA" is often simply one or more local body inspectors. In some local authorities powers are commonly delegated to an official who combines the role with other tasks. Such an official generally receives little real support, and in particular, lacks the ability to obtain prompt legal advice without undue difficulty.
- 9.179 Often the inspector will have a range of other responsibilities, some of which could potentially be in conflict with the inspector role.
- 9.180 In some smaller councils, a council official writes the report on the application, and may then effectively also decide whether or not to accept his or her own recommendation. A separate police report may be the only potential independent constraint on approval.
- 9.181 Throughout the country, each licensing inspector's expertise, level of ongoing training, time available for the role, and ability to report regularly varies considerably. Accordingly, action or inaction in response to perceived offences and breaches of licensing conditions also varies. There are no enforceable national standards.
- 9.182 The Office of the Controller and Auditor-General's 2007 performance audit of liquor licensing by territorial authorities (OAG Report) found: 178

Staffing arrangements varied in the DLAs we visited, and in every territorial authority the nature and extent of liquor licensing work was different. We were not satisfied that the allocation of territorial authority staff time was appropriate to the range of tasks associated with the scope of the liquor licensing function. Territorial authorities need to carry out a more informed assessment of the range of activities that staff should perform as part of their DLA tasks.

- 9.183 While some DLAs take an active role, in other DLAs liquor problems may be left almost entirely to the police. Early intervention by inspectors so as to avoid or minimise later more serious problems would be a positive step.
- 9.184 The OAG Report states that: 179

Independence and impartiality are critical to the process of inquiry and reporting set out in the Act, and to the exercise of inspectors' powers of inspection and enforcement. An inspector may oppose an application for a liquor licence, and present evidence when the Authority considers the application.

The principles of independence and impartiality should be reflected in policies and practices, recognising those circumstances where the recommendation of the inspector may differ from the views of their managers of or elected members. The policies and practices should also reflect the possibility that the personal life of a district licensing inspector could bring them into situations where there might be a potential conflict of interest with their statutory duties under the Act.

- 9.185 The OAG Report found that the statutory functions of the inspector and the Secretary of the DLA were "not supported by policies and practices to adequately ensure appropriate independence and impartiality". 180 The Law Commission understands that Local Government New Zealand is working with local authorities to address the matters raised in the OAG report.
- 9.186 Partial separation of functions (reporting and decision-making), mandatory ongoing training for inspectors, and perhaps explicit procedures for resolving differences of opinion are needed. DLA decisions should also be independent from the local council itself.
- 9.187 Decision-making by local personnel who know the local scene and who live with the local consequences has obvious merit. The wider aim should be to decide non-contentious routine applications as speedily as possible locally, and prepare reports for the decision-maker (local or national) where opposing viewpoints exist. Which decisions are taken locally and which centrally requires further consideration. A measure of flexibility is desirable, but with final powers centralised. A 2001 review of the Liquor Licensing Authority by the current chair, 181 considered whether to recommend a further devolution of work such as dealing with contested applications for manager's certificates, to the DLAs. It concluded that: 182

[a]lthough a limited number of the 74 agencies would be capable of carrying out such work, there would be many more which would struggle with the responsibility. The main concern would be the maintenance of consistent standards for all Managers throughout the country. This can really only be achieved by having a central regulatory authority.

- 9.188 The aim is to encourage local responsibility and improve effective control over the sale and supply of liquor.
- 9.189 The ability of the DLA to impose modest sanctions, but only if done speedily, could be a first step to encourage more active local control.
- 9.190 To achieve more active and higher level involvement of officers within each DLA, new powers could be introduced, such as a power to impose either a formal 'DLA warning' or a brief suspension of a licence, for up to three days. Parallel police powers to apply to the Licensing Authority should remain, as should full appeal rights to the Licensing Authority.
- 9.191 If the Licensing Authority was able to impose fines and costs on persons found to have breached the Act or a licence condition, as discussed further below, there may also be merit in providing for DLAs to keep those fines or at least a percentage of them. This would provide a better incentive for DLAs to bring regulatory actions against licensees for hearing by the Licensing Authority, and would provide another means to fund the enforcement costs incurred by DLAs. A similar concept is provided for under the Resource Management Act, where the Court may require the defendant to reimburse the informant for certain costs that the informant has incurred. 183 Those costs must relate to investigating and remedying, or mitigating, any adverse effect on the environment arising out of the events that have given rise to the

relevant charge. In Burns v Bay of Plenty Regional Council, 184 the High Court considered that, when determining the level of a fine, a global penalty should be assessed. It ordered that 90 per cent of the fines be paid to the informant, in addition to an award of costs. 185

- 9.192 The law should also specifically provide for the Licensing Authority to require information from DLAs and discuss wider sale of liquor problems with agencies in each DLA area.
- 9.193 In addition, routine provision, on request, of aggregated data from each DLA to the Licensing Authority regarding the overall position of licences in a particular geographical area, or licences with particular conditions attached, should be provided for.

LIQUOR LICENSING AUTHORITY

- 9.194 The powers of the Licensing Authority and its legal foundation are outlined earlier in this chapter. The ability to reduce harm under the current provisions of the Sale of Liquor Act are severely constrained. The essential ability to refuse a licence revolves around two things: whether the applicant is suitable and whether the physical site meets local council planning requirements. It is very difficult to refuse a liquor licence on grounds outside these.
- 9.195 That is in sharp contrast to the former Licensing Control Commission. It had much wider discretionary functions, as it had to decide whether a licence was "necessary or desirable." The object of the 1962 Act was less neutral in the sense that it required under section 75(4) that the purchase and consumption of liquor is met but not stimulated. In the Law Commission's view, it would be counterproductive to go back to anything that resembles the 1962 test. But the reasons for expanding the grounds for refusing a licence appear strong.
- 9.196 The Law Commission commissioned a legal opinion from Mr RJS Munro, a lawyer in private practice who sat for a considerable period of time as a member of the Licensing Authority. For a period he was its Acting Chair. He gave us the following advice about the powers and functions that the Liguor Licensing Authority needs:

Whatever the division of duties legislatively, powers are desirable locally or NZ wide to: -

- · Grant or explicitly refuse licences and general managers certificates an amended power;
- · Renew such licences and certificates an existing power;
- · Suspend or cancel licences and certificates an existing power;
- · Fine licensees and managers for breaches under ss 132 & 135 a new power;
- · Consider any individual application either at the request of the DLA or by order of the central body. All applications which result in reports in opposition by the police, a licensing inspector, a Medical Officer of Health, or objection by any person with standing should be first considered by the central body, but could be referred to the DLA for hearing by Councillors – an amended power;
- · Issue binding statements and guidance to DLAs under section 96 an existing power;
- · Issue non-binding recommendatory statements and guidance to DLAs a new power;

- · Consider appeals from decisions of DLAs an existing power;
- · Consult any person or body which the decision-maker considers may assist it to achieve the object of the legislation an amended power;
- Continue to be deemed a Commission of Inquiry under the 1908 Act and (proposed) amending legislation and a widened scope of jurisdiction to enhance the flow of data from inspectors, police and DLAs and licensees to the central body – an amended power;
- · Analyse the use and abuse of licences and require a regular and routine flow of information from DLAs an amended power;
- Report annually to the Minister in accordance with (more detailed) criteria including
 assessment of results of DLA initiatives, effect of control measures, periodic public
 surveys of satisfaction of outcomes within each DLA area, (to be independently and
 transparently conducted on a "rolling" basis selected by the LLA but with the ability
 of locals to request an early survey) an amended power;
- Report publicly "if requested" to the Minister on any specific sale of liquor topic other than one relating to an individual hearing or appeal a new power.
- 9.197 We generally favour the recommendations contained in Mr Munro's advice although in some areas it is possible that the scope of the Licensing Authority's powers should be extended even further.
- 9.198 Giving the Licensing Authority power to fine is legally significant. Most tribunals do not have a power to fine. Fines are usually imposed by courts. The protections of court procedure and judicial decision-making are significant safeguards against arbitrary decisions.
- 9.199 On the other hand, there are some tribunals that can fine those who come before them. There are a number of disciplinary tribunals involving the professions where that is so. For example, under the Lawyers and Conveyancers Act 2006, a Lawyers Standards Committee can fine a practitioner up to \$15,000.¹⁸⁶ Even greater powers are provided in respect of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal established under the same legislation. There are similar powers in other legislation governing professions. The Health Practitioners Competence Assurance Act 2003 gives the Health Practitioners Disciplinary Tribunal the power to order a health practitioner to pay a fine not exceeding \$30,000, plus costs.¹⁸⁷
- 9.200 While the people regulated by the Sale of Liquor Act are not professionals in the sense that lawyers, doctors and a whole range of health professionals are, they do share the characteristic that they must be registered (that is, licensed). The licence can be lost. It does not seem unreasonable for a body with extensive knowledge of the liquor industry and power over the issuing and cancellation of licences to have a power to fine these same participants in the industry. If that were done, it may make it much easier to avoid the pitfalls of prosecution in the ordinary courts where the delays would be much greater and the judge before whom the matter came may have little background in licensing matters. It is rather a specialised area. Since the Licensing Authority is presided over

- by a District Court Judge, it should be possible for fining to be carried out to a high judicial standard without sacrificing anyone's rights. A higher standard of proof than the balance of probabilities could be applied.
- 9.201 If the Licensing Authority is to be invested with new and wider powers, together with some changes in its character, then the question arises as to whether a new form of institution is required.
- 9.202 The most obvious alternative would be to have the District Court have all the jurisdiction of the Licensing Authority. There are some advantages in that. The power of a judge presiding in a court certainly gains respect of the public. It would also enable all legal issues that arise in the jurisdiction to be dealt with effectively. In many other countries courts are, or have in the past been, involved in making licensing decisions. But there is a lack of flexibility surrounding courts and court procedure. That may be an undesirable restraining influence on a body that deals with all the social and community facets of liquor licensing.
- 9.203 In the United Kingdom, Justices of the Peace in court used to deal with licensing matters. Now that has been abandoned in favour of local control. But, on a recent visit to England, the Law Commission found that there are some problems with the new model as well. The Licensing Authority in the New Zealand framework is not a court but a tribunal. Officials we spoke to in England thought that such a regulator was a useful device for handling licensing issues.
- 9.204 A number of other models are available. An independent regulatory commission could be established along the lines of the Commerce Commission established by the Commerce Act 1986 or the Gambling Commission set up under the Gambling Act 2003, which function as industry regulators. These models would be more elaborate than the Licensing Authority, even in an expanded role. They would also be more expensive, and pose difficulties in terms of finding an appropriate administrative home.
- 9.205 The Licensing Authority is part of the Tribunals Division of the Ministry of Justice. It is serviced by experienced officers and works smoothly. In fact it is remarkable how well it does on such a limited resource base.
- 9.206 It seems to the Law Commission that not much would be gained by abolishing the Licensing Authority and quite a lot would be lost. In our enquiries we have found that the Licensing Authority is respected by most of the actors in the industry. It has a great deal of institutional knowledge which should be preserved.
- 9.207 One issue that does arise is whether a multi-member Licensing Authority is required. It was formerly the case that two lay members sat with the judge. Now in most cases it is only one. Issues arise as to what value there is in lay membership, although many people think it adds some balance and different perspectives. The chair has a casting vote. 188
- 9.208 Multiple decision-makers are more costly and may tend to cause greater hearing delays. A two-person body sitting with the chair holding a casting vote is really a one person body except in public perception.

9.209 Mr RJS Munro said in his legal opinion

From its creation in 1990 until 2001, the LLA had three members including its chair. Until 1999 the exercised jurisdiction which required it to determine all new licence applications throughout New Zealand, whether or not objections or reports in opposition were made. LLA staff assisted members to facilitate this task. From 1 April 2000 DLAs were empowered to grant non-opposed applications rather than forwarding all complete files for decision. At much the same time a steady increase in the number of disciplinary applications for cancellation or suspension of licences and certificates occurred requiring public hearing.

- 9.210 There is a reasonably strong case for getting rid of the lay membership. The judicial member clearly dominates proceedings and the legal nature of many of the issues makes this inevitable. Furthermore, in the Law Commission's view two-person sittings are undesirable. It either should be three or one.
- 9.211 One consideration that needs to be borne in mind here is a need for economy. The burden of the liquor work is likely to increase in the future. It may be a good idea to have one judge permanently in Auckland doing this work and another one doing the rest of New Zealand. This could be more easily accomplished if funds did not have to be found for lay members.

LICENCE TYPES

- 9.212 The four basic licences provided for in the 1989 Act are a great improvement on the previous system, which provided for a large number of different licences, required the provision of accommodation, and contained other strange forms of economic protection for the industry.
- 9.213 In the Law Commission's preliminary consultation, there has been no criticism of the four types of liquor licence requirement, although there has been criticism of clubs selling liquor to persons outside the club licence restrictions and a lack of enforcement of this.
- 9.214 It can be argued that the four types of licence could be simplified even further just down to one licence. This single licence would then be categorised by various conditions that were set on it and the risks that various types of outlets posed to the object of the Act. However, the four licence system is well known and well understood, and the system should not be changed if it is working well. There may be merit in abolishing club licences and requiring clubs to obtain an on-licence if they wish to sell alcohol. Their status as a club could be reflected in licence conditions. This may place too great an administrative burden on small clubs however. Currently, clubs do not have to have a manager on duty at all times, as liquor is (in theory at least) not being sold to the public. If club licences are to remain a separate category of licence, the legislative provision relating to a manager being physically on duty at all times liquor is being sold could be reinforced to include club premises where more than 10 members are present. This would require larger clubs to adhere to the same management requirements as other types of premises where alcohol is served, while not imposing undue costs on small clubs where, for example, there may only be a few people gathered for a drink after a game of bowls.

NOTIFICATION REQUIREMENTS

- 9.215 Licence applicants must give public notice of the application in the local newspaper on two occasions and ensure that notice of the application is attached in a conspicuous place on or adjacent to the site of the relevant premises unless it is impracticable or unreasonable to do so.¹⁸⁹
- 9.216 It is not clear that the present notification requirements are working effectively for either the public or licence applicants.
- 9.217 For applicants, it is expensive to place public advertisements.
- 9.218 Many people these days do not read the public notices section of the newspaper and are unaware of the opportunity to object to a licence application. For this reason, a notice is required to be put up at the site. However, such notices may not stand out in the particular location, especially if there are other notices in the same place. A low-cost suggestion for dealing with this is to require notices to be a particular colour and size so that they stand out. A physical notice in the letterbox of residents in the immediate vicinity may also be appropriate.
- 9.219 Another means of making licence applications more accessible to the public in a cost-effective way and to reduce compliance costs for applicants would be to require all licence applications, location of premises and dates for objections to be listed on a website. Some Australian states are utilising this method.

LICENCE FEES

- 9.220 Currently, many councils fund liquor licensing administration and enforcement by up to 50 per cent from rates. 190 In most other areas of council responsibility, councils can set fair and reasonable fees through their Annual Plan process. However, licence fees for each type of licence are set out in the Sale of Liquor Regulations 1990. They range from \$63 for a special licence to \$776 for other licence applications. A proportion of some fees is given to the Licensing Authority. There is no variance in the fees payable for different types of premises. For example, a small café is subject to the same fees as large bar. It may be preferable for licence fees to better reflect the level of risk that the particular licence poses to the community. For example, a large bar with long trading hours can be expected to have an association with a greater number of alcohol-related harms, such as violent crime, than a café that is only open during the day.
- 9.221 There also are good arguments in favour of enabling local authorities to set their own licensing fees so that DLAs' costs can be more closely reflected in the fees and charges. It seems inequitable for the same level of fees to apply, irrespective of the resources needed to process and enforce particular licences. Alternatively, local authorities could be empowered to impose an annual 'supervision' fee that could reflect the burden of the number of inspections required for the particular premises.

LICENCE RENEWALS

- 9.222 New liquor licences, other than special licences, last for one year after issue. To continue trading, an application for renewal must be made within that time. After the initial year, licences can be renewed for three-year terms. At the end of each term, the licensee must apply for a renewal and publicly advertise the application.
- 9.223 Public notice requirements apply to renewal applications. 191
- 9.224 The process for consideration of a licence renewal is similar to the original licence application, with opposed renewals being dealt with by the Licensing Authority. If there is no objection, the DLA must issue the renewal. In considering an application for the renewal of an on-licence, the Licensing Authority shall have regard to the following matters:
 - · The suitability of the licensee;
 - · The conditions attaching to the licence;
 - The manner in which the licensee has conducted the sale and supply of liquor pursuant to the licence; and
 - · Any matters dealt with in any report on the renewal application by the police, a licensing inspector or a medical officer of health. 192
- 9.225 Similar, but not identical, provisions apply in respect of off-licences, 193 and club licences. 194 Objections to a renewal may be made by person with a greater interest than the general public on the grounds of the renewal criteria.
- 9.226 There are detailed elements around licence renewal that could be streamlined and simplified, for example premises that pose a low risk to the community could be exempt from the renewal process. This should reduce compliance costs. If there were complaints about the operation of licensed premises, then they could lose this exemption.

MINIMUM PURCHASE AGE/ DRINKING AGE

- 9.227 There is no minimum age at which it is legal to *drink* alcohol. The Sale of Liquor Act provides for a minimum age of 18 years to *purchase* alcohol on or from any licensed premises. It is an offence for a person under 18 years to purchase liquor on or from any licensed premises, or to enter a restricted area on any premises unless part of a police controlled purchase operation.¹⁹⁵
- 9.228 The alcohol purchase age has been heavily fought over in New Zealand over the last decade and there are no easy answers.
- 9.229 A legal purchase age is recognised internationally as being a highly effective and inexpensive supply control mechanism.¹⁹⁶
- 9.230 As a harm reduction measure, there is a case for an increase in the minimum purchase age, given the increased risks alcohol poses to young people outlined in chapter 4 of this paper.

- 9.231 The Law Commission is aware that many young people under 18 years are supplied with alcohol by friends who are 18 years or over. This is exacerbated by the fact that half the school students in year 13 will turn 18 during the school year, and the other half will not turn 18 until they have left school. As discussed in chapter 7, more students are staying for year 13 now.
- 9.232 An increase in the purchase age from the current 18 years to 20 years will make the supply of alcohol to younger teenagers more difficult and therefore may reduce (but not eliminate) consumption in underage teenagers.
- 9.233 This said, the arguments against an increase in the purchase age are also strong. Many young people are responsible and mature individuals. To prevent, for example, a 19 year-old who works, pays taxes and votes from buying a beer at a pub is intolerable to some people.
- 9.234 There is an intermediate option: the split purchase age. Under this option, the purchase age could be kept at 18 years for on-licences, but increased to 20 years for off-licences. This would be less restrictive than the position prior to the 1999 amendment. It is recognised that there is a risk of creating uncertainty around the law. This would have to be managed accordingly. However, a split purchase age offers three benefits. First, the law would not exclude those aged 18 or 19 from purchasing alcohol. It would simply require that those purchases occur in the relatively supervised environment of on-licence premises. Second, a split-age may encourage some young people to drink at on-licence premises earlier in the evening, rather than drinking large volumes of cheap alcohol from an off-licence before coming into town late at night ('pre-loading'). Third, young teenagers are less likely to have friends that are at least 20 years of age, meaning that the supply of alcohol purchased from off-licences may reduce.
- 9.235 Another option is to introduce a minimum drinking age so that it would be an offence for people under a certain age, say 18 years, to consume or possess alcohol. There is evidence that minimum drinking ages are effective, 197 but there are also risks of criminalising youth, creating a disincentive for them to seek help (for example, in cases of alcohol poisoning or dependence, or a party that has become out of control) and potential difficulties in enforcing the law in private places.
- 9.236 A person cannot purchase or acquire any liquor on or from any licensed premises with the intention of supplying it to any person who is under the age of 18 years, unless the person intends to supply it to:
 - · A child of whom that person is a parent or guardian; or
 - · Any other person who is attending a private social gathering. 198
- 9.237 There is no requirement for the adult who is supplying the alcohol to supervise the young person's consumption.
- 9.238 Many have said to the Law Commission that parents should take responsibility for their children's drinking. In many cases, this is not occurring. The Law Commission considers a broader set of obligations for the supply of liquor to young people than the existing ones have merit. One option is to make it an offence for an adult to supply liquor to a young person unless it is a private

social gathering, and that adult is (or has the consent of) the young person's parent or guardian. This would likely reduce the supply of alcohol to minors by friends and therefore reduce consumption by minors. Furthermore, the offence would not criminalise young people and would increase responsibility on adults. In the Law Commission's view, more needs to be done to protect young people.

9.239 Supervision of young people, when they drink, may assist in avoiding harmful consequences. A requirement to do this also has merit.

LICENSING TRUSTS

- 9.240 A further aspect of supply control relates to the ownership of licensed premises. In a number of states in the United States for instance, liquor retail outlets can only be operated by the state government. While the creation of state monopolies was linked with the prohibition era, their retention is commonly justified on the basis that liquor outlets are less likely to proliferate under a government monopoly, and that they are more likely to operate in a responsible way (for example, in regard to pricing practices and selling to underage persons) compared to private enterprise, given that they have a different profit motive.
- 9.241 There are some parallels with licensing trusts in New Zealand.
- 9.242 These trusts operate licensed premises (including on-licences and off-licences) in their respective areas. Some own commercial and residential properties. The profits from the trusts' commercial operations are returned to the local communities. Through the election of trustees, the community is able to exercise a degree of control over the operation of licensed premises certainly more so than areas where licensing trusts do not operate.
- 9.243 Some licensing trusts have the sole right to establish and operate hotels, taverns and off-licences in their districts. 199 Only four remain. To alter the preferential rights of the remaining monopoly licensing trusts, 15 per cent of the electors in the trust area must file a written request for a poll, and a majority of voters in the poll must vote for competition in the area. 200
- 9.244 These preferential trading rights are not without controversy. In these trust areas, only the licensing trust may be granted a licence for a new pub for example. It also means that the two supermarket chains are unable to sell liquor in their stores in these areas. This may be to the disadvantage of drinkers in these areas. More fundamentally, it might be argued the law should not provide a commercial advantage for one entity at the expense of others.
- 9.245 In practical terms, however, those licensing trusts with monopoly trading rights appear to enjoy wide support in their respective communities. The profits that are returned to the communities help fund significant local projects including infrastructure and tourism initiatives, as well as providing financial assistance to small groups reliant on external funding. The amount of money available for distribution to these communities would likely reduce if the monopoly rights were removed.

CHAPTER 9 ENDNOTES

- 1 Sale of Liquor Act 1989, s 6.
- See chapter 12, para 12.8.
- Sale of Liquor Act 1989, s 7.
- Sale of Liquor Act 1989, s 29.
- Sale of Liquor Act 1989, s 53.
- 6 Sale of Liquor Act 1989, s 73.
- Sale of Liquor Act 1989, s 6(3).
- Sale of Liquor Act 1989, s 7.
- 9 Sale of Liquor Act 1989, s 8.
- Sale of Liquor Act 1989, ss 9-11.
- Sale of Liquor Act 1989, ss 13-14.
- Sale of Liquor Act 1989, s 16.
- Sale of Liquor Act 1989, s 17.
- Sale of Liquor Act 1989, ss 18-20 and ss 22-23.
- Sale of Liquor Act 1989, s 28.
- Sale of Liquor Act 1989, ss 29-52.
- Sale of Liquor Act 1989, s 53.
- Sale of Liquor Act 1989, s 238.
- 19 Sale of Liquor Act 1989, s 5(3). See also Armed Forces Canteens Act 1948.
- Sale of Liquor Act 1989, s 73.
- Sale of Liquor Act 1989, s 75.
- Sale of Liquor Act 1989, s 76.
- 23 Sale of Liquor Act 1989, s 79.
- Sale of Liquor Act 1989, s 85.
- Sale of Liquor Act 1989, s 86.
- Sale of Liquor Act 1989, s 91.
- Sale of Liquor Act 1989, s 92.
- Sale of Liquor Act 1989, s 100.
- Sale of Liquor Act 1989, s 102.
- Sale of Liquor Act 1989, s 104.
- Sale of Liquor Act, 1989, s 103.
- Sale of Liquor Act 1989, ss 21, 34, 58, and 76.
- 33 Sale of Liquor Act 1989, ss 11, 33, 57, 78 for initial licences, and ss 20, 43, and 66.
- Sale of Liquor Act 1989, ss 10, 32, 56, and 77.
- Sale of Liquor 1989, ss 21, 34, and 58.
- Sale of Liquor Act 1989, s 137.

- Sale of Liquor Act 1989, s 138.
- Sale of Liquor Act 1989, s 139.
- Sale of Liquor Act 1989, s 151.
- Sale of Liquor Act 1989, s 152.
- Sale of Liquor Act 1989, s 153.
- Sale of Liquor Act 1989, s 154.
- Sale of Liquor Act 1989, s 154A.
- Sale of Liquor Act 1989, 166.
- Sale of Liquor Act 1989, ss167-168.
- Sale of Liquor Act 1989, s170.
- Sale of Liquor Act 1989, s 175.
- Sale of Liquor Act 1989, s 176.
- Sale of Liquor Act 1989, s 177A.
- Sale of Liquor Act 1989, ss 178-180.
- Sale of Liquor Act 1989, ss 185-219ZF.
- Alcohol Advisory Council Act 1976, s 7.
- 53 Alcohol Advisory Council Act 1976, s 28.
- Alcohol Advisory Council Act 1976, s 8(1)(a)
- 55 Alcohol Advisory Council Act 1976, s 8(1)(b).
- Alcohol Advisory Council Act 1976, s 8(1)(c).
- 57 Alcohol Advisory Council of New Zealand Briefing for Incoming Minister (21 November 2008) Wellington: Alcohol Advisory Council, 2 (available at http://www.alac.org.nz/InpowerFiles/ CorporateReports/Document.Document.38468.f505a6f7-bb17-499f-b1e3-c429430caa73.pdf).
- Wine Act 2003, s 3(a).
- Wine Act 2003, s 3(b).
- Wine Act 2003, s 3(c) and (d).
- Wine Act 2003, s 3(e).
- Wine Act 2003, s 3(f).
- 63 See M Livingston, T Chikritzhs and R Room "Changing the Density of Alcohol Outlets to Reduce Alcohol-Related Harm" (2007) Drug and Alcohol Review 557, 557-560.
- 64 Louise Kirkwood Analysis of Waitemata District Alcohol Behaviour Survey (Report Prepared for the Alcohol Advisory Council of New Zealand (ALAC), 2009) 22.
- Karen Hughes, Zara Anderson, Michela Morleo and Mark A Bellis "Alcohol, Nightlife and Violence: The Relative Contributions of Drinking Before and During Nights Out to Negative Health and Criminal Justice Outcomes" (2008) 103 Addiction 60.
- P Gruenewald; W Ponicki and H Holder "The Relationship of Outlet Densities to Alcohol Consumption: A Time Series Cross-Sectional Analysis (1993) 17 Alcoholism: Clinical and Experimental Research 38-47.
- See P Mäkelä, I. Rossow and K Tryggvesson "Who Drinks More and Less When Policies Change? The Evidence From 50 years of Nordic Studies" in I R Room (ed) *The Effects of Nordic Alcohol Policies: What Happens to Drinking and Harm When Alcohol Controls Change* (Nordic Council for Alcohol and Drug Research Publication, Helsinki, 2002) 17-70.

- 68 Statistics New Zealand Alcohol Available for Consumption: Year Ended December 2008 (available at http://www.stats.govt.nz/default.htm) (accessed 14 July 2009).
- 69 See chapter 3.
- 70 World Health Organisation Expert Committee on Problems Related to Alcohol Consumption (World Health Organisation, Geneva, 2007) 26.
- T Huckle, J Huakau, P Sweetsur, O Huisman and S Casswell "Density of Alcohol Outlets and Teenage 71 Drinking: Living in an Alcogenic Environment is Associated with Higher Consumption in a Metropolitan Setting" (2008) 103 Addiction 1614.
- 72 K Kypri, M Bell, G Hay and J Baxter "Alcohol Outlet Density and University Student Drinking in New Zealand" (2008) 103 Addiction, 1131.
- 73 P Gruenewald "Why Do Alcohol Outlets Matter Anyway? A Look into the Future" (2008) 103 Addiction 1585.
- 74 T Norstrom "Outlet Density and Criminal Violence in Norway: 1960-1995" (2000) Journal of Studies on
- 75 R Lipton and P Gruenewald "The Spatial Dynamics of Violence and Alcohol Outlets" (2002) Journal of Studies on Alcohol 187.
- 76 D Gorman, P Speer, P Gruenewald and E Labouvie "Spatial Dynamics of Alcohol Availability, Neighbourhood Structure and Violent Crime" (2001) Journal of Studies on Alcohol 628.
- 77 R Stevenson, B Lind, and D Weatherburn "The Relationship Between Alcohol Sales and Assault in New South Wales, Australia" (1999) 94 Addiction 397.
- 78 A J Treno, J Grube and S Martin (2003) "Alcohol Availability as a Predictor of Youth Drinking and Driving: A Hierarchical Analysis of Survey and Archival Data" (2003) 27 Alcoholism: Clinical and Experimental Research 835.
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- R Scribner, D Cohen and T Farley "A Geographic Relation Between Alcohol Availability and Gonorrhea 80 Rates" (1998) 25 Sexually Transmitted Diseases 544.
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- D Begg, G Davie, K Kypri, J Langley, S Stephenson, S Tippets and R Voas "Minimum Purchase Age for Alcohol and 85 Traffic-crash Injuries Among 15-19 Year Olds in New Zealand (2006) 96 American Journal of Public Health, 126.
- New Zealand Police "24 Hour Licensing Hours in Auckland City" (A paper prepared by Senior Sergeant Ben 86 Offner, Sergeant Bryce Law and Barry Hyde, May 2008).
- 87 See generally R Parker and R Cartmill "Alcohol and Homicide in the US: Or One Reason Why US Rates of Violence May be Going Down" (1998) 88 Journal of Criminal Law and Criminology 1369.
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- 89 R Scribner, D Cohen, S Kaplan and S Allen "Alcohol Availability and Homicide in New Orleans: Conceptual Considerations for Small Area Analysis of the Effect of Alcohol Outlet Density" (1999) 60 Journal of Studies on Alcohol 310.
- 90 See Simon Collins "Broken Bottles Society's Hangover" (5 January 2009) New Zealand Herald Auckland A2.

- **91** Sale of Liquor Act 1989, s 13.
- 92 Sale of Liquor Act 1989, s 2 does not include a statutory definition of "suitability".
- 93 Sale of Liquor Act 1989, s 2 defines "restricted area" as areas in licensed premises where minors cannot be admitted.
- 94 Sale of Liquor Act 1989, s 2 defines "supervised areas" as areas in licensed premises where minors cannot be admitted unless accompanied by their parent or guardian.
- **95** Sale of Liquor Act 1989, s 35.
- **96** Sale of Liquor Act 1989, s 59.
- 97 Sale of Liquor Act 1989, s 59(2).
- **98** Sale of Liquor Act 1989, s75.
- **99** Sale of Liquor Act 1989, ss 10, 32, 56, 77.
- 100 Sale of Liquor Act 1989, ss 13(2), 35(2), and 59(3).
- 101 Alan Dormer, Alastair Sherriff and John Crookston Sale of Liquor (Thomson Brookers, Wellington, 1990), 1-91, 35.05.
- 102 Except in so far as water rights are concerned where a "first in first served" rule applies.
- 103 Resource Management Act 1991, s 5(2).
- **104** Sale of Liquor Act 1989, ss 14(7) and 37(5).
- **105** Sale of Liquor Act 1962, s 75(4).
- 106 Liquor Licensing Act 1997 (South Australia), s 58(2).
- **107** See for example *B & D Co 2008 Ltd* (LLA, PH0001/2009).
- 108 Local Government New Zealand submission on Sale and Supply of Liquor and Liquor Enforcement Bill (254-1).
- 109 Controller and Auditor-General "Liquor Licensing by Territorial Authorities: Performance Audit Report" (Wellington, November 2007), 18.
- 110 See, for example, YP Parker (LLA, 1131/97); My Noodle Limited v Queenstown Lakes District Council (2008) NZAR 481 (HC), French J.
- 111 Jones; Evolution Foods Ltd (LLA, PH 224/01).
- 112 Samson Pehi (LLA, 1460/95).
- **113** The 515 Club Inc (LLA, PH835/03).
- **114** Gambling Act 2003, s 102.
- **115** Gambling Act 2003, s 101.
- 116 Liquor Act 1982 (NSW); Liquor Regulation 1996 (NSW).
- 117 Liquor Control Advisory Council "Report on the Appropriateness of the Regulatory Regime for the Sale of Packaged Liquor in Victoria" (Reference No 1, Melbourne, 25 March 2008).
- 118 Liquor Control Advisory Council, above n 117, 31.
- 119 Parliament of New South Wales, (Legislative Assembly, Hansard, 28 November 2007), 4632.
- 120 NSW Casino Liquor & Gaming Control Authority, Community Impact Statement Introduction (Sydney, December 2008) (available at http://www.olgr.nsw.gov.au/pdfs/CIS/CIS%20Introduction.pdf).
- **121** NSW Casino Liquor & Gaming Control Authority, above n 120, 5.
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- **123** Department of Racing, Gaming and Liquor, Government of Western Australia, "Public Interest Assessment A guide to satisfying the Public Interest Test" (22 January 2008), 2.

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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

- 0.1 Extensive studies and research, covering many countries and spanning decades of experience, show that price does influence consumer demand for alcohol. 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.
- 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 more than 1.15% but not more than 2.5% alcohol by volume	No excise levied 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) other (such as table wine)	\$46.400 per litre of alcohol \$2.5476 per litre
Other fermented beverages (such as cider, perry, mead) Spirits (including spirits-based ready-to-drinks) Liqueurs and cordials	 more than 2.5% but not more than 6% alcohol by volume more than 6% but not more than 9% alcohol by volume more than 9% but not more than 14% alcohol by volume more than 14% alcohol by volume 	\$25.476 per litre of alcohol \$2.0380 per litre \$2.5476 per litre \$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. 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. 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. It is clear that some licensed premises in New Zealand do hold back excise tax increases where they are able. 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 alcoholrelated 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 guite 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. The wine industry alone has been estimated to contribute \$1.5 billion to New Zealand's GDP. 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.
- 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 overconsumption 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 offlicence 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 offlicences 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. The Director also issues guidelines that indicate the kinds of activities or promotions he or she considers undesirable.

CHAPTER 10 ENDNOTES

- 1 A C Wagenaar, M J Salois and K A Komro "Effects of Beverage Alcohol Price and Tax Levels on Drinking: A meta-analysis of 1003 Estimates From 112 studies" (2009) 104 Addiction 179-190.
- 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."
- 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.
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- 15 See "Annual Increase in Excise Tax" (Morning Report, Radio New Zealand National, 1 July 2009).
- 16 Currently no alcohol excise is payable on beer with an alcohol volume of 1.15% or less.
- 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).
- **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.

- 25 E Crampton and M Burgess *The Price of Everything, The Value of Nothing: A (Truly) External Review of BERL's Study of Harmful Alcohol and Drug Use* (Working Paper No 10/2009, Department of Economics and Finance College of Business and Economics, University of Canterbury, 2009) (available at http://www.econ.canterbury.ac.nz/RePEc/cbt/econwp/0910.pdf).
- 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.
- 27 New Zealand Institute of Economic Research Economic Impact of the New Zealand Wine Industry: An NZIER Report to the New Zealand Winegrowers (Wellington, 2009).
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 New Zealand Herald Auckland A11. The New Zealand Business Round Table favours abolition of excise tax:
 New Zealand Business Roundtable Submission on the Tax Review 2001 Issues Paper (July, 2001) 11-12.
- 29 Changing Scotland's Relationship with Alcohol: A Framework for Action (The Scottish Government, 2009) 11-12 (available at http://www.scotland.gov.uk/Publications/2008/06/16084348/0).
- 30 Chief Medical Officer 150 Years of the Annual Report of the Chief Medical Officer: On the State of Public Health 2008 (2008) 21-23 (available at http://www.dh.gov.uk/en/Publicationsandstatistics/ Publications/AnnualReports/DH_096206); "Independent Review of the Effects of Alcohol Pricing and Promotion" (The University of Sheffield, 2008) (available at http://www.dh.gov.uk/en/Publichealth/ Healthimprovement/Alcoholmisuse/DH_4001740).
- \$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.
- 36 Alcohol Beverages Advertising Code (Australia) (available at http://www.abac.org.au/publications/thecode/).
- 37 See Cath Hart "Laws Fail to Stop Alcohol Being Marketed to Children" (19 June 2007) *The Australian* Sydney (available at http://www.theaustralian.news.com.au/story/0,20867,21933123-2702,00.html).
- **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.
- 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).
- Advertising Standards Authority "Draft Liquor Promotion Code and Complaints System: Discussion Document for Stakeholders" (May 2009) (available at http://www.asa.co.nz/pdfs/Public%20 stakeholder%20draft%20May%202009.pdf).
- 45 Her Majesty's Government "Safe. Sensible. Social. The Next Steps in the National Alcohol Strategy" (2007) (available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_075218).
- 46 Liquor Act 2007 (NSW), s 102(2).
- **47** Liquor Act 2007 (NSW), s 102(4).



MITIGATING ALCOHOL HARMS

"Prosecuting some of the offences in the Sale of Liquor Act in court can be long and drawn out and can involve the Police in a lot of paper work. A specific effort needs to be made to simplify the law in this area and make it work better."

PROBLEM LIMITATION

CHAPTER 11

INTRODUCTION

- 11.1 Problem limitation measures do not attempt to alter the demand or supply of alcohol. Instead they seek to reduce both the incidence of alcohol misuse and the level of alcohol-related harm.
- 11.2 This chapter includes commentary on the current law and possible options in relation to the following problem limitation measures:
 - · Licensing enforcement
 - · The use of infringement offences
 - · Alcohol in public places
 - · Public drunkenness
 - · Product labelling
 - · Transport
 - · Treatment.

ENFORCEMENT AND PENALTIES

CURRENT POSITION ON ENFORCEMENT IN THE LEGAL SYSTEM

- It is necessary first to explain how the criminal justice system treats prosecutions and police discretion in order to understand how liquor law is enforced.
- 11.4 Criminal offences and penalties come at several levels. These are:
 - · Indictable and electable offences, which must attract or may be subject to a jury trial, for serious criminal activity. The offences are usually found in the Crimes Act 1961 and attract substantial terms of imprisonment – there are none of these in the Sale of Liquor Act 1989.
 - Summary offences, which are dealt with by judge alone in the District Court, and are punishable by a fine and, in some cases, a short term of imprisonment.
 - · Infringement offences, which involve an on-the-spot fine, only proceed to court if they are challenged, and do not attract a criminal conviction.
- 11.5 Currently, most of the offences under Part 8 of the Sale of Liquor Act 1989 are summary offences, which are punishable by a fine, 1 but some are also punishable by a maximum penalty of a short term of imprisonment.² Some offences can be committed by any person, while others apply only to the licensees or managers. In the case of some offences involving licensees, the court also has the power to suspend a licence for up to seven days.³ Sale of Liquor Act offences are prosecuted in the District Court and, if proved, result in a criminal conviction. Liquor ban bylaws, discussed later in this chapter in the section about Alcohol in Public Places, also result in a summary conviction in court.
- 11.6 An alternative to summary offences is infringement offences. A well-known example of an infringement offence is failing to have a warrant of fitness for a motor vehicle on the road.⁴ Infringement offences evolved largely in response to increasing demand placed on court resources. 5 Essentially they are a way of relieving court pressure, while at the same time ensuring that penalties are imposed. The advantages of infringement offences are that they are outside the formal court process (unless challenged), do not result in a criminal conviction, and save Police time due to the considerable amount of paperwork and Police time and resources involved in bringing prosecutions. In addition, there are often substantial delays in the court system and in many instances it is not worthwhile for the Police to prosecute, especially where the offence is a minor one and the penalty likely to be small. Police resources are limited and they must establish priorities over the use of these resources.
- 11.7 The Sale of Liquor Act 1989 already has provision for two infringement offences.⁶ These relate to minors in restricted or supervised areas. There is an offence punishable by a fine not exceeding \$1,000 where a person under the age of 18 is found in any restricted area on any licensed premises. ⁷ The other infringement offence is the purchasing of liquor by minors, which has a maximum fine of \$2,000,8 but if that is proceeded against as an infringement offence the fine cannot exceed \$500. These infringement offences provide a means of avoiding a minor getting criminal convictions for these offences.

- In addition to prosecution through a District Court, Part 6 of the Sale of Liquor Act 1989 also provides powers for a member of Police or a licensing inspector to apply to the Liquor Licensing Authority (Licensing Authority) vary or revoke any licence condition, or to suspend or cancel a licence on the following grounds: ⁹
 - the licensed premises have been conducted in breach of any of the provisions of the Act or of any conditions of the licence or otherwise in an improper manner;
 - the conduct of the licensee is such as to show that he or she is not a suitable person to hold the licence; or
 - the licensed premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public.
- 11.9 Where a licensee or manager is convicted of particular offences under the Sale of Liquor Act 1989 there is a mandatory requirement for the police to send a report to the Licensing Authority, including a recommendation about whether the licence should be suspended or cancelled. The Licensing Authority must consider the report immediately and determine whether or not to have a hearing.
- 11.10 While these different offence and enforcement regimes, through either the District Court or the Licensing Authority, have been set out in the Sale of Liquor Act, individual decisions about whether enforcement action should be taken are for the Police and the liquor licensing inspectors.
- 11.11 The first principle, and it is an important principle, is that the Police have a duty to enforce the law. But they also have discretion as to how and when to enforce it. What they cannot have is a policy of non-enforcement. ¹¹ Furthermore, the Police have a discretion with which the courts will not interfere. It is also clear under New Zealand law that although the Police have a good cause to suspect a person of having committed an offence, there is discretion whether to arrest. ¹²
- 11.12 Enforcement of council liquor ban bylaws, which we discuss below, is a key area where police discretion is exercised. Police have the powers to ask individuals to tip out the liquor, or leave the area with the liquor, to give warning, or to arrest and charge the individual. While Police have data about the number of breach of liquor ban apprehensions they have undertaken (9,359 in 2007/08),¹³ there is no record of the number of times where something short of a prosecution was the outcome. Some constables have conservatively estimated that only one in 10 offences detected ends up recorded as an apprehension, with other alternative action preferred. Some police have also suggested that requiring a person in breach of the liquor ban to tip their evening's proposed consumption down a drain may have a greater deterrent factor than a warning, or a charge.

ENFORCEMENT OF LICENSING

- 11.13 The Sale of Liquor Act 1989 sets out the framework for the licensees and managers of licensed premises to obtain licences. Licensees are expected to operate their businesses to ensure compliance with the Act and the conditions of their licence. 14 This includes ensuring that door and bar staff are aware of their obligations under the Act to ensure that minors or intoxicated persons are not present on their licensed premises or served there.
- 11.14 A manager is required to be on duty at all times. 15 Managers are required to hold a manager's certificate 16 and the Licensing Authority or District Licensing Agency (DLA) must only issue or renew a general manager's certificate to those with prescribed qualifications. 17 Since April 2006 anyone wishing to apply to the DLA for a manager's certificate has been required to obtain a Licence Controller Qualification, through the Hospitality Standards Institute. 18 This is designed to equip someone with a working knowledge of the Sale of Liquor Act with an emphasis on the requirements of host responsibility and responsible service. The qualification comprises two New Zealand Qualifications Authority standards and can be gained online or by attending a course, which typically involves two half days of study and an examination. A person must be 18 years or more to obtain the qualification.¹⁹
- 11.15 In the course of preliminary consultation with those responsible for compliance and enforcement, a number of issues regarding the adequacy of the current management system have been raised with the Law Commission. These concerns included:
 - The relative ease and speed with which a manager's certificate can be obtained²⁰ can have the effect of minimising the impact on licensees when a manager is suspended or loses their manager's certificate as a result of an infringement such as selling to minors; that is, a replacement manager is often easily found.
 - The current Act does not differentiate between the risks and responsibilities attached to managing different types of premises (for example, a small wine bar attached to a vineyard compared to a 2,000-capacity inner-city bar with multiple drinking and service areas). The question was asked whether larger premises should be required to have a specific ratio of duty managers based on patronage numbers.
 - Also, under the current Act there is no legal requirement for security or door staff to have training in the obligations of licensees under the Act. In some situations, security staff are making critical assessments of the state of intoxication of patrons both on- and off-premises and are frequently required to intervene.
- 11.16 A key part of the role of the licensee and manager includes monitoring intoxication levels of patrons and asking intoxicated patrons to move on. It has been said by a member of the United Kingdom's Metropolitan Police that "publicans are often our best policemen".21

- 11.17 There is a clear link between the consumption of liquor and aggression and violence occurring in and around bars, pubs and clubs. A 2008 book by Kathryn Graham and Ross Homel,²² which includes research based in Wellington, focuses on specific industry characteristics and explores ways in which policies can be developed in the running of drinking establishments and the policing of them to eliminate problems. This sort of research has many rich insights to offer both law enforcement personnel and regulators.
- 11.18 The book deals with accords, that is to say voluntary agreements among licensees and Police, local government, community groups, health agencies and other interested parties. These arrangements can have an important effect in lowering the levels of violence. Industry initiatives, such as alcohol accords, are an important aspect of enforcement. An alcohol accord is a voluntary, industry-based partnership in a local community used as a framework to introduce practical solutions to alcohol-related problems. An example of an accord in New Zealand is the Christchurch City one-way door intervention, which is a willing compliance model for licensees to not admit patrons after 3 am on Thursday, Friday, and Saturday nights. They are currently limited by the provisions of the Commerce Act 1986, which restricts any accord that prevents competition on price. The New South Wales Liquor Act 2007 has specific trading conditions to manage high-risk bars, which are known as declared premises and are listed in the schedule to the legislation.²⁴ The applicable conditions include:
 - · a "lock-out" where patrons are not permitted entry after 2 am and before 5 am;
 - · no glass vessels after midnight until closing;
 - · no shots or drinks of higher than listed proportion of alcohol by volume levels;
 - · restrictions on the number of drinks served after midnight; and
 - 10 minutes per hour of non-service for each hour after midnight.
- 11.19 The suggested approaches in Graham and Homel's book aim to discover how to prevent violence by sustainable evidence-based practices. As the authors point out:²⁵

In addition, the specific approaches that will be most successful are likely to vary by drinking establishment, community and culture, and each type of establishment is likely to pose different regulatory challenges. Neighbourhood bars, for example, tend to have a loyal clientele and operate according to well-established informal norms that have evolved over many years. On the other hand, nightclubs and bars crowded together in city centre entertainment areas may operate as discrete and highly competitive business entities, lack any sense of tradition, and aim to package excitement and glamour for hundreds or even thousands of young adults who may have trouble remembering where they were the night before.

11.20 The manner in which police and licensing inspectors deal with difficult and intoxicated people in such situations is very important. Graham and Homel note the importance of a tailored, evidence-based prevention approach to enforcement by police and licensing inspectors.²⁶ The authors concisely summarise targeted enforcement as follows:27

A broad, heavy-handed enforcement approach, for example, will not be effective when problems are due to a small number of uncooperative high-risk premises and where most licensees have been cooperating effectively for some time with local government, community groups and police. On the other hand, prevention programmes that emphasise voluntary involvement in codes of practices and staff training may make little progress in a situation where there is a culture of confrontation between licensees and authorities, or where short-term competition is the major concern among drinking establishments.

- 11.21 The New Zealand Police are involved in delivering proactive and reactive policing approaches, which reflect the 'policing with confidence' strategic goal.²⁸ While reactive policing is demand-driven by incidents observed by police and calls for service from members of the public, proactive policing is focused on prevention. Liquor licensing staff are a key part of the frontline police response, working with general duties police to gather intelligence about alcohol-related risks and harm based on incidents and calls for service in and around licensed premises. This information is critical to informing enforcement action and education with licensees to contribute to Police's overall effectiveness in preventing alcoholrelated offending and victimisation.²⁹
- 11.22 On the proactive side, police undertake compliance checks. This involves entering licensed premises and requiring duty managers or licensees to provide certain information, and checking the premises for compliance with licence conditions, including host responsibility.³⁰ Police also observe the patrons on the premises to determine whether any offences under the Sale of Liquor Act 1989 (such as allowing a minor on premises, sale or supply to a minor, or allowing a person to become intoxicated) have been committed.³¹ These visits enable police to monitor the risks on individual premises and intervene, where necessary. In 2007/08 Police recorded undertaking 12,745 hotel compliance checks.³² This equated to 1.2 visits per year for every on- and club-licensed premise in New Zealand,³³ although it is possible not every licensed premise has been visited and some will have been visited numerous times due to targeting to risk.
- 11.23 Police direct their staff's compliance checks of licensed premises, focusing on premises with higher risk and previous non-compliance with the requirements of the Sale of Liquor Act 1989. Liquor licensing staff also ensure that Alco-link data is completed on charge sheets for all individuals charged with offences.³⁴ Alco-link data is used to determine where enforcement action through either the District Court or the Licensing Authority may be required with licensees or managers. It provides an evidence base to determine issues and an appropriate course of action for licensed premises or managers, based on risk.

- 11.24 Liquor licensing staff within New Zealand Police are either dedicated full-time positions, of which there are 15, or a part-time portfolio role. It is more common to be a part-time role, alongside other policing responsibilities. In some locations (for example, Manukau and Canterbury) Police have a dedicated Liquor Licensing Unit, where a sergeant leads a team of liquor licensing officers in managing all alcohol work. In 2007/08 Police recorded 16,938 applications being checked for suitability of licensees and liquor licence renewals.³⁵
- of controlled purchase operations. These planned, collaborative operations, with partner agencies, involve supervised volunteers aged 17 years and younger attempting to purchase alcohol from licensed premises (on-off-and club-licence holders). The purpose is to monitor and enforce section 155 of the Sale of Liquor Act 1989 about sales to a minor. Police visited 1,455 licensed premises during controlled purchase operations in 2007/08, visiting on average 13 premises during each operation.³⁶ Off-licence premises were most likely to be visited in these operations, and numbers of sales they made to minors have reduced since 2005/06, with the proportion being 17 per cent selling to minors in 2007/08.³⁷ Club licensed venues were most likely to sell to a minor (60 per cent of those visited in 2007/08, although a very small number were visited).³⁸
- 11.26 Licensing inspectors employed by local authorities also play an important role in ensuring licence conditions are being met by operators. Information on the number of compliance checks undertaken by licensing inspectors each year is not collated nationally. An inspector may exercise the power to enter licensed premises for the purpose of ascertaining "whether the licensee or any manager is complying with the conditions of the licence". 39 An inspector must produce evidence of identity to the person appearing to be in charge of the premises on first entering licensed premises. Inspectors may enter permanent chartered club premises. In contrast, the Police may enter premises "to ascertain whether the licensee is complying with the provisions of this Act and the conditions of the licence". 40 The Police have no right of entry on to permanent chartered club premises. The role of the DLAs and their inspectors were discussed in chapter 9.
- 11.27 Police, often in collaboration with partner agencies, determine the appropriate course of action to take with a particular licensee or manager for any observed breaches of conditions or the provisions of the Act. There are choices to be made between proceeding in the District Court or the Licensing Authority, or working to achieve a satisfactory resolution through the Graduated Response Model. This collaborative model involves face-to-face meetings with key agencies (Licensing Authority, Police, and public health) who determine a proposed approach for the current situation, informed by the evidence of the licensee/manager's past behaviour, and make a decision based on an evaluation of risks and appropriate intervention ranging from low intervention/ education to a high intervention/cancellation approach.

- 11.28 Seeking a determination of an alleged breach of licence conditions or the Sale of Liquor Act through the District Court or the Licensing Authority can be lengthy and resource intensive. The Licensing Authority has expertise in licensing laws but deals only in licensing matters and not the criminal law. It currently does not have the power to impose fines.
- 11.29 The Sale of Liquor Act 1989 does provide a mechanism for police to close a bar when there are concerns about rioting or fighting.⁴¹ The provision regarding rioting requires an order to be made by a District Court Judge, or two or more Justices of the Peace, or a community magistrate before a bar is closed. Such an order only applies for the time specified in the order but cannot apply after the day on which it is made. 42 This provision has limited utility because the time required to obtain the order before the bar is closed defeats its purpose.
- 11.30 In contrast, powers to close bars due to fighting or serious disorder do not require court approval, as police can make the order. These powers are more effective than those relating to rioting, but raise the guestion of whether there should be wider circumstances where police can close premises immediately, such as when serious breaches of the Act are occurring. New South Wales has powers in its legislation to immediately close a bar where there is a significant threat or risk to the public interest, such as a threat to public health or safety, a risk of substantial damage to property, a significant threat to the environment, or a risk of serious offences being committed on the premises.⁴³
- 11.31 The law seems to be most effective when the relevant agencies take a collaborative approach to compliance and enforcement. The Responsible Liquor Licensing model, first promoted by councils in the wider Auckland region, New Zealand Police, Fire Service and the Auckland Regional Public Health Service, seems to be a particularly good example of this collaborative approach in action. These multi-agency approaches must be well planned to be effective and they must be resourced adequately.
- 11.32 The Law Commission's own observations, based on extensive contact with the New Zealand Police working in the New Zealand night-time culture, leads us to the view that they have developed some excellent policing methods for handling difficult situations. And there is a group of police in New Zealand handling licensing matters who have become specialist and who are extremely knowledgeable. This expertise should be further developed and fostered within the New Zealand Police.
- 11.33 Despite these positive features, it appears that there are some aspects of the existing law that are not fully enforced through the court or Licensing Authority process because enforcement is expensive and there are other priorities. Prosecuting some of the offences in the Sale of Liquor Act in court can be long and drawn out and can involve the Police in a lot of paper work. A specific effort needs to be made to simplify the law in this area and make it work better.

MORE INFRINGEMENT OFFENCES?

- 11.34 The Law Commission's extensive observations show that the Police require some efficient and expedient way of dealing with people who are causing public disorder but where the expense and complication of the full court process is not warranted. That raises the question of infringement offences. Infringement offences create a penalty. There are many instances in New Zealand law of minor offending where infringement notices provide a sufficient and proportionate response to the wrong that was done. The Ministry of Justice guidelines suggest that infringement notices are appropriate if the misconduct at which they are aimed is comparatively minor; there are straightforward issues of fact to be determined; the offences are strict or absolute liability; and an infringement notice would be an appropriate mechanism to encourage compliance with the law.⁴⁴
- 11.35 It appears to the Law Commission that there is scope for expanding the range of infringement offences in relation to liquor. Given the nature of the enforcement activities the Police have to undertake in this regard, it would be very helpful if the constable could issue these offence notices on the spot. This would cut down the amount of paperwork required. It would avoid having to arrest people in some instances and it would mean that penalties were being imposed in circumstances where often they are not at present due to the cumbersome nature of the system for formal prosecutions.
- 11.36 There are a number of offences involving liquor that are minor and do not involve complex facts and therefore may meet the Ministry of Justice's criteria for creating new infringement offences. Infringement offences may also be appropriate for breach of licence conditions or technical breaches of the liquor laws as a way to enforce the law without the need for a full prosecution. This would mean that there could be faster resolutions for offences where there is little in issue.
- 11.37 The content of the more serious offences contained in the Sale of Liquor Act needs to be reviewed, and the maximum penalties reviewed as well. Increased penalties will assist in signalling to licensees and the community that there needs to be a deterrent effect for particular types of liquor offending. Examples where penalties might be increased include selling to minors and intoxicated individuals and other offences which require a report to be provided to the Liquor Licensing Authority upon conviction.⁴⁵

ALCOHOL IN PUBLIC PLACES

CURRENT POSITION

11.38 The Law Commission's terms of reference direct it to consider the relationship between the Sale of Liquor Act 1989 and the Local Government Act 2002. In recent years the activities of local government around New Zealand have become a matter of great importance in regulating conduct relating to liquor in public places. The Local Government Act 2002 empowers the making of bylaws to regulate drinking in public areas. These liquor ban bylaws, which are enforced by the Police, are an important source of the police activity in relation to liquor. But there are questions about whether a designated

- liquor ban area is appropriate, or whether drinking in a public place should be barred altogether. A separate, but related, issue raised is how to deal with intoxicated people in public places.
- 11.39 There is no offence of drinking in a public place for all persons in New Zealand. However, police have power to deal with drinking in public places in two circumstances: they can issue a Liquor Infringement Notice for an individual under the age of 18 who is in possession of, or drinking alcohol, in a public place, 46 or prosecute any person in breach of a council's liquor ban bylaw. 47
- 11.40 In 2007/08 Police issued 3,145 liquor infringement notices under the Summary Offences Act 1981 in 2007/08 which represents approximately 34 people out of 10,000 under the age of 18 being issued with a liquor infringement notice in 2007/08.48
- 11.41 Councils have the power to make bylaws for liquor control purposes under section 147 of the Local Government Act 2002. These allow for liquor bans in public places.⁴⁹ There are a range of activities which the bylaw cannot prohibit, such as the carriage of an unopened bottle or container, or taking the liquor to visit someone who lives within the liquor ban area. 50
- 11.42 The Local Government Act 2002 also contains powers of arrest, search and seizure in relation to liquor.⁵¹ Section 169 authorises police to search any vehicle that is in or entering a public place in a liquor ban area. 52 The provision also authorises police to seize and remove liquor and its container if found in breach of the bylaw,53 which is forfeited to the Crown upon conviction.54 There are some requirements to be met by police before they can exercise the power of search, including informing the person of their opportunity to remove the container or vehicle from the public place and giving the person a reasonable opportunity to do so. Police are authorised to arrest a person found committing an offence, or who refuses to comply with a request of police to leave the ban area, or surrender the liquor in their possession. 55
- 11.43 A large number of bylaws have been made under these provisions and they are frequently changed. In 2005, 64 per cent of the 74 territorial authorities had a liquor control bylaw.⁵⁶ Research conducted by the Law Commission for this review shows that there has been a large increase in the number of territorial authorities with liquor control bylaws, with 93 per cent of the territorial authorities having at least one liquor ban. The main reason for the 29 per cent increase in the total number of territorial authorities with liquor bans is due to more district councils creating bans.
- 11.44 When liquor bans initially began, they were largely in place for New Year's Eve, Guy Fawkes, or special events. However, now more of the territorial authorities' liquor bans operate permanently. In 2005, 64 per cent of the councils' bans were permanent, 24 hours a day/7 days per week (24/7) liquor bans;⁵⁷ while in 2009, 71 per cent of the councils with bans have at least one 24/7 liquor ban area. 58
- 11.45 The areas covered by liquor bans also vary from the central business districts (CBD) only, to far-reaching boundaries. Some boundaries for liquor bans have expanded significantly over time.

- 11.46 At least 80 per cent of people apprehended by police for breach of a liquor ban are prosecuted.⁵⁹ The number of liquor bans in place, and subsequent apprehensions, has increased in recent years. Therefore, while the proportion proceeding to court remains relatively stable, the volume impact on the court between 2005 and 2007/08 is over 2,000 additional cases to be determined, which has an impact for police, court staff (including the Collections Unit) and the judiciary.
- 11.47 Most individuals who are charged with breach of liquor ban and proceed to court plead guilty,⁶⁰ and over half are convicted.⁶¹ The 2005 data showed that a quarter of those charged were discharged without conviction,⁶² while data for 2007/08 showed that only four per cent were discharged without conviction.⁶³ Between five and 10 per cent of cases were withdrawn.⁶⁴ In 2007/08, 10 per cent were withdrawn by leave due to the offender completing police diversion.⁶⁵
- 11.48 Fifty per cent of those prosecuted in 2007/08 were convicted and received a fine as their sanction, while the remainder of those convicted (12 per cent of prosecutions) received a conviction and discharge.⁶⁶ The maximum penalty that can be imposed for a breach of a liquor ban bylaw is \$20,000.⁶⁷ The average penalty imposed in 2004 was \$257.77, which is similar to the penalty for a liquor infringement notice for under those under 18,⁶⁸ but in 2007/08, the average fine imposed for breach of liquor ban was \$231.⁶⁹

Problems and benefits of liquor bans

- 11.49 There are a number of problems with bylaws. Bylaws are less robust legal instruments than statutes. They can be invalidated on the grounds that they are *ultra vires* the empowering Act, contrary to the Bill of Rights Act 1990, unreasonable, or repugnant to the law of New Zealand.
- 11.50 Further, it is difficult for anybody to know with any degree of certainty what the law of New Zealand on this subject is in a particular place, at a particular time. They certainly cannot ascertain it by looking at the New Zealand statute book. The law does require legible notices to be affixed in the public place but it is doubtful how effective these are. Observations by the Law Commission often found it hard to locate or read the notices, especially in the dark.
- 11.51 There is a seemingly remorseless tendency for local authorities to expand the geographical range of their liquor bans, to address perceptions of displacement of drinking to outside the boundaries of the liquor ban.
- 11.52 The process of developing bylaws is expensive, since they have to be advertised and go through a special consultative process. The requirement for signage to be displayed also imposes costs. Havelock North, for example, conservatively estimated their costs of implementing, maintaining and evaluating the liquor ban at \$60,000, with annual operational costs of between \$10,000 and \$15,000.70 These estimates do not take into account the costs of defending challenges to the bylaw in court, which can be substantial.

- 11.53 There is some duplication between the power to prosecute for a breach of the liquor ban and the power to issue a liquor infringement notice for those under 18. At least, in principle, this means that someone under 18 years of age could be charged with both offences and face different consequences.
- 11.54 It is clear that drinking in a public place tends to promote social disorder. But to what degree that will occur depends on the circumstances, the time of day, the location of the drinking and many other factors. Police's data identified that in 2007/08 public places were the place of last drink for 18 per cent (14,838 apprehensions) of apprehensions where an alleged offender consumed alcohol prior to offending.⁷¹ Almost half (47 per cent) of alleged offenders who identified their place of last drink as a public place were assessed as moderately affected by alcohol and a further 13 per cent were extremely affected by alcohol at the time of arrest.⁷² This means that 60 per cent of those apprehended for an offence and who had been drinking in a public place were at the high end of intoxication on the Police's behavioural scale.73
- 11.55 Significant harm and costs result from consumption of alcohol in public places. Alcohol can contribute to perceptions of lack of safety in some areas⁷⁴ and normalise the abuse of alcohol. There are significant costs to councils and ratepayers as a result of litter, vandalism and associated behaviour. Cleaning up CBD areas the morning after is a significant and expensive activity in some towns and cities.
- 11.56 It is obvious that councils find liquor control bylaws essential to maintain order and a sense of amenity, especially in CBDs where there are clusters of licensed premises. An 'alcohol-free zone' is not unique to New Zealand, with the United Kingdom also having an example of such legislation.⁷⁵ The Police regard them as an important tool as well. But there are some enforcement problems. For example, the police must seize the alcohol or a sample and take it back to the station and then, in some instances where a charge is defended, prove that it is alcohol. There are also serious issues about the resources necessary to enforce these laws, taking into account offender transportation and processing, file preparation and the time in having the case finalised in court. Police recorded 9,359 liquor ban offences in 2007/08, and suggest that this is an under-estimate given that in many areas police exercise alternative action including asking the individual to tip the liquor down a drain, or giving the individual a warning.⁷⁶ It is noted that most individuals who are charged with breach of a liquor ban, and whose cases proceed to court, plead guilty.⁷⁷
- 11.57 One alternative is to make it an offence to consume alcohol in any public place. The advantage of such a proposal is that it would be clearer for the public by providing a bright-line rule in a way that liquor ban bylaws do not and cannot do. It would avoid confusion about where and when people can and cannot drink. Since many councils have 24/7 or weekend/evening bans in CBDs, at beaches, carparks and other popular sites, this effectively means that the public cannot drink in these places anyway.

- Prohibiting consumption of alcohol in all public places would mean that some people would be unable to have a drink at a picnic on the beach where such a beach is not currently subject to a liquor ban (although many beaches are). It would also curtail individual freedom for those who drink responsibly in public and do not create disorder. It is possible there would be a strong public reaction against a proposal to make it unlawful to drink in a public place. To overcome these difficulties it may be possible to build into the law some exemptions where a local authority determines that alcohol could be consumed at certain locations or times or events. These exemptions would need to be provided for in the legislation itself. And there would need to be a process for promulgating decisions about them. There are, however, formidable legal design problems with constructing such a law.
- 11.59 The central issue is whether the problems of public order addressed by liquor bans are best addressed by continuing them in the form of bylaws or whether there should be a summary offence that makes it an offence to drink in a public place across New Zealand. Obviously supplying alcohol on occasions in public places can be allowed if a special licence is obtained, under the Sale of Liquor Act, for the sale of liquor, or under a statutory exemption as described above if a suitable regime can be defined.

PUBLIC DRUNKENNESS

- 11.60 The offence of being drunk in a public place, which has been described by an Australian commentator as "one of the more tawdry bits of legal baggage that the British brought to Australia", 78 harks back to 1606, "when the English Parliament passed an Act 'for oppressing the odious and loathsome sin of drunkenness'". 79
- 11.61 New Zealand had the offence of being drunk in a public place at least as far back as section 19 of the Police Offences Act 1884. It remained an offence through the Police Offences Act 1927⁸⁰ until 1981 when it was repealed.⁸¹
- 11.62 What replaced public drunkenness was an amendment to the Alcoholism and Drug Addiction Act 1966 to provide police with the powers to take an intoxicated person found in a public place to that person's home, or if that is not reasonably practicable, to a temporary shelter, or if neither option is available, to a police station.⁸² The section was amended to enable a constable to take the person to a police station when it is not immediately practicable to determine whether the person should be taken home or to the shelter. The offences of disorderly behaviour and offensive behaviour continue to apply.⁸³
- 11.63 One of the reasons the offence of being drunk in a public place was repealed in 1981 was the time, expense and resources expended in processing many drunk people through the courts where only small penalties would be imposed. Members of Parliament of the day were convinced the offence should go. When the Summary Offences Act 1981 was first introduced, the then Minister of Justice, Hon Jim McLay said:84

This provision can be described, at best, only as a clumsy method of achieving a measure of social hygiene. It needlessly takes up the time of the courts, and unnecessarily imposes convictions on those who transgress. Accordingly, public drunkenness of itself and by itself is no longer to be an offence... Other offences that involve something other than mere drunkenness, but of which drunkenness may on certain occasions be a part, and which might, for example, lead to disorderly behaviour, fighting, or the use of indecent language, can still lead to the intervention of the law.

- 11.64 It is relevant to note that during the second reading of the Summary Offences Bill, the Member for Island Bay, Rt Hon Frank O'Flynn QC, decried the absence of detoxification centres. 85 Almost 30 years on, the relative paucity of available detoxification centres or temporary shelters to which individuals can be taken remains an issue.
- 11.65 In chapter 5, we highlighted that 21,263 individuals were detained in custody or taken home in 2007/08.86 These powers to detain reside in section 36 of the Policing Act 2008.87 This is a huge Police resource invested in looking after drunks who cannot safely look after themselves. During submissions on the Police Act Review, a community representative raised the following concerns about the power under the then section 37A of the Alcoholism and Drug Addiction Act 1966:88

While [...] acknowledge that at present the Police are empowered under section 37A of the Alcoholism and Drug Addiction Act to take any person found publicly drunk or debilitated... the final option is being used to excess. This is not a criticism of the Police but of the Health Service that currently does not provide adequate detox care in communities. [...] consider... [this] is an inappropriate use of Police time and resources.

- 11.66 If we look to overseas jurisdictions, Australia has all but removed the offences of public drunkenness. Victoria is the only state that continues to have the offences for public drunkenness,89 with other states and territories in Australia having decriminalised public drunkenness and put in place more welfare-based approaches, like New Zealand. 90 There have been calls over the past decade for Victoria to decriminalise their remaining offences relating to public drunkenness.91
- 11.67 Public drunkenness remains an offence in the United Kingdom with the offences of being "drunk and incapable" 92 and "drunk and disorderly".93
- 11.68 Does New Zealand want to return to having an offence of being drunk in a public place, or are the existing offences in the Summary Offences Act 1981 sufficient? Should this behaviour lead to an individual being fined by way of infringement offence? Or should it remain a welfare issue, where the powers to detain intoxicated people in order to drive them home, take them to a temporary shelter, or, as a last resort, take them to a police station, remain the appropriate powers?

PRODUCT LABELLING AND SERVING SIZES

LABELLING

- 11.69 Labelling requirements for alcohol products are set out in the *Australia New Zealand Food Standards Code*. The code requires that alcoholic beverage containers list the alcohol content and the number of standard drinks in the container. 94 Standard drink labelling provides consumers with more information about alcohol products so that they are better informed when making purchasing decisions. They are also designed to encourage responsible alcohol consumption.
- 11.70 Alcoholic beverages are among only a handful of products not required to show ingredients or a nutritional information panel.⁹⁵ It is unclear whether either of these would affect alcohol consumption, but an argument can be made that alcohol products should have the same ingredient and nutritional information requirements as other food and beverages.
- 11.71 Some countries, including Canada and the United States, require alcoholic beverage containers to provide health warning labels. 96 Food Standards Australia New Zealand is currently assessing whether health advisory labels relating to drinking during pregnancy and high risk (including binge) drinking should be required for alcoholic products in Australia and New Zealand. The following statement in figure 11.1 from Food Standards Australia New Zealand, supplied by the agency to the Law Commission, sets out its role and current work in this area:

FIGURE 11.1

FOOD STANDARDS AUSTRALIA NEW ZEALAND

INTRODUCTION

Food Standards Australia New Zealand (FSANZ) is an independent statutory authority established by the Australian Government under the Food Standards Australia New Zealand Act 1991. An agreement between the Governments of Australia and New Zealand set out the arrangements relating to a joint food standards system.

FSANZ is responsible for the development and maintenance of food standards and other food-related regulatory measures in Australia and New Zealand. All foods produced or imported for retail sale and for catering in Australia and New Zealand are required by law to comply with the Australia New Zealand Food Standards Code (the Code). Due to country-specific requirements, food safety standards, standards for primary products and maximum residue levels for agricultural chemicals are not part of the joint system.

FSANZ is part of a wider food regulatory system for Australia and New Zealand consisting of three parts: food regulation policy development, food standards development and the implementation and enforcement of food standards. Food policy is established by the Australia and New Zealand Food Regulation Ministerial Council (the Food Regulation Ministerial Council) supported by the Food

Regulation Standing Committee. The Food Regulation Ministerial Council comprises Health and Food Ministers from all Australian State and Territory jurisdictions and from the Australian and New Zealand Governments. FSANZ receives policy guidelines from the Food Regulation Ministerial Council and is required to have regard to them when developing standards. The implementation and enforcement of food standards are carried out by the relevant authorities in the Australian jurisdictions and the New Zealand Food Safety Authority.

Food standards can be developed or amended by application from interested parties. Proposals to amend the Code can be raised by FSANZ or initiated on receipt of policy guidelines from the Food Regulation Ministerial Council. The assessment of both applications and proposals involve public consultation.

Food standards are contained within the Code. Part 2.7 of the Code contains standards relating to composition and labelling (including declaration of alcohol by volume and standard drinks labelling) of alcohol products. The Code can be found on line at: www.foodstandards.govt.nz

HEALTH ADVISORY STATEMENTS ON PACKAGED ALCOHOL

In recent times, FSANZ has completed work on one project that involves the labelling of alcoholic beverages with health advisory labels, and is currently working on another in the same general area of interest.

HEALTH ADVISORY STATEMENTS ON PACKAGED ALCOHOL TO HELP CURB ALCOHOL MISUSE

In March 2008, the Council of Australian Governments (COAG) asked the Food Regulation Ministerial Council to request FSANZ to consider mandatory health warnings on packaged alcohol. The request was made concurrently with a request to the Ministerial Council on Drug Strategy to report on a range of options to curb high risk (including binge) drinking. In response to this request, FSANZ commissioned a review on the effectiveness of labelling in relation to high risk drinking, and submitted the review report to the Food Regulation Ministerial Council in May 2009. The Food Regulation Ministerial Council considered the report and agreed to provide the report to the Ministerial Council on Drug Strategy to allow a single and coordinated response to COAG as a part of its consideration of a broad and comprehensive approach to reducing high risk (including binge) drinking.

Application A576 – Labelling of alcoholic beverages with a pregnancy health advisory label (see www.foodstandards.govt.nz).

FSANZ received an application to amend the Code to require pregnancy health advisory statements on the labels of alcoholic beverages from the Alcohol Advisory Council of New Zealand in 2006. An Initial Assessment Report was released for public comment in December 2007 and ninety-nine submissions were received. A commissioned review on the effectiveness of labelling was completed in July 2009. FSANZ is currently developing a Draft Assessment Report for this application.

- 11.72 In response to a previous application for health advisory labels on alcoholic beverage containers (Application 359), the Australia New Zealand Food Authority concluded:97
 - Scientific evidence for the effectiveness of warning statements on alcoholic beverages shows that while warning labels may increase awareness, the increased awareness does not necessarily lead to the desired behavioural changes in 'at-risk' groups. In fact, there is considerable scientific evidence that warning statements may result in an increase in the undesirable behaviour in some 'at risk' groups.
- 11.73 Babor reviewed the evidence of effectiveness of alcoholic beverage container warning labels and found no evidence that exposure to these labels in itself produces a change in drinking behaviour. 98 However, they did find that warning labels have some effects on intentions to change drinking patterns, conversations about drinking, and willingness to intervene with others who are seen as engaging in hazardous drinking, all of which may facilitate the effectiveness of other interventions in reducing alcohol-related harm. They concluded that warning labels could be effective if combined with other strategies.
- 11.74 In regard to labelling, commercial free-speech issues of the type we have already analysed in chapter 10 concerning advertising also exist.
- 11.75 In light of the work going on in FSANZ and the width of its jurisdiction over these matters, there seems to be little point in the Law Commission taking up the issue of labelling of alcohol products.

SERVING SIZES

- 11.76 The United Kingdom Government has a significant and substantial strategy in the course of development, part of which relates to serving sizes and related issues.⁹⁹ This is a joint project between the Department of Health, the Home Office, the Department of Education and Skills, and the Department of Culture, Media and Sport in the United Kingdom. The aim is to promote sensible drinking.
- 11.77 The United Kingdom Government published an alcohol harm-reduction strategy for England in 2004. The key elements of that were:
 - · better education and communication;
 - · improving health and treatment services;
 - · combating alcohol-related crime and disorder; and
 - · working with the alcohol industry.

There are many facets of the strategy not relevant to the issue being discussed here.

11.78 In May 2009 the Home Office published an extensive consultation document on highly specific mandatory licensing conditions. ¹⁰⁰ It is worth summarising the mandatory licensing conditions, including Food Safety Act requirements, that are being contemplated: ¹⁰¹

- Banning irresponsible promotions, such as "All you can drink for £10" or speed drinking competitions. The proposal is to ban any promotion that encourages 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.
- Banning alcohol from being dispensed directly into the mouth of any customer, a practice which encourages the type of excessive and irresponsible drinking that could increase the risk of alcohol-related crime and disorder, and risk to public safety.
- Ensuring that smaller measures (not smaller glass sizes) of alcohol are made available to customers to help them manage their alcohol consumption and reduce the risk of alcohol-related crime and disorder.
- Ensuring that free tap water is available to customers to help them manage their alcohol consumption and reduce the risk of alcohol-related crime and disorder.
- Seeking to ensure that online or mail-order alcohol retailers have robust ageverification systems in place to prevent underage sales.
- Ensuring there is point-of-sale information visible to all customers of licensed premises about the unit content of a representative sample of drinks, and in the off-trade there is further information about health guidelines and risks.
- 11.79 The enabling authority for imposing mandatory conditions is contained in the Policing and Crime Bill at present before the United Kingdom Parliament. 102 The Bill provides the legal authority necessary to impose up to nine mandatory conditions by subordinate legislation.
- 11.80 One of the conditions is that the responsible person shall ensure that, if sold for consumption on the premises, alcoholic drinks specified must be available and offered for sale or supply in the measures stated. These measures are based on the standard quantities specified in the existing Weights and Measures legislation:
 - · beer, lager or cider: half pints;
 - · gin, rum, vodka or whiskey: 25 ml or 35 ml; and
 - · still wine in a glass: 125 ml (except where the wine is only sold by the bottle).
- 11.81 The commentary says this condition would stop the practice of offering large glasses of wine, double measures of spirits or pints of beer or cider. It would mean greater consumer choice with deciding how much they wish to drink. It would not prevent other measures being offered, such as pints of beer, lager or cider, or 250 ml of still wine.
- 11.82 At the time of writing, it is not clear which of the mandatory conditions upon which consultation is being conducted will be chosen, but from the point of view of this review, developments in the United Kingdom do raise the question of whether or not there should be more attention in this country to the issue of serving sizes.

- 11.83 New Zealand currently has no requirement for standard serving sizes for alcoholic beverages, although in on-licences, spirits may not be served in a drinking vessel of a capacity exceeding 500 millilitres. Currently the perserve volume of alcoholic beverages differs markedly across different onlicence premises.
- 11.84 There is a case for providing a regulatory power to require licensed premises to offer standard measures of wine, beer and spirits, as this would help people to better understand the actual amount of alcohol they are drinking and to moderate their consumption accordingly. The harm-reduction benefits likely to be gained from a standard serving size would need to be balanced against the costs this would impose on the industry, however.

TRANSPORT

- 11.85 While the blood alcohol limits for driving are not governed by the Sale of Liquor Act, they are closely related to it.
- 11.86 New Zealand's legal limits for blood alcohol content (BAC) and equivalent breath measures are set in the Land Transport Act 1989. The present law provides for a blood alcohol limit of 80 milligrams of alcohol per 100 millilitres of blood (often referred to as .08) and a youth limit for drivers under 20 years of age of 30 milligrams per 100 millilitres of blood. 103 It is an offence to exceed these limits. 104 The blood alcohol limits only apply to vehicles on roads.
- 11.87 The New Zealand .08 limit is among the highest limits internationally, although the same limit applies in the United Kingdom. Many jurisdictions, including Australia and Europe, have legal limits of .05 or less.
- 11.88 Many published studies show that the risk of being involved in a crash increases as blood alcohol level increases. While there has been considerable reduction in alcohol-related fatal crashes since the 1990s, general road safety progress has stalled in recent years. Both the proportion of total crashes that are alcohol-related, and the number of alcohol-related crashes has risen for both fatal crashes and injury crashes.
- 11.89 In 2007 there were 128 deaths from crashes with driver alcohol or drugs as causal factor, 30 per cent of New Zealand's total road toll. Over 83 per cent of the alcohol or drug affected drivers in fatal crashes are male. Many more males are convicted for drink driving than females, however, the conviction numbers for women have increased sharply over the last four years. The 20 to 24 and 25 to 29 year-old age groups were the most likely to be affected by alcohol.
- 11.90 Reducing the BAC limits for both age groups is likely to reduce the risk of alcohol-related vehicle crashes for *all* drivers (that is, those under the legal limit as well as those over it) on the basis that the lower limit would encourage people to drink less before they drive. ¹⁰⁵ International experience has consistently demonstrated the safety benefits associated with limits of .05 or lower. Queensland, New South Wales, and the Australian Capital Territory all experienced fewer fatal and non-fatal vehicle crashes following a reduction from a .08 limit to a .05 limit. ¹⁰⁶

- 11.91 It has been suggested that most repeat drink drivers will not adhere to a reduced limit any more than they would to the current limit. Similarly, it has been suggested that those drivers who currently drive a vehicle while in the .05 to .08 band pose a much smaller road risk than those people who drive above the current limit and, therefore, that the harm reduction gain from a reduced BAC limit would be relatively minor.
- 11.92 Other harm reduction mechanisms outside drink driving laws may also be considered desirable in respect of motor vehicles. For example, legislation enabling the use of vehicle ignition interlocks has been introduced in the USA, Canada, Australia, Sweden, Finland and parts of France.¹⁰⁷ Vehicle interlocks may be considered a useful mechanism to help reduce alcohol-related vehicle accidents, particularly in the case of recidivist drink drivers. The cost and effectiveness of interlock devices would need to be considered in some detail. Vehicle 'open container' laws are another possibility. 108 These laws are common in the United States and are designed to discourage driving under the influence of alcohol and to minimise driver distraction. Any shift to an open container law in this country would need to be considered alongside other laws dealing with the consumption of alcohol in public places.
- 11.93 Most Australian states have generalised alcohol offences for operating water-based vessels while under the influence of alcohol or drugs. Some of these states have specified blood alcohol limits for operators of recreational boats that are the equivalent of blood alcohol limits for driving a vehicle on the road.¹⁰⁹ A Maritime New Zealand review published last year noted that alcohol was a factor in 18 per cent of recreational boating fatalities between 2000 and 2006. 110 Both Maritime New Zealand and Yachting New Zealand have recommended set blood alcohol limits for boat skippers. The benefits and practicalities of such laws being introduced in New Zealand will need to be examined closely.

TREATMENT

- 11.94 During the course of the Law Commission's initial inquiries, we have become concerned at the lack of policies, facilities and programmes around the country in relation to assessment and treatment for people with alcohol problems. The District Court Judges have made clear to the Law Commission their grave concerns about the absence of assessment facilities and programmes to which they can refer people who appear in front of them.
- 11.95 While the adequacy of treatment services is not in itself a legal matter, it is a key problem-limitation measure that cannot be divorced from any discussion about reducing alcohol-related harm. Gaps in treatment availability have been identified as a problem for people with alcohol-use disorders coming into contact with the courts, corrections system, social welfare system, primary care and emergency department services.
- 11.96 Specialist treatment can be effective for people with alcohol-use disorders. 111 However, because specialist treatment is comparatively resource intensive it is available only to the small proportion of people with a relatively severe disorder for whom this level of treatment can be effective.

- There is good evidence that brief interventions can be highly effective and cost-effective for treating less severe alcohol-use problems. ¹¹² Brief interventions are short treatment sessions that aim to assist change in the behaviour of individuals with regard to their alcohol use before the onset of significant health and social consequences. They can be effective in changing patterns of alcohol consumption and reducing alcohol-related problems, but they are underutilised in New Zealand. ¹¹³ There is scope for increased use of brief interventions, which can be delivered in primary care or a range of community settings. For example, a court referral for screening and brief intervention could be useful in cases where offending was linked to alcohol use but the offender may not be dependent and requiring specialist services. Ambulance services, emergency departments and police who deal with people for alcohol-related matters could refer those people to a health professional or other trained staff for screening and brief intervention.
- 11.98 A major conflict seems to be that sectors differ in their desired outcomes. Most treatment is provided by the health sector, so is prioritised based on the severity of the disorder as an indicator of need for treatment. In contrast, the justice sector has an interest in reducing reoffending, and would like to see more treatment available for people whose offending is linked with their use of alcohol. These people might not be a high priority for treatment according to the health sector because their actual disorder might be relatively minor.
- 11.99 Most of the policy suggestions to improve treatment would require additional government investment, possibly from multiple sectors. One of the major barriers to increasing treatment provision is the shortage of skilled practitioners, both specialist addiction treatment practitioners and non-specialist professionals with the capability to provide lower-level treatment services. 114 Workforce development for the addiction treatment sector has been identified as an area of need, and is being addressed through existing strategies. 115 Workforce limitations could be mitigated in part by increasing the use of electronic or webbased brief interventions, which are known to be well received and effective in some settings. 116 This is a new area of research that would benefit from further investigation because it has the potential to be highly cost effective.
- 11.100 What is needed to address the problems with access to treatment falls within the Health Portfolio and cannot be the subject of detailed recommendations by the Law Commission. But the Law Commission has reached the conclusion from those aspects of the problem that we have studied that the following measures may be needed:
 - Provide centres for temporary supervision for individuals who are not charged with an offence but pose a significant concern to their own or others' safety or health.
 - Require the need for alcohol and other drug assessment and treatment to be taken into account during sentencing in cases where alcohol and other drugs may have contributed to the offending.
 - Develop the workforce to ensure assessment, referral and brief interventions can be delivered by appropriate professionals across sectors (for example, primary care, mental health, emergency departments, justice, corrections, education, Work and Income, ACC).

- Investigate the range of alcohol-specific treatment interventions provided, with a view to determining gap areas (such as alcohol detoxification and nationally consistent drink driving group interventions) with the potential to increase funding via the alcohol levy managed through ALAC.
- · Fund primary care providers to deliver screening, brief interventions and referral to specialist treatment.
- · Investigate the feasibility of using electronic screening and brief interventions in a range of settings.
- · Monitor the prevalence of alcohol-use disorders and the delivery of screening, brief intervention and referrals in primary care and Emergency Departments.

11.101 The Alcoholism and Drug Addiction Act 1966 is also currently under review.

CHAPTER 11 ENDNOTES

- Sale of Liquor Act 1989, s 154A Promoting the excessive consumption of alcohol; s 160 Purchasing liquor for minors; s 161 Employment of minors; s 162 Purchasing of liquor by minors; s 163 Minors in restricted area or supervised areas; s 164 Allowing minors to be in restricted areas; s 168 Allowing drunkenness or disorderly conduct on licensed premises; s 169 Sales of spirits otherwise than in a glass; s 170 Being on licensed premises outside licensing hours; s 171 Allowing person on licensed premises outside licensing hours; s 172 Making false representation to licensees, etc; s 172A Licensee's offences in respect of manager.
- 2 Sale of Liquor Act 1989, s 151 Selling liquor without a licence; s 152 Allowing unlicensed premises to be used for sale of liquor.
- 3 Sale of Liquor Act 1989, s 155 Selling liquor to minors; s 165 Unauthorised sale or supply; s 166 Sale or supply of liquor to an intoxicated person; s 167 Allowing person to become intoxicated.
- 4 Land Transport Act 1998, s 34(1)(b).
- **5** Royal Commission on Courts Report (Wellington, 1978) paras 435-447.
- 6 Sale of Liquor Act 1989, s 162C.
- **7** Sale of Liquor Act 1989, s 163.
- 8 Sale of Liquor Act 1989, s 162.
- 9 Sale of Liquor Act, ss 132-133.
- **10** Sale of Liquor Act 1989, s 132A.
- 11 R v Metropolitan Police Commissioner, Ex Parte Blackburn [1968] 1 All ER 762.
- **12** Attorney-General v Hewitt [2000] 2 NZLR 110.
- 13 New Zealand Police *National Alcohol Assessment* (Wellington, April 2009) 20 [*National Alcohol Assessment*] (available at http://www.police.govt.nz).
- **14** Sale of Liquor Act 1989, s 115.
- **15** Sale of Liquor Act 1989, s 115.
- **16** Sale of Liquor Act 1989, s 116.
- **17** Sale of Liquor Act 1989, s 117A.
- 18 Sale of Liquor Act 1989, s 117A and Sale of Liquor Regulations 1990, reg 21AA.
- **19** Sale of Liquor Regulations 1990, reg 21A.
- A leading Auckland provider, Hospitality Management Consultants, quotes course fees (including provision of a copy of the Sale of Liquor Act 1989 (\$20.90) and the liquor controller qualification application fee) of \$245.00 (available at http://www.barmanager.co.nz/training-course.html).
- 21 Commander Simon O'Brien, Metropolitan Police, London to Sir Geoffrey Palmer, Law Commission (1 June 2009), meeting.
- 22 Kathryn Graham and Ross Homel *Raising the Bar Preventing Aggression in and Around Bars, Pubs and Clubs* (Willan Publishing, Devon, 2008).
- 23 Alcohol Advisory Council of New Zealand Evaluation of the Christchurch City One Way Door Intervention: Final Report (ALAC, Wellington, 2008) (available at http://www.alac.org.nz/DBTextworks/PDF/One_Way_Door.pdf).
- **24** Liquor Act 2007 (NSW), Sch 4.
- 25 Graham and Homel, above n 22, 251.
- **26** Graham and Homel, above n 22, 251.
- 27 Graham and Homel, above n 22, 251.
- 28 New Zealand Police Strategic Plan to 2010 (Wellington, 2006).
- 29 New Zealand Police, generic position description for Liquor Licensing Constable.

- 30 Sale of Liquor Act 1989, s 175.
- 31 Sale of Liquor Act 1989, ss 160-175.
- 32 National Alcohol Assessment, above n 13, 28.
- 33 National Alcohol Assessment, above n 13, 28.
- 34 Information on the collection of Police's Alco-link data and its use is outlined in chapter 5.
- 35 National Alcohol Assessment, above n 13, 29.
- National Alcohol Assessment, above n 13, 30. 36
- 37 National Alcohol Assessment, above n 13, 31.
- 38 National Alcohol Assessment, above n 13, 31-32.
- 39 Sale of Liquor Act 1989, s 131.
- 40 Sale of Liquor Act 1989, s 175.
- 41 Sale of Liquor Act 1989, ss 173-174.
- 42 Sale of Liquor Act 1989, s 173.
- 43 Liquor Act 2007 (NSW), s 82.
- 44 Ministry of Justice Policy Framework for New Infringement Schemes (2008) 5, para 21. (available at http://www.justice.govt.nz/pubs/reports/2008/infringement-guidelines/index.html).
- 45 Sale of Liquor Act 1989, s 132A.
- Summary Offences Act 1981, s 38(3) infringement offence. 46
- 47 Local Government Act 2002, s 147.
- National Alcohol Assessment, above n 13, 32. 48
- 49 Local Government Act 2002, s 147(1):
 - public place—(a) means a place—
 - (i) that is under the control of the territorial authority; and
 - (ii) that is open to, or being used by, the public, whether or not there is a charge for admission; and
 - (b) includes—
 - (i) a road, whether or not the road is under the control of a territorial authority; and
 - (ii) any part of a public place.
- 50 Local Government Act 2002, s 147(3):

A bylaw made under this section does not prohibit, in the case of liquor in an unopened bottle or other unopened container,—

- (a) the transport of that liquor from premises that adjoin a public place during any period when, under the Sale of Liquor Act 1989, it is lawful to sell liquor on those premises for consumption off the premises, provided the liquor is promptly removed from the public place:
- (b) the transport of that liquor from outside a public place for delivery to premises that adjoin the public place, provided the premises are licensed for the sale of liquor under the Sale of Liquor Act 1989:
- (c) the transport of that liquor from outside a public place to premises that adjoin a public place—
- (i) by, or for delivery to, a resident of those premises or by his or her bona fide visitors; or
- (ii) from those premises to a place outside the public place by a resident of those premises, provided the liquor is promptly removed from the public place.
- Local Government Act 2002, s 169.

- **52** Local Government Act 2002, s 169(2)(a)(ii).
- **53** Local Government Act 2002, s 169(2)(b).
- **54** Local Government Act 2002, s 169(3).
- 55 Local Government Act 2002, s 169(2)(c) and (d).
- Department of Internal Affairs & Buddle Findlay Report on Liquor Control Bylaws (August 2005) 16 [Report on Liquor Control Bylaws].
- **57** Report on Liquor Control Bylaws, above n 56, 16.
- Note that 4 district councils' hours/days combination could not be ascertained for the purpose of the stocktake so were not counted (April 2009).
- **59** Corroborated by 2005 and 2007/08 data: *Report on Liquor Control Bylaws*, above n 56, 17 (80%), and data provided to the Law Commission by the Ministry of Justice (8 June 2009) email (82% for 2007/08).
- Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email, showed that over the past five fiscal years between 86 and 91 per cent of individuals pleaded guilty.
- Corroborated by 2005 and 2007/08 data: Report on Liquor Control Bylaws, above n 56, 17 (54%), and data provided to the Law Commission by the Ministry of Justice (8 June 2009), email, (62% for 2007/08).
- Report on Liquor Control Bylaws, above n 56, 17.
- Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- Corroborated by 2005 and 2007/08 data: Report on Liquor Control Bylaws, above n 56, 17, and data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- **65** Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- **67** Local Government Act 2002, s 242(4).
- 68 Report on Liquor Control Bylaws, above n 56, 18.
- 69 Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email.
- 70 Hastings District Council Havelock North Liquor Ban An Impact and Outcome Evaluation (2004).
- 71 National Alcohol Assessment, above n 13, 69.
- 72 National Alcohol Assessment, above n 13, 70.
- 73 National Alcohol Assessment, above n 13, Appendix D, 103.
- 74 Nielsen Research "Quality of Life Survey 2008 National Report" (Wellington, 2009) 6. (available at http://www.qualityoflifeproject.govt.nz/pdfs/Quality_of_Life_2008.pdf).
- 75 Criminal Justice and Police Act 2001 (UK), s 13 gave local authorities the power to designate public areas through the introduction of a designated public place order, making it an offence to drink alcohol in such areas after being asked not to do so.
- 76 National Alcohol Assessment, above n 13, 20.
- 77 Data provided by the Ministry of Justice to the Law Commission (8 June 2009), email, showed that over the past five fiscal years between 86 and 91 per cent of individuals pleaded guilty.
- 78 A Cornish "Public Drunkenness Laws in Australia" (1988) 2 Aboriginal Law Bulletin 4.
- 79 Tom Roper (30 November 1990) Parliamentary Debates (Victoria), Legislative Assembly 2911, quoted in Desmond Lane "Public Drunkenness in Victoria" (1991) 2 Aboriginal Law Bulletin 21.

- 80 Police Offences Act 1927, s 41 read: Every person found drunk in any public place is liable:
 - (a) to a fine not exceeding \$20:
 - (b) repealed
 - (c) on a third conviction with a period of 6 months to imprisonment for any term not exceeding 14 days, or, at the discretion of the convicting court, to a fine not exceeding \$20...; and
 - (d) on any subsequent conviction within such period of 6 months, to imprisonment for any term not exceeding 3 months.
- 81 Summary Offences Act 1981.
- 82 Alcoholism and Drug Addiction Act 1966, s 37A, subsequently repealed from 1 September 2008 when the substantive provision was included as section 36 of the Policing Act 2008.
- 83 Summary Offences Act 1981, ss 3-4.
- (16 June 1981) 437 NZPD 420. 84
- 85 (15 October 1981) 442 NZPD 4180.
- National Alcohol Assessment, above n 13, 26. 86
- 87 Policing Act 2008, s 36 Care and protection of intoxicated people:
 - (1) A constable who finds a person intoxicated in a public place, or intoxicated while trespassing on private property, may detain and take the person into custody if-
 - (a) the constable reasonably believes that the person is—
 - (i) incapable of protecting himself or herself from physical harm; or
 - (ii) likely to cause physical harm to another person; or
 - (iii) likely to cause significant damage to any property; and
 - (b) the constable is satisfied it is not reasonably practicable to provide for the person's care and protection by—
 - (i) taking the person to his or her place of residence; or
 - (ii) taking the person to a temporary shelter.
 - (2) A person detained under subsection (1)—
 - (a) must be released as soon as the person ceases to be intoxicated:
 - (b) must not be detained longer than 12 hours after the person is first detained, unless a health practitioner recommends that the person be further detained for a period not exceeding 12 hours.
 - (3) A health practitioner must not recommend the further detention of a person detained under subsection
 - (1) unless the health practitioner satisfies himself or herself that—
 - (a) the person remains intoxicated and is incapable of protecting himself or herself from physical harm; and
 - (b) the person does not have health needs that may require medical attention; and
 - (c) it is not reasonably practicable to provide for the person's continuing care and protection by—
 - (i) taking the person to his or her place of residence; or
 - (ii) taking the person to a temporary shelter.
 - (4) In this section,—

intoxicated means observably affected by alcohol, other drugs, or substances to such a degree that speech, balance, co-ordination, or behaviour is clearly impaired

temporary shelter means a place (other than a place operated by the Police) that is capable of providing for the care and protection of an intoxicated person.

(5) Section 31 of the Crimes Act 1961 applies in respect of the power to detain and take a person into custody under this section as if the power were a power of arrest.

Compare: 1966 No 97 ss 37A, 38; 1992 No 46 s 122A.

- 88 New Zealand Police *Public Views on Policing: An Overview of Submissions on Policing Directions in New Zealand for the 21st Century* (2007) (available at http://www.policeact.govt.nz).
- 89 Summary Offences Act 1966 (Vic), s 13 drunk in a public place (fine 1 penalty unit; allowing for detention by police); s 14 offence of drunk and disorderly (penalty: for a first offence 1 penalty unit or imprisonment for three days; for a second or subsequent offence 5 penalty units or imprisonment for one month).
- **90** Richard Milford "The Decriminalisation of Public Drunkenness in Western Australia" (1991) 2 Aboriginal Law Bulletin 18, 42.
- **91** Royal Commission into Aboriginal Deaths in Custody *National Report* (vol 3, 1991) 6, cited in Lane, above n 79.
- 92 Licensing Act 1872 (UK), s 12.
- 93 Criminal Justice Act 1967 (UK), s 91.
- "Standard 2.7.1: Labelling of alcoholic beverages and food containing alcohol" in Food Standards Australia New Zealand Australia New Zealand Food Standards Code (Canberra, 2009).
- "Standard 1.2.4: Labelling of ingredients" and "Standard 1.2.8: Nutrition information requirements" in Food Standards Australia New Zealand, above n 94.
- **96** Alcohol HealthWatch *Alcohol Health and Safety Advisory Statements (Warning Labels) in New Zealand* (Auckland, 2003) 7-8.
- 97 Australia New Zealand Food Authority Full Assessment Report and Regulation Impact Assessment. Subject A359 – Labelling of Alcoholic Beverages (2000) 1 (available at http://www.foodstandards.gov.au). The Australia New Zealand Food Authority is the name by which Food Standards Australia New Zealand was previously known.
- 98 T Babor and others Alcohol: No Ordinary Commodity (OUP, New York, 2003) 193.
- 99 Her Majesty's Government Safe. Sensible. Social. The Next Steps in the National Alcohol Strategy (2007).
- 100 Home Office Safe. Sensible. Social. Selling Alcohol Responsibly: A Consultation on the New Code of Practice for Alcohol Retailers (May 2009) [Selling Alcohol Responsibly].
- 101 Selling Alcohol Responsibly, above n 100, 19.
- 102 Policing and Crime Bill (available at http://www.parliament.uk).
- **103** Land Transport Act 1998, s 11.
- **104** Land Transport Act 1998, ss 56-57.
- 105 Bill Frith and Grant Strachan "Road Safety Impact of Establishing Blood Alcohol Concentration Levels at 0.05" in Road Safety Handbook (vol 1, Austroads, Sydney, 2002) 30.
- J Fell and R Voas "The Effectiveness of Reducing Illegal Blood Alcohol Concentration (BAC) Limits for Driving: Evidence for Lowering the Limit to .05 BAC" (2006) 37 Journal of Safety Research 233, 238.
- A Clayton and D Beirness A Review of International Evidence on the Use of Alcohol Ignition Interlocks in Drink-Drive Offences (Road Safety Research Report 89, Department for Transport, London, 2008). A vehicle ignition interlock is a small, hand-held, breath-testing device, wired to the ignition system of a vehicle. The driver must blow into the interlock before attempting to start the vehicle. If the driver's breath alcohol content is higher than the pre-set level, the vehicle will not start.
- **108** Open container laws prohibit drivers or passengers from possessing or drinking from an open alcohol vessel when inside a vehicle.
- 109 See generally S Diplock and K Jamrozik "Legislative and Regulatory Measures for Preventing Alcohol-Related Drownings and Near Drownings" (2006) 30 Australian and New Zealand Journal of Public Health 314.
- 110 Maritime New Zealand *Boating Safety Strategy: 2007 Review of the New Zealand Pleasure Boat Strategy* (compiled for the National Pleasure Boat Safety Forum, Wellington, 2008) 6.
- 111 Babor and others, above n 98, 213.

- **112** Babor and others, above n 98, 212.
- 113 J Hosking, S Ameratunga, C Bullen, I Civil, A Ng and A Rodgers "Screening and Intervention for Alcohol Problems Among Patients Admitted Following Unintentional Injury: A Missed Opportunity?" (2007) 120 New Zealand Medical Journal, 2417; J Pulford, R McCormick, A Wheeler, P Firkin, I Scott and G Robinson "Alcohol Assessment: The Practice, Knowledge, and Attitudes of Staff Working in the General Medical Wards of a Large Metropolitan Hospital" (2007) 120 New Zealand Medical Journal 2608.
- 114 National Committee for Addiction Treatment Investing in Addiction Treatment: A Resource for Funders, Planners, Purchasers and Policy Makers (Christchurch, 2008) 3-4, 16.
- 115 Minister of Health Te Kökiri: The Mental Health and Addiction Action Plan 2006–2015 (Ministry of Health, Wellington, 2006) 2.
- 116 K Kypri, J Langley, J Saunders, M Cashell-Smith, and P Herbison "Randomized Controlled Trial of Web-Based Alcohol Screening and Brief Intervention in Primary Care" (2008) 168 Archives of Internal Medicine 530.



SOME PRELIMINARY IDEAS ON REFORM

It is the Commission's firm view that the whole Act should be redrafted from the beginning and not be made the subject of a further amending Act. That is the best way to secure a clear and coherent statute and to minimise complexity.

TOWARDS A NEW FRAMEWORK FOR REGULATING LIQUOR?

CHAPTER 12

INTRODUCTION

- 12.1 The purpose of this chapter is to bring together some preliminary ideas as to how a package of changes to New Zealand's liquor law could be framed. It is based on the material that is analysed in Part II of this report, bearing in mind the scope of the problem set out in Part I.
- 12.2 The approach here is both high level and tentative. Its development will depend upon submissions and further analysis. The Law Commission remains open minded concerning a difficult and controversial set of choices.

PRINCIPLES

- 12.3 The Law Commission has fashioned a set of principles to guide this project. They are:
 - (a) People in New Zealand live in a free and democratic society. They are subject only to such limitations on their freedom as can be justified in a free and democratic society. They have liberty to behave as they choose as long as their actions are not contrary to law and respect the rights of others. Public policy decisions that are made to restrict activity have to be justified by strong arguments that it is in the public interest that individuals and corporations do not exercise their freedom in a particular way.
 - (b) Cultures differ markedly in their attitude to liquor. New Zealand law has to deal with New Zealand conditions. But the law cannot bear all the responsibility for harmful use of alcohol. It is a matter of societal attitudes, education and parenting, together with a range of non-legislative government and community actions. What is required is an integrated approach.
 - (c) The maintenance of law and order and health and well-being are adversely impacted by the harmful consumption of liquor, and this imposes costs on families, government agencies and New Zealand societies, as well as individuals. The reduction of these harms must be the prime policy target.
 - (d) The interests of manufacturers, producers, sellers and consumers of alcohol products need to be reflected in the law. Regulation should be proportionate to the mischief sought to be remedied.

THE HARM

- 12.4 The catalogue of harm and social disorder analysed in Part I of this report seems to the Law Commission to call for measures to curb the harm. These measures should go beyond what is being achieved by the existing law. Designing a suite of measures that will target the harm without damaging the interests of the reasonable drinker poses no easy challenge. No law can save society from all the adverse consequences of consuming liquor. History plainly proves that prohibition on the production and sale of alcohol products does not work. Furthermore, individuals are responsible for their own actions. But New Zealanders have a collective societal interest in minimising alcohol-related harm.
- 12.5 The evidence of the ravages of alcohol is all around us. The submission supplied to the Law Commission by the District Court Judges should be sufficient to alert the community to the nature of the problem. The contribution that drinking makes to criminal offending is clear and palpable. What the Police have recorded about their compelling need to concentrate large resources on alcohol policing should be of grave concern to those who value a civilised society. We are in danger of losing our dignity as a society on the basis of some of the behaviours recorded in this report.
- 12.6 The health risks associated with even moderate alcohol consumption are probably not well known to members of the public. Those dangers need to be more widely appreciated. Much of the harm resulting from excessive use of

alcohol is easily preventable by people themselves. But they need to know the harm they are doing to themselves. Moderate drinkers comfort themselves perhaps with the thought that their moderation will avoid harm. They may even think they are doing themselves some good from a health point of view. The research to justify that optimistic view is shaky, despite the publicity it has had. And how many New Zealanders are fully informed about the carcinogenic qualities of alcohol?

12.7 If the facts and research satisfy us that some further regulation is warranted, it is necessary to weigh up what is at stake on the other side. It is important that additional regulation does not unduly inhibit the ability of the liquor industry to contribute to further economic growth, or impose costs that are not in proportion to the harm being mitigated. Therefore, the impacts of regulation have to be carefully weighed to ensure that any framework for regulation is balanced and will achieve its aims and keep additional compliance costs to a minimum. Such a system of regulation has to be carefully constructed both in regard to its individual items and to ensure that the package as a whole achieves balance.

OBJECT OF THE LAW

- 12.8 A statute enacted by the Parliament must have an object. The greater the precision with which the object is specified, the better prospect the statute has of achieving its purpose. The 1989 Act sets out its object in section 4, which is broadly to contribute to the "reduction of liquor abuse". While that is an important aim, the Commission considers that the object provision should state the Act's objects with greater specificity. The object section should state that it is to establish a system for the sale, supply and consumption of liquor for the benefit of the community as a whole, and in particular to:
 - (a) Minimise crime and disorder;
 - (b) Promote public safety;
 - (c) Minimise public nuisance;
 - (d) Protect and improve public health;
 - (e) Protect families and children from harm;
 - (f) Minimise the impact of harmful use of liquor on state agencies such as Police and the health system;
 - (g) Encourage responsible attitudes towards the promotion, sale, supply and consumption of liquor;
 - (h) Ensure that the liquor industry develops and operates in a way that is consistent with the needs and aspirations of the community;
 - (i) Ensure so far as practicable that the supply of liquor contributes to and does not detract from the amenity of community life.

COMPLETE NEW ACT OF PARLIAMENT

- 12.9 The existing Sale of Liquor Act is a complex Act of more than 250 sections. It covers 178 pages of the statute book. It has been amended since 1989 by Sale of Liquor Amendment Acts on 12 occasions, disregarding consequential amendments from other statutes. This is an Act that is used by many people that are not legally qualified, such as publicans, bar managers, local authority officers, and Police. The law needs to be made as clear and accessible as possible.
- 12.10 Acts that are heavily amended on several occasions easily lose their coherence and their accessibility. It seems likely, as a result of the Law Commission's review, that substantial changes will be required to the Sale of Liquor Act. It is the Commission's firm view that the whole Act should be redrafted from the beginning and not be made the subject of a further amending Act. That is the best way to secure a clear and coherent statute and to minimise complexity.
- 12.11 The strategies for dealing with minimisation of harm fall into three categories:
 - · Supply controls;
 - · Demand reduction;
 - Problem limitation.

SUPPLY **CONTROLS**

12.12 The fundamental supply control in New Zealand is the Sale of Liquor Act 1989. This sets out a licensing system. Licensing is at the heavy handed end of the spectrum of regulatory tools available. Nevertheless licensing systems can themselves be more or less demanding. The New Zealand Act appears to the Commission to be sound as far as it goes. The issue is whether it goes far enough. More requirements could be inserted within it to catch a wider range of harm.

Four licences

12.13 We favour leaving the basic system as it is with four types of licences: on-licences, off-licences, club licences and special licences. We do believe there is a strong case for removing the existing exemption from the need to obtain a licence for some or all of the following: chartered clubs, police canteens, defence establishments, fire-fighters' facilities and Parliament. If the basic rule is that to sell alcohol it is necessary to have a licence, then the law should apply equally to all.

Wider grounds upon which to refuse licences

- 12.14 The Commission does not favour a return to the "necessary or desirable" test contained in the 1962 Act for the granting of a new licence, or any similar restriction. It would be too inflexible and would create an artificial value in a licence that would be unnecessarily restrictive. But the Commission does favour allowing the Liquor Licensing Authority to refuse a licence on wider grounds than permitted at present, for example, on one or more of the following grounds:
 - (a) the overall social impact of the licence is likely to be detrimental to the wellbeing of the local or broader community, taking into account the proposed site and nature of the premises and the health and social characteristics of the local population and the risks applicable;

- (b) granting the licence would be inconsistent with the object of the Act;
- (c) the amenity, quiet or good order of the locality would be lessened by the granting of the licence;
- (d) the licence would be inconsistent with the relevant local alcohol policy.
- Submissions on the precise legal text to be recommended are welcome.
- 12.15 Consideration also needs to be given to widening the grounds upon which a licence can be cancelled.
- 12.16 Under the existing law there is inadequate provision for people who live in the area to have their views be given due regard in the granting of a licence.

Types of off-licence premises

- 12.17 The statutory provisions concerning the types of premises in respect of which off-licences may be granted are difficult to understand and the application of the law in this area is consequently variable. In many instances the distinction between a grocery store, a dairy and a convenience store is hard to discern. Restricting off-licences in respect of delicatessens is also hard to justify from a harm minimisation perspective.
- 12.18 Prescription around the nature or size of the premises invites making the decisions technical and arbitrary when wider factors are more relevant. What is required is a proper risk analysis in each case. Where an application meets the general licence criteria, that should be sufficient. If the Liquor Licensing Authority had discretion to refuse licences on more grounds than at present, there would be less need for tight prescription as to the type of premises. We do, however, favour keeping the existing restrictions for service stations.

Conditions of licences

12.19 We think it would be useful to allow the Liquor Licensing Authority to impose any reasonable condition on the licence it considers appropriate for the purpose of reducing liquor-related harm. These conditions could include such matters as promotional activities, discounted promotions, and ensuring availability of free tap water.

The regulator

- 12.20 We favour retaining the Liquor Licensing Authority (Licensing Authority) as the specialist regulator but giving it a range of enhanced powers and functions that will enable it to be more proactive in enforcing the law and furthering the object of the Act. The Licensing Authority needs to have the flexibility to deal with new situations as they arise. Among the measures we view as useful would be additional powers to:
 - · Monitor and report on trends;
 - · Make rulings on aspects of sale of alcohol policy, such as promotions, without requiring a specific change in the law;
 - · Award costs:

- · Impose fines on licensees, managers and staff of licensed premises for breaches of any provisions of the Act;
- Enhance the flow of data and information to the Licensing Authority from inspectors, Police, District Licensing Agencies (DLAs), medical officers of health, and licensees;
- · Analyse the use of licences and require a regular and routine flow of information from DLAs;
- · Impose quality control on DLA output and compliance.
- 12.21 The Authority needs to be presided over by a District Court Judge, and its resource base needs to be strengthened. The Commission does not favour giving the jurisdiction to the District Court because the wider range of functions we envisage can better be discharged by a Tribunal. The Licensing Authority will require a modest increase in administrative support to perform its enhanced function.

District Licensing Agencies

- 12.22 In the Commission's view the powers and functions of the DLAs need to be restructured and enhanced. The DLAs' performance around the country is extraordinarily variable. Some are close to inactive and never meet, having delegated their functions to council officials.
- 12.23 The law should require higher levels of performance and reporting from DLAs. Local authorities should be permitted to keep the fines imposed as a result of their prosecutions. Inspectors employed by the DLA should receive mandatory training. The level of fees set for the issuing of licences should be sufficient to ensure that the DLAs can properly perform their functions, including enforcement. It is also necessary to ensure that the decisions of the DLAs are independent of the Council itself. Our vision is of a vital and involved DLA that takes ownership of the issues in its area. It is important to allow local opinion more weight in licensing decisions but not to confer a veto on it. The final word should be with the Licensing Authority.
- 12.24 The Commission also considers that every District Council should have a local alcohol policy. The policy would be produced on the recommendation of the DLA, with input from the Police and medical officers of health. It would be approved by the Council, and then by the Licensing Authority. The research done by the Law Commission shows the Resource Management Act 1991 is not the appropriate vehicle for regulation of the sale of liquor.

Fee structure

12.25 The Commission considers that there is a good case for enabling local authorities to set their own licensing fees so that each DLA's costs in processing, monitoring and enforcing licences can be more closely reflected in the fees and charges. Alternatively, local authorities could be empowered to impose an annual "supervision" fee that could reflect the burden of the number of inspections

- required for the particular premises. If a national licence fee system was to continue, the Commission favours a graduated fee structure to better reflect the risk posed to the community by the relevant licence.
- 12.26 Detailed elements around licence renewal could be streamlined and simplified, for example, premises that pose a low risk to the community could be exempt from the renewal process. This should reduce compliance costs.

Hours

- 12.27 The trend toward extended, including 24 hour, trading of liquor in New Zealand appears to be leading to increasing disorder and problems for the Police. Liquor is typically much cheaper at off-licences than at on-licences. For this reason, people purchase liquor at off-licences, drink at home or on the street, and then come to licensed premises, where there is entertainment but the liquor is more expensive. Sometimes, they return to the off-licence or return to their vehicles to drink breaching a liquor ban in the process. Often they drive. While the Law Commission believes liberal trading hours are necessary to give responsible people sufficient time to purchase their liquor requirements, our preferred position is that all off-licences should be closed by law, from say 10pm to 8am.
- 12.28 On-licences should be restricted in the Commission's view from selling liquor after 2 am on a nation-wide basis but should be permitted a standing extension to serve liquor until 4 am if the premises operates a 'one-way door' policy from say 1 am as a condition of its licence. By that we mean patrons can remain there drinking until 4 am but new patrons cannot enter. A one-way door policy would reduce the number of people on the streets, where harm is more likely to occur, and would facilitate a staggered departure from licensed premises onto city streets.

Age

- 12.29 The evidence available on age suggests that lowering the alcohol purchase age in New Zealand to 18 in 1999 contributed to an increase in alcohol-related harm. The Commission considers that the case for increasing the purchase age seems on the evidence to be strong. A legal purchase age is recognised internationally as being a highly effective and inexpensive supply control mechanism.
- 12.30 The scientific evidence suggests that the earlier one starts to drink, the greater the later problems. Furthermore, young people experience more harm per drink than older people. Supervision of young people, when they drink, may assist in avoiding harmful consequences. We favour at this stage a split purchase age. By this we mean leaving the minimum purchase age at on-licences at 18, and increasing the minimum purchase age at off-licences to 20 years. This should help reduce the supply of alcohol to people under the age of 18 by older friends, while still allowing 18 and 19 year-olds the freedom to drink in the supervised environments of on-licence premises.

Individual and parental responsibilities

12.31 Many have said to the Commission that parents should take responsibility for their children's drinking. In many cases, this is not occurring. We think a broader set of obligations for the supply of liquor to young people than the existing ones have merit. We favour making it an offence for an adult to supply liquor to a young person unless it is a private social gathering and that adult has the consent of the young person's parent or guardian. More needs to be done to protect young people in our view.

Types of products available

- 12.32 Supermarkets and grocery stores are currently restricted to selling beer and wine. From a business point of view, it would seem fairer if all off-licences were allowed to sell all types of liquor without discrimination. On the other hand, in terms of the object of reducing alcohol-related harm, there is a case for removing all alcohol from supermarkets and grocery stores. We doubt that either of these options would be publicly acceptable.
- 12.33 So far, we have heard many representations that ready-to-drink spirits-based drinks should be banned or controlled. We are not persuaded that it is wise for the law to travel in that direction. We are reluctant to make distinctions between various liquor products. Possibly, there is a case for allowing the Minister, on the recommendation of an expert committee, to ban certain products for health reasons.

Licensing Trusts

12.34 The Law Commission does not have strong views on the Licensing Trusts. They are few compared with earlier years. We are inclined to leave the law relating to them as it is, but we welcome submissions on the topic. The alternative is to allow competition in the current licensing trust areas where they currently have exclusive rights to be granted on and off-licences.

DEMAND REDUCTION

12.35 Demand limitation revolves around two main topics – price, and advertising and promotions.

Tax and price

- 12.36 New Zealand has a system of excise tax that has been officially sanctioned as having the primary purpose of minimising harm, and a secondary purpose of recovering the net fiscal costs of external alcohol harm. Tax measures designed to increase the retail price of alcohol products are widely viewed in the research literature as being an effective mechanism for reducing alcohol-related harm.
- 12.37 In the preliminary view of the Law Commission, 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.

- 12.38 How the detail of any increase in the excise tax should be calibrated requires much more work, which will be contained in the Commission's final report. Quantifying the magnitude of the various alcohol-related harms and putting a dollar value on them is not an exact science and is inevitably value laden. The benefits of alcohol are an important part of the equation. The Law Commission intends to explore this issue and invites public submissions on it.
- 12.39 The flip side of increasing the rate of excise tax generally is to reduce it for low-alcohol products. This would encourage increased marketing of low alcohol products, which could help in reducing alcohol-related harm.
- 12.40 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 cheaper alcohol products which tend to be favoured by the young and by heavy drinkers. Minimum pricing affects both on and off-licences although in practice the impact will be greater for off-licences. Both international research and the evidence the Law Commission has seen point to the fact that some of the most harmful levels of consumption come from cheap alcohol.
- 12.41 The Government of Scotland is currently actively pursuing a minimum price scheme for alcohol and the Commission will watch these developments closely and analyse them in our final report.

Advertising

- The alcohol industry spends millions of dollars on alcohol promotion in the media and via sponsorship. An existing system of advertising self-regulation is currently being tightened up to include a wider range of promotions. The Law Commission favours leaving the main bulk of the regulation to the Advertising Standards Authority. A useful backstop may be to provide a regulation-making power in statute to be exercised if (in the view of ministers) the present system fails to promote responsible advertising. Just the threat of regulation would provide a strong incentive for responsible advertising. But such a power would need to be carefully calibrated and circumscribed to avoid problems under the New Zealand Bill of Rights Act 1990. It would be necessary to tailor the power to particular advertising content.
- 12.43 The issue of irresponsible promotion practices by both on-and off-licences could be made grounds for the Liquor Licensing Authority to suspend or cancel a licence.
- 12.44 There is a case for enacting advertising restrictions in order to treat advertisements for price and discounts on a different basis from other types of advertising. The Commission is interested in learning through the submissions process how this could be accomplished in a practical way, and the likely effectiveness of such restrictions. But we are somewhat sceptical as to whether such regulation can be accomplished within reasonable compliance costs. There are also commercial free speech issues.

PROBLEM LIMITATION

Enforcement

- 12.45 It appears that there are many aspects of the existing law that are not fully enforced because enforcement is expensive and there are other priorities. Prosecuting some of the offences in the Sale of Liquor Act in court can be long and drawn out and involve the Police in a lot of paper work. A detailed effort needs to be made to simplify the law in this area and make it work better. It is the Law Commission's strong view that more vigorous efforts must be made to enforce the law. There are a number of measures we think have merit. These are to:
 - · Provide a member of the Police at or above the rank of Inspector with the power to immediately close particular on-licence premises to prevent breaches
 - · Review the penalties for the serious offences under the Sale of Liquor Act with a view to increasing them;
 - · Provide for an increased range of infringement notices for technical and minor breaches of the Act or a licence condition;
 - Provide a statutory process in the Sale of Liquor Act for the development and recognition of alcohol accords (in which licensees make an agreement concerning supply of liquor or management of licensed premises for the purposes of minimising alcohol-related harm), thereby excluding these accords from the provisions of the Commerce Act 1986.

Liquor in public places

- 12.46 The system at present, where liquor bans are dealt with by way of local body bylaws (of which there are 166 by our count), is problematic from a legal point of view. It is very difficult to find out what the law is in any given place. Some of the bans are for 24 hours, while others are limited to the day or night or particular times during the year. There is a pronounced tendency for bans to be extended in respect to both hours and applicable areas.
- 12.47 Despite their difficulties, liquor bans have served an important and necessary purpose in keeping order in difficult areas, especially in city centres. One option is to make it an infringement offence to drink in a public place. This would certainly assist in dealing with disorder. On the other hand, it would impose restrictions on freedom and some innocent activity would be caught. We really do need public views on this issue.
- 12.48 There is much legal analysis to be done before we can be confident that a reasonable and robust regime can be designed to replace liquor bans. We think it would be desirable, where the Police have reasonable cause to suspect that a beverage contains alcohol and have taken steps to ascertain that the beverage does contain alcohol, that this is sufficient proof that the beverage in fact contains alcohol for the purpose of seizing and destroying it.
- 12.49 It may be worth making drunkenness in a public place an infringement offence.

Product labelling and serving sizes

- 12.50 We do not favour a regulatory power to restrict the alcohol content and size of packaged beverages. There is a case for providing a regulatory power to require licensed premises to offer standard measures of wine, beer and spirits. People then have a clear way to know how much they are drinking. The harm reduction benefits likely to be gained from a standard serving size would need to be balanced against the costs this would impose on the industry.
- 12.51 Labelling for alcohol products is governed by the Australia New Zealand Food Standards Code and work is currently going on concerning health advisory labels for alcohol products. The Law Commission will not trespass into that area. Labelling is likely to be of only marginal relevance to the problems we are addressing.
- 12.52 There should be improved training, education and character requirements for licensees, managers and other staff.

Treatment

12.53 Through our initial inquiries, we have become concerned at the lack of policies, facilities and programmes around the country in relation to assessment and treatment for people with alcohol problems. The District Court Judges have made clear to us their grave concerns about the absence of assessment facilities and programmes to which they can refer people who appear in front of them. What is needed falls within the Health Portfolio and cannot be the subject of detailed recommendations by the Law Commission. But we have reached a number of tentative conclusions regarding those aspects of the problem that we have studied. In cases where alcohol and other drugs may have contributed to offending, there should be greater consideration during sentencing of the need for alcohol and other drug assessment and treatment. Efforts are needed to develop the workforce and provide funding to ensure that screening, assessment, referral and brief interventions can be delivered by appropriate professionals across sectors – primary care, mental health, emergency departments, justice, corrections, education and Work and Income, as well as ACC. Increased funding is required to enable a greater number of treatments across a greater number of sectors in a way that meets individual needs. The resource implications of these changes need to be investigated further.

Transport

- 12.54 While there has been considerable reduction in alcohol-related fatal crashes since the 1990s, general road safety progress has stalled in recent years. Both the proportion of all crashes that are alcohol related, and the number of alcohol-related crashes, have risen for both fatal crashes and injury crashes.
- 12.55 New Zealand does not compare well with other countries when considering drink driving crashes as a proportion of total fatal crashes. Approximately 30 per cent of fatal crashes in New Zealand are alcohol related, while in Australian states the proportion is closer to 21 per cent, and in Great Britain, 17 per cent.

- 12.56 While the blood alcohol limits for driving are not governed by the Sale of Liquor Act, they are closely related to it. In the Commission's view, there is a strong case for those limits to be reduced from 80 milligrams of alcohol per 100 millilitres of blood (0.08) to 50 milligrams of alcohol per 100 millilitres of blood (0.05) for all drivers, with zero tolerance for all drivers under 20 years of age. The research evidence supports this conclusion and the levels are lower in many other countries compared with New Zealand's existing level of .08 for adults. By international standards New Zealand's record in this area is lamentable. There are far too many traffic accidents where alcohol is a factor.
- 12.57 Alcohol ignition locking devices offer some promise in reducing repeat drink driving offences. Consideration should be given to requiring all convicted drink drivers to have interlock devices installed in their vehicles.
- 12.58 The Law Commission understands that the Ministry of Transport will shortly issue a discussion paper of its own concerning a road safety strategy including legal blood alcohol limits and other aspects of road safety policy. Since most of the Law Commission's tentative recommendations on this matter are based on the Ministry's research, the Commission is happy to leave further action in relation to these matters to the Ministry of Transport and its Minister. We will not be reporting further on the transport aspects above.
- 12.59 People who wish to make submissions on that particular matter should direct them to the Ministry of Transport, PO Box 3175, Wellington 6140 or www.transport.govt.nz.

QUESTIONS

The Law Commission would like feedback on some of the key issues raised in this document. A fuller range of options for change is contained in chapter 13.

THE HARM

- 1. Does the level of alcohol-related harm we are experiencing justify a new approach to the law?
- 2. Do you agree that getting drunk is considered acceptable drinking behaviour in New Zealand?
- 3. Do you think the risks associated with heavy drinking are well known? If not, what more could be done to make people aware of them?
- 4. Do you think the cumulative lifetime risks associated with drinking are well known? If not, what more could be done to make more people aware of them?
- 5. Is the management of intoxicated people an acceptable use of a large part of the New Zealand Police resources? If not, what are the alternatives?

OBJECT OF THE LAW

6. Is the balance in the current law between individual responsibility and providing an environment that is conducive to moderate drinking the correct one? If not, what changes could be made?

SUPPLY **CONTROLS**

Licensing

- 7. Do you agree with the current system of four types of liquor licence?
- 8. Should the criteria for licences change and, if so, what should the changes be?
- 9. Do you think the Liquor Licensing Authority should be retained as the regulator?
- 10. Do you think local views should be taken into account in respect of licences in that area?

Hours

- 11. Do you think the hours that restaurants, bars, and clubs can be open should be restricted? If so, what should the hours be?
- 12. Do you think the hours that off-licence premises (including supermarkets and liquor stores) can sell alcohol should be restricted? If so, what should the hours be?
- 13. Should we continue to have specific days on which alcohol cannot be sold?

Age

- 14. At what age should a person be able to purchase alcohol in New Zealand?
- 15. At what age should a person be able to drink at a pub, club, bar or restaurant?

Individual and parental responsibility

16. Should it be an offence for anyone other than a parent or guardian to supply alcohol to someone under the purchase age?

Types of products

- 17. Do you think there are any alcohol products that should be banned?
- 18. Do you think the rules about supermarkets and grocery stores selling liquor should continue as now?

DEMAND REDUCTION

Tax/price

- 19. Do you think the availability of cheap alcohol is contributing to alcohol-related harm?
- 20. Does the difference in price between alcohol bought from retailers such as supermarkets and liquor stores and alcohol bought in a bar or restaurant influence where you drink?
- 21. Do you think there is a case for increasing tax or setting a minimum price for alcohol in order to help reduce the amount of alcohol consumed by young people and heavy drinkers?

Advertising

22. Should the way alcohol is marketed (including advertising, promotions, and sponsorship) have greater restrictions? If so, what restrictions are appropriate?

PROBLEM LIMITATION

Treatment

23. Do you think there is a need for greater emphasis on treatment for people using alcohol in a risky manner?

Penalties

- 24. Should there be increased penalties for serious breaches of the liquor laws?
- 25. Should there be greater use of infringement offences for minor breaches of the liquor law?
- 26. Should the Police have greater powers to close down bars where there are breaches of law occurring?

Liquor in public places

- 27. Should liquor bans be retained?
- 28. If so, can the liquor ban provisions on notification be improved?
- 29. Do you think an offence of drinking in a public place, rather than the liquor ban system, is preferable?
- 30. Do you think it should be an infringement offence to be drunk in a public place?

GENERAL

31. Do you have any further comments or suggestions?



A LIST OF **POLICY OPTIONS**

In some cases, there is a clear choice between the different policy options. In other cases, there are a number of listed options that may be preferred in combination.

RANGE OF OPTIONS

CHAPTER 13

INTRODUCTION

- 13.1 This chapter comprises a list of policy options developed in the course of preliminary consultation.
- They arose from discussions with individuals, organisations and government agencies. People considering how to handle the issues may find them helpful in making submissions.
- In some cases, there is a clear choice between the different policy options. In other cases, there are a number of listed options that may be preferred in combination. Many of the options have not been developed or explained in the preceding chapters.

SUPPLY CONTROLS

PURCHASE/DRINKING AGE OPTIONS

- (a) No change.
- (b) Increase the minimum purchase age from 18 to 19, 20 or 21 years from any licensed premises.

- (c) Create a split purchase age that is leave the minimum purchase age at on-licences at 18 and increase the minimum purchase age at off-licences to 20 years.
- (d) Introduce a minimum age at which it is lawful to drink (rather than purchase) alcohol, for example 18 years, and make it an infringement offence to drink alcohol unless a person has reached this age.
- (e) Require mandatory age verifications for the sale of alcohol.

INDIVIDUAL AND PARENTAL RESPONSIBILITY FOR YOUNG PEOPLE'S DRINKING OPTIONS

- (a) No change.
- (b) Make it an offence for an adult to supply liquor to a young person other than that adult's child or ward.
- (c) Make it an offence for an adult to supply liquor to a young person other than that adult's child or ward without the consent of a parent or guardian of the young person.
- (d) Make it a legal requirement for adults supplying alcohol to a young person to supervise the consumption of the alcohol.

LICENCE OPTIONS

- (a) Leave the system of four basic licences as it is.
- (b) Leave the system as it is, but remove the existing exemptions from the need to obtain a licence for some or all of the following: chartered clubs, police canteens, defence establishments, fire-fighters' facilities, and Parliament.
- (c) Have a single liquor licence with conditions added on to it to reflect the nature of the business.
- (d) Increase the licence fees to better reflect the costs that the granting of a particular licence is likely to generate.
- (e) Create a graduated licence fee structure to reflect the risk posed to the community by the relevant licence.
- (f) Clarify the requirements for managers and temporary managers, and require multiple managers for large licensed premises.
- (g) Increase the education, age and training requirements for managers and door staff working in all licensed premises.

LIOUOR LICENSING AUTHORITY OPTIONS

- (a) Maintain the status quo with regard to the functions and powers of the Liquor Licensing Authority.
- (b) Transfer the functions of the Licensing Authority to the District Court.
- (c) Establish a special Licensing Commission with a substantial staff, with both enforcement and adjudicative powers.

- (d) Retain the Licensing Authority as the specialist regulator but give it enhanced powers and functions, for example to:
 - monitor and report on trends and adjust aspects of sale policy like promotions.
 - · award costs.
 - impose fines on licensees, managers and staff of licensed premises for breaches of any of the provisions of the Act.
 - enhance the flow of data from inspectors, police, District Licensing Agencies (DLAs), medical officers of health, and licensees.
 - · implement quality control of DLA output and compliance.

DISTRICT LICENSING AGENCY OPTIONS

- (a) Leave the powers and functions of District Licensing Agencies (DLAs) as they are.
- (b) Abolish DLAs and incorporate their functions and powers in a central body.
- (c) Enhance the powers and functions of DLAs, for example by:
 - · Requiring higher levels of performance and reporting from DLAs.
 - · Allowing local authorities to keep the fines imposed as a result of their prosecutions.
 - · Providing for mandatory training for their inspectors.
 - Enabling the setting of fees for the issuing of licences to allow the DLAs' functions to be performed effectively.
 - Ensuring that DLAs' decisions are independent of the Council of the relevant local authority.
 - · Specifying by statute a particular membership for DLAs.

LICENCE CRITERIA AND OBJECTIONS OPTIONS

- (a) No change.
- (b) Change the law to allow the licensing decision-maker to refuse licences on wider grounds than at present, for example, on grounds that:
 - the overall social impact of the licence is likely to be detrimental to the well-being of the local or broader community, taking into account matters such as the site of the proposed premises, the density and type of other premises in the area, and the health and social characteristics of the local population;
 - · granting the licence would be inconsistent with the object of the Act;
 - the amenity, quiet or good order of the locality would be lessened by the granting of the licence.
 - the licence would be inconsistent with the relevant local alcohol policy.

- (c) Allow the licensing decision-maker to impose any licence condition it considers appropriate for the purpose of reducing alcohol-related harm.
- (d) Widen the category of persons who can object to a licence application.
- (e) Specifically authorise medical officers of health to report on all types of licences and licence renewals.
- (f) Better define and strengthen the criteria for suitability of licence applicants.
- (g) Improve the effectiveness and efficiency of the process for notifying the public of licence applications.

HOURS OPTIONS

- (a) No change.
- (b) Restrict the opening hours of all off-licences, for example from 8 am to 10 pm, on a nationwide basis.
- (c) Restrict on-licence premises from selling alcohol after a specified time, for example 2 am, on a nationwide basis.
- (d) The same as (c), but provide for a standing extension to serve alcohol until 4 am if the premises operates a one-way door policy whereby patrons can remain on the premises, but patrons cannot enter the premises after a specified time, for example from 1 am, as a condition of its licence.
- (e) Have nationwide standard trading hours, but allow on-licence trading outside these hours if the licensee can satisfy the Licensing Authority that it has a plan to manage the risk of harm and contribute to the costs to the local community associated with extended hours.
- (f) Allow each territorial authority to specify policies regarding opening hours and conditions around opening hours in a local alcohol policy, and require the licensing decision-maker to take this into account in licensing decisions.

PROHIBITED DAYS OPTIONS

- (a) No change.
- (b) Maintain the status quo, but specify the hour at which the prohibition begins, for example, 2 am.
- (c) Prohibit the sale of alcohol by all licensees, including restaurants, on these prohibited days, but specify the hour at which the prohibition begins, for example, 2 am.
- (d) Keep some but not all of the prohibited days, for example, Christmas Day.
- (e) Extend the prohibited days to other public holidays.
- (f) Allow the sale of alcohol from all types of licensed premises on all days of the year, including the prohibited days.

TYPES OF OFF-LICENCE PREMISES OPTIONS

- (a) No change.
- (b) Irrespective of the type of premises, allow an off-licence to be issued provided the application meets the general licence criteria (for example, the overall social impact of the licence is not likely to be detrimental to the well-being of the local or broader community).
- (c) Specify and further restrict the type of premises in respect of which off-licences may be granted (for example, restrict supermarket sales; better define what constitutes a grocery store).
- (d) Confine off-licence sales to dedicated liquor stores only.

OFF-LICENCE PRODUCT OPTIONS

- (a) No change.
- (b) Allow all off-licence premises to sell all alcohol products.
- (c) Prohibit the sale of some or all alcohol products currently able to be sold by supermarkets and grocery stores, for example, beer and wine.
- (d) Provide a regulatory power to prohibit the sale of undesirable liquor products based on expert recommendations to the Minister.
- (e) Allow the licensing decision-maker to restrict the type of alcohol products able to be sold as a condition of the licence.

OPTIONS ON PRODUCT LABELLING AND SERVING SIZES

- (a) No change.
- (b) Provide a regulatory power to restrict the alcohol content and size of packaged alcoholic beverages.
- (c) Provide a regulatory power to require licensed premises to offer standard measures of wine, beer and spirits.
- (d) Require health warning labels on alcohol products.
- (e) Require nutritional information and ingredients to be listed on alcohol products.

LICENCE RENEWAL OPTIONS

- (a) No change.
- (b) Provide for three-yearly applications for renewals of licences, but remove the requirement to advertise the application for renewal unless changes to the licence conditions are sought.
- (c) Create a "permanent" licence for licensees who have shown there are no issues with their performance in adhering to the regulatory regime, and where no change in licence conditions is sought. The licence would be reviewed if there was a complaint from the public or at the instigation of the police, a licensing inspector or a medical officer of health.

LICENSING TRUST OPTIONS

- (a) No change.
- (b) Allow competition in the licensing trust areas where they currently have exclusive rights to be granted on-licences and off-licences.

DEMAND REDUCTION

EXCISE TAX OPTIONS

- (a) Leave the current system as it is.
- (b) Increase the current levels of excise tax on alcohol.
- (c) Reduce tax on low alcohol products.
- (d) Pledge some or all of the excise tax collected from alcohol for expenses and costs associated with alcohol-related harm, for example, treatment.
- (e) Increase the Alcohol Advisory Council of New Zealand (ALAC) levy and use the proceeds for harm reduction initiatives.
- (f) Change to a pure volumetric excise tax system (that is, remove the current bands to make the rates more closely reflect volumes of alcohol).
- (g) Introduce regular reviews of excise rates (over and above the annual adjustment).

PRICING OPTIONS

- (a) No change.
- (b) Regulate the pricing of alcohol by introducing a minimum price per unit of alcohol.
- (c) Prohibit the sale of alcohol as a loss leader.
- (d) Restrict the discounting of alcohol products.
- (e) Require the Licensing Authority to take into account past retail practice (including pricing and promotions behaviour) in licensing decisions and require liquor licensees to supply the necessary data.
- (f) Prohibit advertisements containing the price of alcoholic beverages.
- (g) Prohibit off-licence price promotions that create an economic incentive for consumers to buy larger amounts.

ADVERTISING OPTIONS

- (a) No change.
- (b) Introduce a system of enforced self-regulation to set out the public policy goals of the proposed system, roles of the body responsible for the self-regulatory system, and offences and sanctions.
- (c) Establish a legal framework and statutory body to regulate and control liquor advertising.

- (d) Leave most matters to the existing system of self-regulation but ban certain advertising by law, for example:
 - · advertisements containing the price of alcoholic beverages;
 - advertisements of liquor discounts, sales, specials or irresponsible promotions;
 - · advertisements aimed at marketing alcohol to young people;
- (e) Ban all advertising of all alcohol in all media.
- (f) Control television advertising between certain hours.
- (g) Restrict sponsorship linked to alcohol products.
- (h) Provide for a reserve power to regulate advertising only if there is evidence of a lack of compliance with the current self-regulatory scheme.

PROMOTIONS OPTIONS

- (a) No change.
- (b) Establish a legal framework and statutory body to regulate some or all of the following:
 - · packaging;
 - · promotions;
 - · point of sale placement;
 - · display of alcohol products.
- (c) Require the licensing decision-maker to take into account previous harmful promotional practices in licensing decisions.

PROBLEM LIMITATION

ENFORCEMENT AND PENALTIES OPTIONS

- (a) No change to the current enforcement tools.
- (b) Increase the penalties for breach of licence conditions, including making it easier for a licensee to lose a licence.
- (c) Provide the police with the power to close a bar immediately to prevent further breaches of the Act or for serious public safety concerns based on behaviour in the licensed premises or in the immediate vicinity.
- (d) Provide the police and licensing inspectors with the ability to request an urgent hearing with the Licensing Authority if there are serious concerns or repeated breaches of the Act to expedite the Licensing Authority's consideration of the matter.
- (e) Provide for infringement notices to be issued for any technical or minor breach of the Act or a licence condition.
- (f) Provide a legal definition of intoxication for the purposes of enforcement in any new legislation.
- (g) Provide medical officers of health with the same powers of entry as licensing inspectors.

- (h) Remove the requirement for licensing inspectors to identify themselves when entering licensed premises.
- (i) Provide a statutory process for the development and recognition of alcohol accords for the purpose of minimising alcohol-related harm, and exclude these accords from the provisions of the Commerce Act 1986.
- (j) Make it an infringement offence to present fake evidence of age documents to a licensee.
- (k) Empower licensees to confiscate fake evidence of age documents, including driver licences, and hand these in to the Police.

ALCOHOL IN PUBLIC PLACES OPTIONS

- (a) Continue the status quo, where liquor bans are dealt with by way of local authority bylaws.
- (b) Provide the Police with a power to issue an infringement offence for breach of a liquor ban, with a reserve power of arrest for the purposes of safety of persons.
- (c) Place no restrictions on drinking in a public place.
- (d) Reintroduce the offence of being drunk in a public place.
- (e) Create an offence of drinking in a public place.
- (f) Provide a power for the police/Licensing Authority to ban specified persons from entering or remaining in an area or on specified premises within an area.
- (g) Provide that where the Police have reasonable cause to suspect that a beverage contains alcohol, and have taken steps to ascertain that the beverage contains alcohol, that shall be sufficient proof that the beverage in fact contains alcohol for the purposes of seizure and destruction of the alcohol.
- (h) Empower persons other than the police (for example, persons employed by local authorities) to transfer intoxicated persons home or elsewhere for safety reasons.

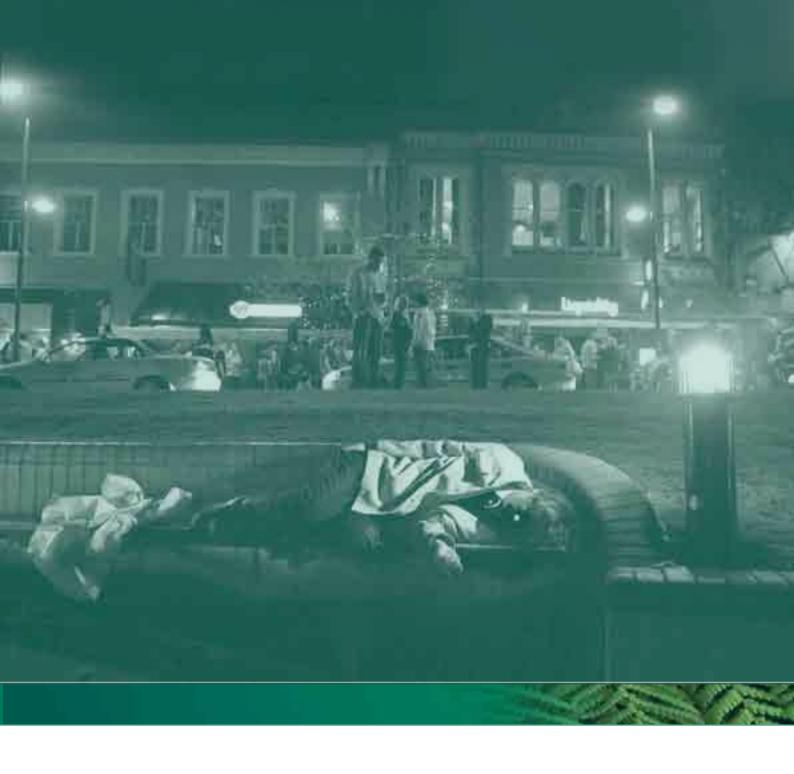
TRANSPORT OPTIONS

- (a) No change.
- (b) Lower the blood alcohol limit from 80 milligrams of alcohol per 100 millilitres of blood to 50 milligrams of alcohol per 100 millilitres of blood for all drivers.
- (c) Lower the blood alcohol limit from 80 milligrams of alcohol per 100 millilitres of blood to 50 milligrams of alcohol per 100 millilitres for those over 20 years, and lower the blood alcohol limit to zero for those under 20 years.
- (d) Ban the possession of alcoholic beverages in an open container in a moving or stationary motor vehicle.

- (e) Introduce alcohol ignition locking devices (which require the driver to blow into them and "pass" before the vehicle will start) for all or some convicted drink drivers.
- (f) Introduce a legal blood alcohol limit for a person in charge of a pleasure craft, for example, a yacht.

TREATMENT OPTIONS

- (a) No change.
- (b) Provide centres for temporary supervision for individuals who are not charged with an offence but pose a significant concern to their own or others' safety or health.
- (c) Require the need for alcohol and other drug assessment and treatment to be taken into account during sentencing in cases where alcohol and other drugs may have contributed to the offending.
- (d) Develop the workforce to ensure assessment, referral and brief interventions can be delivered by appropriate professionals across sectors (for example, primary care, mental health, emergency departments, justice, corrections, education, Work and Income, ACC).
- (e) Investigate the range of alcohol-specific treatment interventions provided, with a view to determining gap areas (for example, alcohol detoxification and nationally consistent drink driving group interventions) with the potential to increase funding via the alcohol levy managed through the Alcohol Advisory Council of New Zealand (ALAC).
- (f) Fund primary care providers to deliver screening, brief interventions and referral to specialist treatment.
- (g) Investigate the feasibility of using electronic screening and brief interventions in a range of settings.
- (h) Monitor the prevalence of alcohol use disorders, and the delivery of screening, brief interventions, and referrals in primary care and emergency departments.



APPENDICES

APPENDIX 1

DISTRICT COURT JUDGES' PRELIMINARY SUBMISSION

29 May 2009



The President
The Law Commission
Wellington

Dear Sir Geoffrey

The Law Commission has invited the District Court to detail its experience of alcohol related offending which comes before it, the situations in which it arises, the age when it first appears and what options are available to the court to assist in dealing with the incidence of alcohol related offending.

This response has been prepared on behalf of the Chief Judge by Judge John Walker after consultation with Judges in various courts.

THE EXTENT OF ALCOHOL RELATED OFFENDING

Judges in the District Court report that at least 80% of defendants coming before the criminal courts have alcohol or other drug (AOD)¹ dependency or abuse issues connected with their offending. It is estimated that in 80% of those cases the drug involved is alcohol. It is exceptional for intoxication not to be mentioned in a police summary of facts in relation to violent offending, and in relation to offensive and disorderly behaviour offences and other street disorder.

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¹ The term is used widely in Australia and New Zealand to convey the inclusion of alcohol as a drug rather than something separate.

Intoxication is generally a feature in cases before the Family Violence Courts, with both the perpetrator and victim often affected by alcohol.²

In order to provide a better indication of the extent of the problem this percentage needs to be translated into the number of defendants. More detailed analysis of the numbers needs to be carried out, but the following calculation, is sufficiently conservative to be realistic.

In the week of 4 May 2009, 11,001 people appeared once or more on summary charges in the District Courts and 485 young people appeared in the Youth Courts in that week. These figures, at least, are known. Recognising that a large number will have appeared before Justices of the Peace on minor offences including traffic infringements and taking a very conservative estimate of those who made an appearance before a Judge in a District Court as 6000 in that week the percentages translate to approximately 3800 people with alcohol consumption connected with their offending. That is just one week.

To answer the question when does alcohol related offending start we turn to the Youth Court experience.

The same percentages apply in the Youth Courts.

The Youth Court deals with offenders aged 14 – 16. The very large number of those young people whose offending has alcohol consumption as an underlying cause reflects the now normalised behaviour of "binge drinking". Young people in the Youth Court have little idea that their drinking is even problematic because their drinking is the same as all those around them. Serious dependency does not stand out in this crowd and often goes untreated until very well established.

A significant number come into the Youth Court with this well established alcohol dependency.

² A recent survey of cases in the North share Family Violence List over a period of 9 months revealed approximately 90% of cases involved alcohol.

It is not uncommon for the use of alcohol by these young people to have started when they were children. This early use of alcohol is documented in the AOD assessments provided to the Youth Court when dependence has been identified.

The following are typical extracts from assessments recently provided to Youth Courts. They relate to young persons under 17 at the time the reports are written:

B reported that she tried alcohol at a very young age (undisclosed), and that she started to drink alcohol "hard out" from about 13 years of age. She recalled that she often became "too drunk", and would not remember most things during those times. Over the last month before her arrest in January 2008, B reported drinking alcohol every day until she felt "wasted" and her "head spins". She further explained that she would drink to get drunk, and that she would also take drugs. B reported an increasing tolerance for alcohol and that she could go through two 1.5 litre bottles of vodka mixers (50% alcohol) over a day and a night.

K said that he first started drinking alcohol at 10 years of age and would drink "when I could". At 13 years of age he said this increased to drinking once a week or once a fortnight. When he was 14 years he did not drink for two months but reported he now drinks every night to "get drunk".

L stated that he first tried alcohol when he was at primary school. He described an incident where he came home drunk at the age of 7 or 8. L said he started drinking regularly about the age of 13 due to peer pressure. He says that he currently tries to limit himself to one or two beers during the week, as he doesn't want to get too tipsy but that he will "get hammered" on the weekends. He said that he will drink as much as he can and has had several times of alcoholic blackout. He laughed when relating "I've been told a few shocking things" (by other people about what he is like when drunk). He also said there has been at least one time when he has vomited blood and also said that he has passed blood in his urine. He also mentioned being taken to hospital at the age of 13 with alcohol poisoning. L stated that "everyone calls me an alcoholic, but I'm not".

M now states she first got drunk at age 12 years on Vodka. She has continued to follow a binge pattern of use that is limited only by availability. She admitted she would drink more and daily if she could get it. Her drinking increased this year with an increase in tolerance especially over the last six months. She will consume a case between herself and another person spending \$40-50 per week as her contribution.

S said that she first tried alcohol with friends at age 13 and at this time drank 5% refreshers. She began regular use at the start of this year, drinking with friends. She regularly drinks on the weekends, Friday and Saturday nights, drinking four cans of 12% spirits. S described herself as "fine" with this amount however that she is unable to stop if offered more to drink and at this point begins to black out. S described binge drinking for a week, day and night, and said that she had begun to sell things to purchase alcohol. She said that she experiences blackouts every few weeks when binging

J first used alcohol when he was at primary school. His first regular use of alcohol was when he was 12-13 years of age. Currently he drinks every weekend and consumes either 24 bottles or cans of beer or 24 Woodstocks. J states that he usually drinks in the evening beginning between 6.00 – 7.00pm and finishing approximately 3.00am. This is only on Friday and Saturday nights.

KH first used alcohol at the age of 12 years, and increased his use until cutting back over the past month to using approximately twice a month. In the three months prior to him cutting back he would drink on 3-4 occasions a week consuming an 1125ml bottle of Vodka on each occasion. He acknowledged tolerance to alcohol but thought that he could control his use, was able to cut down when he wanted to and did not think it dominated his life unduly, especially given that he enjoyed it. It did cause him problems such as increases in anger and confrontation when intoxicated.

KM started drinking around the age of 14 years. She usually drinks to intoxication and drinks approximately three times a week. KM states that it now takes more alcohol use to get the same effect as what she had when she was 14 years of age. She has missed school due to hangovers, and all of her offending has occurred when intoxicated.

KR first tried alcohol at the age of 9 years. R describes KR secretly mixing alcohol with orange juice at this time. When she was 12 years old she drank copious amounts of Woodstock Bourbon and ended up in hospital with alcohol

poisoning. Her regular use of alcohol began at the age of 14 leading to her heaviest period of using being the last 12 months in which she would drink nearly every day. It was difficult to assess quantities but KR describes being able to drink large amounts of alcohol such as 20 RTDs in one session or more than 20 standard drinks. She last consumed alcohol 2 weeks ago and has recently reduced her use because of the charges in Court. In terms of the dependence criteria KR describes increasing tolerance to alcohol being able to consume large quantities for her slight build. She also describes having memory black outs on occasions.

Judge McMeeken is a Family Court Judge, and Youth Court Judge and presides in the Christchurch Youth Drug Court. She makes the following observations:

It is my strongly held view, and one which I become more certain of with every passing month working in the Youth Justice System, that the cost in financial, criminal and social terms of alcohol abuse and dependency amongst the young is absolutely astronomical.

In my experience alcohol abuse has a hugely detrimental impact on the lives of young people who begin drinking early. It clearly interferes dramatically with their schooling which in turn impacts upon their sport and community involvement and their general development.

There is certainly a perception that P use is a problem and the party pills are abusive. Those substances are abused as is cannabis but by far and away alcohol abuse is the major issue for offenders in both the Youth Court and the Youth Drug Court.

I often comment when I am sitting in Youth Court that if I only had to deal with young offenders who offended whilst sober, I would have very, very little work to do. That is a chilling statement to make when most of the young people I see are 14 and 15 years of age.

In an average Youth Court List in Christchurch of approximately 30-35 young people, at least 70% of them are drunk when they offend. That proportion is much higher in respect of young people who commit serious acts of violence. When reviewing the files of these young people I find that most of them are not at school and that in many, many cases they have been excluded from school because of factors that directly relate to their abuse of alcohol. They either truant because they are hung-over, they steal from pupils and teachers because they need money, they are irritable and aggressive because they are hung-over or withdrawing and they are uninterested or unable to learn because they have inadequate sleep and nutrition as a result of their drinking.

Judge Fitzgerald, a Youth Court Judge in Auckland who presides in the specialist Intensive Monitoring Group hearings within the Youth Court³ details his experience in dealing with the AOD dependant young offenders:

There is ample research to confirm the link between excessive alcohol use and offending and that offenders are more likely to use alcohol (and/or other drugs) and offenders are more likely to have alcohol (and/or other drug) problems than the general population. This is true across all age groups.

It is of course not the consumption of alcohol alone that causes offending. Some people will consume alcohol to excess but not offend. The link established by the research is that alcohol causes impaired executive functioning in the brain. It is the consequent inability to control and manage behaviour which leads to e.g. violence and other types of offending. Add to that situational factors such as social context, provocation, frustration and individual factors such as personality and difficulties in exercising self control.

Young people appearing before the Youth Court (ages 14 to 16 inclusive) are of an age where their cognitive development is still a work in progress. Young males especially are typically involved in high-risk-taking behaviour. Adding alcohol to that contributes to even more disinhibition in such behaviour which shows itself every week in the types of offending for which they appear before the Court. This applies across the range of criminal offending. Violent crime is one area of concern in this context. Another is driving related offending, given the age at which young people can be licensed to drive plus the ready availability of alcohol. Alcohol abuse amongst teenagers is a significant issue of concern; especially the binge-drinking.

The ages at which young people start using alcohol is disturbingly low in many cases. It is not uncommon to read of alcohol use beginning before age 10 and to have reached significant levels by age 13. The dependency can therefore be quite entrenched by the time the young person reaches Court. It is also often the case that this is occurring in young people with mental health issues; typically conduct and anxiety disorders. Indeed the alcohol (and often cannabis) use is often a form of self-medication by the young person; the alcohol (and/or cannabis) dependency masking the underlying disorder and making treatment and recovery more complex.

Some offending by young people in this category (given their usually limited means - including ineligibility for state benefits - most have been excluded from school) is in order to obtain money to purchase alcohol or other drugs.

³ A Court modelled on the Youth Drug Court dealing with young persons with high level dependency connected with their offending.

Judges in all Youth Courts will share these experiences described by these two judges.

It seems to judges that what we are seeing in the adult courts follows on from what we see in the Youth Courts.

It must be remembered that a high percentage of youth offending is dealt with by alternative action and is never seen in the Youth Court and so the extent of alcohol related youth offending is much greater than what comes before the court.

Against this background judges recognise that if the underlying problem remains then reoffending is likely. Reduction in reoffending is a legitimate purpose of sentencing and so, in appropriate cases, judges will endeavour to use the court process to assist in this aspect of rehabilitation.

Current District Court Intervention Processes and the practical difficulties

In those cases where alcohol dependency or abuse is identified as a possible contributing cause of offending Judges have the ability to call for an AOD assessment and report as part of the sentencing process. The process for obtaining of these reports varies across the country. In most courts this is left to Probation Officers to arrange. In the Wellington Courts this is controlled by the courts. AOD Assessors are required to have recognised qualifications and are approved by a selection process. The reports which they provide have to meet specifications and provide a treatment plan which can form the basis of a court directed intervention. Having advice as to what is required to deal with an underlying cause of offending is one thing, having the treatment provided is a much more difficult.

If the recommendation is for residential treatment there are likely to be waiting lists. Judges cannot direct that treatment be provided and must rely on others to find a bed. The options are limited. There is one provider of adult residential treatment in Wellington (short duration programme), there is one in Hawkes Bay which does not

admit anyone with a current court matter, there are two in Auckland, one in Christchurch, Dunedin and Blenheim.

The options for residential treatment for women are more limited than those for men.

Treatment in the community is easier to obtain particularly the non intensive weekly counselling type. Intensive day programmes, sometimes a viable alternative to inpatient treatment, are more difficult to find.

The unavailability of residential treatment for young people is also a difficulty for the Youth Court. There is one facility in Auckland, one in Otane, and one in Christchurch. There is some uncertainty about the future of a residential programme in Hamilton.

In both the Adult and Youth Courts waiting lists for counselling and day programmes and residential treatment stand in the way of using the court processes to encourage engagement in treatment.

Current international research shows that it does not matter if engagement in treatment is mandated by a court or purely voluntary, the outcomes are the same, It is retention in the programme which determines outcome. The notion that a person has to be "motivated" to enter treatment for treatment to have any chance of success is outmoded. Motivation or readiness to change can be part of the intervention which moves the person towards change.

When treatment is available the court has a number of options to encourage entry into treatment and continued engagement. The fact of arrest and appearing in court can be a catalyst for change. Taking advantage of this can be an option where a sentence short of imprisonment is appropriate.

Treatment can be part of a sentence, for example part of supervision or Intensive supervision, it may be part of a sentence of home detention. Sentencing can be deferred providing the offender with an opportunity to undergo treatment while on bail and having the outcome taken into account on sentence.

All of this is, of course, dependant on treatment being available. Unfortunately, more often than not, it isn't. I hope that this is of some use in your deliberations. I am happy to further discuss any aspect of this response. June John Walker

APPENDIX 2

COUNCIL OF MEDICAL COLLEGES NEW ZEALAND PRELIMINARY SUBMISSION



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Sir Geoffrey Palmer

Law Commission

P O Box 2590

WELLINGTON

Dear Sir Geoffrey

Re: Sale of Liquor Act Review

We, the undersigned Presidents of the Medical Colleges in New Zealand write to express our collective concerns about the pervasive medical harms that continue to occur as a result of alcohol intoxication, abuse and dependency.

We also acknowledge the enormous social burden to society as the result of alcohol misuse, including the contributions to the legal system, and economic frameworks. Alcohol abuse ranks as the sixth highest contributor to the global burden of disease, and we believe New Zealand is no exception in this regard.

Medical literature attests to the many contributions of alcohol intoxication, abuse and dependency on nearly all organs, as summarized in the attached appendix. This listing is not exhaustive, but illustrates the wide variety and comprehensive effects of alcohol both with acute or chronic excess. There will be few members of our colleges who do not observe these medical effects in one way or other in their practise, or fall to notice the profound effects of alcohol abuse/dependency in these patients.

We appreciate that there is much scope to better define the epidemiology of alcohol-related medical disorders in New Zealand but there is no doubt that alcohol abuse/dependency is common with lifetime risks (males) being 10-20% respectively (cf. USA). It is likely 10-20% of hospital/emergency department admissions in New Zealand relate to alcohol. We are aware of the relationships between alcohol price, availability, advertising to youth and per capita consumption with alcohol related medical harm e.g. live disease (cirrhosis).

Appendix

Common Medical Complications of Alcohol Intoxication, Abuse and Dependency

Psychiatric:	Anxiety disorders, depression and suicid alcohol withdrawal and delirium, brain damage syndromes	
Neurological:	Fatal alcohol poisoning, brain haemorrhage. Seizures, disorders of co-ordination, Neuropathy in legs and hands	
Respiratory:	Severe pneumonies, worsened obstructive sleep apnoea	
Blood:	Low platelets and white cells	
Cardiovascular:	High blood pressure, heart rhythm disorders, and heart failure	
Cancer:	Significant co-contributions to various cancers including head and neck, oesophagus, breast and rectum	
Gastrointestinal:	Inflammation and bleeding from the oesophagus, stomach, pancreatitis. Liver disease with a spectrum of fatty liver, alcohol hepatitis and cirrhosis	
Rheumatological and Metabolism:	Contribution to gout and osteoporosis	
Trauma	Head injuries, falls, motor vehicle accidents and fractures	
Vitamin deficiencies:	Folic acid, and vitamin B	
Pregnancy:	Low birth weight, foetal-alcohol syndrome	
Endocrine	Impaired testicular/ovarian function	

Thank you for considering our serious concerns on these medical issues, in your endeavours to review the provision of this drug (alcohol) to New Zealand communities. Please advise as to how we may be of future assistance, in developing strategies to reduce the harm contributed to by alcohol.

Yours faithfully

Dr G.M Robinson

NZ President

Royal Australasian College of Physicians

- s. - C-

Dr Jonathan Fox

Chair

Council of Medical Colleges in New Zealand (CMC)

ImRA

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APPENDIX 3

DRAFT REGULATORY IMPACT STATEMENT FOR ISSUES PAPER

EXECUTIVE SUMMARY

- A.1 The objective of the Law Commission's review of the Sale of Liquor Act 1989 is a reduction in the harm to both society and individuals associated with the consumption of alcohol while securing for the community the benefits of it. The Law Commission's Issues Paper sets out the wide range of alcohol-related harm that has been identified. It seeks feedback on the harm and the proposed rationale for government intervention on alcohol issues (Part I).
- The Issues Paper outlines the range of options that have been identified by the Commission through preliminary discussions with stakeholders (Part II). Within this broad range of options, the Commission has tentatively identified some preferred options, but will not undertake a rigorous analysis of a preferred regulatory framework until public consultation is completed in November 2009.

STATUS QUO

A.3 The Sale of Liquor Act 1989 (the Act) is the key regulatory framework for the sale and supply of liquor. In comparison to previous legislation, the Act adopts a more 'minimalist' approach to intervening in the market for alcohol, creating a relatively



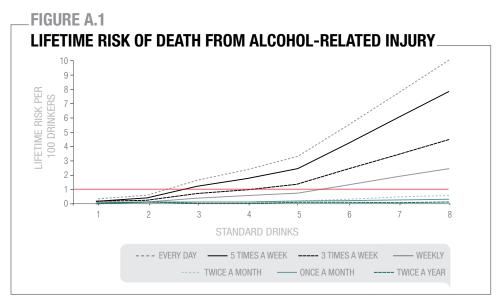
liberal, albeit mandatory, licensing system for the retailing of alcohol products. The philosophy behind the Act was that liquor licences would be easier to get, but also easier to lose. The object of the 1989 Act is:2

...to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.

- The aim is to contribute to the "reduction of liquor abuse", with legislation around the retailing of alcohol having "only a limited role to play in controlling liquor abuse". The underlying principle of the Act is: "The sale of liquor to the public or any member of the public requires a licence." Licensing has been a constant feature of New Zealand liquor law because of the harm associated with harmful or risky drinking.
- A.5 Since the enactment of the 1989 Act there have been a number of significant changes to the framework. For example, in 1999 the minimum legal purchasing age was reduced from 20 to 18 years, and beer and cider sales were introduced in supermarkets. Parliament is now considering further amendments to the Act around the current self-regulation of alcohol advertising, supply of alcohol to minors, community input into licensing decisions, and restrictions for off-licences (particularly the size of grocery premises that are eligible for a licence).
- During the intervening 20 years since the 1989 Act was enacted, there has been an increase in choice and access for New Zealand drinkers. The regulatory environment, and the associated competitive retailing sector, has seen the emergence of a wider range of alcoholic beverages, both in terms of price and quality, to meet consumer demand. The hospitality sector has seen a growth in the number and types of locations where consumers can drink (for example cafes, restaurants, bars and clubs, and one-off events). A significant nightlife industry has developed in many city centres. Niche products and services associated with alcohol have also developed (for example wine tourism, craft breweries, organic wineries, spirits-based drinks (RTDs) and so on). The wine industry has expanded to become a major export earner, (generating 2.2 per cent of New Zealand's exports by value last year).

PROBLEM

- Alcohol contributes to a wide range of harm, both to the individuals who consume harmful amounts and their families and whānau, and to wider society. *Immediate harm* ranges from the physical injuries associated with falls and fights by intoxicated individuals, and harm to others arising from alcohol-related criminal offending, through to alcohol-related deaths from drink driving or alcohol poisoning from one-off drinking sessions. There is also *long term harm* caused by the cumulative effects of alcohol consumption on the human body (particularly alcohol use disorders and cancers).
- A.8 The relative lifetime risk of death from alcohol-related disease or injury is estimated at about 1-in-100 for people drinking an average of more than two standard drinks a day. This risk cumulatively increases with rising levels, and increased frequency of consumption (see graph for male drinkers below). As drinking is a voluntary activity, it is considered more acceptable for regulatory controls to permit higher levels of risk as compared to levels of risk considered acceptable when exposed to other known carcinogens (for instance, international guidelines for cancer causing chemicals in drinking water state that the chemicals must not be present in levels that would cause more than one additional cancer per 100,000 population members drinking the water).



Source: Australian Guidelines to Reduce Health Risks From Drinking Alcohol (2009).

- A.9 A significant proportion of the New Zealand population drink at levels that are potentially harmful (that is, a 1-in-100 lifetime risk of death from alcohol-related injury or disease). Nearly 30 per cent of New Zealand drinkers (aged 12 years and over) average more than the two standard drinks a day. A quarter of drinkers aged 35 to 64 years drink an average of more than two drinks a day, and nearly half the drinkers aged 18-24 drink at this level.⁷
- A.10 Harmful alcohol consumption is a modifiable risk factor, and reducing harmful drinking can reduce the harms that alcohol causes others (such as assaults, sexual offending, family violence and road trauma) as well as improving individual health (that is mortality and morbidity).

- A.11 The most recent assessment of the costs to government associated with alcohol-related harm were estimated by Business and Economic Research Limited (BERL) at \$1.2 billion in 2005/2006,8 with the estimated tangible social costs to society (that is, monetary harms borne by individuals, families and government, such as assaults, increased car insurance costs, lost wages, medical treatment, Police and court costs) of \$3.7 billion.9 Other estimates of New Zealand's tangible social costs are \$4.4 billion (Easton 1997) and \$3.8 billion (Devlin et el 1997).10 The BERL estimate of tangible costs is approximately 2.5 per cent of New Zealand's Gross Domestic Product (GDP) and 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 2.4 per cent of GDP).11
- A.12 There are negative externalities associated with alcohol (that is, costs borne by third parties, such as government or families, arising from alcohol-related injury, criminal activity or health effects). Treasury estimated these in 2002 at \$608 million, 12 although the Treasury study notes that it does not include an estimate of all possible externalities and was based on the alcohol-harm estimates data from a 1997 study. 13 A recent critique of the BERL study estimated the external tangible costs at \$571 million. 14
- A.13 New Zealand and international estimates of the intangible costs of harmful drinking (that is, non-monetary harms, such as pain and suffering as a result of sexual assault or road trauma) vary much more widely. For example, the European estimates of intangibles range from 1.7 per cent to 8.2 per cent of GDP.¹⁵ Similarly, New Zealand studies have variously estimated the intangible cost of alcohol consumption at 2.6,¹⁶ 13.5,¹⁷ and one per cent of GDP.¹⁸
- A.14 However, these estimates of the social cost of alcohol do not take into account the beneficial effects associated with alcohol, arising primarily to the individual. Alcohol is consumed for various reasons and provides various benefits, including flavour, social cohesion and celebration, social signalling and, of course, the value of the neuro-cognitive deficits associated with drinking (ranging from mild to extreme intoxication). It should be noted, however, that recent research by epidemiologists has concluded that alcohol consumption may not have any real health protective effect, and if such an effect does exist it is probably too small to be of significance for public policy (or to justify recommendations to drink alcohol for health benefits).¹⁹
- A.15 The fact that New Zealanders last year spent between \$4 and \$5 billion on alcohol suggests that consumers find significant 'benefits' in consuming alcohol.²⁰ The issue for the Law Commission is balancing the social benefits against the social costs, while seeking to meet the goal of identifying a range of initiatives that will cost-effectively reduce alcohol-related harm.

PUBLIC POLICY OBJECTIVE

- A.16 The objective of the Law Commission's review, based on the terms of reference, is to identify legislative measures that will successfully reduce the harm associated with the consumption of alcohol. Specifically, the Issues Paper seeks to identify alcohol-related policy approaches that will:
 - · minimise crime and disorder;
 - promote public safety;
 - prevent public nuisance;
 - protect and improve public health;
 - protect families and children from harm;
 - · minimise the impact of harmful drinking on state agencies such as Police and the health system;
 - · encourage responsible attitudes toward the promotion, sale, supply, and consumption of liquor;
 - ensure that the liquor industry develops and operates in a way that is consistent with the needs and aspirations of the community; and
 - ensure, so far as it is practicable, that the supply of liquor contributes to, and does not detract from, the amenity of community life.

OPTIONS (AND IMPACT WHERE IDENTIFIABLE)

- A.17 The Law Commission has identified a large number of possible options through its preliminary discussions with stakeholders, including government departments, local government, New Zealand Police, judges, representatives from industry and business, health researchers and health professionals, as well as many individuals involved in dealing with the impact of harmful alcohol consumption in New Zealand.
- A.18 The range of feasible options identified in the issues paper is extensive and, in the time available to the Commission in preparing this paper, it has not been possible to identify all the impacts (costs and benefits) of each option. On the basis of the Commission's preliminary discussions with stakeholders and key international evidence of the effectiveness of options, the Commission has indicated tentative preferences for options.
- A.19 The options are divided across the three levers of minimising alcohol-related harm:
 - **supply control** or addressing the availability of alcohol (including factors such as outlet density, days and hours of sale, minimum purchase and drinking age, and licensing controls);
 - **demand reduction** via pricing policies and policies relating to the marketing of alcohol (including excise tax policies, minimum pricing, price promotions, advertising, marketing and promotion of alcoholic beverages as well as social marketing and public information programmes); and
 - problem limitation or minimising the impact of harmful consumption of alcohol (including measures such as drink driving policies, health sector interventions and controls over alcohol in public places).

(1) Demand reduction

Pricing policies

- A.20 The role that price plays in alcohol consumption has been one of the more widely examined alcohol policy measures. Extensive research, covering many countries and spanning decades of experience, has shown price changes to be effective in reducing per capita consumption. At issue is the magnitude of the effect that changes in price can have on consumption levels, and whether price changes affect the harmful drinking of key population groups such as binge drinkers or young drinkers.
- A.21 The issues paper considers two primary ways in which the government can affect the price of alcohol. Through:
 - · changes to the excise tax regime, including raising the overall rate of excise tax and reducing the excise on low-alcohol products; or
 - regulations regarding the retail pricing of alcohol, including introducing a minimum price per unit of alcohol to create a floor price, restricting loss leading and requiring excise taxes to be 'passed-on' (that is requiring excise tax increases to be reflected in the retail price).
- A.22 The effect of price on consumer demand varies between countries, types of consumers (for instance binge, or problem drinkers), age groups, and across different alcohol products. Demand for alcohol is generally fairly inelastic with comprehensive research indicating that a 10 per cent increase in price is likely to see alcohol consumption drop by about 5 per cent.²¹ Research also indicates that raising the price of alcohol reduces harmful consumption by young people (who generally have less income and are more price sensitive). Raising the price also delays the starting age of drinking and slows young people's progression to binge or heavier drinking.²²
- A.23 There is strong evidence that hazardous drinkers such as young binge drinkers and problem drinkers tend to choose cheaper drinks. Raising the 'floor price' (or minimum price) for drinks will have a larger impact on consumption by those drinkers than increasing the prices of more expensive drinks.²³
- A.24 Legislation setting minimum prices for alcohol is not common, although the Scottish government has this year decided to introduce a policy to this effect. The implementation and enforcement of a minimum price per unit of absolute alcohol would have to be carefully considered, particularly the equity implications. While a minimum price regime has the potential to reduce harm, the increase in price paid by consumers provides a windfall profit gain for retailers and/or producers (unlike excise taxes where increased income goes to the government). A minimum price regime necessarily targets prices in offlicence premises because of the lower prices in that environment. Given the current price differential between off- and on-licence premises (bars, clubs, and restaurants), consumers in on-licence environments are unlikely to be affected by a minimum price regime. The effect of minimum pricing on producers and retailers needs to be further considered. There would also be implications for enforcement activity, either by licensing authorities or Police.

- A.25 Government already uses excise tax to reduce alcohol-related harm. Excise has a greater effect on cheaper priced products because excise makes up a larger proportion of the price. There are concerns that increases to excise tax are not always passed-on to retail prices, as sometimes producers, retailers, or both choose to absorb some (or all) of the excise tax increase in order to maintain market share. Consequently, increasing excise tax may sometimes only reduce the profitability of some sectors of the alcohol industry without any beneficial effect in terms of reducing consumption and alcohol-related harms via a price rise.
- A.26 Increases in excise tax lead to increases in price for all consumers (as does the imposition of a minimum price). This can be seen as inequitable for those who are not drinking in a harmful fashion. However, it is generally heavier drinkers who bear the main burden of any price increase rather than more moderate consumers. For example, the top 10 per cent of New Zealand drinkers in terms of amounts consumed are estimated to consume nearly half of all the alcohol consumed, each paying an average \$1,396 per year in excise tax, compared to the average New Zealand drinker who pays \$285 per year.²⁴
- A.27 Low-alcohol products containing less than 2.5 per cent alcohol constitute a very small segment of the New Zealand market, compared to Australia and United States (for instance, they comprise only one per cent of the New Zealand beer market). Removing excise tax on low-alcohol products (or exempting them from minimum price controls, or both) has the potential to reduce the price of these products, with the likely result of raising demand and reducing overall alcohol consumption.

Marketing/Advertising policies

- A.28 Alcohol is marketed in increasingly sophisticated ways, across a wide range of mainstream media, and newer forms of media (such as social networking sites) as well as via sponsorship of sporting and cultural activities.
- A.29 Methodological difficulties have been identified as one reason for a lack of clear-cut and consistent evidence linking marketing and harmful drinkers. However, a recent review of 13 longitudinal studies and covering 38,000 young people found convincing evidence of the impact of media exposure and alcohol advertising on subsequent alcohol use, particularly the onset of drinking, and increased drinking amongst those young people who are already drinkers.²⁵
- A.30 All European countries (except the United Kingdom) have a ban on one or more types of alcohol advertising. Several countries, including New Zealand, rely on self-regulation of advertising. In New Zealand, the Advertising Standards Authority (ASA) is responsible for all advertising in all media via codes of practice for the advertising industry, including the Code for Advertising Liquor (CAL). The system relies on complaints by the public. Parliament is currently considering improvements to strengthen the existing self-regulatory approach.

- A.31 Given the proposed changes to the system currently under consideration, the Law Commission's preliminary view is that additional regulatory controls are not yet required. However, in light of the emerging evidence about the effect of advertising, together with the rise of innovative approaches to alcohol marketing, the Commission favours a regulation-making power in statute to enable effective controls of marketing if required. This engages important commercial speech issues.
- A.32 Increased regulation of liquor advertising would have major implications for advertisers, including direct marketers and all media, as well as for the advertising industry. Any changes to what is acceptable advertising or marketing would also raise enforcement cost issues that must be considered.
- A.33 The Commission has identified controls on price-based promotions and advertising as a specific marketing approach requiring regulation. Controls could cover standard advertisements of price deals by supermarkets and liquor retailers as well as promotions such as two-for-one drinks, free drinks for females, and happy hours in bars and club. There is limited evidence of the effectiveness of regulations banning price promotions in relation to harmful consumption.
- A.34 The Commission considers that some controls on the use of such promotions may be best addressed at a community level via licensing and enforcement practices, as well as responsible hospitality and retail practices. However, for the self-regulatory approach to work successfully, all industry participants need to abide by the policy and there need to be enforceable consequences for those disregarding the codes. Without such an approach, responsible industry sectors are competitively disadvantaged by those who choose to ignore the codes.
- A.35 Similarly, bans on sale below cost could also be part of industry self-regulatory codes of practice initiatives. However, as the Commission does not know the extent to which alcohol is sold below cost at present, it is difficult to determine the overall impact of such a policy.

(2) Supply Control

Restrictions on number of retail outlets, days or hours of trading

- A.36 The fewer the number of outlets from which to purchase alcohol, and the shorter the hours of trading or fewer the days on which alcohol can be purchased, the greater the difficulty in obtaining alcohol, and the higher search costs for individuals.
- A.37 Increased density of alcohol outlets is associated with increased consumption of alcohol among young people, as well as increased alcohol-related harm (such as numbers of assaults, instances of child abuse and neglect, self-inflicted injuries, and to a lesser extent road traffic incidents).²⁶ However, the nature and location of retail outlets produces different types of alcohol-related

harm. For example, an increase in numbers of pub and bar outlets in urban areas may be associated with an increase in crime and anti-social behaviour, whereas an increase in off-licence retail outlets in suburban areas may be associated with a rise. The clustering of particular outlets in specific areas also has implications for the volume of people, their levels of intoxication and overall public disorder.

- A.38 Changing the hours, days, or both, for retail sales of alcohol can redistribute the times when alcohol-related harm occurs, and can often also lead to an increase in violent incidents. For example, a Western Australian study showed that an extension in opening hours from midnight to 1am was accompanied by a 70 per cent increase in violent incidents.²⁷ A reduction in the hours or days of sale of alcohol leads to fewer alcohol-related problems. A Brazilian study showed that introducing a limit on opening hours substantially dropped homicide rates in one city, with a 44 per cent decline in murders,²⁸ while another Brazilian study showed a 10 per cent reduction in monthly homicide rates alongside restricted opening hours.²⁹
- A.39 Changes to hours may also shift peak times for police and health services who are responsible for dealing with alcohol-related harm. Retailers may face compliance costs (for instance, they may have to section off areas of the store) as well as reduced sales as a result of restricted hours.
- A.40 The key issue is whether availability really matters as a causal factor in alcohol misuse and alcohol-related harm. There is very little evidence comparing 'before and after' scenarios worldwide, possibly because policies have been implemented too infrequently or too recently to have been evaluated, as well as difficulties in accessing commercially-sensitive retail sales volume data. The statistical association between drinking and harm with outlet density is difficult to assess. Better information is needed to understand the features of both outlets and drinkers in order to fully evaluate the effectiveness of introducing major restrictions on supply availability.
- A.41 At this stage the Commission does not believe there are grounds for extending the types of liquor outlets (for example allowing petrol stations to sell alcohol) or the types of products sold (for example allowing supermarkets and grocery stores to also sell spirits and spirit-based drinks).
 - Minimum age for purchase or drinking of alcohol
- A.42 Legal restrictions on the minimum age for the purchase of alcohol have shown clear decreases in numbers of drink-driving casualties,³⁰ and other kinds of alcohol-related harm (such as alcohol-related injury admissions to hospital, and injury fatalities).³¹
- A.43 Young people experience disproportionate rates of alcohol-related harm research has found that young people experience more harm per standard drink than older drinkers,³² with the highest risk of harm for those under the age of

- 15 years, and elevated risk for those under the age of 25 years.³³ Australian and UK experts have recommended that young people should not drink at all before the age of 15, and that drinking among 15 to 17 year-olds should be delayed and limited.³⁴
- A.44 There is also a range of harm specific to young people's drinking that does not affect adults in the same way or to the same extent. Early initiation of drinking in adolescence is associated with immediate and future alcohol-related health and social problems.³⁵ New Zealand research has found that, regardless of prior conduct disorder, early exposure to alcohol (defined as multiple occasions of alcohol consumption before the age of 15) is associated with a range of poor adult outcomes (including substance dependence, criminal convictions, herpes infection and failure to achieve educational qualifications).³⁶
- A.45 While there are restrictions on minors for the purchase of alcohol, minors more frequently receive their alcohol from friends and parents.³⁷ In terms of total volume of alcohol supplied to 14 to17 year-olds, the greatest proportion is from their friends, and most of the friends who supplied alcohol are aged 18 years or older.³⁸
- A.46 The Commission's preliminary analysis suggests that in order to reduce alcohol-related harm to minors, and limit the onset of drinking by young people, there should be an increase in the age of *purchase* of alcohol. At this stage the Commission favours a split age that will allow young adults (18 years and older) to purchase alcohol in on-licence premises (such as bars, clubs and cafes) where responsible serving practices, safety-oriented design of drinking premises, higher prices and so on would limit alcohol-related harm. However, the age for off-licence premises purchase of alcohol could be increased to 20 years in order to restrict access of minors to alcohol.
- A.47 The proposed age change is likely to reduce sales for retailers, but has the potential to increase income for on-licence premises. Young adults (18-20 years) are also likely to face an increase in costs associated with drinking, if they can only consume alcohol in on-licence premises. Their choice of drinking location will also be restricted.
- A.48 There is a risk of criminalising minors, or people other than parents who supply minors with alcohol, if restrictions on social supply of alcohol were strengthened. The Commission believes that there should be greater parental responsibility for supply of liquor to minors.

Licencing regimes

- A.49 The way in which liquor licences are granted and enforced has an impact on availability and consumption of alcohol. The Commission favours retaining the basic system of four licence types (that is, the on-licence, off-licence, club licence and special licence types). The Commission has also identified a number of ways in which the current licensing regime could be enhanced, including:
 - · eliminating current exemptions for liquor licences (for example chartered clubs, Police canteens, Parliament, defence premises, and fire stations currently do not need a liquor licence to sell alcohol);
 - development of a graduated licence fee structure to better reflect the risk posed to the community by the relevant licence;
 - reducing compliance costs by streamlining and simplifying licence renewal, for example, with exemptions for premises that pose a low risk;
 - allowing the Liquor Licensing Authority wider grounds on which to refuse a licence, for example, allowing a licence to be refused where the overall social impact of a licence is likely to be detrimental to the well-being of the community or where the amenity, quiet or good order of a locality would be lessened:
 - allowing the Liquor Licensing Authority to impose appropriate conditions on a licence for the purpose of reducing alcohol-related harm, such as conditions around promotional activities, discounted prices, and availability of free tap water;
 - simplifying some of the process for enforcement of breaches of liquor licensing laws to reduce administrative costs for agencies, licence holders and government (examples of the types of processes are outlined in the paper).
- A.50 The Commission has identified a wide variability in the performance of the District Licensing Agencies across the country. The Commission considers that these Agencies' powers and functions need to be restructured and enhanced to ensure a higher level of performance and reporting, including the development of local alcohol policies.
- A.51 These changes could increase the role of communities in making licensing decisions, creating a greater 'voice' for affected groups and individuals. However, these changes could also alter compliance requirements for regulatory agencies, licensees, applicants and premises that are currently exempt from the Act. It is too early to identify the overall impact on compliance costs for all parties. The Commission is seeking feedback on the Issues Paper to help to identify the various costs and benefits.
- A.52 Parliament is currently considering a number of proposals that are intended to enhance the role of local authorities in making licensing decisions (via the development of local alcohol plans).

(3) Problem Limitation

Health sector interventions

- A.53 The spectrum of alcohol use that ranges from no use through to severe dependence, with hazardous and problem use falling in between those extremes. Different levels of health intervention and treatment intensity are appropriate depending upon where a person sits on the spectrum.³⁹ The Commission has been advised that there are limited facilities, funding and programmes available for treatment of people with alcohol use disorders.
- A.54 'Brief interventions' or brief advice to people with hazardous or harmful drinking (but who are not severely dependent on alcohol) has been identified as the most effective evidence-based treatment method.⁴⁰ These interventions can be provided in general practice settings or delivered by other trained professionals, such as professionals working with people held by Police for intoxication or attending courts for alcohol-related offences.
- A.55 For people with more serious alcohol use disorders (approximately four per cent of the population), specialist treatment can be both effective and cost-effective.⁴¹ There is evidence that for people convicted of a crime, specialist alcohol treatment can be as effective when people are coerced to receive treatment as when they voluntarily to go into treatment.⁴² The human rights implications of coerced treatment are significant, so it is important that a principled approach is taken to imposing treatment orders.
- A.56 Any improvements in treatment will require increased funding for the health sector and other training and service provision sectors. However, increased treatment of those with alcohol use disorders can potentially reduce justice sector costs (that is, corrections, courts and Police costs) as well as longer term costs in the health sector.

(b) Drink-driving and transport policies

- A.57 Both the proportion of all crashes that are alcohol-related, and the number of such crashes, has risen for both fatal crashes and injury crashes. New Zealand's rate of drink driving fatalities is higher than in other countries (approximately 30 per cent of New Zealand's fatal crashes are alcohol-related, 43 compared to Australian states' rate of 21 per cent and in Great Britain 17 per cent). 44
- A.58 General population-based policies (for instance increasing alcohol prices, raising the minimum purchase age, limiting outlet density) can reduce alcohol-related traffic incidents. There is also evidence of road safety benefits from introducing a lower legal blood alcohol limit from 80 to 50 milligrams of alcohol per 100 millilitres of blood, and a zero tolerance for novice or young drivers (the Commission's preferred option).
- A.59 It was estimated in 2004 that reducing New Zealand's BAC to 50 milligrams of alcohol per 100 millilitres of blood would lead to significant savings 4.5 per cent reduction in social cost by 2010, or a reduction of \$103 million

annually, and a saving of 14 lives and 260 injuries annually. 45 Reducing the BAC for young drivers (under 20 years of age) from 30 milligrams of alcohol per 100 millilitres of breath to 10 milligrams of alcohol per 100 millilitres of breath (effectively zero), was estimated to save at least one life and prevent 26 injuries annually.

- A.60 Based on international road safety gains, Alcohol Healthwatch estimates a lower BAC would save 16 to 72 lives and 640 to 1280 injuries annually. 46 Internationally, reducing BAC levels has produced many case studies that consistently demonstrate the considerable safety benefits associated with BAC limits of 50 mg or lower.⁴⁷ Following the introduction of a .05 limit, Queensland reported an eight per cent reduction of crash involved drivers with alcohol in the .08 to .15 range, while in New South Wales there was an eight per cent reduction in fatal crashes. Lowering the limit appears to have positive effects on driver alcohol consumption, not just at the lower legal limits, but also at the upper extremes. 48 In Australian Capital Territories, there was a 39 per cent reduction of crash involved drivers with alcohol in the .08 to .99 range.
- A.61 There is also evidence for the effectiveness of measures for targeting drink drivers, including mandatory treatment, and the use of ignition interlocks (a mechanical device that does not allow a car to be driven by a driver who is over a specified limit).49
- A.62 Tighter restrictions on drink driving could affect the hospitality industry in rural areas and consumers in the rural areas, where there are limited means of public transport or alternative means of transport.

Restrictions on public drinking

- A.63 Prohibition or total bans on the sales of alcohol continue to be used in several countries with Muslim populations as well as local indigenous communities. But many jurisdictions have restrictions or bans on the consumption of alcohol in particular circumstances (for instance, public places, or workplaces). For example, liquor bans are used extensively in New Zealand by local councils, with an estimated 166 local body bylaws. Some of those ban alcohol consumption in city centres and parks, on beaches and during various periods (for instance, during weekends, the night and early morning hours, or for 24-hours).
- A.64 Independent evidence on the effectiveness of restrictions on public drinking or public intoxication in reducing social harm from alcohol is limited, and many restrictions are introduced in combination with increased policing, greater use of CCTV and so on. Any benefits from improved public safety arising from liquor bans has to be weighed against increased costs to individuals and the justice sector (such as increased policing, and increased courts and collections resources). Given the number of variables involved, it is not currently possible to quantify the cost-effectiveness of liquor bans on reducing alcohol-related harms.

CONCLUSION

- A.65 It is hoped that public consultation on the Issues Paper will provide the Commission with more information, enabling it to better identify the impacts (including cost and benefits) of the various regulatory measures under consideration. While there is good evidence available for many of the individual options being considered, there is limited research available on the *optimal* mix or combination of policies to reduce alcohol-related harm. There is "extremely limited understanding of how different interventions affect each other, and how to optimize their mix to obtain improved outcomes". 50
- A.66 There can be no doubt, however, that many of the interventions on offer will result in increased compliance costs and, in some instances, may inhibit the development of the liquor business. The issue will be which of the proposed measures are justified in light of their likely success in reducing the harm they are aimed at. That analysis will await our final report.

APPENDIX 3 ENDNOTES

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- 2 Sale of Liquor Act 1989, s 4(1).
- Dormer, Sherriff and Crookston, above n 1. 3
- 4 Sale of Liquor Act 1989, s 6(1).
- 5 National Health and Medical Research Council Australian Guidelines to Reduce Health Risks from Drinking Alcohol (Canberra, 2009) [Australian Guidelines].
- 6 World Health Organization Guidelines for Drinking-Water Quality (3rd ed., WHO, Geneva, 2006), 194. ["For substances that are considered to be carcinogenic, the guideline value is the concentration in drinking-water associated with an upper-bound excess lifetime cancer risk of 10⁻⁵ (one additional cancer per 100,000 of the population ingesting drinking-water containing the substance at the guideline value for 70 years)"].
- 7 Ministry of Health Unpublished Data Analysis of the 2004 New Zealand Health Behaviour Survey - Alcohol Use (Ministry of Health, Wellington, 2009).
- Business and Economic Research Limited (BERL) Costs of Harmful Alcohol and Other Drug Use 8 (Report prepared for the Ministry of Health and Accident Compensation Corporation, Wellington, 2009) 61 [BERL report].
- 9 BERL report, above n 8.
- 10 Business and Economic Research Limited (BERL) Costs of Harmful Alcohol and Other Drug Use – A Literature Review. (Report to the Ministry of Health and Accident Compensation Corporation, Wellington, 2008). Previous New Zealand estimates of the social costs associated with alcohol-related harm, updated by BERL to 2006/06 dollars were:
 - Brian Easton The Social Costs of Tobacco Use and Alcohol Misuse (Department of Public Health, Wellington School of Medicine, 1997).
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- 12 F Barker Consumption Externalities and the Role of Government: The Case of Alcohol (Working Paper 02/25, Treasury, Wellington 2002) 15. The net external cost of alcohol consumption was \$385 - \$831 million [1999 dollars].
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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).
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APPENDIX 4

PRELIMINARY CONSULTATION

The following list records the organisations and stakeholders who have met with the Law Commission during the preliminary consultation phase of the Review.

In addition the Law Commission would like to acknowledge the considerable contribution to this issues paper made by the dozens of individuals who were interviewed or provided advice including police and liquor licensing inspectors around the country.

Accident Compensation Corporation

Activate (youth focus group), Ministry of Youth Development

Advertising Standards Authority

Alcohol Advisory Council of New Zealand

Alan Dormer, Barrister

Alastair Sherriff, Barrister and Solicitor, Buddle Findlay

Alcohol Healthwatch, Whakatupato Waipiro (an NGO)

Auckland Regional Transport Authority

Beam Global (NZ) Ltd

Brewers Association of Australia and New Zealand Inc.

British High Commission

Centre for Science in the Public Interest (Washington, United States)

Coronial Services Unit, Ministry of Justice

DB Breweries New Zealand

Department for Business Enterprise & Regulatory Reform (United Kingdom)

Department of Culture, Media & Sport (United Kingdom)

Department of Health (United Kingdom)

Department of Justice (Victoria, Australia)

Department of Prime Minister & Cabinet

Department of Internal Affairs, Scotland

DIAGEO Australia

Distilled Spirits Association of NZ

District Court Judges

Dr Brian Easton

Dr Jamie Pearce

Dr Juliet Broadmore

Dr Nick Baker

Dr Paul Christoffel

Dr Paul Quigley

Dr Sue Bagshaw

Dr Geoffrey Robinson

Dr Martin Sage

Dunedin City Council

Food Standards Australia New Zealand

Foodstuffs (Auckland) Ltd and Foodstuffs (NZ) Ltd

Hapai Te Hauora Tapui (Māori Public Health)

Health Select Committee (United Kingdom)

Home Office (United Kingdom)

Hon Peter Dunne

Hon Simon Power, Minister Responsible for Law Commission

Hospitality Association of NZ

Independent Liquor

International Center for Alcohol Policies (Washington, United States)

Judith Fyfe, Barrister and Solicitor

Kenny MacAskill, MSP (Scotland)

Licensing Trusts Association (The Trusts)

Lion Nathan

Liquor Licensing Authority (Judge Bill Unwin)

Local Government New Zealand

Local Government, New Zealand, Alcohol Reference Group

Massey University (Centre for Social and Health Outcomes Research and Evaluation) (Prof Sally Casswell)

Medical Officers of Health

Metro Mayors

Ministry of Culture and Heritage

Ministry of Economic Development

Ministry of Health

Ministry of Justice

Ministry of Pacific Island Affairs

Ministry of Social Development

Ministry of Transport

Mr Nahar Singh (father, Navtej Singh)

National Institute on Alcohol Abuse and Alcoholism (United States)

New South Wales Office of Liquor, Gaming and Racing (Australia)

New Zealand Business Round Table (Roger Kerr)

New Zealand Drug Foundation

New Zealand Police – Executive and various frontline sections, team policing units, tactical response teams, and licensing staff around the country at the 17 locations visited

Nicola Sturgeon, MSP (Scotland)

North Shore City Council

NZ Customs Service

NZ Institute of Liquor Licensing Inspectors

NZ Retailers Association

NZ Winegrowers

Pastor Lui Ponifasio (Life Church, Manurewa)

Police Central Communications Command (United Kingdom)

Porirua City Council

Professor Doug Sellman

Progressive Enterprises Limited

Provincial Mayors

Public Health and Wellbeing Directorate (Alison Douglas)

Retired Judge John Gatley

Rob Munro, Barrister and Solicitor

Roger Brooking

Sandeep Verma

Secretariat – Taskforce for action on sexual violence

Super Liquor

Te Puni Kōkiri

The Royal Australasian College of Physicians

The Scottish Government

Scottish Health Action on Alcohol Problems (SHAAP)

- · Dr Bruce Ritson
- · Dr Peter Rice
- · Professor Peter Brunt

The Scottish Parliament – Criminal Justice Directorate

Treasury

United Kingdom Parliament, Health Select Committee

University of Canterbury

University of Otago, Injury Prevention Research Unit

Victoria Police (Australia)

Wellington City Council

Wellington Hospital

NOTES		

NOTES	

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