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TE·AKA·MATUA·O·TE·TURE

April 2010, Wellington, New Zealand | REPORT 114

ALCOHOL IN OUR LIVES: CURBING THE HARM

A REPORT ON THE REVIEW OF THE REGULATORY FRAMEWORK FOR THE SALE AND SUPPLY OF LIQUOR

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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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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).

The Hon Simon Power
Minister Responsible for the Law Commission
Parliament Buildings
WELLINGTON

27 April 2010

Dear Minister

NZLC R114 – ALCOHOL IN OUR LIVES: CURBING THE HARM

I am pleased to submit to you Law Commission Report 114, *Alcohol in Our Lives: Curbing the Harm*, which we submit under section 16 of the Law Commission Act 1985.

Yours sincerely

Geoffrey Palmer
President

FOREWORD

In the 24 years since the last full review of New Zealand's liquor laws much has changed. Sir George Laking's Working Party on Liquor reported in October 1986 (the Laking Report). The Working Party's recommendations formed the basis of the much liberalised regime established by the Sale of Liquor Act 1989. The law over the years has not kept pace with changes in society.

Alongside major social and technological changes there have been great advances in our understanding of alcohol's effects on the brain and body, and in the availability of peer-reviewed published research. There is a great deal more in the current medical and health literature on the effects of alcohol than there was in 1986. Indeed, the health issue barely rates in the Laking Report.

Of most concern now is the research supporting a causal link between alcohol intoxication and aggression.[1] In March 2010, I had the privilege of chairing a panel of Police Commissioners from Australia and New Zealand in Melbourne. There was agreement across all jurisdictions that alcohol is the biggest problem facing police forces. The Chief Commissioner of Victoria, Simon Overland, described the situation as a case of regulatory failure.

The principle under which we have approached this review is that New Zealanders live in a free and democratic society. They are subject only to such limitation in their freedom as can be justified in such a society. They have liberty to behave as they choose as long as their actions respect the rights of others and are not contrary to the law. 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 particular ways. We believe the recommendations in this report meet that test.

We held meetings and consultations for this project all over New Zealand. We received more submissions than any other project in the 24-year history of the Law Commission. We are so grateful to all those who have helped us with their submissions, their advice and their professional expertise. In particular, we are grateful to the Alcohol Advisory Council of New Zealand, New Zealand Police, Ministry of Health and Ministry of Justice, all of whom played a vital role in our review.

The subject of our report is a social battleground replete with both passions and prejudices. We have tried to steer a reasonable course around these policy whirlpools and fashion a report that will address the needs of the society as a whole.

1 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 46.

The Commissioners who worked on this project were Sir Geoffrey Palmer and Val Sim. The policy and research staff were:

Cate Honoré Brett – Law Commission

Lecretia Seales – Law Commission

Marion Clifford – Law Commission

Rachel Hayward – Law Commission

Ryan Malone – Law Commission (until December 2009)

Susan Joy – Ministry of Health (on secondment)

Helen Fielding – Alcohol Advisory Council of New Zealand (on secondment)

Fiona Stirling – Ministry of Justice (on secondment)

Susan Roberts – New Zealand Police (on secondment).

Geoffrey Palmer
President

TERMS OF REFERENCE

To examine and evaluate the current laws and policies relating to the sale, supply and consumption of liquor in New Zealand.

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.

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.

To prepare an issues paper for publication and take submissions on it, and to engage in extensive public consultation.

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.

Alcohol in our lives:
Curbing the harm

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Summary

A new approach to the regulation of alcohol

INTRODUCTION

1 In this summary we provide an overview of the Law Commission's conclusions and recommendations on the sale, supply and consumption of alcohol in New Zealand.

2 Alcohol is a legalised drug with the potential to cause serious harm. We propose a new policy framework that amounts to a paradigm shift in the regulation of alcohol compared with the current system. We anticipate there will be considerable resistance to some of the proposed measures.

3 The proposals flow from our analysis of the level of alcohol-related harm being experienced in New Zealand. The New Zealand Police's conviction that alcohol misuse is a major contributor to rates of violent offending, including family violence, in this country, weighed heavily on this review.

4 New Zealanders have been too tolerant of the risks associated with drinking to excess. Unbridled commercialisation of alcohol as a commodity in the last 20 years has made the problem worse. New Zealanders now spend an estimated $85 million a week on alcohol.

5 The changes we recommend are aimed at curbing alcohol-related harm. The recommendations amount to a retreat from the most permissive aspects of the current legal controls on alcohol in New Zealand but they do not amount to a return to wowserism. Those who do not drink in a risky manner will be little impacted by the measures we recommend.

6 In the decade between 1998 and 2008 there was a 9% increase in per capita consumption of pure alcohol. This coincided with the lowering of the minimum purchase age from 20 to 18 years, falling unemployment, sustained economic growth and yearly fiscal surpluses. The current economic recession, which has seen the unemployment rate increase to 7.3%, is likely to be contributing to the slight decline in consumption seen in the latest alcohol consumption data.

7 We believe our package of policy recommendations will help reduce the levels of criminal offending in New Zealand. We note that reducing the harm from alcohol is one of the four priority areas for cross-government action in addressing the drivers of crime. The policies will relieve the heavy burden carried by the New Zealand Police, and should also improve the nation's health.

8 An integrated package of policies is proposed in this report, the key elements of which are:

- a new Alcohol Harm Reduction Act to replace the Sale of Liquor Act 1989;
- increasing the price of alcohol through excise tax increases in order to reduce consumption;
- regulating promotions that encourage increased consumption or purchase of alcohol;
- moving, over time, to regulate alcohol advertising and sponsorship;
- increasing the purchase age for alcohol to 20 years;
- strengthening the responsibility of parents supplying alcohol to minors;
- increasing personal responsibility for unacceptable or harmful behaviours induced by alcohol;
- cutting back the hours licensed premises are open;
- introducing new grounds upon which licences to sell alcohol can be declined;
- allowing more local input into licensing decisions through local alcohol policies and District Licensing Committees (the bodies we are recommending replace District Licensing Agencies);
- streamlining the enforcement of the alcohol laws and placing the overall decision-making in a new Alcohol Regulatory Authority (building on the existing Liquor Licensing Authority) presided over by District Court judges especially selected for the task; and
- a substantially improved and reorganised system for the treatment of people with alcohol problems.

9 This report is structured in four parts. Part 1 reviews the case for reducing alcohol-related harm. Part 2 discusses recommendations for controlling the supply of alcohol. Part 3 addresses proposals for reducing the demand for alcohol and Part 4 examines recommendations for limiting alcohol-related problems.

The harm

10 The excessive consumption of alcohol by New Zealanders contributes to a range of serious harms. These harms can be categorised as:

- an array of criminal offences including homicides, assaults, sexual assaults, domestic violence and public disorder that place heavy and unacceptable burdens on the New Zealand Police;
- the causative contribution that alcohol consumption makes to a long list of diseases, including alcohol-related cancers, mental health disorders, dependence, foetal alcohol spectrum disorder, sexually transmitted infections, and many others;
- alcohol poisoning and accidental injury due to intoxication, sometimes causing death. This includes many cases of death in the home and on the roads. The Accident Compensation Corporation estimates up to 22% of the claims it receives have alcohol as a contributing factor. These injuries place a heavy burden on the public health system, particularly on the accident and emergency departments of New Zealand hospitals. Treating disease and disability to which alcohol contributes places a further heavy load on the public health system;
- the catalogue of harms visited upon third parties as a result of others' excessive alcohol consumption. These include many victims of crime, victims of domestic violence and children whose lives are marred, sometimes before birth, by their dependence on adults who drink to excess;
- the harmful effects on educational outcomes, workplace productivity, friendships, social life, home life and the financial position of households;[1]
- the public nuisance: litter, glass, noise, the damage and destruction of property and the costs associated with rectifying these nuisances.

11 It is hard to think of any other lawful product available in our society that contributes so much to so many social ills. While alcohol misuse is only one of several risk factors contributing to these harms, alcohol distinguishes itself because, unlike many other factors associated with crime, injury and social dysfunction, the harmful use of alcohol is a *modifiable risk factor*. In other words, as a society, we can modify our use of alcohol.

12 Balanced against these harms must be the pleasure many people derive from the consumption of alcohol. Those who drink in a low-risk manner will be little affected by our proposals. The focus of our proposals is on the *excessive consumption* of alcohol, which the evidence tells us is clearly associated with the heavy burden of acute harms we are experiencing as a society.

1 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009) at XXIV [*Alcohol Use Survey 2007/08*].

Law Commission inquiry

13 The significant changes recommended rest on the analysis of harm reached in our extensive inquiry that began in August 2008. This included the publication of a 278 page issues paper,[2] the receipt and analysis of 2,939 submissions on the paper and more than 50 meetings held around New Zealand from Whangarei to Invercargill. These consultations, summarised in chapter 1, weave a rich tapestry of concerns about the problems to which alcohol contributes in our society.

14 The overwhelming message communicated to us is the need for change – indeed many have advocated drastic change. Not only did our investigations support the need for change but so, too, do the research findings of scientists, social scientists and medical researchers around the globe. These research findings now amount to a formidable body of literature that must inform New Zealand policy. As a society, we cannot go on pretending that all is well. Such a position can only be regarded as plausible if both the international and New Zealand research on alcohol is ignored. Dr Paul Quigley, Consultant Specialist in Emergency Medicine at Capital and Coast District Health Board, put it this way in his submission:[3]

> It is clear that some of the interventions with the greatest outcomes are going to be unpalatable to the general public. *Despite overwhelming international evidence* that decreasing excessive alcohol consumption reduces health and social harms, and *improves national economies*, many of the key initiatives in this submission, especially taxation and age elevation, will be subject to the whims of politicians and their need for votes. Evidence and science *must win this battle* and I entrust that the Commission will be forthright in its recommendations to Parliament.

15 The message from the rapidly expanding research base on alcohol is that policy should follow the evidence.

Drinking behaviour

16 A familiar refrain we heard in our consultations and the submissions is that moderate drinkers should not be punished for the abuses of a minority. The statistics in New Zealand tend to give lie to the bald assertion that the "vast majority of New Zealanders drink responsibly". Instead they suggest that the majority of drinkers get drunk occasionally; just over 20% drink in a potentially hazardous manner, and about 10% drink enough to get drunk every week. Some people may abstain or moderate their drinking during the week and drink large amounts on the weekend. And many New Zealanders who may classify themselves as "responsible" drinkers may be among the third whose daily intake is pushing their risk of dying of an alcohol-related disease or injury above 1:100. What the figures make clear, is that drinking to intoxication and drinking large quantities remain dominant features of our drinking culture and this behaviour is not confined to an aberrant minority.

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2 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009).

3 Submission of Dr Paul Quigley MbChB, FACEM, Emergency Medicine Speciality, Wellington Hospital (submission dated 29 October 2009) at 1.

17 In the past two decades, the scientific understanding of alcohol's effects on the human body and brain (including the developing brain) has advanced considerably, leading to revisions of what constitutes low-risk levels of consumption. One-in-five drinkers – and nearly half of drinkers under 24 years of age – typically drink enough in a single session to double their risk of injury in the six hours after drinking.[4]

18 New Zealand has a pervasive culture of drinking to excess. National drinking surveys consistently show that around 25% of drinkers – the equivalent of 700,000 New Zealanders – typically drink large quantities when they drink.[5] Despite the incontrovertible evidence linking intoxication to a range of serious harms, as a society, we have developed a dangerous tolerance for drunkenness. The latest drinking survey shows just under 60% of drinkers, or 1.3 million people, reported they had consumed enough to feel drunk at least once in the past 12 months.[6] Just under 12%, the equivalent of 305,800 people, reported drinking enough to feel drunk one-to-three times a month. Ten percent, or the equivalent of 224,600 adults, consumed enough to feel drunk at least weekly.

19 Otago University epidemiologist Professor Jennie Connor characterised the problem in this way:[7]

> Many [New Zealanders] drink in a low-risk manner and reap the social benefits. However for a large sector of the population there is a dominant pattern of heavy intermittent drinking episodes, the worst pattern for the drinker's own health outcomes, and the worst for damage to those around them.

20 Such high rates of risky drinking are associated with harm to both the drinkers and people affected by their actions. A key aim of any new policies must be to reduce the incidence of intoxication and heavy sessional drinking in our society.

21 New Zealand is not alone in grappling with these problems. Many Western nations, including Australia and the United Kingdom, are undertaking similar inquiries and are formulating legal and other responses in an effort to curb alcohol-related harms.

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4 Ministry of Health *Unpublished data analysis of the 2004 New Zealand Health Behaviour Survey – Alcohol Use* (June 2009) [*Ministry of Health Data Analysis*].

5 The Alcohol Advisory Council of New Zealand defines a quarter of adult drinkers in New Zealand as "binge drinkers" because they typically consume seven or more standard drinks per session. One standard drink contains 10 grams of pure alcohol. The Ministry of Health's *Alcohol Use 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. By this measure, the *Alcohol Use Survey* found: 25% (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% (50.3–57.9) of our 18 to 24 year olds.

6 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009).

7 J Connor "The knock-on effects of unrestrained drinking" (2008) 121 New Zealand Medical Journal 101.

Alcohol is no ordinary commodity

22 The opportunities for purchasing alcohol have increased greatly since 1989. The number of licences allowing the sale of alcohol has more than doubled since the 1989 Sale of Liquor Act was passed. There were 6,295 licensed premises in 1990 and 14,424 in February 2010. On-licences more than trebled (2,423 to 7,656) and off-licences more than doubled (1,675 to 4,347) in this period. The density of outlets has meant that alcohol is much more widely accessible than ever before in New Zealand and has been "normalised" after being available for more than 20 years among the foods sold in our supermarkets and local groceries. In a retail sense, alcohol has become no different from bread or milk and is often sold at cheaper prices than these commodities.

23 The trend towards regarding alcohol as a normal food or beverage product needs to be reversed. In truth, alcohol is no ordinary commodity. Alcohol is a psychoactive drug that easily becomes addictive and that can produce dangerous behaviours in those who drink too much. New Zealanders are reluctant as a nation to face up to the facts. There are many convenient but wrong explanations offered for why the availability of alcohol should not be tightly regulated. But in the end, reality must be faced: it is the product alcohol itself that is the problem. When consumed, alcohol will reduce one's cognitive abilities and eventually make one intoxicated, thus reducing self-control and a sense of responsibility. There are many reasons why people drink to excess but the behaviours that result can cause harm both to the drinkers themselves and those around them. For that reason, the idea that society must take great pains to protect the interests of reasonable moderate drinkers rings somewhat hollow. It is the interests of society as a whole that must have the first claim on the priorities of policy. Those who do not drink at risky levels will be impacted only slightly by our recommendations.

24 One knowledgeable organisation made the submission to us that the existing Sale of Liquor Act fails in its basic objective. Alcohol Healthwatch submitted: "We assert that the law as it stands is acting counter to its object and resulting in increased harm rather than reduced harm".[8] Regretfully, we believe that conclusion is correct. The law can and should be changed but that will not be enough.

Changing the drinking culture

25 We recommend changes to the law but we are under no illusion that this will be sufficient to combat the problems outlined in this report. Law changes are a necessary condition for other changes to be achieved and can nudge the community in a different direction by creating an environment more conducive to less risky behaviour. To bed in enduring change the need for it has to be reflected in the hearts and minds of the community and that requires an attitudinal shift and a new drinking culture. These shifts in attitude need to be based on community awareness of the risks associated with the abuse of alcohol and a willingness not to take those risks.

8 Submission of Alcohol Healthwatch (submission dated 30 October 2009) at 7.

26 Many of the necessary changes must flow from the community itself, not the law. Many individuals, local government bodies, educational institutions and businesses can contribute to the goal of changing the drinking culture without any changes to the law. Strenuous efforts need to be made to change the pervasive binge-drinking culture that afflicts New Zealand. Social attitudes need to be shifted so it is not regarded as socially acceptable to get drunk. Some New Zealanders appear to have adopted what has been labelled elsewhere as "a new culture of intoxication".[9] Efforts should be made to demonstrate it is both possible and normal to socialise without drinking alcohol in a risky way.

Community action and leadership

27 Following well-publicised excesses in the use of alcohol by university students, the Vice-Chancellor of the University of Otago, Sir David Skegg, and the University Council, have eliminated all alcohol advertising and sponsorship from University of Otago campuses. Such measures are available to all tertiary educational institutions in New Zealand without any changes to the existing law. In our view the concentration of alcohol-related incidents within universities and among university students is a cause for concern. On a broad level, local government and communities can ensure there are sporting and other activities available for young people that provide an alternative to gravitating to the pub to drink alcohol. There is no substitute for an aware and concerned community that keeps abreast of developments within it and takes action to encourage the development of norms that will support the reduction of harmful drinking in those communities.

28 In the course of our meetings around New Zealand we were told of instances where communities had concern at adverse developments and had changed them. Cooperation and dialogue between local government, the Police, health authorities, educational institutions and community leaders can produce many productive partnerships that will improve situations without resort to law. We recommend strongly, not to the government, but to every New Zealand community, that their first resort to curb the problems of alcohol in a community must be action by the community itself.

29 Leadership at a local level can take many different forms. The Law Commission encourages all organisations, businesses, councils, educational bodies and clubs in New Zealand to see what they can do to change the drinking culture by taking steps that are within their control. Such measures, if widely adopted, are likely to yield significant results. It is by these means that the unfortunate New Zealand drinking culture can be turned around over time. Market behaviour, social attitudes, parental upbringing, personal beliefs and individual choices are the forces that drive the drinking culture. The law can shape and influence aspects of the culture but it cannot control it.

9 S Wells, K Graham and J Purcell "Policy Implications of the widespread practice of 'pre-drinking' or 'pre-gaming' before going to public drinking establishments-are current prevention strategies backfiring?" (2009) 104 Addiction 4.

Policy levers

30 It is recognised in the international literature that there are seven major policy levers available to reduce alcohol-related harm:[10]

- regulating the physical availability of alcohol through restrictions on time, place and density of outlets;
- regulating conduct in commercial drinking establishments;
- taxing alcohol and imposing controls on price;
- regulating advertising, promotions and marketing;
- imposing penalties for alcohol-related anti-social behaviour such as drink driving;
- education and persuasion with the provision of information; and
- increased availability of treatment programmes with screening and brief interventions in health care.

31 An important qualification needs to be added to the list. Whatever laws are enacted need to be adequately enforced. Lack of enforcement has been a problem in New Zealand. For example, in seven years there have been only six convictions for the sale or supply of liquor on licensed premises to intoxicated people. In such situations there should be a more active policy to prosecute in order to deter bad behaviour.

32 A further point is that we are not drawing on a clean slate. New Zealand currently has a system of regulation that applies. The elements of the existing system need to be borne in mind during the design of a new system, and those aspects that are performing well should be retained.

33 In the suite of measures we recommend we have attempted to design an integrated package, the various elements of which are mutually reinforcing. Picking and choosing from among the various elements put forward will lessen the power of the package to reduce the harm at which it is aimed. The measures adopt both a targeted and population-wide approach. There will be an impact on the total population's consumption as well as on patterns of episodic binge drinking, in particular, on the prevalence of heavy drinking by young people.

10 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 107.

A new Alcohol Harm Reduction Act

34 We recommend that the Sale of Liquor Act 1989 should be repealed and replaced by a new Act called the Alcohol Harm Reduction Act. In order to have a new approach to controlling the sale, supply and consumption of alcohol, a completely new statute is called for. A patch-up job of the current legislation will not do. The Sale of Liquor Act is a complex law, with more than 250 sections. It has been amended on 12 occasions since its enactment in 1989. Acts of Parliament that are heavily amended easily lose their shape and accessibility. The object of the new Act is important; it will drive the decisions made under the new law.

35 The object of the Alcohol Harm Reduction Act should be to establish a reasonable system for the sale, supply and consumption of alcohol for the benefit of the community as a whole, and, in particular, to:

(a) encourage responsible attitudes to the promotion, sale, supply and consumption of alcohol;
(b) contribute to the minimisation of crime, disorder and other social harms;
(c) delay the onset of young people drinking alcohol;
(d) protect and improve public health;
(e) promote public safety and reduce public nuisance; and
(f) reduce the impact of the harmful use of alcohol on the Police and public health resources.

36 The object of the Act is fundamental, it is that which drives all the decisions made to grant or refuse a liquor licence. The features of the licensing system we recommend are described in 12 chapters of this report. In this summary we can only deal with the main principles and highlight them. For the detail, people will have to consult the full report. The main features of the system designed to drive down alcohol-related harm are:

- restricting the times alcohol can be sold;
- restricting the places alcohol can be sold;
- preventing a growing proliferation of alcohol outlets;
- increasing the purchase age for alcohol;
- expanding the grounds upon which a liquor licence can be declined;
- providing for more local input into liquor licensing decisions;
- reorganising and upgrading the efforts of local authorities in relation to alcohol decisions;
- providing for local alcohol policies to be decided by councils;
- financing liquor licensing, monitoring and compliance through licence fees, not a combination of fees and ratepayer contributions;
- tightening the law about off-licences; and
- improving regulation of special licences.

37 In recommending a new approach to alcohol regulation, we are not resiling from the position that many positive changes have resulted from the decades of reform. Many of those positive changes will be enhanced by our recommendations because they will support those operating in a responsible fashion and investing in sustainable business models that properly reflect the risks and responsibilities accompanying the privilege to sell alcohol.

Four types of licence

38 We recommend the four types of liquor licence that have become familiar since 1989 be retained. They are:

- on-licence;
- off-licence;
- club licence; and
- special licence.

Grounds upon which to decline a licence

39 We recommend that there be wider grounds in law upon which to decline a liquor licence than exist now. Local views must be given some weight. A licensee will have to be a "suitable person". The premises must have the requisite certificate under the Resource Management Act 1991 and comply with the Building Act 2004. In addition, in deciding whether to issue a licence, the following factors should be required to be taken into account:

- the object of the Act;
- the provisions of the relevant local alcohol policy;
- whether the amenity or good order of the locality would be lessened by the granting of the licence; and
- whether the applicant has the appropriate systems, staff and training to comply with the law and manage the risks.

40 Licence criteria are discussed in chapter 7.

Off-licences

41 Because of the manner in which Parliament dealt with the legislation in 1989 there are serious problems with the law relating to off-licences. There have been confusing, changing interpretations, coupled with a proliferation of small liquor outlets that was never the intention of Parliament. It is not practical to start again, but we recommend significant tightening of the law based on the connection to food. This was the original justification for the policy of putting wine and beer in food stores. We recommend that the types of premises that are eligible for an off-licence be reduced to the following:

- a specialist alcohol retailer or manufacturer;
- a food retailer where food comprises at least 50% of the annual sales turnover;
- premises for which an on-licence is held (but not a restaurant, nightclub, entertainment venue, or club, including sports clubs); and
- any other type of retailer if no other off-licence alcohol retailer is reasonably available to the public, and the grant of the licence would not encourage alcohol-related harm.

42 The law should expressly prohibit certain types of premises from being eligible for an off-licence. These should be as follows:

- a service station; and
- a takeaway food outlet.

43 Only specialist alcohol retailers or manufacturers and premises for which an on-licence is held should be able to sell spirits or ready-to-drink spirit-based beverages (RTDs) under an off-licence. To be a specialist alcohol retailer, a store should be required to have the sale of alcohol as its "principal business". The legislation should allow specialist alcohol retailers to also sell some food and other products. However, if the amount of food products in a specialist alcohol retailer is more than minimal, it will not be permitted to sell spirits and RTDs. Also, the stocking of non-food product lines needs to be consistent with and supplementary to a store's status as a specialist alcohol retailer.

44 A liquor store within the physical footprint of a supermarket or grocery store should also only be able to sell wine, beer and mead.

45 Supermarkets should be required to keep liquor in one place on the premises (known as a "single-area restriction") as a condition of their licence. This will prevent supermarkets placing alcohol at the end of other aisles, in doorway entrances and among other goods. The criteria for the sale of takeaway alcohol are discussed in chapter 8.

Internet retailers

46 Increasing amounts of alcohol are sold on the internet. We have examined the situation and made several recommendations in chapter 8 to take into account this form of sale.

Licence conditions

47 The existing law provides for a variety of conditions to be imposed on liquor licences. These conditions are aimed at regulating behaviour in and around drinking establishments. We propose a detailed range of mandatory and discretionary licence conditions designed to prevent alcohol-related harm.

48 There should be a power for decision-makers to impose any reasonable condition on licences where the condition will reduce alcohol-related harm. Mandatory conditions for on-licences and clubs cover matters such as the provision of food, soft drinks and free water. Discretionary conditions for on-licences and clubs include matters such as the number of door staff required and the provision of CCTV cameras where necessary. Licence conditions are discussed in chapter 9.

Hours

49 Hours for all licences should continue to be a discretionary condition of a licence, but be subject to New Zealand-wide maximum hours as specified by Parliament. Twenty-four hour trading should be stopped. Off-licences should be required to stop trading in alcohol no later than 10pm at night and not open again until 9am, by which time schools are in session. On-licences and clubs should be required to close no later than 4am, with a mandatory one-way door from 2am, and not reopen until 9am. The one-way door requirement means people cannot enter after 2am but they do not have to leave until 4am (or such earlier time as the licence provides).

50 Local government should not be able to set maximum trading hours that are longer than the national maximum hours, but should have the discretion to reduce hours below the maximum through local alcohol policies.

51 The longer premises are open, the greater the opportunity for alcohol-related harm to occur. The research evidence makes it clear that hours can make a contribution to curbing harm. Availability of alcohol does matter. Restrictions on hours are discussed in chapter 9.

District Licensing Committees

52 District Licensing Agencies (in effect local councils) should be replaced by new District Licensing Committees (DLCs).

53 The membership of each DLC should consist of a councillor selected for the task by the council, and two members of the community appointed by the council.

54 The process for appointment of community members should be publicly advertised, and the selection of community members should be undertaken in consultation with the New Zealand Police, liquor licensing inspectors and medical officers of health.

55 There should be a requirement for community members to have particular knowledge and experience in areas specified in the statute, such as:

- public health;
- the social issues of the particular community in which the DLC is situated;
- the liquor industry (but not be currently participating in it);
- law enforcement (but not be currently participating in it); or
- legal or regulatory matters.

56 On receipt of an application for a liquor licence, the DLC should notify the application on a designated website and require the applicant to affix a physical notice in a prescribed form at the proposed premises. The DLC should also notify residents within 200 metres of the proposed premises.

57 All applications should be referred to a liquor licensing inspector, the Police and medical officer of health for the area, who should report on the application to the DLC.

58 All decisions made by a DLC should be appealable to the Alcohol Regulatory Authority by any persons appearing before the DLC. The Alcohol Regulatory Authority should have full power to substitute its own decisions for those of the DLC.

59 We recommend that the Auckland Council provide for several committees to carry out the work for the new city, with their geographical coverage to be determined by the Auckland Council.

Local alcohol policies

60 Every local authority should be required to adopt a local alcohol policy. All licence decision-makers should be required to take these local policies into account in all decisions regarding the granting or refusal of liquor licences. In preparing the proposed policy, councils should consult with the Police, liquor licensing inspectors, medical officers of health, local iwi and hapū, and any other people they consider appropriate. There should be public consultation on the proposed policy.

61 Policies should be required to include:

- a stocktake of the number, type and hours of licensed premises in the district;
- the demographic and socio-economic make up of the local population, and overall health indicators;
- a broad assessment of the range and level of alcohol-related problems occurring within the district;
- permitted areas for licensed premises;
- areas, if any, subject to liquor ban bylaws; and
- a local process for managing intoxicated people in public places by collaboration between police, ambulance and health services.

62 Local alcohol policies may also include:

- a strategy for reducing alcohol-related harm in the district;
- local restrictions on the national hours prescribed in the statute for the opening and closing of licensed premises; and/or
- areas in the district that may reasonably be identified as having reached or being close to reaching saturation levels in terms of the cumulative impact of licensed premises (there being a rebuttable presumption that further licences will not be granted in those areas).

63 Local alcohol policies should be renewed at least every six years, in conjunction with every second long-term council community plan in the relevant area. Two or more territorial authorities should be able to develop a joint proposed policy for their combined districts.

64 Once a policy has been consulted on and agreed by the local authority, the statute should permit those who submitted on the policy to appeal it to the Alcohol Regulatory Authority. This will provide a check and balance and assist in securing a broadly consistent approach across the country.

Alcohol Regulatory Authority

65 We recommend that the Liquor Licensing Authority be renamed the Alcohol Regulatory Authority and be reorganised with expanded powers.

66 We recommend that the Alcohol Regulatory Authority not have lay members.

67 The main function of the Alcohol Regulatory Authority should be to hear appeals from decisions of the DLCs and applications for suspension or cancellation of liquor licences.

68 The expanded functions of the Alcohol Regulatory Authority should include:

- monitoring and reporting to Parliament on annual trends in its case load and on trends in alcohol consumption, marketing and alcohol-related harm in New Zealand;
- making rulings on promotions of alcohol by all licensees;
- issuing practice notes and guidelines on matters within the Alcohol Regulatory Authority's jurisdiction;
- monitoring and auditing the performance of DLCs and local alcohol policies; and
- enhancing the flow of data and information concerning licensing matters.

69 An Executive Officer should be appointed to administer the Alcohol Regulatory Authority and carry out policy work related to its expanded functions.

70 An appeal on the merits should lie from decisions of the Alcohol Regulatory Authority to the High Court.

71 Local alcohol policies are discussed in chapter 7, and DLCs and the Alcohol Regulatory Authority are discussed in chapter 10.

Licence fees and renewals

72 It is important that the licensing, monitoring, compliance and enforcement activities of the DLCs and liquor licensing inspectors be funded through licence fees rather than a combination of fees and ratepayer contributions.

73 A risk-based licence application fee and annual renewal fee scheme should be consulted on and established by regulation.

74 Premises that are categorised as low risk, and that have had no compliance issues in the preceding year should be granted a yearly licence renewal on the basis of payment of an annual fee.

75 If there are compliance issues for any low-risk premises, a liquor licensing inspector should be able to require the licensee to formally apply for a licence renewal within three years of the date on which the licence was last renewed. An annual licence fee should still be payable.

76 Three yearly applications for licence renewals should continue to be a requirement for premises that are not categorised as low risk, but these premises should also pay an annual fee, not a three-yearly licence renewal fee.

77 Licence renewal applications should be advertised by way of notification on the applicable DLC website, and a physical notice in a prescribed form affixed to the premises. Licence fees, renewals and managers are discussed in chapter 11.

Club licences

78 The current distinctions between the club licence and on-licence should be retained, with the exception that clubs should only be exempted from having a manager present when 20 or fewer people are present on the premises drinking.

79 We recommend there should be more rigorous enforcement of licensing laws for clubs.

80 Managers of clubs should be required to have the same qualifications as general managers for on-licences and this requires completion of a Licence Controller Qualification.

81 Some clubs should be authorised under the club licence at the licensing decision-maker's discretion to serve guests of a member of a club that has reciprocal visiting rights, but the purview of the club licence should not be expanded further than this. Club licences are discussed in chapter 12.

Special licences

82 We have been concerned that there were about 11,000 special licences granted in 2009. There is little information available as to the risks of alcohol-related harm these special licences generate in the community. Special licences need to be more closely regulated and information collected about them. The legislation should provide for four categories of special licence: public events, private events at licensed premises, trade fairs and extended hours. An event at a stadium should be covered by a special licence rather than an on-licence. We have several detailed recommendations to ensure special licences are kept under better scrutiny in the future. Special licences are discussed in chapter 13.

Exemptions

83 In chapter 14 we make several recommendations about the existing exemptions under the Sale of Liquor Act 1989.

- The exemption for prison officers' canteens should be removed.
- The New Zealand Defence Force should no longer be exempted from licensing legislation, but the Chief of Defence Force should be delegated the authority to monitor and enforce the sale of alcohol law, and should be required to report annually to the Alcohol Regulatory Authority.
- New Zealand Police and New Zealand Fire Service canteens should no longer be exempted from licensing legislation, but they should be treated as clubs.
- The House of Representatives should no longer be exempt from licensing legislation. The Speaker of the House should retain the sole authority to monitor and enforce this legislation.
- Permanent charter clubs should no longer be exempt from licensing legislation, but should be required to obtain club licences.

Licensing trusts

84 We discuss licensing trusts in chapter 15 and recommend a minor change.

Age

85 The purchase age for alcohol was lowered to 18 years in 1999. This was a key issue for the review. Our consultation revealed strong support for increasing the age at which young people can purchase alcohol. This view was mirrored in submissions, with 78% of the 2,272 submitters who commented on policy options relating to age and supply to minors supporting an increase in the minimum purchase age.

86 The New Zealand Police was among those submitters advocating a return to a purchase age of 20. In its submission the Police stated the evidence from District Police staff was that the lowering of the purchase age has been associated with a range of negative outcomes in youth drinking patterns and offending.[11] Police suggested that since the lowering of the purchase age the "de facto drinking age was now 14–17 or even younger".

87 Given the strength of the new evidence regarding the risk to young people from the early initiation of drinking we believe a more cautious regulatory approach is necessary.

88 We therefore recommend returning the minimum purchase age for alcohol to 20 years with no exceptions.

89 We recommend it should be an offence to sell or supply alcohol on licensed premises to anyone under the age of 20, even if they are accompanied by a parent or guardian. It should also be an offence for anyone under the age of 20 to drink or possess alcohol in any public place. It is already an offence for those under the age of 18.

90 We heard a lot in the submission process about personal rights and responsibilities. One aspect of that lies with the rights and responsibilities of parents for their children. Some legal backbone is needed to support parents. Three states in Australia (New South Wales, Queensland and Tasmania) have introduced legislation restricting who can supply alcohol to minors. We believe a similar law change is required in New Zealand.

91 We recommend it be an offence for any person to supply alcohol to a minor under the age of 18 unless that person is the minor's parent or guardian or a responsible adult authorised by the parent or guardian. A parent, or the adult they have authorised to supply, will also commit an offence if they fail to supply in a responsible manner, which would include providing appropriate adult supervision.

11 Submission of New Zealand Police (submission dated 31 October 2009).

92 These law changes are justified by research showing the harm alcohol does to brains that are not fully developed and by the evidence of misuse of alcohol by young people since the age of purchase was lowered. The Police evidence before us was strong on this point. The Australian Health and Medical Research Council makes the following comment:[12]

> Young adults up to the age of 25 should be aware that they are at particular risk of harm from alcohol consumption, due to a greater risk of accidents and injuries, a lower alcohol tolerance than older adults, and an increased risk of cognitive impairment and alcohol dependence in later life. Young adults are advised to drink within the low-risk guideline levels, and to take steps to minimise their risk of accidents and injury.

93 The issue of the alcohol purchase age is discussed in chapter 16.

PART 3: REDUCING THE DEMAND FOR ALCOHOL

Taxation and price

94 There is conclusive evidence that price changes affect overall alcohol consumption. Putting up the price of alcohol will reduce alcohol-related harm. It will also help to pay for the costs to society of those harms. The widespread availability of cheap alcohol products has encouraged excessive and harmful consumption of alcohol. It is cheap products that are most favoured by heavy, harmful and young drinkers.

95 The evidence suggests while moderate drinkers are most responsive to price increases, younger and heavier drinkers will also reduce their consumption. There is also some evidence that price increases "reduce the prevalence of drinking, heavy drinking and bingeing, and appear to reduce the prevalence of dependence and abuse as well".[13]

96 Excise tax increases are also an effective way of targeting some of the most harmful drinking associated with the consumption of low-cost alcohol. As noted, the young and heavy drinkers tend to favour cheap alcohol so pricing policies that impact on cheap alcohol are particularly effective at reducing alcohol harms in these high-risk groups.

97 We have considered three mechanisms that will influence the price of alcohol:

- increasing retail prices of all alcohol, but with a focus on cheap products, through an increase in excise tax rates;
- increasing only the retail price of cheap alcohol products through the introduction of a minimum price scheme;
- restrictions on the use of price advertising for cheap alcohol products.

12 National Health and Medical Research Council *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Canberra, 2009) at 85.

13 P J Cook *Paying the Tab: The Costs and Benefits of Alcohol Control* (Princeton University Press, Princeton, New Jersey, 2007) at 81.

98 In the competitive market environment that now exists, the pricing policy that can most effectively reduce alcohol-related harm is an increase in the price of alcohol through an increase in excise tax. We recommend the following:

- The price of alcohol be increased by an average of 10%, which would reduce overall consumption by about 5%, and possibly more in the longer term. This would require a 50% increase in the excise tax rate. It is conservatively estimated such an increase would provide a net benefit to New Zealand of a minimum of $72 million annually, by reducing the costs of alcohol-related harm and health care.
- The excise tax on low-alcohol products up to 2.5% alcohol by volume should be removed to encourage the development of such products.

99 Our recommendation would increase, for example, the tax on a 330 ml bottle of beer from 34 cents to 50 cents. If passed on to the consumer this would increase the price of the bottle from $1.33 to $1.49. The percentage increase in prices of cheap alcohol products would be greater than on more expensive products.

100 Our recommendations on excise tax are backed by independent economic advice we secured from an Australian firm of economic consultants Marsden Jacob Associates. There had been substantial controversy in economic circles in New Zealand in the course of our inquiry on these issues. The key advice we received from Marsden Jacob Associates was:[14]

> A significant increase in New Zealand's alcohol excise tax, of 50 or even 100 per cent, would yield net economic benefits, reducing the call on the public budget thus allowing either tax reform and/or a reduction in taxation levels and would be worthwhile from the community's point of view in terms of both efficiency and equity.

101 An increase in excise tax operates indirectly. There are concerns that the full effects of an increase in excise tax will not be fully reflected in the retail prices of alcohol. It is for this reason that we have suggested introducing a minimum price regime. There appear to be some advantages to introducing the use of minimum pricing. Unfortunately, we do not have access to the retail sales data or any empirical evidence to be able to provide a definitive recommendation in respect of minimum pricing. There are disadvantages to a minimum price regime compared with price increases through excise tax, such as increasing the profits to industry, which can in turn be used to increase advertising and marketing, and for greater administrative and operational costs around enforcement.

102 We recommend that:

- given the potential for a minimum price regime, in association with excise tax, to reduce the availability of cheap alcohol, the government fully investigate a minimum price regime after it has the relevant information; and
- retailers and producers be required by law to provide sales and price data to enable the government to investigate a minimum price regime and to be able to effectively model the impacts of changes in excise tax levels.

14 Marsden Jacob Associates *The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework* (A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009) at 45.

103 The third key pricing option aimed at restricting consumption is restrictions around the use of price promotions. While some economic modelling suggests that restrictions on price discounting and advertising are effective, we consider there is insufficient evidence of the effectiveness of restrictions to warrant recommending an outright ban on price advertising or discounting. Instead, we propose addressing retailers and the hospitality industry's use of heavy price discounting and promotions by extending offences dealing with the promotion of excessive consumption of alcohol.

104 We note that the totality of our recommendations in this report will restrict competition in the alcohol markets and this is a deliberate policy. Where the new alcohol legislation is inconsistent with the Commerce Act 1986, the alcohol legislation will prevail.

105 The role of price in reducing demand for alcohol is discussed in chapter 17 and alcohol pricing policies are addressed in chapter 18.

Advertising and promotions

106 The alcohol industry spends millions of dollars on alcohol promotion in the media and by sponsorship. We took the view in our Issues Paper, *Alcohol in Our Lives*, that the existing system of self-regulation administered through the Advertising Standards Authority, a voluntary organisation, was generally a sufficient safeguard against irresponsible advertising and advertising that will encourage harm. Our view has since changed on the basis of analysing the research.

107 No part of our Issues Paper was more heavily contested in our consultation meetings and the submissions than alcohol advertising and promotions. There was, among many submitters, a strong view that advertising should be more heavily controlled. Sponsorship and promotions associating alcohol with sporting activity were deplored by many.

108 Since our Issues Paper was published, there has been a lot more research drawn to our attention that summarises the effects of advertising on liquor consumption. The 2010 edition of the authoritative World Health Organization book *Alcohol: No Ordinary Commodity* notes that there has been a marked increase in alcohol marketing using an expanding repertoire of media and communications technology. Much of this advertising is aimed at young people. As the authors put it:[15]

> The evidence reviewed has suggested that exposure of young people to alcohol marketing speeds up the onset of drinking and increases the amount consumed by those already drinking. The extent and breadth of research available is considerable, utilises a range of methodologies, and is consistent in showing effects with young people. Marketing to young people undoubtedly contributes to the ongoing recruitment of young people to replace drinkers lost to the industry by attrition in mature markets and to expand the drinking population in emerging markets.

15 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 196.

109 The authors say that the evidence now available suggests the question of controls on advertising should be high on the policy agenda. We agree with this view.

110 We have devised a plan in three stages to bring alcohol promotions, advertising and sponsorship under greater regulation. The process will take five years. The ultimate aim will be to bring about a situation where no alcohol advertising should be permitted in any media other than that which communicates objective product information, including the characteristics of the beverage, the manner of production and the price.

111 **Stage 1** of the programme should consist of introducing new provisions in the Alcohol Harm Reduction Act that will build on what is already in section 154A of the Sale of Liquor Act 1989. In section 154A it is an offence for licensees and managers to promote any event or activity with an intention of encouraging persons on the premises to consume alcohol to an excessive extent. Our recommended new provision will extend that offence to include the promotional activities undertaken by off-licence businesses. The provision's intent is to curb the most egregious examples of alcohol retailers stimulating demand through heavy discounting and inducements. It will also provide new offences for promotions that target young drinkers whom we know from the research are most at risk from alcohol-related harm.

112 Detailed discussion of the new provision and its offences and penalties can be found in chapters 19 and 20.

113 **Stage 2** of the programme would see the establishment of an interdepartmental committee overseen by the Ministers of Health and Justice to plan and implement the next phase of a programme to limit exposure to alcohol promotion and restrict the content of alcohol promotion messages. The second stage of that programme should aim to further reduce exposure to advertising and increase control of advertising content, with particular emphasis on reducing exposure to young people.

114 **Stage 3** of the programme should focus on restricting the advertising and promotion of alcohol in all media, with the ultimate aim to bring about a situation where no alcohol advertising is permitted in any media other than that which communicates objective product information, including the characteristics of the beverage, the manner of production and the price.

115 The details of these proposals are discussed in chapter 19.

Enforcement

116 The enforcement of the law is a critical factor in any licensing regime. There is room for considerable improvement in enforcing the law relating to alcohol in New Zealand. We have reviewed the criminal offences contained in the Sale of Liquor Act 1989 and recommend various measures to improve and streamline the law, and allow it to be better enforced.

117 Many of the recommendations proposed in Part 4 are highly technical and we had considerable help from the New Zealand Police and Ministry of Justice in framing them. We think these recommendations will work better than the present provisions. They are set out in detail in chapter 20.

Liquor in public places

118 While we do not recommend reintroducing public drunkenness as an offence, we do recommend that a civil cost-recovery regime be adopted that provides Police with the power to serve a notice of debt on any individual who is either taken home, to temporary shelter or put in a police cell under the powers of detention that police have under section 36 of the Policing Act 2008. We think the prescribed amount for this notice of debt should be $250 or some extra amount that makes it economic to collect. The proceeds should go to the consolidated fund. Disputes should be dealt with by the Disputes Tribunals of the District Courts. This measure is designed to sheet home personal responsibility.

119 We recommend that following a final programme evaluation, further funding be provided to enable existing watch-house nurses in police stations to continue in their role of assisting police in managing the risks of dealing with intoxicated people in their custody. Consideration should also be given to additional high-volume locations being supplied with such nurses to help police in this role.

120 While we believe there are problems with the local government legislation permitting the imposition of liquor bans by bylaws, we do recommend that liquor bans continue with important new requirements. Before such a law can be made there will need to be a finding that:

- the proposed liquor ban area and timing can be justified as a reasonable limitation on the rights of freedoms of individuals;
- there is a high volume of offending or disorder in the proposed liquor ban area that can be linked to alcohol; and
- the evidence demonstrates that the density of offending and disorder, and the location of the offending, is such that the boundaries of the liquor ban are appropriate and proportionate.

121 We recommend there should be collaboration between Local Government New Zealand and the Parliamentary Counsel Office to ensure an appropriate drafting template is produced to assist territorial authorities in making liquor ban bylaws.

122 We recommend that the definition of "public place" in section 147(1) of the Local Government Act 2002 is amended to include private carparks to which the public have access.

123 We recommend that signage provisions for liquor ban bylaws showing where they apply are laid down in a uniform fashion around New Zealand by regulation.

124 We recommend that the maximum fine for a breach of a liquor ban be $500 but the power to confiscate the alcohol should remain.

125 To assist with the problems that the Police have encountered concerning proof that a container contains alcohol, we recommend it be sufficient proof, in the absence of other evidence, where:

(a) the container is labelled as containing alcoholic beverages and is of a type sold in the ordinary course of trade; or

(b) the content of a container, when opened, smells like an alcoholic beverage and the container appears to be one that contains an alcoholic beverage; or

(c) the defendant has admitted the container contains an alcohol beverage.

126 These measures are discussed in chapter 21.

Regulation of alcohol products

127 The new legislation should contain a provision that allows particular alcohol products or classes of products that are considered "undesirable" to be banned on the recommendation of the Expert Advisory Committee on Drugs. The criteria for determining that a product or class of products is "undesirable" should be that it:

- is particularly dangerous to health;
- is targeted at or particularly attractive to minors; or
- encourages irresponsible, rapid or excessive consumption of the product.

128 This recommendation is based on the Australian experience where products such as alcohol ice-blocks, alcoholic milk and alcoholic vapour have been banned. The regulation of alcohol products is discussed in chapter 22.

Treatment

129 Our findings on treatment, which are discussed in chapter 24, are:

- there is a lack of access to quality addiction treatment across the spectrum of care because of service gaps, poorly defined systems and mechanisms of governance;
- co-existing mental health problems are common in addiction treatment populations, with alcohol-related issues a key factor complicating psychiatric cases;
- a major barrier to increasing treatment provision is a shortage of skilled practitioners;
- 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, mental health and emergency department services;
- treatment can be effective and cost-effective, although not to the same extent as some population-level policies to reduce alcohol-related harm;
- there is good evidence that brief interventions can be highly cost-effective in helping people with less severe alcohol-related problems to reduce those problems and change their alcohol consumption patterns;
- there is the tension between social sectors (for example, health and justice systems) because they are focused on quite different outcomes; and
- where alcohol and other drugs may have contributed to offending, there should be greater consideration during the sentencing of the need for alcohol or drug assessment and treatment. While the government is doing further work in this area, there should be efforts to improve the ability of court staff to provide screening and brief interventions.

130 We recommend the key principles that need to underpin any changes to the treatment system should be as follows:

- mental health and addiction services need to be dealt with together in an integrated system;
- the system needs to deliver levels of intervention ranging from brief to intensive;
- the system response must be adaptable – able to assess type and level of need;
- the roles, responsibilities and powers to coordinate care and treatment need to be specified;
- the system should be interdepartmental, interministerial and cross-sectoral: it should involve the Ministry of Health, Ministry of Justice and Child, Youth & Family Services; and
- care pathways are required to define how people with acute problems can get access to care.

131 We recommend that the Ministry of Health and Mental Health Commission be supported to develop a blueprint for addiction service delivery for the next five years. The work should be undertaken with support from key groups, in particular, the Alcohol Advisory Council of New Zealand and National Addiction Centre, along with all government agencies whose outcomes could benefit from improved access to alcohol treatment. This work should be based on best practice principles and address:

- the level and type of service, how much, what type and location;
- required resourcing and staffing levels, including workforce issues; and
- the design of a service system, including models of care pathways, service delivery systems and coordination.

132 We recommend that consideration be given by the government to the setting up of a National Mental Health and Addictions Helpline that provides triage, advice, disposition and service coordination to district health boards.

133 We recommend that a policy be adopted requiring district health boards to develop care pathways based on a plan put forward to us by the Mental Health Commission.

134 We further recommend that some of the proceeds of the increase in excise tax that we have proposed be applied to spending on alcohol treatment services.

135 We have also found that intoxicated people are placing an unacceptable burden on Police, ambulance services and acute health services but we cannot see a single national solution for this. We recommend relevant sectors work together to develop local strategies for managing intoxicated people.

136 We recommend reviewing section 65 of the Land Transport Act 1998 (dealing with drink driving and associated services) to ensure that both punishment and rehabilitation are addressed, that barriers to receiving treatment are minimised and that interventions provided are effective and cost-effective.

Drink driving and transport policies

137 In our Issues Paper we suggested there was a strong case for the blood alcohol limits to be reduced from 80 to 50 mgs of alcohol per 100 mls of blood for all drivers, with zero tolerance for drivers under 20 years of age. We also said consideration should be given to the introduction of alcohol ignition locking devices for all convicted drink drivers.

138 Although we did not seek submissions on these matters, but encouraged them to be made directly to the Ministry of Transport as part of the Safer Journeys consultation, we received more than 1,240 transport-related submissions. These were forwarded to the Ministry of Transport for its consideration. Our view is unchanged: like the majority of the submitters, we believe blood alcohol limits must come down. Many submitters also support the introduction of alcohol ignition locking devices.

Parliament and the conscience vote

139 The Law Commission's first report on the review of the regulatory framework for the sale and supply of alcohol was tabled in Parliament in May 2009.[16] The report pointed out that New Zealand was alone among Westminster democracies in allowing a free vote or conscience vote on sale of liquor matters in Parliament. The report demonstrated the risks of legal incoherence that flow from that rare method of parliamentary consideration. We suggested it would be preferable for alcohol bills to be voted on the basis of standard party-based voting rather than using the conscience vote. Such decisions are for party caucuses to make, not the Executive Government. At the time of writing, no announced response to our suggestion has been made. We regret this situation. We regard it as vital to have clear and coherent legal rules governing the sale and supply of alcohol. Such an objective is imperilled by the conscience vote.

140 The suite of measures we recommend in this report will have sufficient challenges for Parliament without the added complication of the conscience vote. The measures we have put forward are based on the evidence available. We are under no illusions they will be universally popular. We expect the contents of our report will be vigorously contested by the many vested interests with a financial stake in what is a large New Zealand industry. In the end, it will be for Parliament to decide what action to take.

16 Law Commission *Review of the Regulatory Framework for the Sale and Supply of Liquor: Part 1: Alcohol Legislation and the Conscience Vote* (NZLC R106, 2009).

Periodic review of alcohol policies

141 The need for periodic review of alcohol regulation is essential. Before our review, alcohol regulation had been neglected for too long. We recommend that the whole legislative scheme and related alcohol policies be reviewed by a group of three independent people appointed on the joint recommendation of the Minister of Justice and Minister of Health after the legislative scheme and related policies have been in operation five years. Thereafter, alcohol regulations should be reviewed every 10 years.

Regulatory Impact Statement

142 In our Issues Paper, we included a draft Regulatory Impact Statement. The Law Commission and Minister of Justice have agreed that this report will not contain such a statement but one will be prepared by the Ministry of Justice for any bill that the Minister of Justice introduces.

Part 1
THE CASE FOR REDUCING ALCOHOL-RELATED HARM

Part 1

An introduction

The purpose of our Issues Paper, *Alcohol in Our Lives*,[17] was to provide the platform for a national debate about alcohol. Specifically, the paper outlined the social and health harms associated with alcohol and offered tentative options for reform.

This report presents our final analysis and recommendations for a new statute. The package of reforms outlined in the report has been shaped by a large body of international and New Zealand research.

This report has also been influenced by the three-month long consultation and submission process we embarked upon following the publication of the Issues Paper in July 2009.

In Part 1 of this report we:

- provide a summary of what we learned from New Zealanders in the course of our consultation (chapter 1);
- outline the context of the review, including the major changes that have occurred since the introduction of the Sale of Liquor Act 1989 (chapter 2);
- revisit the social and health harms associated with the misuse of alcohol with a particular emphasis on new research on the effects of alcohol on third parties, including children (chapter 3); and
- set out the case for a new approach to the sale and supply of alcohol in New Zealand (chapter 4).

The elements of this new approach are set out in detail in Parts 2-4 of this report.

17 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009).

Chapter 1

What New Zealanders told us

IN THIS CHAPTER, WE:

- Discuss what we learned during the three-month public consultation.
- Present the high-level findings from the public submissions.
- Highlight the importance of community action.

THE PROCESS

1.1 It began in a community hall in Cannon's Creek, Porirua where 60 people gathered on a Monday morning in August 2009 to give feedback on the Law Commission's options for reform of New Zealand's liquor laws. Accompanying the customary prayers and gracious Pacific hospitality was an urgent and unmistakeable message: alcohol is inflicting too high a price on this community and the law needs to help us push back.

1.2 From Whangarei to Invercargill, at venues as diverse as cathedrals and council chambers to youth clubs and converted gang pads, well over a thousand New Zealanders came to offer their views on the problems – and possible solutions – associated with New Zealand's drinking culture. Some came as concerned citizens, others with a vital community, professional or business interest in liquor reform: Black Power and Plunket; secondary school principals and publicans; grandmothers and students; doctors and economists.

1.3 In Auckland, principals from secondary schools in neighbourhoods as diverse as Epsom and Otahuhu came to talk about their losing battle with parents who appeared to have capitulated to 15- and 16-year-olds' demands for routine access to alcohol. Plunket spoke of the difficulty new parents are having excluding alcohol from their lives; of the unequivocal evidence its nurses are seeing of alcohol's impact on child health and safety, and of the correlation between alcohol and family violence.

1.4 In public forums and private hearings, owners and managers of some of the country's 14,424 licensed clubs and businesses shared their views on what is driving our alcohol problems and how to address them.[18] Many were as frustrated as their communities by the proliferation of alcohol outlets: yes, they had a vested interest in limiting competition but they also had first-hand knowledge of what can happen to "host responsibility" in a saturated market driven by fierce price competition.

1.5 Much of what we heard during these meetings would later be mirrored in the 2,939 written submissions on our Issues Paper, *Alcohol in Our Lives.*[19] This was the largest number of submissions received by the Law Commission on any project, indicating a high level of public awareness and concern.

1.6 However, the terms of reference for the review of the Sale of Liquor Act 1989 required us to go further and to "engage in extensive public consultation".[20] Consequently, in the three months from the Issue Paper's publication until the closing of public submissions on 30 October 2009, the Commission held 50 meetings in 16 different locations from Whangarei to Invercargill.[21]

1.7 The object of the consultation was twofold: to provide members of the public with an opportunity to give direct feedback on the issues and options outlined in our Issues Paper and, secondly, to undertake targeted consultation with those stakeholders most directly impacted by alcohol-related harm and the laws governing the sale of alcohol.

1.8 These stakeholders were by no means homogenous: on one side were the manufacturers, retailers and hospitality sector whose businesses depend on the estimated $85 million New Zealanders spend on alcohol each week.[22] On the other, were police, emergency workers, counsellors and addiction specialists who deal with the harms arising from the misuse of alcohol.

1.9 Throughout the process, we consulted extensively with the alcohol industry. In Auckland, we attended two pan-industry forums hosted by Thomas Chin, Chief Executive of the Distilled Spirits Association. These were attended by over 50 people representing a diverse range of liquor industry interests. Throughout the consultation, we maintained a dialogue with the key manufacturers, retailers and representatives of the hospitality sector, many of whom provided us with valuable assistance in our deliberations.

1.10 We also consulted widely with those who have first-hand experience of the harms associated with alcohol misuse. As explained in the Issues Paper, the young and Māori and Pacific peoples experience disproportionately high levels of alcohol-related harms. Wellington-based law reform bodies are not

18 Figures provided to the Law Commission by the Liquor Licensing Authority 11 February 2010. This total comprises 7,656 licences to sell liquor on-premises, 4,347 licences to sell liquor for consumption off-premises and 2,421 club licences. Some disused licences may be included in this total.

19 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) [*Alcohol in Our Lives*].

20 The full terms of reference for this review can be found at the beginning of this report.

21 A list of the locations where meetings were held can be found at the end of appendix 3.

22 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 18.

always best placed to engage with these groups, so we relied on the substantial assistance of the Alcohol Advisory Council of New Zealand (ALAC), Te Puni Kōkiri and Ministry of Youth Affairs to ensure the insights and views of these groups were well represented in our consultation process.

1.11 Some of the organisations and individuals with whom we met supplemented their oral presentations with written submissions: others relied on their parent bodies, such as the Hospitality Association of New Zealand (HANZ), which has 2,400 members nationwide, to represent their views.

1.12 As table 1.1 illustrates, more than two-thirds of the 2,939 written submissions were from individuals. Of these, over a thousand either wholly or partially endorsed the so-called "5 + solution" promoted by Alcohol Action New Zealand, a national lobby group formed by concerned clinicians and alcohol researchers in 2009.[23] While some submitters signed a standard form letter, others provided detailed rationales as to why they supported aspects of the "5 + " package. Many of the remaining submissions from individuals limited their comments to a few key policy issues, sometimes drawing on deeply personal accounts of loved ones lost and lives ruined as a result of alcohol.

TABLE 1.1: NUMBER AND PROFILE OF SUBMITTERS (N = 2, 939)

Submitter groups	Number of submissions
Individuals	2,482
Non-government	212
Retailers	108
Local government/government	97
Industry	40

1.13 Several submitters conducted extensive research and/or consultation with their membership or sector before arriving at their policy positions. Among these were submissions from the New Zealand Police, primary health organisation Pegasus Health (Canterbury), and a submission from the Ministry of Youth Development that incorporated 171 individual views on key policy areas. Of particular significance was a submission from senior doctors and health practitioners around New Zealand calling for urgent reform of the liquor laws.[24] At the time this report went to print the doctors' and nurses' submission had been signed by over 400 medical personnel including representatives, heads or leaders of medical colleges, district health boards, universities, professional bodies and public health bodies.

1.14 Each of the 2,939 submissions was entered into a database, allowing researchers working on the review to quickly access and analyse submissions across a range of policy options. Given the large number of submissions, we also contracted specialist social research and evaluation company, Litmus, to assist with our analysis.

23 For details of the "5 + solution" see < www.alcoholaction.co.nz/FivePlusSolution.aspx > .

24 Submission of Doctors and Nurses of New Zealand (submission dated 9 November 2009).

1.15 Both the public consultation and submissions were shaped by the 30 questions posed in a summary document used to assist public debate. These questions were designed to elicit public reaction to the tentative policy options put forward in the Issues Paper, and revolved around the three core policy levers: alcohol supply controls, alcohol demand reduction and problem limitation.

1.16 In addition to our own analysis of the submissions, Litmus was commissioned to interrogate all 2,939 submissions to ascertain the strength of support or opposition to policies relating to seven key areas identified as being of particular importance to the public.[25] These were:

- the age at which young people should be able to purchase and drink alcohol;
- the price of alcohol and whether there is a case for increased taxation or the introduction of a minimum price;
- the marketing of alcohol (including advertising and sponsorship) and whether current restrictions are adequate;
- the adequacy of laws prescribing when a licence to sell alcohol can be issued and grounds for refusal;
- the adequacy of laws prescribing the types of retailer permitted to sell alcohol;
- whether there should be restrictions on opening hours;
- whether there should be restrictions on drinking in a public place and public intoxication.

1.17 We also wished to identify the key areas of agreement and divergence between the major stakeholder groups. Not surprisingly, the stakeholders tended to be polarised according to their own particular interests: the Police, for example, tended to favour policies designed to increase its powers to deal with alcohol-related crime while lessening the impact on its operations and budgets. On-licence businesses tended to oppose restrictions on their ability to trade but were largely supportive of policies designed to curb the sale of discount alcohol in the off-licence sector.

1.18 We identified 12 major stakeholder groups comprising: alcohol manufacturers; alcohol retailers; the hospitality sector; advertisers, marketers and media; local government; police and law enforcement; alcohol and public health researchers; medical experts and treatment providers; Māori; youth; individual submitters; and "other" organisations.[26] We then selected 158 submissions[27] that were

25 In our Issues Paper we also sought feedback on drink driving policies, and many submitters commented on these. However, because the Ministry of Transport was undertaking its own review of road safety strategy, the submissions relating to transport matters were forwarded to the Ministry of Transport for consideration.

26 Among these were organisations representing business, economic and political interests as well as organisations representing the interests of children and families.

27 Within these broad stakeholder groups, our criteria for selecting submissions included those that were broadly representative of the stakeholder group, such as the Hospitality Association of New Zealand, those that represented large interest or population groups, such as local government bodies, and those representing the full gamut of interests and perspectives, for example, the New Zealand Business Roundtable, family and community organisations, young people, media, business owners and medical and addiction specialists.

broadly representative of the 12 stakeholder groups and asked Litmus to provide a high-level analysis of their different positions across the full range of policy options.[28]

1.19 Our researchers have drawn extensively on the submission database and Litmus analysis in preparing this final report. Although in no way bound by the views expressed in the submissions or during the public consultation, our final recommendations were nonetheless influenced and, in some instances, changed by the insights, experience and evidence made available to us during this process.

1.20 The following discussion does not pretend to be an exhaustive account of the consultation and submission process. Given the extraordinarily diverse nature of the consultation meetings and the sheer number of submissions it is impossible to capture all the viewpoints expressed. Rather, we attempt to distil the flavour and themes that emerged during the public consultation and provide a high-level synopsis of what submitters had to say about key policies.

1.21 It is also important to acknowledge at the outset that those who were motivated to attend consultation meetings and to send written submissions typically had a strong personal or professional interest in the issues. Their views do not necessarily reflect those of the wider New Zealand public.

What's the problem?

> We need to look at the issues holistically. Alcohol is the backdrop to so many issues. Issues which New Zealand is not addressing very well, issues like obesity, suicide, sexual health, injuries and so on. – *Rotorua consultation*[29]

1.22 Throughout history, debate about liquor laws in this country has often served as a proxy for a broad debate about the moral and physical wellbeing of the nation. Human nature, poor parenting, peer-group pressure, dysfunctional communities, inequalities in health, education, employment, housing, the erosion of social values, the legacy of colonialism, advertising and marketing, the ascendancy of Generation Y: throughout the consultation, all were nominated as possible causes of problem drinking in this country.

1.23 Irrespective of where people sat on this issue of causation, there seemed to be a general acknowledgement that drinking to excess is an intergenerational problem with deep roots in this country's colonial history. Alcohol has been used as a means of escape and an unquestioned adjunct to New Zealanders' social, cultural and sporting life for many generations.

1.24 However, running through both the public consultation and many submissions, was a perception that, for a significant number of young people today, drinking was not merely an adjunct to their social lives but the focal point; drunkenness not an occasional by-product of drinking, but an end in itself. And that the harms arising from these drinking patterns were increasing, both for the individual and society as a whole.

28 The full text of the Litmus report on the submissions is available online at www.lawcom.govt.nz.

29 ALAC community consultation, Rotorua, 7 September 2009.

1.25 Intoxication and the behaviours that have come to be associated with it in this country – violence, sexual assaults, unwanted or regretted sexual activity, offensive and anti-social behaviour – were highlighted again and again as among the most pressing social issues confronting communities. Some suggested alcohol alone was not responsible for these undesirable aspects of the drinking culture, but rather alcohol in concert with a general erosion of values, including a lack of self-respect and respect for others, and an absence of personal and parental responsibility.

1.26 Frequent reference was made to women's rapid rise to equality in the drinking culture, with the "drunken score" becoming the typical way for young people to pair-up.[30] A student advocate in Hamilton explained how a trio of student-friendly pubs had been dubbed the "Chlamydia triangle" because of the number of young students who contracted sexually transmitted infections as a result of unprotected sex with people they had met at these premises.

1.27 In an oral submission delivered during the Wellington consultation, Dr Judith Aitken, a former chief executive of the Ministry of Women's Affairs, and current member of the Capital and Coast District Health Board, remarked:[31]

> The weekly spectacle of drunk young women on Wellington streets, tragic evidence of this permissive environment, may demonstrate how far 21st century women have been freed from traditional social and behavioural constraints, but can hardly be regarded as a triumph for feminism.

1.28 Parents and law makers also came in for strong criticism for apparently failing to set clear boundaries and impose meaningful consequences for unacceptable behaviour. In respect of the harms caused by adult drinkers, there was widespread support for measures that reinforced a sense of personal responsibility and accountability.

1.29 While not all wished to see harsh penalties, this was an issue that attracted agreement across several stakeholder groups, many of which were in favour of legal measures to reassert social norms and expectations around drinking, which many felt had been lost since offences such as "being drunk in a public place" were removed from the statue book in 1981.

The environment

1.30 Not everyone, however, believed the solution lay solely in the hands of the individual drinker. People pointed out one of the primary effects of drinking was to impair judgement and decision making: for some, losing self-control and escaping personal responsibility was the very *point* of drinking. Restrictions on how alcohol was marketed and sold therefore made more sense than relying on alcohol-impaired individuals to make good decisions.

1.31 But how far the law should go in restricting the availability of alcohol was a contentious issue: those with a medical and health perspective argued the laws governing how alcohol is marketed and sold needed to better reflect the fact it is

30 ALAC community consultation, Masterton, 18 August 2009.

31 Oral submission of Dr Judith Aitken and Margaret Faulkner (submission delivered 10 September 2009, Wellington).

a toxic and addictive substance causally related to over 60 different diseases and disorders. Conversely, many of those involved in the sale and manufacture of alcohol argued the current laws, if properly enforced, were adequate and the majority of responsible drinkers should not be penalised because of a small minority of problem drinkers. They also questioned the extent to which alcohol laws could influence behaviours and warned against imposing onerous new regulations on an industry that contributed heavily to the country's economy.

1.32 This dichotomy between alcohol's status as a legal but potentially harmful drug and its role as an important ingredient in the lives of over a million New Zealanders surfaced repeatedly throughout the consultation.[32] Many also referred to the powerful cultural associations that have been developed between alcohol, sport, mateship and even, for some, national identity in this country.

1.33 The contradictory messages surrounding alcohol were raised repeatedly in consultations around the country. In Cannon's Creek, Porirua, a young mother asked: "How can we tell our children that drinking can be harmful when the All Blacks have Steinlager on their chests?". In Napier, a community worker asked: "You tell us alcohol is causing all this harm and is carcinogenic but how can we expect young people to take this on board when they see that the whole adult world turns on it?".

1.34 In Masterton, a secondary school teacher commented: "The key message the industry delivers to our children is that alcohol is the gateway to babes and good times".

1.35 In an oral submission to the Wellington hearings, addiction specialist Roger Brooking argued the risks associated with alcohol use were largely obscured by the fact it is sold and marketed in a manner similar to any other commodity:[33]

> Alcohol is advertised on television and other media – indicating it's an ordinary consumer commodity just like any other. Alcohol is sold without a warning label – indicating it's totally harmless, even for pregnant women. Liquor companies sponsor sport – leisure activities symbolising health and vitality which are a fundamental component of Kiwi culture…The underlying message conveyed to the public is this – alcohol is a safe, harmless, health inducing product that helps people enjoy life and have fun. The more you drink the more fun you will have.

1.36 The fact of course is that, for many drinkers, alcohol *is* associated with fun and enjoyment – and, as several young people pointed out during the consultation process, binge drinking and getting drunk is, for some, a large part of that fun. The fact it carries risks to the drinker and others is therefore not a popular or easy message to sell.

OPTIONS FOR CHANGE

1.37 At each of the meetings held around the country we asked those attending to comment on the questions and tentative policy options outlined in *Alcohol in Our Lives*. Again, the following provides only a high-level summary of the views canvassed during the consultation and gleaned through submissions. A detailed analysis can be found in the Litmus report of submissions at www.lawcom.govt.nz.

32 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009) at 28 [*Alcohol Use Survey 2007/08*].

33 Submission of Roger Brooking (submission dated 8 October 2009) at 2.

The availability of alcohol

1.38 Alcohol's availability and affordability have both increased during the past two decades. Since the Sale of Liquor Act 1989 was passed, the number of outlets licensed to sell alcohol has more than doubled; restrictions on the hours during which alcohol can be sold have been removed; alcohol has become more affordable relative to people's incomes – particularly alcohol purchased at off-licences – and the minimum purchase age has been reduced from 20 to 18 years.

Proliferation of outlets

1.39 Both the submissions and public consultation revealed strong support for halting the proliferation of licences – particularly off-licences – under any new legislative regime. The reasons most commonly cited for reducing licence numbers were:

- the effect of market saturation on the profitability and sustainability of existing business and the extent to which competition is driving irresponsible pricing and promotions;
- the impact the proliferation of liquor stores has had on low socio-economic and vulnerable communities;
- the extent to which the proliferation of small suburban outlets, including dairies and convenience stores, has facilitated supply to young people and, in particular, those of school age;
- the negative impacts of alcohol outlets on the amenity values of neighbourhoods, including increased rates of offending, vandalism, disorderly and offensive behaviour;
- the difficulty of adequately monitoring and enforcing liquor laws across such large numbers of outlets.

1.40 While researchers continue to probe the relationships between alcohol-related harms and liquor outlet density, those who actually *live* and work in communities battling high levels of crime and social deprivation, seemed in no doubt about the damaging effects of saturating their neighbourhoods with liquor.

1.41 One of the largest and most impassioned community meetings we attended took place in the Otara shopping centre and drew well over 100 people, including students, residents, business people, youth and community workers, local kaumatua and health workers.[34] Despite being the "subject" of numerous governmental and non-governmental research projects to quantify alcohol's impacts on their community, the unequivocal message from this group was the time for academic research, consultation and talking was over:

> Alcohol is destroying our community. I work with families and we can see the damage to them, to their children and to the wider community. I see it in the courts, the hospitals, family violence. We have tried many ways to reduce the damage. My dream is to stop selling alcohol in our community altogether. – *Otara consultation meeting*

34 ALAC community consultation meeting, Otara, 26 August 2009.

1.42 In Otara, as elsewhere, people highlighted the difficulties they faced trying to tackle alcohol-related offending and victimisation when their communities were saturated with liquor outlets. A Hauraki iwi health provider, Whakamama te Tangata of Te Korowai Hauora O Hauraki, made this observation in its submission:[35]

> Alcohol outlets appear to be more prevalent in low socio-economic areas and we believe that this is deliberate targeting of low income and vulnerable families. We also feel that clever marketing is utilised to persuade consumers to purchase more alcohol. Our observation has been that, in low socio-economic areas, alcohol outlets either replace, or are factors in the disappearance of, neighbourhood food stores. Whanau in these areas often lack transport to supermarkets, so rely on local shops for fresh and day-to-day supplies so losing the local store is more of a problem for whanau than it would be in a higher socio-economic area. Aggressive marketing of "specials" which persuades consumers to purchase alcohol in larger amounts also impacts on tight budgets.

1.43 We also heard repeatedly of the frustration experienced by individuals, schools and community groups attempting to have their voice heard in relation to the granting of licences in neighbourhoods already saturated with alcohol outlets or in areas regarded as inappropriate because of their proximity to child care centres, schools or other public amenities frequented by young people.

1.44 While HANZ argued the current law already gave sufficient scope for impacts on communities to be taken into account in licensing decisions, many others argued the current criteria for objecting to a licence were too narrow. Others highlighted the failure of the district planning process to manage the often conflicting interests between those selling alcohol and other business and residential users. In the course of an oral submission, the Precinct Manager of the Karangahape Road Business Association provided us with a copy of the Association's objection to the issuing of another off-licence in the precinct. There were already seven off-licences in the space of just over a kilometre and, in the Association's view, adding another was likely to exacerbate the precinct's problems as pointed out by local security guard David Korewha:[36]

> Drinking, urination, rubbish, fighting, broken windows, graffiti, begging, theft will happen related to the proposed new store. Wherever there are seats and a bottle store in K Road this happens.

35 Submission of Whakamama te Tangata of Te Korowai Hauora O Hauraki (submission dated 18 November 2009) at 2.

36 Karangahape Road Business Association Inc Liquor License Objection EMKAY Trading Company Limited (11 May 2009) at 3.

WHAT SUBMISSIONS SAID: LICENCE CRITERIA AND GROUNDS FOR REFUSAL

Litmus analysis of this policy question revealed 903 out of 2,939 submissions commented on the range of policy options presented regarding the adequacy of the current criteria for issuing licences and the sufficiency of grounds for objecting to licences. Of these 903 submissions:

- 46% supported in general changing the law to allow a refusal of licences on wider grounds;[37]
- 39% explicitly supported allowing the licence decision maker to refuse licences on the grounds that the social impact of the licence would be detrimental to the wellbeing of the community.

Alcohol industry submissions noted the need for consistency and transparency in licence decision making.

Who can sell alcohol?

1.45 Alongside opposition to the proliferation of bottle stores there was also considerable public concern at the liberal interpretation of the licensing laws, which in recent years have seen some convenience stores and dairies licensed to sell alcohol.

1.46 However, several submitters pointed out that these small mixed-retail businesses accounted for only a fraction of the liquor sold in the country and their prices were seldom discounted. In a sworn submission, one retailer with 40 years' experience described how many small retailers had been forced into stocking liquor as a defensive move in the face of the growing market share of the supermarkets:[38]

> I was one of many who resisted as long as possible the selling of liquor in small shops (corner dairy's/supermarkets), but because of the high competitive nature and pressure from the combined food giant empires meant I had no economic alternative other than to start a small liquor stock. I always have a tight customer service focus and have never had any demands by youth for excess sales of liquor.

37 Percentages are based on the total number of submissions that commented on the range of policy options within a specific category (that is, 903 submissions commented on the range of policy options relating to licensing). Percentages noted represent submissions that have explicitly supported the policy option noted.

Percentages do not imply the level of disagreement with the proposed options. For example, 46% of submitters expressly support wide grounds to refuse a licence. This *does not* mean that 54% state a lack of support for this option. Rather, the submitters who make up the 54% have made a range of other comments or responded to other policy options related to licensing (for example, the role of medical officers of health). Percentages are not cumulative but are discrete (that is, the 46% and 39% cannot be added together).

38 Submission of Suresh Dayal (submission handed-up Wellington consultation, 9 September 2009) at 2.

1.47 This submission was accompanied by a copy of the supermarket retailers' in-house newsletter *Supermarket News,* which stated that within the supermarket retail sector, "wine and beer together bring in more revenue than any other category".[39]

1.48 According to a New Zealand Retailers' Association report, the two supermarket chains (Australian-owned Progressive Enterprises and the New Zealand cooperative, Foodstuffs) sold just under 60 % of all wine and just over 30 % of all beer available for consumption in New Zealand in 2008.[40] The consultation revealed a surprisingly strong sentiment in favour of removing alcohol altogether from supermarkets and returning to the pre-1989 era when it was only sold by specialist liquor outlets.

1.49 The rationale behind this view varied between stakeholder groups: those concerned about the risks associated with alcohol consumption believe by displaying alcohol at multiple points throughout their stores and engaging in mass-market price promotions, supermarkets have played a major part in both driving down the price of alcohol and cementing the perception it is a daily commodity indistinguishable from bread and milk.

1.50 HANZ also argued removing all alcohol from supermarkets and grocery stores would be consistent with "the object of reducing alcohol-related harm".[41] Many submitters from the hospitality sector expressed the view that supermarkets' aggressive promotion and pricing of cheap alcohol has played a major part in the acceleration of drinking away from licensed premises. One long-standing proprietor suggested that, in the past two years, the combination of the recession and deep discounting by large retailers had seen an intensification of the phenomenon of "pre-loading" (drinking before going out):[42]

> In the past if someone was going to drink 10 beers in a night, the ratio used to be two at home and eight in a pub. That's reversed now and it's more like six to eight at home and two or four in the pub.

1.51 These comments illustrate the conflicting business interests of those in the on- and off-licence trade and how drinking behaviours can be influenced by price and affordability.

39 "Liquor: Big Retail Changes Coming?" *Supermarket News* (September 2009) Vol. No.2 Issue No 7, at 1.

40 New Zealand Retailers' Association Report *Alcohol in New Zealand* (ACNielsen, Wellington 21 April 2009) at 21–22.

41 Submission of the Hospitality Association of New Zealand (submission dated October 2009) at 13, [17].

42 Oral submission of licensee (submission delivered Wellington consultation, 9 September 2009).

WHAT SUBMISSIONS SAID: RESTRICTIONS ON TYPE OF OUTLET ALLOWED TO SELL ALCOHOL

Litmus analysis of this policy question revealed 1,931 out of 2,939 submissions commented on the range of policy options dealing with restrictions on outlets and the range of alcohol products they are able to sell. Most submissions focused on restricting the types of off-licence outlet. Of the 1,931:[43]

- 69% supported specifying and further restricting the types of premises for which off-licences may be granted, in particular, restricting small grocery stores or dairies from selling alcohol. However, opinion was inconsistent on how small grocery stores or dairies were defined for licensing purposes.

Hours

1.52 With few exceptions, those attending the consultation were of the view that 24-hour trading had contributed to alcohol-related harms. Concerns ranged from the extent to which around-the-clock access to alcohol had exacerbated a drinking culture already inclined towards excess, to concerns about the impact of 24-hour trading on public amenity values and, in particular, on neighbouring businesses and residents.

1.53 While on-licence owners pointed out the benefits accruing to cities from the development of the late-night/early morning entertainment culture, there was also an acknowledgement from some that much of the anti-social behaviour was occurring in the streets after 3am when intoxication levels were high. Again, there was a strong connection drawn between the levels of intoxication and the ready availability of off-licence liquor to either pre-load or "top up" cheaply throughout the night.

1.54 The option of imposing national maximum trading hours for off-licences in an attempt to interrupt the supply of alcohol and reduce intoxication levels received wide support from the public. Perhaps unsurprisingly, this measure also received support from many in the on-licence trade, including HANZ. In nominating a midnight closing time for off-licences, Lion Nathan commented in its submission:[44]

> Our rationale is that there will be very few individuals exercising good judgement who wish to purchase alcohol after midnight.

43 Percentages are based on the total number of submissions that commented on the range of policy options within a specific category. Percentages noted represent submissions that have explicitly supported the policy option noted.

Percentages do not imply the level of disagreement with the proposed options. Percentages are not cumulative but are discrete.

44 Submission of Lion Nathan (submission dated 29 October 2009) at 16, [103].

1.55 Imposing similar national restrictions on the maximum trading hours of on-licence premises was more controversial – particularly among licensees running clubs whose clientele were accustomed to entering their establishments after 3 or 4am. Against this, several bar owners in urban areas spoke of the economic challenges they faced as a result of the "hollowing out" of the night-time trade as a result of extended trading. Business would peak after work and then effectively die between 9pm and midnight. Staff had to be rostered on and kitchens kept functioning despite the fact patrons may not reappear until after midnight.

1.56 Young people taking part in a Far North consultation suggested they would probably adapt to earlier closing hours by going into town earlier. However, unless the cost of drinking in bars was reduced, they told us they would still choose to pre-load at home before going out.

WHAT SUBMISSIONS SAID: RESTRICTIONS ON HOURS OF TRADING

Litmus analysis on this policy question showed 1,146 out of 2,939 submissions commented on the range of policy options relating to hours of trade. Of these 1,146:[45]

- 78% supported restricting the opening hours of all off-licences on a nationwide basis;
- 52% supported restricting on-licence premises from selling alcohol after a specified time on a nationwide basis;
- 24% supported providing an extension to serve alcohol until 4am if the premises operated a one-way door policy preventing new customers from entering the premises after 2am.

The age and supply to minors

1.57 The consultation revealed strong support for increasing the age at which young people can purchase alcohol. This view was mirrored in submissions, with 78% of the 2,272 submitters who commented on policy options relating to age and supply to minors supporting an increase in the minimum purchase age and 68% stating a clear preference for an increase to 20 years. Several recent media polls indicate support for change is widespread.[46]

45 Percentages are based on the total number of submissions that commented on the range of policy options within a specific category. Percentages noted represent submissions that have explicitly supported the policy option noted.

Percentages do not imply the level of disagreement with the proposed options. Percentages are not cumulative but are discrete.

46 Research New Zealand "Majority think lowering drinking age has been bad for New Zealand" (press release, 12 October 2009).

1.58 Not everyone was aware there is currently no legal restriction on when young people can drink. Rather, the law is framed around the age at which it is legal to purchase alcohol.

1.59 In both the consultation and submissions people grappled with how best to use the law to postpone and limit drinking by the young. At one end of the spectrum were those who argued for the introduction of a legal drinking age in place of the purchase age. This would make it illegal for anyone under a specified age to *consume* alcohol rather than merely purchase it.

1.60 This position tended to be favoured by licensees and those who believe the lack of consequences is one of the root causes of problem youth drinking, as illustrated in this extract from the HANZ submission:[47]

> Changing the age of purchase of liquor does nothing to address New Zealand's drinking culture, making it illegal for those under the age of 18 to consume, except when supervised by their parent or guardian, could however send a strong signal against a youth drinking culture and promote better individual responsibility.

1.61 However, there was also strong opposition to the introduction of a drinking age, including from the Police, on the grounds it would be problematic to enforce, would shift the onus onto young people and may criminalise large numbers unnecessarily.

1.62 At the other end of the spectrum were those who argued for a more nuanced approach to youth drinking, reflecting the changing levels of risk associated with the maturing adolescent and providing some sort of progression towards responsible independent drinking similar to the graduated drivers' licence. In its submission, for example, New Zealand Winegrowers suggested "at least for a certain probationary period, say two years, the ability for young persons to purchase alcohol should be conditional on appropriate behaviours, and not a right".[48]

1.63 Our tentative proposal to introduce a split purchase age, permitting 18 year olds to drink in licensed premises, but not to purchase takeaway alcohol until aged 20, was seen to have merit as an example of a graduated approach. But some were concerned it may send mixed messages to young people and was predicated on an assumption that drinking on licensed premises was safer when there was evidence these environments (not necessarily the premises themselves) were often the setting for alcohol-related violence and intoxication.

1.64 It was also recognised that laws designed to restrict the purchase of alcohol by young people addressed only part of the problem: the supply of alcohol to minors by parents and peers was of even greater concern and, in the view of many, not effectively addressed under the current law.

47 Submission of the Hospitality Association of New Zealand (submission dated October 2009) at 13, [16].

48 Submission of New Zealand Winegrowers (submission dated October 2009) at 4(b).

1.65 Several secondary school principals commented the lowering of the purchase age to 18 years had meant many senior students were legally able to purchase alcohol, which had facilitated easier supply to underage school peers and seen the "de facto" drinking age lower to 14 and 15 years in many cases. This view was echoed in the submission of the New Zealand Police.[49]

1.66 We were told weekend parties involving large quantities of alcohol were as much if not more a feature of high decile school communities than low, because pupils had few if any financial constraints and were also often supplied by parents who "thought they were doing the right thing". More often than not, the alcohol provided to teenagers by their parents went on to be consumed in unsupervised parties and was only a fraction of that available. Large parties with minimal or non-existent adult supervision and unlimited supplies of alcohol had become a routine feature of weekend socialising in some communities and while these activities occurred outside school hours, some principals felt the schools were often left to pick up the pieces.

1.67 In two cases, principals appearing before the Commission were currently dealing or had recently dealt with the potentially life-changing impacts of incidents that had occurred at such parties. Educationally, too, we were told the impacts of regular heavy weekend drinking meant students were tired, lethargic and disengaged.

1.68 While most believed parents should be able to supply alcohol to their own children, there was support for a change in the law requiring parents who *are* supplying alcohol to minors to also *supervise* its consumption. A significant number echoed the views of this parent at a meeting in Mount Roskill:[50]

> It would have helped me as a parent to have the law behind me when I was trying to restrict their participation. It would have helped their studies too. Sometimes as parents it's nice to have some decisions made for you.

1.69 However, both the principals and many others participating in the consultation acknowledged the law and parental authority were often a poor match for the power and influence of the media and alcohol advertisers and marketers, as summed up by these comments from consultation meetings:[51]

> Rangatahi (children) can push their parents and find ways around it. Parenting is part of the picture, but regulations can support parents say "NO". – *Whangarei*

> I don't buy into this whole parenting skills bit. Parents have a big enough job to do. How are parents supposed to work against such a big industry that makes such a lot of money? We are being hammered by a culture that doesn't acknowledge or support families. – *Otara*

1.70 At the same meeting in Otara, a mother commented how hard it was to take a stand against adolescent drinking when society was awash in it:

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49 Submission of New Zealand Police (submission dated 31 October 2009) at 11, [3.4].

50 ALAC community consultation, Mount Roskill, Auckland, 26 August 2009.

51 ALAC community consultation, Whangarei, 24 August 2009; ALAC community consultation, Otara, 26 August 2009.

> As a mum I am sick of it. Advertising all the time telling my kids to be cool and to drink. I am sick of food pamphlets showing us how cheap alcohol is in our supermarkets.

1.71 The extent to which spirit-based or ready-to-drink (RTD) drinks were providing a gate-way to adolescent drinking was also an issue that attracted heated debate. While acknowledging on the face of it these products were simply a convenient form in which to drink light spirits, many expressed the view their high sugar content, packaging and price were cynically designed to mimic that of popular non-alcoholic beverages, allowing for an easy transition from soft drinks to spirits.

1.72 So while the law relating to age was seen as something that could help limit early teen drinking, people were clear this measure needed to be backed by changes in other areas – including third party supply, price, advertising and sponsorship – if it were to be effective.

WHAT SUBMISSIONS SAID: PURCHASE/DRINKING AGE

Litmus analysis revealed that 2,272 out of 2,939 submissions commented on the range of policy options relating to a minimum purchase/drinking age. Of the 2,272:[52]

- 78% supported an increase in the minimum purchase age, with 68% preferring 20 years;
- 12% supported a split purchase age;
- 4% supported a minimum age to drink.

Advertising and sponsorship

1.73 No single issue galvanised the public to such a degree as alcohol advertising and sponsorship. Our treatment of the issue in *Alcohol in Our Lives*, including the tentative suggestion the current system of self-regulation under the Advertising Standards Authority should be largely left alone, was strongly criticised.

1.74 In many of the larger public forums there was strong support for applying the tobacco "Smokefree" model to alcohol, with a ban on all advertising and a staged withdrawal of all alcohol sponsorship. Others wished to see the codes covering alcohol advertising overhauled; the hour at which alcohol can be advertised on television moved forward from the current threshold of 8.30pm to 9.30pm, and the responsibility for regulation and complaints handed to an independent statutory body.

52 Percentages are based on the total number of submissions that commented on the range of policy options within a specific category. Percentages noted represent submissions that have explicitly supported the policy option noted.

Percentages do not imply the level of disagreement with the proposed options. Percentages are not cumulative but are discrete.

1.75 Submissions revealed a similar level of appetite for change – except from industry and media stakeholders, all of whom strongly opposed changes to the current self-regulatory regime. These submitters highlighted that the current system was working well and the recommendations of the 2007 review of the regulation of alcohol advertising were currently being implemented.

1.76 The one exception to this related to price advertising. A significant number of on-licence owners and some manufacturers indicated support for restrictions on price advertising by off-licences on the grounds this was seen to be driving the high-volume/low-value alcohol market.

1.77 While industry stakeholders questioned the strength of evidence linking advertising to harmful drinking and consumption levels, the public concern tended to focus on the glamorisation of alcohol through advertising and the extent to which advertising helped shape a culture where drinking was seen to be the key to social and sexual success. Young adults taking part in the consultation were particularly incredulous when informed the current voluntary codes supposedly ban advertisements that have these effects: "Advertising makes drinking look flash. Tui ads create fantasy and appeals to the younger generation in particular. TV ads give you the impression that drinking will help you score a beautiful blonde or two. Steinlager influences kids to drink so they can be like the All Blacks".[53] Certain branded beer campaigns were repeatedly highlighted as examples of the associations between drinking, "doing risky or dumb stuff " and being accepted as "one of the boys".

1.78 Less visible, but of equal concern to many, were the aggressive promotions of both off- and on-licence alcohol, some of it specifically targeting young and price-sensitive drinkers. In Dunedin, the Commission was presented with a dossier of flyers and advertisements published or distributed during Orientation Week in 2009, all offering discounted alcohol and prizes.

1.79 In a first for a New Zealand university, Otago's Vice-Chancellor Sir David Skegg and his council voted in October 2009 to ban alcohol advertising and sponsorship from all buildings and events hosted on university-owned property. In a memo to his fellow council members, the Vice-Chancellor outlined his concerns about the extent to which the industry was complicit in sending students the message that drinking was a primary aspect of campus life in Dunedin:[54]

> One issue that has concerned me and many other members of the University is the advertising of alcohol on campus and the sponsorship of events by the alcohol industry. For example, Orientation Week has been sponsored by a liquor company for several years. Even before they arrived at Otago, new students in the past have received packages containing promotional material about alcohol products. When they arrive, students are greeted by banners promoting the brewery concerned. This year the liquor company paid provocatively clad women to dispense trays of free beer to students in flats. Is it any wonder that some students gain the impression that our "scarfie culture" is more about beer-drinking than the numerous attractions of New Zealand's leading university?

53 ALAC consultation, residential addiction treatment centre, Moana House, Dunedin, 24 August 2009.

54 University of Otago Vice-Chancellor Sir David Skegg, memorandum to council members Alcohol Advertising and Sponsorship, 5 October 2009.

1.80 Alcohol's association with sport was also viewed by many as inappropriate and there was a call for an immediate end to alcohol branding on primary and secondary school goal pads and other sports equipment. The irony was frequently noted that as New Zealand undertook this comprehensive review of its liquor laws it was also preparing to host the Heineken Rugby World Cup.

1.81 Many also questioned why, given the risks associated with alcohol consumption, there was no requirement for advertisers and manufacturers to include in advertisements and product packaging basic consumer information such as the number of standard drinks, recommended maximum intake and risks to pregnant women and the young.

WHAT THE SUBMISSIONS SAID: ADVERTISING AND MARKETING POLICIES

Litmus analysis revealed 2,281 out of 2,939 submissions commented on the range of policy options presented on alcohol advertising and marketing. Of the 2,281:[55]

- 86% supported banning or restricting all advertising of all alcohol in all media.

In contrast, submissions from advertisers, the alcohol industry and retailers supported no change to self-regulation because the industry is currently implementing the recommendations of the 2007 review of alcohol advertising.

Tax and price

1.82 In several cities, members of the public arrived at consultation meetings armed with advertising circulars promoting the weeks' special offers, including a reputable label chardonnay at $4.99; a litre of gin for $23.99; 2 litres of "medium white wine" for $9.99; an 18 pack of beer for $19.99 and a range of RTDs with an alcoholic content ranging between 5 and 9% for between $1.30 to $2.00 a can.

1.83 Many believed the widespread availability of alcohol at prices lower than a lot of basic commodities was contributing to the culture of excessive drinking. Representatives of the hospitality industry, whose business costs typically prevent them from discounting alcohol, were particularly vocal about the role cheap off-licence alcohol is playing in the levels of intoxication and anti-social behaviour occurring in entertainment precincts.

55 Percentages are based on the total number of submissions that commented on the range of policy options within a specific category. Percentages noted represent submissions that have explicitly supported the policy option noted.

Percentages do not imply the level of disagreement with the proposed options. Percentages are not cumulative but are discrete.

1.84 Submissions also showed support for policies aimed at dampening demand through price increases. However, there were differing views as to which mechanisms should be used – an increase in excise tax, which is borne by the producers and paid to the government, or the introduction of a minimum price for alcohol, which would have the effect of increasing the price of cheap alcohol. Additional revenue gained as a result of a minimum price would accrue to the industry.

1.85 Alcohol industry submitters were generally sceptical about the impact of price on harmful drinking and questioned the fairness of penalising all drinkers on account of the minority of harmful drinkers. Some, including New Zealand Winegrowers, argued if tax were to be used as a mechanism to reduce consumption it should be imposed at the retail end of the supply chain, rather than the producers, because retailers determined the final price consumers were paying.[56]

1.86 On-licence businesses were similarly concerned excise increases would widen the price differential between on- and off-licence alcohol because retailers were in a better position to absorb the increases than restaurant and bar owners.

1.87 Industry stakeholders, and especially those in the on-licence trade, were less opposed to a minimum pricing regime because it was seen to better target problem drinkers by focusing on the cheapest alcohol. A minimum price also had the potential to narrow the gap between on- and off-licence prices, potentially stalling the trend towards drinking away from licensed premises and "pre-loading".

1.88 The idea that alcohol taxes in general should be hypothecated (that is, earmarked for off-setting alcohol-related harm) received strong support throughout the country.

1.89 Notes of caution were sounded regarding the impacts of increasing the price of alcohol. For example, it was suggested those who are drinking to get drunk, including young binge drinkers and those with alcohol-use disorders, will strategise to purchase the product that delivers the "biggest bang for their buck", therefore price and alcoholic volumes needed to be closely correlated.

1.90 Concern was also expressed about the effects of a price rise on low-income families, particularly in households with dependent children and adults with addiction problems. Groups working in vulnerable communities said it would be important to ensure the resources were in place to provide appropriate interventions and support at the time of any price increase.

56 Submission of New Zealand Winegrowers (submission dated October 2009) at 10, [d].

WHAT THE SUBMISSIONS SAID: TAX AND PRICING POLICIES

Litmus analysis revealed 2,015 out of 2,939 submissions responded to questions about price and tax. Of these:[57]

- 76% supported introducing a minimum pricing per unit of alcohol;
- 77% supported increasing levels of current excise tax on alcohol.

Personal responsibility and accountability

1.91 The need for increased personal responsibility in both the consumption and sale of alcohol was a clear theme to emerge from the public consultation in every centre. For example, many expressed a strong appetite for the reintroduction of the offence of "being drunk in a public place".[58] (This offence was replaced with a welfare provision that allowed police to take a person who was intoxicated and posed a risk to themselves to their home or a place of safety – something police were required to do on 21,263 occasions in 2007/08.[59])

1.92 The rationales given for reintroducing a specific offence relating to drunkenness ranged from wanting to make those individuals who were obnoxious and disorderly accountable for their actions to wanting to assert the social unacceptability of drunkenness. This sense the public was looking to the law to shore-up or reassert social norms and mores that have eroded was a common sentiment. In its submission on behalf of 144 Canterbury doctors and nurses, Pegasus Health stated: "Making it an infringement (not a criminal offence) to be intoxicated in a public place sends a very powerful societal message about appropriate drinking".[60]

1.93 Members of the hospitality sector were often critical of the lack of measures aimed at increasing personal responsibility included in the Commission's options for reform. Specifically, they highlighted that the current regulatory regime places all the legal responsibilities and penalties on the licensee and few if any on the individual drinker. For example, a licensee can be heavily fined for selling to a minor or serving an intoxicated person but there are no penalties for the person who becomes intoxicated on their premises.

57 Percentages are based on the total number of submissions that commented on the range of policy options within a specific category. Percentages noted represent submissions that have explicitly supported the policy option noted.

Percentages do not imply the level of disagreement with the proposed options. Percentages are not cumulative but are discrete.

58 The offence of being drunk in a public place was repealed in the Summary Offences Act 1981.

59 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 26.

60 Submission of Pegasus Health (submission dated 30 October 2009) at 4, [1].

1.94 Some young people who participated in the consultation were also in favour of both the young person and publican having equal responsibility for outcomes, as illustrated by this comment from a participant in a Far North meeting:[61]

> We have to have personal responsibility for the level of personal intoxication. The person serving is 50% responsible, but we are 50% responsible for accepting it, receiving it and requesting it.

1.95 Others, including the Police, were concerned such offences would be difficult to detect and enforce, and may unnecessarily criminalise or alienate the young. They believed the law should focus on curbing and punishing offensive or harmful *behaviours* resulting from intoxication, rather than the state of intoxication itself. It was pointed out numerous offences already existed to deal with many of the anti-social behaviours associated with intoxication, including disorderly behaviour, assault, breach of liquor bans and various property offences.

1.96 Other suggestions included requiring those who damaged property to work with council street cleaning teams and requiring those caught drink driving to work in spinal units. There was also a suggestion frequent offenders be required to complete brief alcohol interventions under the supervision of their doctor.

Empowering communities

1.97 Finally, while the consultation revealed a clear public conviction that law change is needed to address alcohol-related harm, there was also an acknowledgment that changing the drinking culture requires a whole of society approach.

1.98 Many have already risen to the challenge. The ability of local businesses, neighbourhoods, councils and iwi to take action to curb alcohol-related harms was evident in most consultations. In many areas, voluntary Alcohol Accords between licensees, police, public health and local bodies have given rise to several initiatives to curb harm. In Nelson, for example, a long-serving publican told us of the protocol he had devised to ensure patrons temporarily banned from one premise in the area for causing serious trouble, would also be banned from other licensed premises. To date, 42 licensees in the Nelson/Tasman area had adopted the protocol. In Rotorua, we heard from licensees who were issuing young people buying liquor from off-licences with dockets reminding them they were legally liable if they intended to supply the liquor they had just purchased to a minor. The commitment of licensees to the responsible sale of alcohol was evident in many meetings.

1.99 In Christchurch, a strong collaborative model between police, local bodies and licensees has resulted in various innovative schemes, including the voluntary trial of a one-way door policy in the central city aimed at reducing the disorder and assaults associated with intoxicated patrons migrating between bars in the early hours of the morning.

61 ALAC youth consultation meeting, Whangarei, 25 August 2009.

1.100 Alongside such initiatives from licensees and liquor law enforcers, we also heard numerous examples of actions taken by individuals, community organisations, non-governmental organisations, iwi, marae committees, youth groups, student bodies and churches, all targeted at reducing alcohol-related harms.

1.101 Here, we give just two examples of community initiatives we learned of in the course of the public consultation. The catalyst for one was the lack of resources available to young people in a rural mid-Canterbury community; for the other it was the slow awakening of a Mongrel Mob chapter to the devastating effects of drugs and alcohol on their members and children. Both cases illustrate the power of individuals and communities to effect change in drinking cultures.

Detoxing the Mob

1.102 In 2009, an improbable partnership was forged between leaders of the "Notorious" Chapter of the Mongrel Mob and the Salvation Army. At its heart was an ambitious contract to provide an intensive drug and alcohol treatment programme for Chapter members and their whānau. The project's Salvation Army sponsor, Major Lynette Hutson, told us this initiative was the culmination of four or five years work within the gang as it attempted to address the devastating effects of methamphetamine (P) on its members: "there had already been significant movement to shut down the normalisation of drug-taking behaviour in relation to 'P', marijuana and alcohol. Notorious leaders had been making advances toward this and had reached the point where they were willing and ready to take this further using a more formal AOD [alcohol and other drug] treatment approach".

1.103 And while P was the catalyst for change, Major Hutson said it was evident – and eventually acknowledged by the Chapter's leadership – that this was against a background of entrenched alcohol abuse and associated violent offending, including family violence. "Despite the current limelight on P, we are under no illusion that alcohol is the most damaging of all drugs and the one having the most harmful and widespread impacts. This was no different for Notorious."

1.104 Concern about the impact of drug and alcohol abuse on the Chapter's whānau and, in particular, its children, coupled with a desire to improve their children's future prospects were key motivators.

1.105 The Chapter leadership played a pivotal role in delivering the programme, which was based on the seven-week intensive residential Bridge programme run by the Salvation Army. The 12 Chapter members undertaking the programme were supported by whānau, including children, who took up residence at the camp, attending local kohanga reo and schools for the duration.

1.106 As well as the conventional alcohol and drug treatment elements, the programme contained strong cultural components designed to reconnect members with their whakapapa and Māori tikanga. It was also acknowledged that, alongside the drug and alcohol issues, it was essential to address housing, budgeting, employment and the physical, spiritual and mental wellbeing of Chapter members and their families.

1.107 At the time of writing, 9 of the 12 clients had graduated from the residential programme and had been drug and alcohol free for 18 weeks. Major Hutson told us the process of working in partnership with the Mob as distinct from their normal client/provider relationship had been both hugely challenging and rewarding. The whānau model had also brought unexpected benefits for the children, some of whose behaviours were transformed as a result of experiencing six weeks of stability and schooling.

1.108 Having completed the residential component of the programme, the Mob clients were moving into an 18-week aftercare programme involving a variety of individual and whānau supports tailored to meet the needs of each client. This was intended to complement a roopu-wide whānau development programme for all Notorious Chapter members across the North Island in the Auckland, Hamilton and Far North districts aimed at the reintegration of whānau into the community through mentoring and practical case management in relation to parenting, employment, training, education and life skills.

1.109 A rigorous evaluation of the programme would take place, but at the time of writing the Army was hopeful the model could be rolled out in other areas.

A rural township's response to alcohol-related harms

1.110 At the other end of the country, in a small mid-Canterbury rural community, the Oxford Community Trust is pioneering its own solutions to alcohol-related harm. Again, a key to the project's success has been that its roots were firmly planted in the local community, involving school, church and police. Again, critically, the project has been led by the target group – Oxford's young people.

1.111 The Oxford township had a population of 1,716 people at the time of the last census in 2006, an unusually high proportion of whom were under 15 years of age (21.7% compared with 19.6 % for the wider Canterbury region). The area has the advantages that come with a small well-established farming community with strong community networks, and the disadvantages that come with geographic isolation and a lack of recreational facilities for its youth. In 2008, about two-dozen young people from the district joined with 50 adults at a public meeting to discuss police and community concerns over the level of alcohol-related vandalism and intimidation occurring in the township.

1.112 Oxford Community Trust Chair Ian Thurlow described this meeting as the first overt sign of the community's commitment to working with its young people to find solutions. With assistance from ALAC's Community Alcohol Action Fund, the Trust launched a youth-led project to improve the recreational opportunities available to local youth. Providing transport into Christchurch's skateboard parks and surf beaches was one of the project's early aims as was organising regular alcohol-free entertainment for young people in the township. Ian Thurlow credits a local youth worker and her team, working in close association with Oxford's two community police officers, with much of the project's success. The response of other Oxford groups including the churches, school and Lions and working men's clubs was also critical – as was the support of the Waimakariri District Council.

1.113 As an example of the project's success, Ian Thurlow said young people would now frequently consult the local police for advice when organising parties and had produced a party pack with key information for others. Most significantly the project had set in force a virtuous cycle of mutual support between Oxford youth and the older members of the community, something the project organisers noted in their application to ALAC for funding: "Three years ago the community was wary of youth. Now we notice that the community will do anything to help us with our activities and youth are involved in many community projects".

Conclusion

1.114 Many of the themes traversed in this summary are revisited in the first four chapters of this report in which we assess the level of harm associated with alcohol misuse in the present day.

1.115 Parts 2 of 4 of this report focus on the policies and legal mechanisms we believe will best combat alcohol-related harm. Irrespective of the policy package that is eventually adopted by Parliament, the commitment shown by ordinary New Zealanders who participated in this national consultation and who took time to make submissions provides a strong indication of the appetite for change.

Chapter 2
The context for reform

IN THIS CHAPTER, WE:

- Review the impact of the 1989 liquor reforms on the industry.
- Examine the relationship between the availability of alcohol and levels of consumption at a population level.
- Discuss the economic, demographic and social factors that influence alcohol consumption.
- Discuss the importance of drinking patterns as a predictor of harm.

INTRODUCTION

2.1 In our Issues Paper, *Alcohol in Our Lives,*[62] we presented a detailed analysis of the impact of the Sale of Liquor Act 1989 (the 1989 Act) and subsequent amendments on various segments of the alcohol industry. We also provided analysis of the size and importance of the industry to the New Zealand economy.

2.2 The fundamental questions posed in this report are whether, and in what ways, those reforms may have contributed to alcohol-related harms, and whether changes in the laws controlling the sale and supply of liquor could help reduce those harms. In Parts 2 to 4 of this report these questions are posed in relation to each aspect of the liquor laws.

2.3 In this chapter we address the high-level question that underlies much of the history of New Zealand's liquor legislation: *what influence does the availability of alcohol have on how much New Zealanders drink?*

2.4 We also address a second-order question that was often implied, if not explicitly stated, in the historic debates: what influence does the availability and affordability of alcohol have on *how* New Zealanders drink? In other words, how do alcohol laws and drinking cultures interact? As our history of liquor reform illustrates, the effects of law changes are complex and can be unexpected.

62 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) [*Alcohol in Our Lives*].

THE FRUITS OF LIBERALISATION

2.5 The progressive liberalisation of the laws governing the sale of alcohol in New Zealand over the past 20 years has contributed to significant change, both from an industry and consumer perspective. At an industry level, the suite of legislative changes had the effect of opening up the sector to competition and loosening the breweries' historic control over the supply chain.

2.6 In its submission, New Zealand Winegrowers described the 1989 Act as a "significant advance on pre-existing legislation" and credited it with removing "anti-competitive provisions".[63]

> Those (provisions) had often granted localised monopolies which had mandated poor service and low standards. The 1989 Act eliminated those monopolies and without doubt has assisted the process of developing a world class hospitality industry in New Zealand.

2.7 In *Alcohol in Our Lives,*[64] we provided a detailed analysis of the industry post-reform. We summarise the key points below.

The industry

2.8 The present-day alcohol industry is a multi-billion dollar sector spanning a wide range of economic activities from growers, to beverage manufacturers, distributors, retailers and the thousands of cafes, restaurants, bars and clubs that make up the hospitality sector. Together, these various sectors of the industry are estimated to directly and indirectly employ as many as 70,000 people, the majority of whom work in the hospitality sector.[65]

2.9 Beer brewing in New Zealand is dominated by two international companies: Lion Nathan and Dominion Breweries.[66] 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, Greymouth, 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.[67]

2.10 The meteoric growth of New Zealand's wine industry, and the shift in our drinking preferences away from beer in favour of wine, are 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 about 30,000 hectares in cultivation.[68] In 2008, the wine industry was estimated to have contributed

63 Submission of New Zealand Winegrowers (submission dated October 2009) at 3 [a) ii)].

64 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 17–27.

65 A Whiteford and M Nolan *An Employment Profile of the Hospitality Industry: A Report to the Hospitality Standards Institute* (Infometrics Ltd, Wellington, 2007) at 7, Table 1.

66 Lion Nathan is owned by the Japanese beer producer Kirin. Lion's major competitor, Dominion Breweries, 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 the Dominion Breweries Group in 1993.

67 Rob Stock "Local Brew" *Sunday Star-Times* (New Zealand, 26 April 2009).

68 New Zealand Institute of Economic Research *Economic Impact of the New Zealand Wine Industry: An NZIER Report to New Zealand Winegrowers* (Wellington, 2009) at 8.

$1.5 billion to the country's gross domestic product and supported over 16,500 full-time equivalent jobs.[69] In the same year, wine exports were valued at $900 million, accounting for 2.2% of our total exports in 2009, and ranked as New Zealand's 12th-largest goods export item.[70]

Liquor retailers

2.11 Because the 1989 Act relaxed the criteria for granting licences there has been a proliferation of liquor outlets, with the number of licences more than doubling from 6,295 in 1990 to 14,424 in February 2010. Of this total, licences to sell liquor on premise more than trebled (2,423 to 7,656) while off-licences more than doubled (1,675 to 4,347).[71]

2.12 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, the greatest volume of alcohol is actually sold by just half a dozen major retailers dominated by the two main supermarket chains, Australian-owned Progressive Enterprises and the New Zealand cooperative, Foodstuffs.

2.13 Supermarkets account for only 3% of total licenses but, in 2008, were estimated to have sold 33% of all beer and 58% of all wine available for consumption that year.[72] In 2000, the supermarket's share of beer and wine sales was 12% and 43% respectively.[73] 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.[74] According to an industry newsletter, *Supermarket News,* "wine and beer together bring in more revenue than any other category".[75]

2.14 The other substantial specialist liquor retailers are generally part of a much larger chain of 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.

2.15 Alongside these large liquor store chains and supermarkets is a plethora of small suburban liquor stores that rely either on specialist markets or extended trading hours and the convenience of their location to attract business.

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69 Submission from New Zealand *Winegrowers* (submission dated October 2009) at 1.

70 New Zealand Institute of Economic Research *Economic Impact of the New Zealand Wine Industry: An NZIER Report to New Zealand Winegrowers* (Wellington, 2009) at 8.

71 Information provided to the Law Commission by the Liquor Licensing Authority 11 February 2010. This total comprises 7,656 licences to sell liquor on-premise, 4,347 licences to sell liquor for consumption off-premise and 2,421 club licences. Some disused licences may be included in this total.

72 New Zealand Retailers' Association *Alcohol in New Zealand: A report to the NZRA by Nielsen* (Wellington, 21 April 2009) at 21–22.

73 Ibid. Supermarkets gained the right to sell beer following amendments to the Sale of Liquor Act in 1999.

74 Information provided to the Law Commission by industry sources.

75 "Liquor: Big Retail Changes Coming?" *Supermarket News* (September 2009) Vol. No.2 Issue No 7, at 2.

2.16 Parallel to this growth in liquor retailing has been the development and diversification of the entertainment and hospitality sector. Since 2000 there has been a 26% growth in the number of pubs, taverns and bars, and a 37% increase in cafes and restaurants.[76]

2.17 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 than 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 7,656 on-licences in force in February 2010, 551 currently permit the sale of liquor "at any time on any day", and a further 2,048 permit the sale of liquor after 2am.[77]

Consumers

2.18 New Zealanders spend an estimated $85 million a week on alcoholic beverages, which equates to $4–5 billion a year.[78]

2.19 The past two decades have seen significant changes in consumer preferences: while beer remains the most popular beverage at 65% of the total alcoholic beverages available for consumption, total beer consumption has fallen from 400 million litres in 1984 to 306 million litres in 2009 – a 23% decline and a much greater decline on a per capita basis. Higher strength alcohol beer has grown significantly in the last 10 years.[79] Similarly, consumption of wine and spirit-based drinks has risen: the amount of wine available for consumption in New Zealand has doubled since 1984 to 95 million litres of wine in 2009. While the volume of traditional spirits available for consumption has remained fairly stable at around 10 million litres annually, the volume of spirit-based drinks has trebled to 59 million litres in 2009.[80] This growth has been fuelled almost entirely by the development of the ready-to-drink or RTD market. It appears from alcohol-use surveys that RTDs are particularly popular among young female drinkers, with 47% of school-aged female drinkers reporting they typically drank RTDs compared with 21% who drank spirits, 19% wine and 12% beer.[81]

76 Statistics New Zealand Business Demography Tables Enterprise and Employee Counts by Industry (ANZSIC 96).

77 Analysis provided to the Law Commission by the Liquor Licensing Authority (11 February 2010). These figures exclude licences granted to boats, trains and aircraft.

78 Statistics New Zealand Retail Sales (Actual) by Industry < www.stats.govt.nz >. These figures are exclusive of goods and services tax 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 alcoholic beverages were estimated based on advice from the industry.

79 High alcohol beer is classified here as 4.36–5.0% alcohol, as well as those beers that are over 5.0% alcohol.

80 Statistics New Zealand, *Infoshare: Alcohol Available for Consumption* (year ended 2009).

81 Adolescent Health Research Group *Youth '07: The Health and Wellbeing of Secondary School Students in New Zealand, Technical Report* (The University of Auckland, Auckland, 2008) at 112.

2.20 Overall, alcohol has become more affordable since 1989.[82] Of all beverage types, wine has seen the greatest improvement in affordability. Alcohol purchased from off-licenses is relatively more affordable than alcohol purchased from on-licenses. In recent times, the traditional price differential between off-licence and on-licence liquor has widened as the on-licence trade faces increased labour costs and higher property rentals while the major retailers have been able to use their market dominance to obtain large price discounts that are passed on to retail consumers.

2.21 The hospitality sector argues this increasing price differential has been a major factor in the ongoing shift towards drinking away from licensed premises. At the time of the Working Party on Liquor, chaired by Sir George Laking (the Laking Committee), it was estimated 59% of alcohol was consumed away from licensed premises.[83] The most recent Alcohol Advisory Council Alcohol Monitor puts this figure at 68%.[84]

THE EFFECT OF LIBERALISATION ON HOW MUCH NEW ZEALANDERS DRINK

2.22 Many industry and individual submitters drew our attention to the transformation of the New Zealand bar, restaurant and entertainment sector under the more liberal regulatory environment. They also cautioned against a narrow focus on the legal framework for the sale of alcohol, pointing out that while the 1989 Act did lead to a significant growth in licensed premises, this did not in fact translate into a spike in New Zealander's alcohol consumption.

2.23 The relationship between the physical availability of alcohol and consumption has been at the heart of liquor debates over time. Changes to New Zealand's licensing laws have not always delivered a corresponding change in alcohol consumption sought by the advocates of those changes. Conversely, changes in alcohol consumption have sometimes occurred despite liquor laws being unchanged in the preceding years.

2.24 The absence of a simple linear relationship between the physical availability of alcohol (as measured by the raw number of outlets) persuaded the architects of the 1989 Act to question the century-old tenet linking levels of alcohol consumption to availability. In its final report, the Laking Committee acknowledged the problems associated with alcohol abuse in New Zealand but was not persuaded the solution lay in continued restrictions on the number of liquor outlets – despite the submissions of many groups arguing to the contrary:[85]

> 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.

82 See Chapter 17 of this report for detailed analysis of changes in price and affordability.

83 Report of the Working Party on Liquor *The Sale of Liquor in New Zealand* (October 1986) at 36 [*Laking Report*].

84 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) at 13.

85 Report of the Working Party on Liquor *The Sale of Liquor in New Zealand* (October 1986) at 18.

2.25 Supporters of liberalisation, including the New Zealand Retailers' Association in its submission, point to the fall in total population consumption in the period immediately following the 1989 Act, as evidence the Laking Committee was correct to conclude increased availability would not automatically translate into a surge in consumption.

2.26 The international literature suggests the association between the law and changes in total consumption tends to be most pronounced when there is a sudden and significant change in availability.[86]

2.27 However, the relationship between licensing law and alcohol consumption is complex because the law does not operate in a vacuum. There are fluctuations in societal factors that take place *alongside* changes in the liquor laws that can also influence the amount of alcohol people drink. This is not to say the law has no effect – it quite clearly does. But rather, the law is one of several variables that will interact in a dynamic fashion with a range of other social and environmental factors to influence drinking behaviours at any given time. This point was reinforced by New Zealand Winegrowers in the introductory comments of its submission:[87]

> It is pertinent also to point out that regulation of 'alcohol' is not a simple matter of cause and effect; it takes place in particular social and cultural environments where the responses to it may vary greatly.

The economic context

2.28 Perhaps the most important of these variables is the state of the economy. Several overseas studies suggest the stronger a country's economy, the higher that country's total alcohol consumption will be.[88] In many respects this stands to reason. The more disposable income people have, the more they are likely to spend on non-essential items such as alcohol.

86 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 131, [9.2.3] [*Alcohol: No Ordinary Commodity*].

87 Submission of New Zealand Winegrowers (submission dated October 2009) at [2].

88 See New Zealand Drug Foundation Evidence Review *The Relationship between the economic downturn and alcohol and other drug use and harm* (NZDF, Wellington, 2009) at 3–5.

FIGURE 2.1: ALCOHOL CONSUMPTION PER CAPITA 15+ 1888–2008

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

2.29 Broadly speaking, New Zealand appears to have followed this pattern. Figure 2.1 sets out the amount of alcohol consumed per person (aged 15 plus) per calendar year since 1888. The rises and falls in alcohol consumption have generally mirrored fluctuations in the state of the New Zealand economy.[89] For example, the Great Depression of the late 1920s and early 1930s was matched by a marked drop in alcohol consumption. Consumption rose steadily through the 1950s, 1960s and early 1970s as the economy benefited from World War II and ready access to Britain for the country's export commodities. Unemployment was near zero during the 1960s and early 1970s.

2.30 Unemployment began to rise during the 1980s but remained at relatively low levels until the late 1980s and early 1990s when the effects of the stock market crash and economic restructuring saw a steep rise in unemployment. In the year to March 1992, two years after the introduction of the Sale of Liquor Act, the unemployment rate peaked at 10.9 % (184,200 people unemployed).[90]

2.31 Hence, while commentators have cited the decline in consumption during the 1990s in the immediate post-reform phase as evidence that increasing physical availability does not impact consumption, the explanation is likely to be more complex and include the overall economic conditions that prevailed over that period.

2.32 Following the low point in consumption in 1998, per capita consumption began to rise again, with a 9 % total increase in per capita consumption of pure alcohol over the next decade. This coincided with falling unemployment, sustained economic growth and yearly fiscal surpluses. Conversely, the current economic

89 See generally *The Reserve Bank and New Zealand's Economic History* (Reserve Bank of New Zealand, Wellington, 2007).

90 Ministry of Social Development *The Social Report (Wellington, 2009)* at 46.

recession, which has seen the unemployment rate increase to 7.3%,[91] is likely to be contributing to the slight decline in consumption seen in the latest Statistics New Zealand alcohol consumption data.[92]

2.33 In addition, the long-term consumption trends reflect the sensitivity of the market to significant changes in price and affordability. Large liquor tax increases imposed by the government in both 1921 and 1958 were followed by steep declines in consumption, as illustrated in figure 2.1. The graph demonstrates the interplay between the overall state of the economy and the impact of government interventions influencing the price of alcohol.

Social and demographic variables

2.34 Economic factors, however, are not the only variable outside of the law that can affect population levels of alcohol consumption. Changes in a country's demographic structure can also influence overall consumption levels. Typically, countries with ageing populations, such as New Zealand, are likely to see a gradual decline in consumption as increasing proportions of the population enter retirement and old age.

2.35 However, demographic blips such as the post-war Baby Boom can also be reflected in consumption patterns as was seen in New Zealand in the 1970s when a large group of baby boomers moved through their late teens and twenties. Similarly, while our population is ageing overall, New Zealand is currently 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 year old cohort than there were in 1991.

2.36 The student population has also grown exponentially 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.[93]

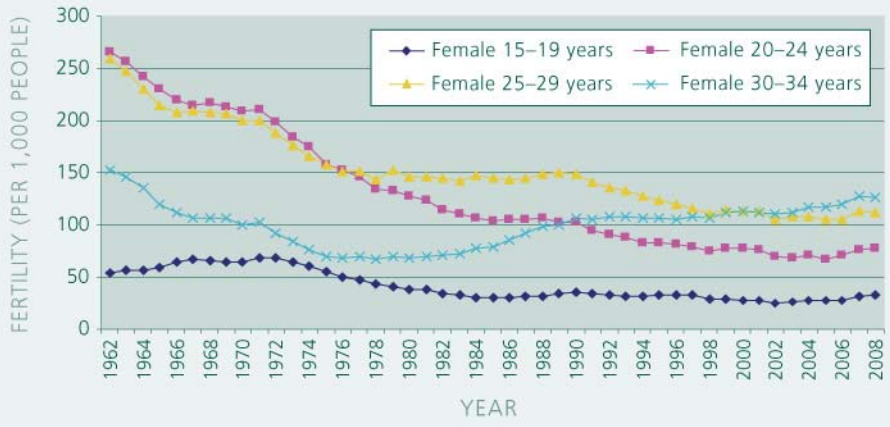
2.37 Changing birth rates are another example of a factor likely to influence alcohol consumption. Figure 2.2 shows that, since the 1960s, there has been a marked drop in birth rates amongst women in the 20 to 24 year age group. A similar decline occurred for the 25 to 29 year age group. This has been matched by a gradual increase in birth rates for the 30 to 34 and 35 to 39 year age groups from about 1980 onwards. This trend, in which women have children later in life, is likely to mean many younger women have both more time and more money available for socialising and alcohol consumption compared with previous generations of the same age.

91 Statistics New Zealand "Unemployment rate rises to 7.3%" (press release, 4 February 2010).

92 Statistics New Zealand *Alcohol and Tobacco Available for Consumption: Year ended 2008* < www.stats.govt.nz > .

93 Ministry of Education "Education Counts Statistics" < www.educationcounts.govt.nz > .

FIGURE 2.2: AGE-SPECIFIC BIRTH RATES 1962–2008



Source: Statistics New Zealand, Infoshare.

2.38 Generational lifestyle changes, such as in the rates of home ownership and marriage, together with changes in family structures and people's working lives can all impact on levels of discretionary income and the opportunities available to people regarding how and where they socialise and spend their leisure time. This in turn can impact on how and where alcohol is consumed.

2.39 Cultural attitudes around drinking are a further factor that can influence per capita alcohol consumption. One of the most notable features of New Zealand's drinking behaviours in recent times has been the increase in the per session quantity and frequency of female drinking.[94] It is likely changes in cultural norms and expectations around female drinking have contributed to this trend. Historically, female drinking in New Zealand was expected to be more restrained, and drinking behaviour more civilised, compared with male drinking. Generally speaking, public bars were the domain of men. If women drank on licensed premises it was in the so-called "lounge bar". Such restrictive gender-based expectations around alcohol consumption – what women drink, where they drink, and how much they should drink – have now largely disappeared. This shift in societal attitudes regarding female drinking has undoubtedly contributed to female drinking patterns becoming more closely aligned with male drinking behaviours, thereby contributing to increased population levels of alcohol consumption.

NOT JUST A QUESTION OF HOW MUCH NEW ZEALANDERS DRINK – BUT HOW THEY DRINK

2.40 In New Zealand, there has been a 9 % increase in per capita consumption of pure alcohol since its low in 1998 followed by a small decrease in 2009.[95] As discussed, this increase in total consumption is likely to be the result of a complex dynamic between the law (for example, lowering of the purchase age to 18 years in 1999) and demographic, socio-economic and cultural change.

94 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 40.

95 Statistics New Zealand *Alcohol and Tobacco Available for Consumption: Year ended 2008* < www.stats.govt.nz > .

2.41 Increases of this magnitude have been associated with increases in alcohol-related harm overseas.[96] But total population consumption figures provide only a partial insight into a nation's drinking habits and the harms arising from them. As this passage explains from the international alcohol policy authority, *Alcohol: No Ordinary Commodity*, levels of alcohol-related harms are also strongly correlated to patterns of consumption – in other words, *how* New Zealanders drink.[97]

> Overall, the conclusion must be that the level of alcohol consumption matters for the health and social well-being of a population as a whole. In addition to this, the predominant pattern of drinking in a population can have a major influence on the extent of damage from extra alcohol consumption. Patterns that seem to add most to the damage are drinking to intoxication and recurrent binge drinking.

2.42 Heavy drinking and drinking to intoxication are both persistent features of New Zealand's drinking culture. As discussed in chapter 3, heavy sessional drinking is directly correlated with a range of acute harms, including alcohol poisoning, suicides, alcohol-related road fatalities and both accidental and intentional injury. Devising policies that will help reduce the incidence of this pattern of consumption is an important policy goal.

2.43 Several submitters argued the current Act has, in some circumstances, exacerbated the culture of drinking to excess by allowing a largely unfettered and highly competitive alcohol market to develop.[98] These submitters argued the combined effect of the increased *physical availability*, *affordability and promotion* of alcohol has been to facilitate drinking to intoxication within segments of the drinking population.

2.44 Analysis of national drinking survey data does suggest young people's drinking patterns have changed in recent years towards increased 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:[99]

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

2.45 By 2000, males in the 16- to 17-year-old age group were consuming eight drinks on a typical drinking occasion and their female peers were consuming nearly six drinks per occasion.[100]

96 P Mäkelä and E Posterberg "Weakening of One More Alcohol Control Pillar: A Review of the Effects of the Alcohol Tax Cuts in Finland in 2004" (2009) 104 Addiction at 554–563.

97 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 70.

98 See, for example, submission of Alcohol Healthwatch (submission dated 30 October 2009) at 6.

99 Unpublished comparative analysis of the National Alcohol Use Survey Data 1995, 2000, 2005, Social and Health Outcomes Research and Evaluation (SHORE).

100 Ibid.

2.46 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 19 and 20 to 24 years (with each age group increasing from four to six drinks on a typical drinking occasion).[101] 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.[102]

2.47 New Zealand's Child and Youth Mortality Review Committee, an independent expert group set up in 2001 to review the deaths of all infants and young people aged 4 weeks to 24 years, noted in its submission that:[103]

> Binge drinking particularly among young women has been increasing indicating that this practice is more widely accepted within younger age groups (e.g. underage drinkers in the 14–18 year old group) alongside well established patterns of male binge drinking associated with rugby and school settings.

As outlined in the public consultation summary, this sentiment was echoed in the oral submissions of several secondary school principals around the country, concerned about the harmful effects of regular patterns of weekend binge drinking among younger school-aged students.

2.48 Similar concerns were expressed by New Zealand psychiatrists specialising in adolescent mental health. In its submission, the Faculty of Child and Adolescent Psychiatry commented that teenagers as young as 14 were now being treated for alcohol addiction and price was an important factor facilitating the binge drinking culture:[104]

> Teenagers continue to drink mostly in a binge fashion and they now drink more per occasion of drinking and are drinking on more occasions per week. The decreasing price of alcohol and increasing relative income of NZ families means that alcohol is increasingly affordable for teenagers. Price used to be a 'brake' on young people's use but is now much less of a factor now that supermarkets are selling alcohol and there is more competition bringing the prices down.

2.49 While care must be taken regarding causation, it does seem plausible to suggest that among price-sensitive segments of the market, in particular, including novice and problem drinkers, the liberalisation of the liquor laws has contributed to the incidence of binge drinking and drinking to intoxication – patterns of consumption that, as discussed in chapter 3, generate significant levels of acute harm.

101 Ibid.

102 Mervyl McPherson, Sally Casswell and Megan Pledger "Gender Convergence in Alcohol Consumption and Related Problems: Issues and Outcomes from Comparisons of New Zealand Survey Data" (2004) 99 Addiction 738, at 746.

103 Submission of the Child and Youth Mortality Review Committee (submission dated October 2009) at 22, [2.1].

104 Submission from the Faculty of Child and Adolescent Psychiatry New Zealand Branch, The Royal Australian and New Zealand College of Psychiatrists (submission dated 28 October 2009) at 3, [9].

Conclusion

2.50 The liberalisation of New Zealand's liquor laws over the past two decades has been associated with many economic benefits. As a result of these reforms and increased competition, alcohol has become more accessible and more affordable. While this has brought benefits to many consumers it has also been associated with a range of harms that have impacted unevenly on different communities and sub-populations.

2.51 The implementation of the 1989 Act coincided with an economic downturn and an exponential increase in unemployment, which peaked at 10.9% in 1992. Total per capita alcohol consumption declined over this period and did not begin to increase until around the beginning of the century, when New Zealand had strong economic growth combined with historic low unemployment and further liberalisation of alcohol laws, including the lowering of the purchase age from 20 to 18 years, and the addition of beer to the types of alcohol supermarkets were permitted to sell.

2.52 Total alcohol consumption rose by 9% between 1998 and 2008, and decreased again slightly in 2009. However, total consumption figures provide only a partial insight into the drinking patterns and harms being experienced by a community. Patterns of drinking and, in particular, the prevalence of binge drinking and drinking to intoxication are powerful predictors of levels of alcohol-related harm.

2.53 There is some evidence suggesting these patterns of excessive consumption have been exacerbated among segments of the population since liberalisation and the unprecedented availability, affordability and promotion of alcohol may be contributing to these patterns of high-risk drinking and to the levels of harm arising from them.

2.54 The Law Commission recognises the important point that the law is only one of several factors influencing the amount of alcohol consumed in this country and the manner in which it is drunk. In short, the law itself cannot solve the country's problem with alcohol, but carefully constructed legislation can play a central role in a broad strategy to reduce alcohol-related harm.

Chapter 3
Alcohol and harm

IN THIS CHAPTER, WE DISCUSS:

- The ways in which alcohol can harm and the prevalence of hazardous and harmful drinking in New Zealand.
- The association between alcohol and crime.
- How alcohol contributes to injury and disease.
- The extent to which third parties, children, in particular, are harmed by others' drinking.
- The impact of alcohol-related harms on Māori, and the association between alcohol and inequality.

INTRODUCTION

3.1 Our Issues Paper, *Alcohol in Our Lives,*[105] set out to provide both a quantitative and qualitative account of alcohol-related harm in this country. Our approach in the Issues Paper was to examine the problem through two different lenses: crime and health.

3.2 Our analysis of the problem met with general agreement in both the public consultation and the submissions. However, there was a divergence in opinion as to how prevalent problem drinking is in the community and how best to tackle it.

3.3 In this chapter we address the first of these questions: how widespread is the problem? In doing so we draw on new data from the Ministry of Health's most recent survey of drug and alcohol use in New Zealand.[106]

3.4 We also examine the implications of harmful drinking for New Zealanders' health at both a population and sub-population level, and discuss the "invisible" dimension to harmful drinking: alcohol's impact on others, in particular, children.

105 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) [*Alcohol in Our Lives*].

106 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Ministry of Health, Wellington, 2009) [*Alcohol Use Survey 2007/08*].

3.5 Throughout this chapter we draw on the submissions where they have offered new evidence or insights into the level of alcohol-related harm experienced in New Zealand.

3.6 We begin by summarising the evidence presented in chapters 5 and 6 of the Issues Paper.

HOW ALCOHOL HARMS AND WHO IS AT RISK

3.7 Alcohol is the most commonly used recreational drug in New Zealand. It is a psychoactive substance with the potential to harm in three ways: toxicity, intoxication and dependence. 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 toxic effects of alcohol consumed over many years and include a range of cancers, cardiovascular disease, liver disease, high blood pressure, depression, anxiety disorders and alcohol dependence.

3.8 How individuals drink – the frequency and quantity consumed – are key determinants in their risk of harm. Those who consume large quantities when they drink, including those who drink to intoxication, face an increased risk of suffering or causing an immediate or acute harm, such as an accident or injury. Alcohol poisoning and acute tissue damage are also possible outcomes of high-volume drinking. The risk of suffering longer term or chronic harms, including a range of alcohol-related cancers, relates to the toxicity of alcohol on human organs and is determined by the cumulative effects of alcohol over months or years. The frequency and quantity of alcohol consumed determines the level of risk. Similarly, at a population level, the drinking patterns of New Zealanders determine the types and levels of alcohol-related harm experienced as a nation.

3.9 In the past two decades the scientific understanding of alcohol's effects on the human body and brain (including the developing brain) has advanced considerably, leading experts to revise their recommendations as to what constitutes low-risk levels of consumption. In 2009, Australia's National Health and Medical Research Council published its new evidence-based guidelines to reduce health risks from drinking alcohol. It found the following.[107]

- With respect to immediate or acute harms, those who consume more than four standard drinks on a single occasion more than double their relative risk of injury over the next six hours and the more they drink the further the risk increases.
- With respect to longer term harms, for healthy men and women, the lifetime risk of death from alcohol-related disease or injury remains below 1:100 if no more than two standard drinks are consumed on any day.
- However, above two standard drinks a day, the risk rises to just above 1:100 and continues to rise as average daily consumption increases.

107 National Health and Medical Research Council *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Canberra, 2009) at 3 < www.nhmrc.gov.au > [*Australian Guidelines*].

3.10 In New Zealand, analysis of the Ministry of Health's 2004 health behaviours survey indicates one-in-five drinkers aged over 12, and nearly half of drinkers aged 12 to 24, *usually* drink more than four standard drinks on a single occasion, at least doubling their risk of injury in the six hours after drinking.[108]

3.11 The same analysis shows nearly one-in-three drinkers drink on average more than two drinks a day – including a quarter of drinkers aged 35 to 64 – so face a greater than 1:100 risk of dying of an alcohol-related disease, or injury.

3.12 Extrapolating these estimates across the adult population suggests, in 2004, an estimated 700,000 New Zealanders were consuming on average more than two drinks per day. Those people have *at least* a 1:100 risk of dying of alcohol-related causes, meaning at least 7,000 of them will die of alcohol-related causes.

Binge drinking and harm

3.13 Countries where binge drinking and drinking to intoxication are common tend to experience high levels of acute harms, including alcohol-related offending and injury, as highlighted in the following passage from the World Health Organization sponsored authority on alcohol policy, *Alcohol: No Ordinary Commodity*:[109]

> Overall the conclusion must be that the level of alcohol consumption matters for the health and social well-being of a population as a whole. In addition to this, the predominant pattern of drinking in a population can have a major influence on the extent of damage from extra alcohol consumption. Patterns that seem to add most to the damage are drinking to intoxication and recurrent binge drinking.

3.14 Drinking to intoxication and regular binge drinking are persistent characteristics of New Zealand's drinking culture. There was widespread acknowledgement of this fact in the public submissions, including among alcohol manufacturers such as Lion Nathan: "The problem at issue is alcohol abuse and related harm – it is 'the way we are drinking'".[110] DB Breweries suggested the culture of drinking to excess may be a legacy of half a century of restricted closing times:[111]

> The urgency given to drinking during this period (six o'clock closing) possibly created a 'hangover' for the following generations with an ongoing focus on drinking as much as possible. Until recently, it was fairly common for people coming of age to be given a yard glass on their 21st.

108 Ministry of Health *Unpublished Data Analysis of the 2004 New Zealand Health Behaviours Survey – Alcohol Use* (June 2009) [*Ministry of Health Data Analysis*].

109 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 70 [*Alcohol: No Ordinary Commodity*].

110 Submission of Lion Nathan (submission dated 29 October 2009) at 3, [13].

111 Submission of DB Breweries (submission dated 30 October 2009) at 9.

3.15 However, while few disputed the continued existence of a binge-drinking culture in New Zealand, many submitters sought to minimise its significance, adopting the stance put forward by the Hospitality Association of New Zealand (HANZ) in its submission: "The vast majority of New Zealanders that consume alcohol do so in a responsible way without harming either themselves or others".[112]

3.16 While such bald assertions have an intuitive appeal, they are not supported by the evidence. Lay persons' assessments as to what constitutes "responsible drinking" and what constitutes "excessive or binge drinking" are often highly subjective and do not necessarily reflect actual levels of risk. Such subjective assessments have limited value in an evidence-based process aimed at harm reduction. As noted above, one-in-five drinkers in this country and half of young drinkers *usually* drink enough to double their risk of injury; nearly one-in-three drink over the daily recommended maximum so face a greater than 1:100 risk of dying of an alcohol-related disease or injury.

3.17 But to properly test the assertion that the "vast majority of New Zealanders drink responsibly and without causing harm to themselves or others", it may be useful to analyse the profile of the population who drink. The most recent source of data is derived from the Ministry of Health's *Alcohol Use Survey 2008/09* published in October 2009 and based on the results of the 2007/08 *New Zealand Alcohol and Drug Use Survey*. The survey involved face-to-face interviews with 6,500 residents aged 16 to 64 and was designed to produce a representative picture of the whole population's drinking. While changes in methodology between different survey periods mean it is not possible to assess long-term trends, the findings are broadly consistent with earlier surveys and those conducted by the Alcohol Advisory Council of New Zealand (ALAC).

3.18 By extrapolating the survey data to the population, drinkers can be roughly categorised in the following manner:[113]

- around 2.4 million, or 85%, of New Zealanders aged 16 to 64, drink at least occasionally.

Of those who drank at least once in the past year:

- around 877,200 drank three times a month or less (412,400 of these people drank less than once a month);[114]
- around 1.4 million drank at least once a week;[115]
- 647,200 drank between three and seven times a week.[116]

3.19 From this, we can see alcohol is a routine part of the lives of about 1.4 million New Zealanders aged 16 to 64. However, as we have seen, what determines the level of alcohol-related harm individuals and society as a whole experience is influenced by both the *frequency* of drinking and *quantity* consumed. In other words, those who drink infrequently, but drink to intoxication when they drink,

112 Submission of Hospitality Association of New Zealand (submission dated October 2009) at 4, [2].

113 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009) at 15–33 [*Alcohol Use Survey 2007/08*].

114 Ibid, at 28, Table 5.

115 Ibid.

116 Ibid.

are likely to generate significantly more acute harms than those who drink several times a week but only small quantities. In fact, research suggests the chances of harm from a single intoxication event seem to be higher for those who drink infrequently than for those drinking more frequently.[117]

3.20 People's motivation for drinking can differ both from one occasion to the next and at different stages of life. At times people may drink primarily for the flavour and as an accompaniment to food; at other times for sociability and pleasure; and at others in pursuit of intoxication and escape. One type of drinking occasion can turn into another. These patterns of drinking and the rituals, environments and behaviours associated with them, define drinking cultures. As discussed, they are also a strong predictor of the types of harm likely to be generated.

3.21 There can be no doubt drinking environments have changed markedly since the days of the six o'clock swill and sawdust-floored booze barns. As outlined in chapter 2, the quality and diversity of alcoholic beverages, and the venues available for drinking and dining have improved dramatically since liberalisation.

3.22 However, the evidence suggests while many drinkers have added wine to their weekly household shop, and may now regularly consume wine with their meals, this has not necessarily displaced those drinking occasions linked with heavy consumption and drinking to intoxication. In other words, while the alcohol market has changed, the predominant consumption patterns have not.

3.23 Using a variety of different benchmarks, national drinking surveys have consistently shown around 25% of drinkers – the equivalent of 700,000 New Zealanders – typically drink large quantities when they drink.[118] Among young drinkers aged 15 to 24, the rate is much higher, with about half drinking in this way.

3.24 These estimates of heavy drinkers are closely mirrored by estimates of the proportion of drinkers whose consumption can be classified as potentially "hazardous", defined as "an established pattern of alcohol consumption that carries a high risk of future damage to physical or mental health, but may not yet have resulted in significant adverse effects".[119] In a 2006–07 survey the Ministry of Health estimated 21.1% of drinkers aged 15 years and older met this diagnostic criterion. Rates of hazardous consumption among the young, Māori, Pacific and lower socio-economic groups were all significantly higher,

117 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 18.

118 The Alcohol Advisory Council of New Zealand (ALAC) defines a quarter of adult drinkers in New Zealand as "binge drinkers" because they typically consume seven or more standard drinks per session. (One standard drink contains 10 grams of pure alcohol.) The Ministry of Health's *Alcohol Use Survey 2007/08* 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. By this measure, the *Alcohol Use Survey 2007/08* found: 25% (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% (50.3–57.9) of our 18 to 24 year olds.

119 The Alcohol Use Disorders Identification Test (AUDIT) is a 10-item questionnaire covering alcohol consumption, alcohol-related problems and abnormal drinking behaviour. Ministry of Health *A Portrait of Health: Key Results of the 2006/07 New Zealand Health Survey* (Wellington, 2008) at 67.

with 41.1% of 15 to 24 year old drinkers found to have a potentially hazardous drinking pattern; 39.2% of Māori and Pacific peoples; and higher rates among drinkers living in the country's more deprived areas.[120]

3.25 While the proportion of drinkers in the total population meeting the criteria for hazardous drinking has remained stable over the past decade, there have been increases in the rates of hazardous drinking among Māori men (34.6% to 40.9%), women aged 25 to 34 (13.9% to 18.2%) and males aged 35 to 44 (25.5% to 29%). Women aged 55 to 64 and 65 to 74 have also increased from low bases of 1.8% to 4.3% and 1% to 3% respectively.[121]

3.26 Another interesting indicator of potentially harmful drinking can be found in the *Alcohol Use Survey 2007/08,* which estimates the rates of intoxication in the drinking population. This is significant because intoxication is closely correlated with acute harms, including intentional and accidental injury. To satisfy the criteria for intoxication, survey participants were asked how often they had drunk enough to feel light-headed, with slowed thinking, slurred speech, unsteady feet or blurred vision.

3.27 Just under 60% (59.2%) of those who had consumed alcohol in the past year reported they had consumed enough to feel drunk at least once in the past 12 months.[122] As the report points out, this equates to over 1.3 million people, or over half of the adult population aged 16 to 64 years. Just under 12% (11.8%) reported drinking enough to feel drunk one to three times a month.[123] Ten percent, or the equivalent of 224,600 adults, consumed enough to feel drunk at least weekly.[124]

3.28 Participants were also asked whether they had engaged in various risky behaviours while feeling under the influence of alcohol. Just under 20%, (19.8) equating to 444,100 people, admitted driving a vehicle while feeling under the influence of alcohol; the equivalent of 251,900 admitted working while under the influence of alcohol and the equivalent of 68,900 people admitted operating machinery under the influence of alcohol.[125]

3.29 In summary, these figures tend to give lie to the bald assertion that the "vast majority of New Zealanders drink responsibly". Instead, they suggest the majority of New Zealand drinkers get drunk occasionally; just over 20% drink in a hazardous manner, and about 10% drink enough to get drunk every week. Some may abstain or moderate their drinking during the week and drink large amounts on the weekend. And many New Zealanders who may classify themselves as "responsible" drinkers may be among the third whose daily intake is pushing their risk of dying of an alcohol-related disease or injury above 1:100.

120 Ibid, at Appendix 5.

121 Ibid, at 75; Ministry of Social Development *The Social Report 2009* (Wellington, 2009) at 31.

122 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009) at 49.

123 Ibid, at 53, Table 12.

124 Ibid, at 54.

125 Ibid, at 65, Table 15.

What the figures make clear is drinking to intoxication and drinking large quantities remain dominant features of our drinking culture and not behaviour confined to an aberrant minority.

Causation

3.30 Ultimately, the review of the liquor laws is not a numbers game. The impetus for this review did not come from epidemiologists raising concerns about rates of hazardous drinking. Rather, it arose from a growing intolerance of the *actual harms* being experienced by the community.

3.31 To what extent can risky drinking be blamed for these harms? The strength of the association between drinking and various harmful outcomes varies considerably between different types of harm. For example, in the case of alcoholic poisoning, there is a direct causal relationship and alcohol is, by definition, the sole cause. Similarly, alcohol-use disorders, including alcoholism are, by definition, caused by alcohol consumption. These conditions are described as wholly alcohol-attributable conditions. For many other diseases and disorders, known as partially alcohol-attributable conditions, alcohol has been established as one of the causal factors.

3.32 The World Health Organization has developed rigorous epidemiologic methods to assess the burden of disease caused by alcohol, and has increased their sophistication markedly over the last couple of decades. According to these methods, the strongest case for causation is present when there is a consistent relationship across several studies, strong biochemical or physiological evidence of how the causal relationship could work, a strong association between exposure and outcome (that is, a large effect), evidence that the cause precedes the effect, and bias and confounding can be ruled out.[126] Using these methods, the World Health Organization has determined alcohol directly contributes to over 60 different disorders and a range of injuries and has classified it as "carcinogenic to humans".[127]

3.33 Alcohol is also a contributory factor to a range of social harms: that is to say, alcohol is one of several factors responsible for the harm. Those factors operate at both an individual and population-wide level and may include a person's gender, ethnicity, socio-economic status, personality type, existing health status and genetic make up. Environmental and cultural influences, such as peer groups and social norms, also play an important part.

3.34 Whether alcohol abuse is a *driver* or *exacerbator* of social harms, or a *consequence* of them has been the subject of vigorous debate over several centuries. In the Victorian era, for example, Charles Dickens railed against the temperance

126 J Rehm and others "Alcohol Use" in M Ezzati and others (eds) *Comparative Quantification of Health Risks: Global and Regional Burden of Disease Attributable to Selected Major Risk Factors* Volume 1 (World Health Organization, Geneva, 2004) 959, at 992.

127 World Health Organization Expert Committee on Problems Related to Alcohol Consumption (Geneva, 2007) at 944 < www.who.int > ; International Agency for Research on Cancer *Consumption of Alcoholic Beverages* (summary of data reported to be published in Volume 96 of the IARC Monographs) (available at < monographs.iarc.fr/ENG/Meetings/96-alcohol.pdf > .

movement's "monstrous doctrine which sets down as the *consequences* of Drunkenness, fifty thousand miseries which are…the wretched *causes* of it".[128]

3.35 In other words, in Dickens's view, it was the miserable conditions in which so many lived that drove them to abuse alcohol and not vice versa.

3.36 Echoes of this argument can be heard today in the debates about alcohol's role in a raft of social harms experienced by communities battling high levels of poverty, and social and family dysfunction. They also resonate strongly in the submissions of many Māori who argue the legacy of colonialism, and the inequalities and cultural alienation arising from it, are key drivers behind Māori abuse of alcohol. We return to these issues later in the chapter where we consider new evidence relating to alcohol's impact on levels of inequality in New Zealand.

3.37 While alcohol's contribution to most social harms is complex, in one critical area the evidence of causation is much stronger – and that is with respect to violence and aggression, as explained in this passage from *Alcohol: No Ordinary Commodity:*[129]

> …a casual link between alcohol intoxication and aggression has been supported by epidemiological and experimental research, as well as by research indicating specific biological mechanisms linking alcohol to aggressive behaviour. Experimental studies suggest a causal relationship between alcohol and aggression…although this relationship is clearly moderated by gender and personality as well as by situational and cultural factors.

3.38 The researchers point out "patterns of drinking, especially drinking to intoxication, seem to play an important role in causing violence. Violence against intimate partners is strongly associated with the amount of alcohol consumed".[130] From a policy perspective, this finding is significant, suggesting that, *independent* of other social factors, reducing levels of intoxication in society should reduce levels of violent offending.

ALCOHOL, CRIME AND ANTI-SOCIAL BEHAVIOUR

3.39 Given the strength of the association between heavy drinking and violent offending, the New Zealand Police has played a critical role in pressing for reform of alcohol laws. In our Issues Paper, we quoted heavily from the Police's *National Alcohol Assessment,* which drew on 15 Police data sets to identify trends in alcohol-related offending throughout the country. That report showed of all recorded offences in the year 2007/08 *at least* 31% involved an offender who had consumed alcohol before committing the offence.[131]

3.40 With respect to violent offending, the report showed in at least one-third (20,447) of the violence offences committed in 2007/08 the offender had consumed alcohol before committing the offence.[132]

128 B Harrison *Drink and the Victorians* (2nd ed, Faber & Faber, Keele University Press, 1994) at 355. Emphasis in the original.

129 T Babor and others Alcohol: *No Ordinary Commodity* (OUP, New York, 2010) at 46.

130 Ibid, at 61 [4.5.1].

131 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 7 < www.police.govt.nz > [*National Alcohol Assessment*].

132 Ibid, at 23.

- In half (49.5%) of the 489 homicides recorded between 1999 and 2008 either a suspect or victim was under the influence of alcohol at the time of the incident.[133]
- Of these homicides, 241 were classified as family violence-related homicides,[134] and 37% (89) of these involved either a suspect or victim being under the influence of alcohol at the time of the incident.[135]
- In 2007/08, there were 19,388 recorded victims of assaults associated with family violence.[136] In 34% of incidents the alleged offender had consumed alcohol.[137]
- One-in-five of the 3,652 sexual offences recorded in 2007/08 involved an offender who had consumed alcohol before the offence was committed.[138] Police believe this figure to be conservative given the frequent delay in identifying and apprehending alleged sexual offenders. As a consequence, in half the cases it is not possible to ascertain whether or not alcohol was involved. Police estimate, in reality, around one-in-three offenders are under the influence of alcohol when they sexually offend.

3.41 A groundbreaking report on homicides within New Zealand families casts new light on the role of alcohol in crimes against children and intimate partners. The 2009 Ministry of Social Development report investigated the circumstances surrounding 141 family violence-related homicides between 2002–06.[139] Of the 141 deaths, 77 were couple-related homicides, 38 were child homicides and 26 were other family member homicides.

3.42 The researchers identified alcohol and/or drug abuse as a precipitating factor in a significant number of homicides involving couples:[140]

> As reported in international research findings, the most frequently occurring background factor found in this study was the perpetrator's history of violence. The most frequently occurring factors at the time of the event (in about three-quarters of the cases) were threatened, imminent or recent separation and jealousy.
>
> Alcohol and/or drug abuse featured at the time of the incidents in about two-thirds of the cases, sometimes involving both perpetrator and victim.

3.43 Alcohol abuse also featured strongly in relation to child homicides, with the researchers concluding the three most common factors associated with child homicides were drug and alcohol use and abuse, physical punishment and extreme response to intimate partner separation:[141]

133 Ibid, at 41.

134 Family violence-related homicide incidents are assessed differently to other family violence-related occurrences defined by the Police. For further information, refer to New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 92.

135 Ibid, at 42.

136 Ibid, at 40.

137 Ibid, at 41.

138 Ibid, at 24.

139 Ministry of Social Development *Learning from Tragedy: Homicide within Families in New Zealand 2002–2006* (Wellington, 2009).

140 Ibid, at 42, [3.9].

141 Ibid, at 8.

> In summary, children are at highest risk of death from maltreatment in their first year of life and when they live with young unemployed parents or caregivers who abuse alcohol and drugs.

3.44 Significantly, the researchers identified a lack of awareness of the risks associated with drug and alcohol use in the context of the care of children as an obstacle to averting tragedy:[142]

> There is clear evidence in some of the cases where drug and alcohol use was a contributory factor, that extended family members and others around the child did not understand or were unable or unwilling to act on the risks associated with drug and alcohol use in the context of the care of children and the risks associated with drug and alcohol use when associated with other stressors.

The report concluded that:[143]

> …supporting and focusing existing campaigns for reducing the prevalence of drug and alcohol use by parents of dependent children, will improve child safety and including education on the association between drug and alcohol misuse and violence may have an impact on couple-related and other family member violence.

3.45 In our Issues Paper, District Court judges estimated up to 80% 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.[144] These figures are mirrored in estimates from the Department of Corrections of the number of inmates who have had drug and alcohol problems in their lives.[145]

3.46 Alongside this highly visible alcohol-related offending runs a tide of lower order offending and anti-social behaviour that, while not always captured in official crime statistics, nonetheless diverts a considerable amount of police resources and creates a significant nuisance to businesses and private citizens. This includes, for example, the 21,263 separate occasions in the year 2007/08 in which police officers were diverted from other duties in order to pick up from the streets and take to safety people who were so intoxicated they were judged to be at risk to themselves or others.[146]

3.47 It also encompasses a disturbing level of anti-social behaviours from abusive and offensive language, intimidation, sexual harassment, graffiti and vandalism to urinating, excreting and vomiting in public places. Although not a necessary consequence of intoxication, in this country, these behaviours appear to have become an entrenched part of the drinking behaviours of a highly visible minority of drinkers.

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142 Ibid, at 76, [6.6].

143 Ibid, at 79, [7].

144 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 244.

145 Department of Corrections *Strategy to Reduce Drug and Alcohol Use by Offenders 2005–2008* (Wellington, 2004) < www.corrections.govt.nz > .

146 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 26 < www.police.govt.nz > .

3.48 While these behaviours are not new, many submitters suggested they have become more prevalent, more extreme and often involve younger drinkers. This view was reflected in the submission of the New Zealand Police which undertook an extensive internal consultation, drawing on the experience and observation of frontline staff to arrive at its policy positions on our review. With respect to changes in binge drinking and associated behaviours, the Police had this to say:[147]

> It is apparent from the information provided by District Police staff that a number of negative outcomes have been detected in youth drinking patterns since the law change in 1999. Specifically, the lowering of 'the drinking age' has been linked to an increase in youth binge drinking and subsequent alcohol-related offending, creating more work for Police and lessening the perceptions of safety in our communities.
>
> There are some indications of a rise in the number of young people being apprehended for drink-driving offences, and an increase in all forms of violence but particularly street violence and other forms of alcohol-related disorder.
>
> Younger age groups are now regularly encountered drinking in public and there appear to be more alcohol-related disturbances at private premises involving underage drinkers. The phenomenon of young people gathering for the purposes of socialising with alcohol is on the increase, aided by the use of technology such as text messaging. At these occasions Police often become 'the event'.

3.49 In his foreword to the New Zealand Police submission, Commissioner Howard Broad re-emphasised his commitment to tackling these issues and the drinking culture from which they stem:[148]

> I have said previously that alcohol is the drug that is causing the most problems for Police. Alcohol impacts on many aspects of policing, including violent offending in the city and town centres of New Zealand, homicides, drink driving, family violence incidents, accommodating intoxicated people in Police cells and incidents or offending involving young people…Because of the significant impact that alcohol misuse has on Police operations, reducing the impact of alcohol harm has been, and will continue to be, a key focus for Police.

3.50 In December 2009, Justice Minister Simon Power and Māori Affairs Minister Pita Sharples announced that reducing alcohol abuse was to be one of four priority areas to be addressed as part of a whole-of-government approach to tackling the drivers of crime. This announcement followed a ministerial meeting on the drivers of crime in April 2009.[149]

HEALTH AND WELLBEING

3.51 The public face of alcohol-related harm attracts almost daily media coverage in this country, with a stream of news stories featuring recidivist drink drivers, road deaths, assaults and disorder. By comparison, the impact of alcohol on the nation's health receives relatively scant attention. Perhaps for this reason, chapter 6 of our Issues Paper, which set out in detail alcohol's involvement in injury and disease, attracted a great deal of public interest. The single statement that appeared to most surprise those attending our public meetings was that the

147 Submission of New Zealand Police (submission dated 31 October 2009) at 11, [3.2]–[3.5].

148 Ibid, at 2.

149 Minister of Justice "Drivers of Crime a whole-of-government priority" (press release, 17 December 2009).

World Health Organization had classified alcohol as "carcinogenic to humans", and the level of certainty regarding alcohol's potential to cause cancer is the same as for asbestos, formaldehyde and tobacco.

3.52 Equally, many were surprised to learn alcohol contributes directly to over 60 different diseases and conditions, and the risk of dying from one of these diseases is dose dependent, that is, the more alcohol one consumes over a lifetime, the greater the risk.

3.53 It is clear from the significant number of substantive submissions received from workers in the health and treatment sectors these issues are not new to those on the frontline. Alongside submissions from individual doctors, nurses and drug and alcohol workers, we received detailed submissions from many district health boards, public health organisations, primary health groups representing hundreds of doctors and health practitioners, and numerous non-governmental organisations working in the field of drug and alcohol treatment.

3.54 Among the most significant of these was a submission signed by hundreds of New Zealand's leading health professionals including: the New Zealand President of the Royal Australasian College of Physicians, the Chair of the Council of Medical Colleges in New Zealand, the Chair of the New Zealand Medical Association, the New Zealand Chair of the Australasian College for Emergency Medicine, the President of the New Zealand Nurses Organisation, the President of the New Zealand College of Mental Health Nurses, the Director of the Medical Research Institute of New Zealand and the Director of the National Addiction Centre.

3.55 Dr Geoffrey Robinson, Royal Australasian College of Physicians President, described this joint submission as an "unprecedented stand by leading doctors and nurses" reflecting "the deep concern held about the heavy drinking culture that exists in New Zealand".[150] The submission stated:

> For too long has consuming alcohol been viewed by many as a benign activity necessary for social competence, rather than accepting that alcohol is a potentially dangerous and addictive recreational substance. Alcohol is causally related to more than 60 medical conditions [O'Hagan et al 1993; Room et al 2005]. There are over 1000 deaths each year that occur as a result of alcohol in New Zealand. About half (49%) of these are due to chronic alcohol-related diseases, especially various cancers (24%). A recent report [WCRF 2007] concludes that the evidence for alcohol as a cause of cancers of the mouth, pharynx, larynx, oesophagus, colorectal (men) and breast is "convincing" and that it is a probable cause of cancer of the liver and colorectal in women. More recently, a definite link with prostate cancer in men has been established [Fillmore et al 2009]. The other half (51%) of deaths are due to injuries. Of critical importance is the fact that these injuries are disproportionately amongst young people, which impacts on years of life lost due to alcohol, calculated to be 17,000 per year [Connor et al 2005].
>
> Twenty-five percent is a conservative estimate of the number of New Zealand drinkers aged 16 years and over who show a sustained pattern of problematic drinking [Wells et al 2006], which means there are at least 700,000 citizens who could benefit from a therapeutic encounter. Like passive smoking, these citizens are the cause of

150 Elspeth McLean "Otago medical leaders sign liquor reform" *Otago Daily Times* (New Zealand, 28 November 2009).

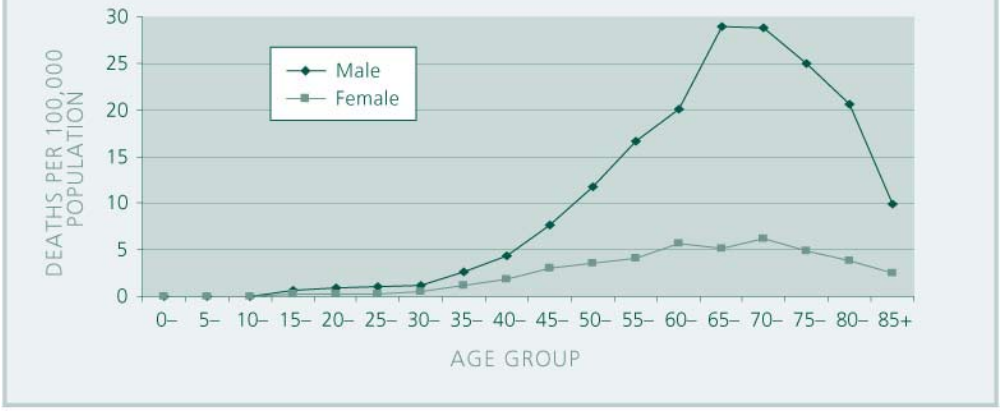
considerable collateral alcohol damage within society, both at home as well as at large. A visit to any Emergency Department on a Thursday, Friday or Saturday night, a stroll downtown in most cities in New Zealand after dark during weekends or a visit to a Women's Refuge or addiction clinic will astound many people. The sophisticated alcohol culture that was promised twenty years ago with the Sale of Liquor Act 1989 has turned out to be more of an endemic heavy binge drinking culture, involving young and older, men and women, Māori and Pakeha [De Bonnaire et al 2004; Wells et al 2006], and causing widespread alcohol-related health and social problems in society.

3.56 Our new analysis of health data demonstrates the health professionals' concerns. Because alcohol contributes to such a wide range of diagnoses and injuries the best way to show its impact on the health of the population would be to calculate the portion of deaths and hospital admissions that are attributable to alcohol. Developing attributable fractions of this type was not possible within the scope of this project so we have selected cruder measures that help demonstrate the impact of alcohol on health status and the health care system.

3.57 Although most alcohol-related injuries and diseases also have several other causes, there are a few that can be considered wholly attributable to alcohol.[151] These make up a relatively small portion of the total burden of death, disability and disease due to alcohol, but are useful as an indicator.

3.58 Figure 3.1 shows the average number of deaths per year between 1989 and 2006 for males and females by age group. It demonstrates there are significantly more deaths among males than females, and deaths peak between the ages of 60 and 80 years. This indicates people who die of alcohol-related causes generally die younger than people who die of other causes. Overall, the numbers are small, making it difficult to identify patterns at a detailed level of analysis.

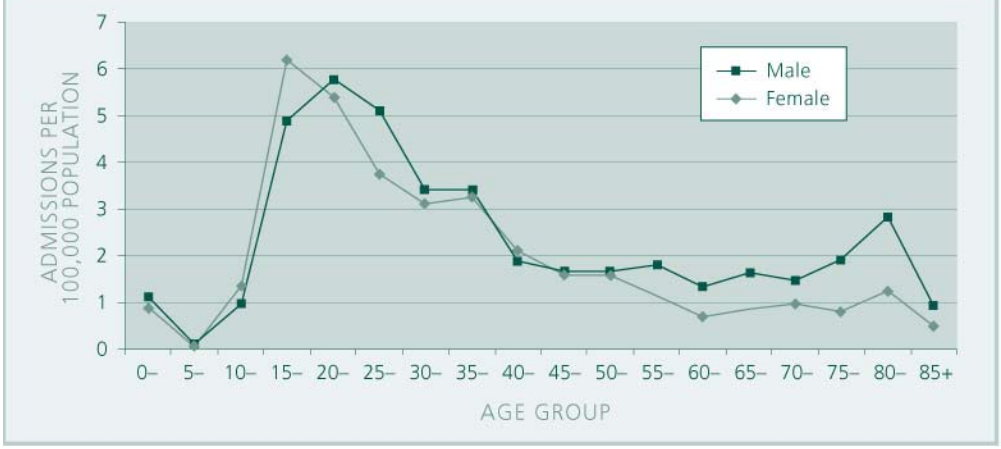
FIGURE 3.1: WHOLLY ALCOHOL-ATTRIBUTABLE DEATH RATES, 1989–2006



151 Data provided by the New Zealand Health Information Service (NZHIS) for this analysis include: all primary diagnoses of alcohol poisoning (ICD-9-CMA codes 8600, 8601, 8602 and 8609, and ICD-10 codes X45 and Y15 for mortality, ICD-9-CMA codes 9800-9801 and ICD-10 codes T510, T511 and T519 for hospital admissions), alcoholic cardiomyopathy (ICD-9-CMA code 4255 and ICD-10 code I426), alcoholic gastritis (ICD-9-CMA code 5353 and ICD-10 code K292), alcoholic liver disease (ICD-9-CMA codes 5710–5713 and ICD-10 code K70), alcoholic myopathy (ICD-10 code G721), alcoholic polyneuropathy (ICD-9-CMA code 3575 and ICD-10 code G621), alcohol-induced pseudo-Cushing's syndrome (ICD-10 code E244), chronic pancreatitis (alcohol-induced) (ICD-10 code K860), degeneration of the nervous system due to alcohol (ICD-10 code G312) and mental and behavioural disorders due to use of alcohol (ICD-9-CMA codes 291, 3030, 3039 and 3050 and ICD-10 code F10). NZHIS switched from ICD-9-CMA codes to ICD-10 codes in July 1999.

3.59 The total numbers of hospital admissions for the same wholly alcohol-attributable causes are much higher and enable detailed analysis. Figure 3.2 shows the average numbers of wholly alcohol-attributable admissions per 100,000 population in each age group per year for the period 1989 to 2006. In contrast to mortality rates, hospital admission rates for females are comparable with those of males and the highest rates are among people aged 15 to 29 years.

FIGURE 3.2: WHOLLY ALCOHOL-ATTRIBUTABLE HOSPITAL ADMISSIONS



3.60 Among wholly alcohol-attributable hospital admissions, the majority (2,087 in 2006) are for mental and behavioural disorders due to alcohol use. Alcoholic liver disease (337 admissions in 2006), alcohol poisoning (234 in 2006) and alcoholic gastritis (196 in 2006) also contribute.[152]

3.61 Hospital admissions for mental and behavioural disorders due to alcohol use peak at between 35 and 44 years of age but occur in relatively large numbers from age 10 upwards. Between 1995 and 2006, almost all age groups increased their rates of admissions for mental and behavioural disorders due to alcohol use. This appears to have been driven by an increase in admissions among females and a reversal of the previously declining admissions among males since 1999. In 1995, female admissions made up less than one-third of the total but by 2006 they had increased to 44% of the total. By far the largest absolute (and relative) increase was in the 15 to 19 years age group, which increased by 126% over this period, showing a particular jump between 1999 and 2000. This may have been a result of policy changes over that period, including greater overall availability of alcohol and the reduction in the purchase age from 20 to 18 in 1999.

3.62 Alcohol poisoning rates fluctuate significantly over this period so it is unclear whether the apparent 92% increase between 1995 and 2006 reflects an actual increase or random variation. The highest numbers of admissions for alcohol

152 Because of changes in coding over this period it is not possible to analyse the trend in wholly alcohol-attributable admissions between 1989 and 2006. However, it is possible to analyse the latter part of this period for diagnoses that mapped neatly from ICD-9-CMA codes to ICD-10 codes in July 1999, such as the four included here. This analysis uses total numbers of admissions so that it can show the absolute impact on the health care system. The alternative, age-adjusted rates, would take into account changes in the age distribution of the population to show any changes in impact within the population.

poisoning are among 15 to 19 year olds, followed by 10 to 14 year olds and 20 to 24 year olds. Large fluctuations are also apparent in individual age groups. This diagnosis does include accidental poisoning from other kinds of alcohol (which probably explains the relatively high but declining rates of poisoning among children aged under five years).

3.63 Hospital admissions for alcoholic liver disease peak among people aged 50 to 64 years. Between 1995 and 2006, hospital admissions due to alcoholic liver disease increased by 89 %, and the fact this was a steady increase suggests a real trend. Particularly concerning are the relatively large increases in alcoholic liver disease admissions among younger age groups. This may reflect people drinking more heavily at younger ages and indicates deaths from alcoholic liver disease and related complications may increase in future years.

3.64 Alcoholic gastritis hospital admissions peak at 20 to 24 years of age, and occur at reasonably high rates between the ages of 15 and 64. Between 1995 and 2006, the number of admissions for alcoholic gastritis increased by 193 %. As with alcoholic liver disease, the steady rate of increase suggests this is a real trend, unrelated to coding changes. The rate of increase appeared to grow from 1999, suggesting this was a consequence of the policy changes that came into effect in 1999. This possibility is supported by the fact there was a particularly large increase at this time for the 15 to 19 years age group.

3.65 Although these four diagnoses represent only a fraction of the alcohol-related hospital admissions, it is likely admissions for other causes will be showing similar patterns. The data show a concerning trend in alcohol-related harm both from consuming large amounts in a single occasion and from the effects of drinking at heavy or moderate levels over months or years.

3.66 If there is no decrease in alcohol consumption we can expect to see hospital admissions continuing to increase. This will increase the cost and resource burden on inpatient hospital services, but also on emergency departments, primary care and outpatient services not captured in the hospital data. The implications for population health are also significant, particularly where we are seeing admissions happening among younger populations than occurred previously.

3.67 The methods for monitoring wholly and partially alcohol-attributable admissions and deaths are well developed and the necessary local data are available. An estimate using these methods several years ago indicated that, in a given year, around 1,000 lives and 33,500 years of healthy life were lost due to alcohol.[153] Advances in methods since then have resulted in larger estimates of the burden of disease internationally so it is likely the New Zealand estimates are also conservative.[154] It is critical New Zealand starts to monitor alcohol-attributable deaths and hospital admissions in order to understand the changing impact of alcohol on the health system and the population's health.

153 J Connor and others *The Burden of Death, Disease and Disability Due to Alcohol in New Zealand* (ALAC Occasional Publication 23, Alcohol Advisory Council of New Zealand, Wellington, 2005) at 6.

154 J Rehm and others "Global burden of disease and injury and economic cost attributable to alcohol use and alcohol-use disorders" (2009) 373 Lancet 2223 at 2225.

ALCOHOL'S INVISIBLE IMPACT ON OUR LIVES

3.68 Alongside the often highly visible and quantifiable harms outlined above is a set of social harms that are sometimes described as the forgotten or invisible dimension of alcohol-related harm. In broad terms, this refers to the insidious and frequently unremarked ways in which alcohol contributes to, or exacerbates, a range of social problems, including child abuse and neglect; family and relationship problems; rates of unwanted pregnancies and sexual infections; educational failure and underachievement; low productivity and absenteeism.

3.69 Many individual submitters drew our attention to the profound and often irreversible effects of problem drinking on personal relationships and, in particular, the corrosive influence alcohol can have on family life. Some submitters had experienced the premature deaths of loved ones:[155]

> I lost my son in July this year. He died of liver disease at the age of 30. The last 10 years of his life have been a continuous battle to get money so he could get alcohol. His health deteriorated rapidly over the last couple of years but he continued to drink. He tried everything to stop but in the end he did not have the will to do it.
>
> He had a lot going for him; good looking; lovely voice; good heart; kind. But because of the alcohol he ended up being a very lonely man and suffered with the side affect of this terrible disease.
>
> For me I have lost my lovely son who I miss terribly and to go through the rest of my life without him is more than I can bear.
>
> I decided at least this is something positive I can do that might help somebody else.

3.70 Others offered frank appraisals of the effects of their own drinking on their marriages and family life:[156]

> I "learnt" to drink when I went to university (1968) and quickly adapted to the "binge drinking culture." By my thirties, I was married had three children, had built my own home and had a steady job. I still played rugby and considered myself a typical "Good Kiwi Male". I worked hard played hard and was a good provider. Trouble was my wife and children saw a different S**** if I got drunk. Over the next seventeen years I got to break the social "one of the boys" drinking habit. Was I an alcoholic? Most of my peers said no. But in my mind I was addicted to the down side of alcoholism. Now I am not against alcohol, although I have chosen to go tee total. But my concern is the prevailing image advertised that it's okay to "drink up large'. TV adds in particular still reinforce this.

3.71 Until recently, there has been limited research into the impact of problem drinking on others. Researchers are increasingly turning their attention to this issue. In 2008/09, Massey University's Centre for Social and Health Outcomes Research and Evaluation, led by internationally renowned alcohol researcher Professor Sally Casswell, examined the impact of heavy drinkers on the health and wellbeing of other people in their lives.[157] The results of the as yet unpublished research paper found significant relationships between exposure to heavy

155 Submitter's name supplied and withheld (submission dated 29 October 2009).

156 Submitter's name supplied and withheld (submission dated 27 October 2009).

157 S Caswell, R Quan You, T Huckle *Alcohol's Harm to Others: Reduced wellbeing and health status for those with heavy drinkers in their lives* (submitted manuscript, October 2009).

drinkers and reduced personal wellbeing and poorer health status. The size of the effect was found to be "comparable to that of caring for people with a range of disabilities". The Ministry of Health's *Alcohol Use Survey 2007/08* elicited information from respondents designed to show the scope of the effects of what is sometimes referred to as "passive drinking".

3.72 The survey results suggest nearly half a million people (477,400 people aged 16 to 64, 18.1% of the people in this age group) reported they had experienced harmful effects on their friendships or social life, home life or financial position in the past year due to someone else's alcohol use.[158] This exceeded the number of people who experienced harmful effects from their own drinking (12.2%).[159]

3.73 The demographics of those affected by other people's drinking roughly match the demographics of those drinking at harmful levels. However, there is one notable exception. Significantly more women than men (22.8% compared with 17.0%) experienced harmful effects from another person's alcohol use, despite the fact significantly more men reported having been drunk and having consumed alcohol more frequently in the last 12 months.[160]

3.74 As expected, more people experienced harmful effects from someone else's use of alcohol over their lifetime than over the last 12 months, as shown in table 3.1. In their lifetimes, around one-in-eight New Zealand adults had been involved in a motor vehicle accident (and, of course, the sample does not include those who died as a result of such an accident) and around one-in-ten experienced harmful effects on their financial position as a result of someone else's drinking.[161]

TABLE 3.1: HARMFUL EFFECTS EXPERIENCED DUE TO SOMEONE ELSE'S ALCOHOL USE

	Prevalence (%) for total population aged 16–64 years (95% confidence interval)	
Harmful effect	**In the last 12 months**	**In lifetime**
Harmful effects on friendships or social life	16.0 (14.7–17.2)	40.4 (38.6–42.3)
Harmful effects on home life	8.5 (7.6–9.4)	25.4 (24.0–26.8)
Harmful effects on financial position	3.6 (3.0–4.2)	10.2 (9.3–11.1)
Involved in motor vehicle accident	1.2 (0.9–1.5)	11.9 (10.9–12.8)

Source: Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* at 134.

158 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Ministry of Health, Wellington, 2009) at 134.

159 Ibid, at 108.

160 Ibid, at 134.

161 Ibid.

3.75 An estimated 43% of the people injured in alcohol-related road accidents were people other than the driver who had been drinking.[162] Many of the innocent victims were children under the age of 15 (around 1,882 injuries and 24 deaths between 2003 and 2007) and young people aged 15 to 19 years (around 8,250 injuries).[163] The cost to the nation of traffic injuries from other people's drinking was estimated at around half a billion dollars per year.[164]

ALCOHOL'S IMPACT ON CHILDREN

3.76 From the moment of conception until the brain ceases to develop in the early to mid-20s, children and young people are without doubt among the most vulnerable to, and seriously impacted by, alcohol. In the opinion of several specialist submitters, including Children's Commissioner Dr John Angus, this fact was not given sufficient weight in our Issues Paper:[165]

> I want to bring to the Law Commission's attention the 'second order' harm that alcohol abuse by parents, caregivers and other significant adults can have on children and young people…alcohol abuse…is associated with and sometimes a cause of physical, sexual and psychological abuse of children and young people and neglect of their needs.
>
> The link between alcohol abuse by adults and child maltreatment is not elaborated in Alcohol in Our Lives. I recommend that you note the links between alcohol abuse and child abuse and neglect. I urge you to take this into consideration in determining your final advice to government.

3.77 In a similar vein, specialist health promoters, Alcohol Healthwatch wrote:[166]

> Children and young people are particularly vulnerable to the primary and secondary effects of alcohol-related harm and have a right to protection under the law.
>
> We believe that the perspective of children has been largely overlooked in the assessment of harm and risks of alcohol consumption. This could be explained, but not justified by the poor collation of information in this regard.

3.78 Groups such as Plunket, Fetal Alcohol Network New Zealand, the Families Commission, Family First and the Children's Commissioner highlighted children's extreme vulnerability to alcohol-related harm from as early as conception, and the damage that can result from their dependence on alcohol-impaired adults:[167]

> Experts in all sectors have come to accept what neuroscientists and researchers have known for some time: by virtue of the speed at which socio-emotional, cognitive and physical development occurs in young children, the under 5 year old population is negatively and disproportionately impacted by maltreatment, neglect, inferior care and poor attachment.

162 J Connor and S Casswell "The burden of road trauma due to other people's drinking" (2009) 41 Accident Analysis and Prevention 1099 at 1101.

163 Ibid, at 1101; calculated based on 19% of 43,410 injuries reported in Table 4.

164 Ibid, at 1101.

165 Submission of the Children's Commissioner (submission dated 4 November 2009) at 1, [2.2].

166 Submission of Alcohol Healthwatch (submission dated October 2009) at 8.

167 Submission of the Royal New Zealand Plunket Society (submission dated 29 October 2009) at [3.2].

3.79 These concerns were strongly echoed in a submission from New Zealand Child and Adolescent Psychiatrists:[168]

> Foetal Alcohol Spectrum Disorder (FASD) is a real problem for New Zealand children, young people and families evidenced by those who present to CAMHS and related services. Children and young people with FASD have learning and behavioural problems which are severe and usually difficult to manage. Many continue to have significant disability into adulthood. Prevention is the best way to minimise the impact of FASD on the individuals (and the community) as the brain damage that occurs when the unborn child is exposed to alcohol in utero is permanent.

3.80 A new study of women who delivered babies in one New Zealand hospital found that drinking large volumes of alcohol before pregnancy was common. Among those who drank, 26 % reported having four or more drinks on a single occasion at least monthly.[169] This kind of drinking pattern increases the risk of damage to a fetus in the early stages of pregnancy when a woman might not yet be aware she is pregnant.

3.81 Over one-quarter of the women reported continuing to drink during pregnancy.[170] Although most did reduce the amount they drank, the authors concluded around one-in-ten women drink in a way that definitely puts their fetus at risk of Foetal Alcohol Spectrum Disorder (FASD).[171] These findings suggest not all women are following Ministry of Health and ALAC advice to abstain from alcohol during pregnancy and that the prevalence of FASD may be higher than previous estimates have suggested.

3.82 In its submission, Plunket staff outlined the ways in which exposure to alcohol is disadvantaging New Zealand children:[172]

> Alcohol misuse has serious implications for New Zealand families especially our very young. Children are affected in many ways by alcohol misuse including, but not limited to, detrimental effects in-utero, alcohol effects if breast milk contains alcohol, increased susceptibility to child abuse and neglect if caregivers have an alcohol problem, increased likelihood of exposure to family violence, risk of injury from persons under the influence of alcohol e.g. vehicle accidents, accidental injury and non-accidental injury and increased risk of early exposure to alcohol themselves.

3.83 At its national conference in June 2009, Plunket passed a remit urging government to: "recognise that substance [drug/alcohol] misuse and abuse by caregivers is a major contributing factor in many New Zealand children not getting the best start in life".[173]

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168 Submission of The Royal Australian and New Zealand College of Psychiatrists, Faculty of Child and Adolescent Psychiatry (submission dated 28 October 2009) at 3.

169 R Ho and R Jacquemard "Maternal alcohol use before and during pregnancy among women in Taranaki, New Zealand" (2009) 122 New Zealand Medical Journal 3883 at 3885.

170 Ibid, at 3887.

171 Ibid, at 3888 and 3890.

172 Submission of the Royal New Zealand Plunket Society (submission dated 29 October 2009). Appendix 2 at [2].

173 Ibid, 1, at [1.51].

3.84 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. As described earlier in this chapter, the Ministry of Social Development's report on homicides within families clearly identifies alcohol abuse as a contributory factor in child deaths. The link between child abuse and neglect and alcohol abuse was explored in several submissions including that of Capital & Coast District Health Board members Dr Judith Aitken and Margaret Faulkner:[174]

> So many children are reared in households where, regardless of household income, parental occupation, or social assets, alcohol consumption is a routine, unremarked, pervasive and damaging feature.
>
> We submit that there is a clear relationship between New Zealand's grossly abnormal OECD ranking on child injury and our extremely high levels of alcohol consumption.
>
> From shaking babies to psychological and physical damage to young children and the carnage evident daily on our roads, alcohol plays a major and largely unmitigated role.

3.85 This view was echoed in Children's Commissioner Dr John Angus's submission. The Commissioner noted "much of the increase in referrals to Child, Youth and Family, and that agency's subsequent findings of emotional abuse and neglect arise from the lethal mix of alcohol and incidents of family violence".[175]

3.86 While serious cases of assault and maltreatment frequently come to the attention of government agencies and the media, the Children's Commissioner also drew our attention to the less remarkable and insidious effects of living with alcohol-impaired adults. These included:[176]

- lack of supervision when children are left alone by parents who intend to, or have been, drinking;
- failure to keep children safe from unintentional injuries, and deaths from burns and poisoning;
- leaving or putting children in unsafe situations (such as, driving while drunk or leaving infants in the same bed as adults who are severely affected by alcohol);
- neglect of a child's emotional development and needs.

Children and domestic fires

3.87 A prime example of the sometimes catastrophic effects of young children's dependence on alcohol-impaired adults can be found in the number of children killed in residential fires involving alcohol in this country.

174 Oral submission of Dr Judith Aitken and Margaret Faulkner (submission delivered 10 September 2009, Wellington).

175 Submission of the Children's Commissioner (submission dated 4 November 2009) at 3, [2.7].

176 Ibid, at 2, [2.6].

3.88 Each year on average 40 New Zealanders die in fires, around half of them in residential properties. The very young, elderly and Māori are disproportionately represented among the victims. While it is relatively rare for media reports of these tragedies to refer explicitly to a victim's drinking, research by the New Zealand Fire Service Commission suggests alcohol is a contributing factor in a significant proportion of residential fire fatalities.[177]

3.89 The 2005 research report commissioned by the New Zealand Fire Service examined "the role of the behaviour of victims (and others)" in relation to 131 unintentional residential fire deaths between 1997 and 2003. The report found alcohol to be a direct or indirect factor in nearly half (44%) of the fatalities.[178]

> Analysis of post mortem Blood Alcohol Levels showed high numbers of victims had been drinking prior to the fire. Many exceeded the legal driving limit by a significant margin, and appeared to have caused the fatal fires through carelessness, inattention, incapacity, and acts of omission. Alcohol was also implicated in other actions that placed the deceased at risk through a failure to quickly exit burning residences.

3.90 The report's conclusions underscore the insidious effects of adult drinking on children and third parties. For example, of the 58 alcohol-related fire victims identified in the 2005 study, 14 were "secondary victims", that is, other people, including very young children, in the house. The report illustrated this issue with the following case study:[179]

> **Case 21.** The deceased was a 5 month old infant. Her mother had been drinking for most of the day at a friend's house before returning home in the early evening. She was described as being in an advanced state of inebriation. The baby was settled in a cot and went to sleep. The mother then went to a nearby address to borrow a cigarette leaving the baby alone. She was away for over half an hour during which time a major fire developed.
>
> The deceased's charred body was found in the remains of the cot. The investigation determined the source of the fire was in a rubbish bag in the kitchen, with the likely cause being discarded smoking materials placed in the bag. The coroner specifically criticised the mother, describing her excessive alcohol consumption as being grossly negligent. No smoke alarm was installed.

Alcohol and educational underachievement

3.91 In the past decade, there has been a growing body of evidence pointing to the risks of early exposure to alcohol in adolescence. In part, this relates to the potentially damaging effects of alcohol on the brain, which new research indicates does not fully mature until a person reaches their 20s. New Zealand research has found 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

177 D Miller "Human Behaviour Contributing to Unintentional Residential Fire Deaths 1997–2003" (New Zealand Fire Service Commission Research Report Number 47, Wellington, 2005) at 47, [5.2].

178 Ibid, at 7, [1.3].

179 Ibid, at 57, [5.4 (ii)].

failure to achieve educational qualifications.[180] These findings were particularly significant in that the outcomes were independent of whether the adolescent had other behavioural problems – in other words, they could not be explained away by factors other than alcohol.

3.92 Adverse effects on education are likely to be fairly common, with nearly one-in-ten 16 and 17 year olds assessing that their own alcohol use had harmful effects on their work, study or employment, and 2.3 % identifying that they had difficulty learning things as a result of their alcohol consumption.[181]

3.93 As outlined chapter 1, we heard from several secondary school principals concerned at the apparent normalisation of regular, high-volume drinking by adolescents aged as young as 14 and 15. These weekend drinking sessions frequently had repercussions on school life ranging from unwanted/regretted sexual incidents, truancy, and fights and conflicts through to the more subtle but potentially long-term effects of regular drinking on educational and sporting achievement.

3.94 These concerns were echoed by many parents who felt powerless to prevent their adolescent from drinking for fear of alienating them from their peers:[182]

> I am the parent of 2 boys and a teacher at a year 7-13 school…My younger son is now 17 and I see the enormous pressure of peers & society on him to be part of the 'normalised' drinking culture that is now prevalent. Just look on Facebook and see the many many postings and pictures of young people – having a 'great time' many of them with a bottle of alcohol in their hands as they pose for the camera. I find this extremely alarming that most of their socialising depends on alcohol. I also make this comment from my observations as a teacher – many Monday conversations between students revolve around how much alcohol was consumed during the weekend.

3.95 More than a third of New Zealand children leave school without obtaining an upper secondary school qualification.[183] Among Māori and Pacific students the number is higher. *Alcohol in Our Lives* cited judges working in specialist youth and drug courts who commented specifically on the extent to which alcohol is derailing the lives of adolescents. Christchurch Youth Court Judge McKeeken made the following assessment of alcohol's impact on the young people coming before her court:[184]

> 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.

180 C L Odgers and others "Is it Important to Prevent Early Exposure to Drugs and Alcohol Among Adolescents?" (2008) 19 Psychological Science at 1037–1044.

181 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Ministry of Health, Wellington, 2009) at 127 and 161.

182 Submitter's name supplied and withheld (submission dated 23 October 2009).

183 Ministry of Social Development *The Social Report 2009* (Wellington, 2009) at 37.

184 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 249.

> …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 are 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.

3.96 In summary, it is clear from the preceding discussion that, from conception through to adolescence, exposure to alcohol has the potential both to cause and be associated with a range of negative outcomes for children. At the extreme, children may suffer fatal or life-long injuries as a result of their dependence on alcohol-impaired adults. More subtly, their potential as human beings may be significantly reduced as a result of maltreatment and neglect by parents and caregivers. Adolescents who become early users of alcohol themselves face increased risk of a raft of negative outcomes, including educational underachievement. This is irrespective of whether they have other behavioural problems.

ALCOHOL'S IMPACT ON BUSINESSES AND PRODUCTIVITY

3.97 Alcohol-related harm affects people other than the drinker not just at an individual level but also at a community, government and economic level. *Alcohol in Our Lives* outlined effects on government budgets, but there is also concern about the adverse effects of alcohol on business.

3.98 In our consultation, we heard from business owners and local groups of businesses concerned about the impact of alcohol on their business. These concerns ranged from dealing with vandalism and environmental hazards (for example, urine, vomit, broken glass) through to loss of trade as a result of lowered amenity values and public safety concerns.

3.99 New research also indicates the adverse effects on business through alcohol-related loss of productivity are significant: 3.2% of adults reported harmful effects on their work, study or employment opportunities as a result of their alcohol use in the last year.[185] Men and younger people are significantly more likely to report such harmful effects.[186]

3.100 There is also a significant problem with alcohol-related absenteeism. An estimated 147,500 adults (5.6% of the population) reported having at least one day off work or school in the last 12 months as a result of their alcohol use.[187] Thousands of workers took multiple days off work (see table 3.2) indicating around 392,800 work days per year in New Zealand are lost to alcohol.

185 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Ministry of Health, Wellington, 2009) at 107.

186 Ibid, at 126.

187 Ibid, at 117.

TABLE 3.2: HAD DAYS OFF WORK OR SCHOOL DUE TO ALCOHOL USE IN THE LAST 12 MONTHS

Days off work or school due to alcohol use in the last 12 months	Prevalence (%) in the last 12 months (95% confidence interval)		Estimated number of adults aged 16–64 years
	For past-year drinkers	For total adults	
Any days	6.6 (5.7–7.5)	5.6 (4.8–6.4)	147,500
One day	2.6 (2.0–3.2)	2.2 (1.7–2.8)	58,600
Two days	1.5 (1.1–1.8)	1.2 (0.9–1.6)	32,600
Three to five days	1.5 (1.1–1.9)	1.3 (1.0–1.6)	34,400
Six or more days	1.0 (0.6–1.3)	0.8 (0.5–1.1)	21,900

Source: Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Ministry of Health, Wellington, 2009), at 117.

3.101 Productivity is also adversely affected by people coming to work under the influence of alcohol. Nearly one-in-ten adults (around 251,900 people), and a higher proportion of men and younger people, worked while feeling under the influence of alcohol at least once in the last 12 months.[188] This is likely to be particularly risky in cases where people need to operate machinery or carry out work that requires a high degree of precision or concentration. Around 68,900 people reported operating machinery while feeling under the influence of alcohol in the last 12 months.

3.102 Taken together, these findings suggest employers may well be concerned at the adverse effects of alcohol on costs and productivity. Employee assistance programmes and healthy workplace policies can reduce the adverse effects of alcohol on individual workplaces, but do require dedicated investment in time and resources. Broad policy changes that have the potential to reduce harmful drinking could have a beneficial effect on productivity for the whole country.

ALCOHOL, MĀORI AND INEQUALITIES

3.103 Just as we have seen that the young are particularly at risk from exposure to alcohol, research consistently shows indigenous peoples and lower socio-economic groups suffer disproportionately from alcohol-related harms. For example, in New Zealand, Māori are more likely to die of alcohol-related causes, more likely to be apprehended by police for an offence that involved alcohol, and more likely to experience harmful effects on areas such as financial position, work, study or employment, injuries and legal problems as a result of their drinking compared with other New Zealanders.[189]

188 Ibid, at 65.

189 J Connor and others *The Burden of Death, Disease and Disability Due to Alcohol in New Zealand* (ALAC Occasional Publication 23, Alcohol Advisory Council of New Zealand, Wellington, 2005) at 36; New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 60; Ministry of Health Alcohol Use in New Zealand: *Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Ministry of Health, Wellington, 2009) at 185.

3.104 On numerous occasions throughout the public consultation, we were reminded that pre-European Māori were one of the few known societies not to have manufactured or used psychoactive substances.[190] Many Māori also drew our attention to the rich history of Māori resistance to alcohol, involving both measures of self-governance at an iwi level as well as petitions to Parliament at a national level. For example, during an oral submission delivered in Manukau, prominent Ngati Porou kuia, Vapi Kupenga, described how under Sir Apirana Ngata's leadership a bylaw prohibiting alcohol consumption was passed by the Horouta (East Coast) Māori Council in 1911. Such was the opposition to this move Ngati Porou men composed a haka expressing their extreme displeasure at this imposition. This was by no means an isolated measure.

3.105 While Māori experiences of and responses to alcohol varied from one tribal area to another, history shows many leaders supported the aims of the temperance movement and regularly petitioned Parliament to this effect. In 1879, for example, all South Island tribes petitioned Parliament for the total prohibition of alcohol in the southern provinces.[191]

3.106 A petition to Parliament in the 1870s sent by Wanganui Haimona Te Aoterangi and signed by 167 Māori from Wanganui summed up the harms associated with alcohol consumption:

> [Liquor] impoverishes us; our children are not born healthy because parents drink to excess, and the child suffers; it muddles men's brains and they in ignorance sign important documents and get into trouble thereby; grog also turns the intelligent men of the Maori race into fools…grog is the cause of various diseases which afflict us. We are also liable to accident, such as tumbling off horses and falling into the water; these things occur through drunkenness. It also leads men to take improper liberties with other men's wives.

3.107 Nearly a century and a half later, this remains an apt, if unfashionably blunt, summary of the impacts of problem drinking not just on Māori but all New Zealanders. It is also significant that, for the first time in history, the prevalence of drinking among Māori has reached the same level as non-Māori. In the past, surveys have shown Māori were significantly less likely than non-Māori to be drinkers, but those Māori who did drink were more likely to drink large amounts. The latest survey data from the Ministry of Health shows that over the past decade Māori drinking prevalence rates have now caught up with non-Māori.[192]

3.108 This new-found parity in drinking prevalence between Māori and non-Māori has potentially serious public policy implications because there is now evidence that alcohol may not simply be reflecting existing inequalities between ethnic groups it may be actively *driving* inequalities. Māori women, for example, suffer more adverse effects as a result of other people's drinking than any other

190 M Hutt *Te Iwi Maori me te Inu Waipiro: He Tuhituhinga Hitori Maori & Alcohol: A History* (The Printing Press, Wellington, 1999) at 3.

191 Ibid, at 30.

192 Ministry of Health *A Portrait of Health: Key Results of the 2006/07 New Zealand Health Survey* (Wellington, 2008) at 69 and Appendix 5.

sub-group by ethnicity and gender.[193] They suffer significantly more as a result of other people's drinking in terms of effects on their friendships or social lives, home lives, financial problems, becoming victims of physical or sexual assault, and being involved in car accidents.[194]

3.109 This suggests indications of poorer outcomes for Māori in a range of different social statistics are partly as a result of alcohol-related harm they cannot control. It is also of significant concern that Māori report higher unmet needs for reducing alcohol consumption.[195] This indicates that, among those who have identified they need help, it is more difficult for those who identify as Māori to regain control over one of the causes of alcohol-related harm to the whānau and community.

3.110 At a hui of Māori health and community workers organised by Te Puni Kōkiri and ALAC, participants discussed the need to acknowledge the colonial roots of Māori alcohol abuse and to ensure solutions were founded on a culturally appropriate model that did not treat the individual in isolation but as part of a whānua, hapū and iwi. During an oral submission in Manukau, Vapi Kupenga suggested to us that, ideally, culturally authentic community-based organisations, such as the kohanga reo movement, had the potential to be the catalyst for change with respect to tackling alcohol's impact on vulnerable young parents and in providing positive role modelling to them.

The consensus from the Te Puni Kokiri hui was Māori need to gain greater control over alcohol and its impacts on individuals, hapū and iwi. This was summed up in a closing speech by Mr Otene Reweti:

> Like an invading war party alcohol came like a thief in the night and now it is time for Māori to regain the palisades and take back control.

Alcohol as a driver of inequalities

3.111 People living in areas of higher socio-economic deprivation are also more likely to experience harmful effects from their drinking.[196]

3.112 These inequalities in experience of alcohol-related harm are associated with consumption patterns and rates of alcohol-use disorders, and are reminiscent of inequalities in other indicators of health and social outcomes.[197] However, emerging evidence indicates alcohol-related harm actually may be *driving* inequalities.

193 Ibid, at 137.

194 Ibid, at 137, 148 and 151.

195 Ibid, at 91.

196 Ibid, at 110.

197 Ibid, at 36; J E Wells, J Baxter and D Schaaf *Substance Use Disorders in Te Rau Hinengaro: The New Zealand Mental Health Survey* (Alcohol Advisory Council of New Zealand, Wellington, 2006) at 25; Ministry of Health *Tatau Kahukura: Māori Health Chart Book* (Public Health Intelligence Monitoring Report No. 5,Wellington, 2006) at 1.

3.113 New Zealand and overseas research shows that people living in areas where there is a higher density of alcohol outlets are more likely to have harmful drinking patterns and to suffer alcohol-related harms.[198] New research indicates outlet density is higher in areas of greater socio-economic deprivation in New Zealand, suggesting that people living in those areas may be more likely to experience harm simply because of where they live.[199] This is a point we develop further in chapter 6 when considering the impact of alcohol outlets on lower socio-economic areas.

3.114 The finding that alcohol can drive inequalities has also been recognised at a global level. A landmark report on the social determinants of health listed alcohol and other drugs as one of ten major contributors to inequalities that can be influenced by public policy.[200] It also acknowledged that alcohol consumption is both a cause and effect: "People turn to alcohol to numb the pain of harsh economic and social conditions, and alcohol dependence leads to downward social mobility".[201] In other words, Victorian novelist Charles Dickens was right to suggest people drink to escape their afflictions but wrong to conclude that cause and effect were uni-directional. Alcohol frequently *exacerbates* the very problems people are often seeking to escape.

3.115 Last year, the World Health Organization's Commission on the Social Determinants of Health made recommendations aiming to reduce the significant inequalities in health both within and between countries.[202] It recognised the problems associated with alcohol and singled it out as one of the "prime candidates for stronger global, regional and national regulatory controls".[203] The Commission called for assessment of the equity effects of major economic agreements, and robust public sector leadership and reinforcement of the primary role of the state in regulating alcohol and other goods and services with a major impact on health, specifically in controlling the number of alcohol outlets.[204]

198 T Huckle and others "Density of alcohol outlets and teenage drinking: living in an alcogenic environment is associated with higher consumption in a metropolitan setting" (2008) 103(10) Addiction 1614 at 1618; K Kypri and others "Alcohol outlet density and university student drinking: a national study" (2008) 103(7) Addiction 1131 at 1135.

199 G C Hay and others "Neighbourhood deprivation and access to alcohol outlets: a national study" (2009) 15(4) Health and Place 1086 at 1091; J Pearce, P Day and K Witten "Neighbourhood Provision of Food and Alcohol Retailing and Social Deprivation in Urban New Zealand" (2008) 26(2) Urban Policy and Research 213 at 213.

200 R Wilkinson and M Marmot (eds) *Social Determinants of Health: The solid facts* (2nd ed, Regional Office for Europe of the World Health Organization, Denmark, 2003) at 24.

201 Ibid.

202 World Health Organization *Closing the Gap in a Generation: Health equity through action on the social determinants of health: Final report of the Commission on Social Determinants of Health* (Geneva, 2008) at 26.

203 Ibid, at 14.

204 Ibid, at 15.

Chapter 4
The case for change

IN THIS CHAPTER, WE:

- Evaluate the current regulatory environment in the light of the levels of alcohol-related harm outlined in chapter 3.
- Consider the place of individual responsibility and the rule of law in relation to reducing alcohol-related harm.
- Discuss the policy approaches available for tackling alcohol-related harm.

INTRODUCTION

4.1 The terms of reference for this review required us, among other things, to "examine and evaluate the current laws and policies relating to the sale, supply and consumption of liquor in New Zealand" and to "ensure the appropriate balance between harm and consumer benefit".[205]

4.2 These issues lay at the heart of the public consultation and were central to the submissions we received. In this chapter, we discuss whether this balance has been achieved under the current law and, if not, whether there is now a case for a new approach. In doing so, we draw on the strength of the evidence outlined in chapter 3 and what submitters had to say.

4.3 We also discuss the role and efficacy of the law as a means of reducing alcohol-related social and health harms. Finally, we outline the objectives we have identified for a new legal framework.

4.4 We begin with a brief summary of the major changes that have occurred since the Sale of Liquor Act 1989 came into force over two decades ago.

EVALUATING THE CURRENT LAWS

4.5 The objective of the current Sale of Liquor Act 1989 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".[206]

4.6 In the course of this review, some submitters suggested that, despite its stated objective, the current Act contains few provisions capable of "contributing to the reduction of liquor abuse" other than those aimed at ensuring those with

205 The complete terms of reference can be found at the beginning of this report.

206 Sale of Liquor Act 1989, s 4(1).

criminal convictions are not licensed to sell liquor. Some even suggested the way the current law has been amended and interpreted may actually have *contributed* to rather than *reduced* liquor abuse. This view was perhaps most forcefully presented in a submission from specialist health promoters Alcohol Healthwatch:[207]

> We believe there is overwhelming evidence to demonstrate that current legislative and policy controls on alcohol, as established by this Act, do not achieve their stated objectives and in many cases serve to facilitate harm.
>
> Despite the object of this Act being to…*contribute to the reduction of liquor abuse*…, this law has facilitated the following changes directly linked with increasing harmful outcomes:
>
> - Proliferation of licensed premises (more than doubled)
> - Sales of beer, wine and mead through supermarket/grocery outlets
> - Greater competition leading to lower priced alcohol and heavy discounting
> - Longer opening hours and seven day trading
> - Lowered minimum purchase age
> - Local community input into licensing decisions disabled
> - High exposure to alcohol advertising by young people
> - An upward trend in per-capita consumption over the last decade.
>
> The results of these changes support harmful drinking patterns across society. The outcomes of which are well captured in *Alcohol in Our Lives*. In economic terms these outcomes result in $5.3 billion dollars a year in health and social costs [footnote reference omitted]. In human terms the cost is immeasurable. While about 1000 New Zealand lives are lost, many in their younger years, each of these lives represent a tragedy for the family/whanau and wider community and lost potential for society.
>
> This burden is not shared evenly. Children, young people, Māori, Pacific Peoples are among those that experience a disproportionate burden of harm.

4.7 A significant body of submitters to this review supported the broad thrust of this submission, suggesting that under the current regime the special nature of alcohol and its potential for harm have been obscured. These submissions argued the proliferation of retail alcohol outlets, including the licensing of "dairies" (expressly against Parliament's intention) and aggressive marketing and price promotion by producers and retailers have led to the over-commercialisation of alcohol and caused the consumer to lose sight of its special status as a legalised drug.

4.8 There can be no doubt that, in the space of two decades, New Zealand has gone from a highly regulated and tightly controlled alcohol market to a regime at the liberal end of the spectrum. Liquor licences are easy to get and hard to lose: members of the public have little or no input into where and how alcohol is sold

207 Submission of Alcohol Healthwatch (submission dated 30 October 2009) at 6, [c].

in their communities; extended trading hours mean alcohol is available around the clock in many parts of the country. Most crucially, the saturated market that has resulted from this liberal regime has led to fierce competition for market share. This in turn has resulted in heavy marketing and price discounting.

4.9 The reforms have been associated with many benefits. The competitive market has resulted in much greater consumer choice both in terms of beverage types and the environments in which people can drink. Ready access to alcohol, at prices lower than many basic commodities, might be viewed by many New Zealanders as entirely beneficial. Others, however, question whether a substance capable of poisoning consumers at relatively low doses should be sold for pocket-money prices.[208] In general terms, the international literature makes it clear cheap alcohol is favoured by the very groups most at risk of causing and experiencing alcohol-related harm: young drinkers, binge drinkers and harmful drinkers.[209]

4.10 It is clear from submissions that sections of the liquor industry, including manufacturers and parts of the hospitality sector, share these concerns. For example, the Hospitality Association of New Zealand (HANZ), with some 2,400 members, stated in its submission: "…the Association accepts that some of the most harmful levels of consumption come from low cost alcohol". And regarding the influence of price on where and how people drink:[210]

> …price has long been an accepted factor in purchasing decisions and the consequence of low cost alcohol products available in supermarkets and convenience stores has been some aggressive marketing of liquor products that the Association believes has contributed to the significant increase in off-premise and unsupervised consumption of alcohol and potentially also alcohol misuse.

4.11 Similarly Lion Nathan, in its submission, acknowledged the links between the proliferation of liquor outlets, price and consumption:[211]

> Lion does however accept that high density or the clustering of outlets can promote lower prices through discounting and promotions, which can entice buyers to consume liquor due to the attractively lower prices. As the Commission notes, market saturation requires outlets to lower prices in order to sustain their profitability on a volume of sales basis. However it should be kept in perspective it is still only a small number of buyers that cause problems.

4.12 The concerns of Lion Nathan and HANZ about the impact of price discounting naturally reflect their own commercial interests in maximising the profitability of the industry. But they also reflect a widely held sentiment that an alcohol industry that turns on high volumes and low margins may be inimical to a responsible industry.

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208 RS Gable "Comparison of acute lethal toxicity of commonly abused psychoactive substances" (2004) 99 Addiction at 686–696. The lethal dose of alcohol is estimated to be just ten times the normal low recreational dose of two-to-three recreational drinks.

209 A Booth and others *Independent Review of the Effects of Alcohol Pricing and Promotion Part A: Systematic Reviews*, (University of Sheffield for Department of Health, United Kingdom, 2008) 34 < www.dh.gov.uk/en/Publichealth/Healthimprovement/Alcoholmisuse/DH_085390 > .

210 Submission of the Hospitality Association of New Zealand (submission dated 29 October 2009) at 14, [20].

211 Submission of Lion Nathan (submission dated 29 October 2009) at 10 [60].

Costs and benefits

4.13 Alcohol's status as a legalised drug with the potential to cause serious harms must be a founding principle of any regulatory regime and the rationale for government's long-standing responsibility for controlling its use. That no one may sell alcohol without a licence signals the seriousness with which alcohol regulation is regarded.

4.14 However, we have seen ample evidence to support the view that, under the present light regulatory regime, alcohol is too often marketed and sold in a manner at odds with this precautionary approach. In the retail market particularly, with the exception of the minimum purchase age restriction, alcohol is now treated much like any other commodity.

4.15 The question is to what extent should the government seek to further regulate the sale and supply of alcohol and what specific regulatory changes will be effective in reducing harm?

4.16 In addressing this question, our terms of reference required us, among other things, to "ensure the appropriate balance between harm and consumer benefit" is achieved. Several submitters stressed the need for us to give adequate weight to the significant economic, social and individual benefits associated with alcohol. In our Issues Paper, *Alcohol in Our Lives*,[212] we set out in considerable detail the benefits associated with the production, sale and consumption of alcohol. We summarise the key points in chapter 2 of this report, where we again emphasise the many positive changes associated with the 1989 reforms.

4.17 As noted in *Alcohol in Our Lives*, New Zealanders associate many benefits with drinking:[213]

> Happiness, confidence, relaxation, sociability and a sense of belonging: this list illustrates the fundamental nature of the benefits we associate with drinking. As discussed in the introduction to this paper, drinking is an important accompaniment to many of our family, social, sporting and cultural lives.

4.18 Given these benefits and the deep entrenchment of drinking in this country's social practices, it is perhaps unsurprising that New Zealanders historically have developed a high tolerance of the risks associated with drinking and specifically with drinking to excess:[214]

> Harmful drinking and alcohol-related harm have become commonplace to the extent that society has adapted to accept this as inevitable and normal. Adaptation of young people has been so profound their drinking activities form part of their identity, and drunken behaviour part of the 'legend' and his and her-stories.

212 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) [*Alcohol in Our Lives*].

213 Ibid, at 44–45.

214 Submission of Alcohol Healthwatch (submission dated 30 October 2009) at 6.

4.19 However, as another submitter noted, it is evident from both the number and substance of submissions on our Issues Paper that a significant number of New Zealanders now believe the pendulum has swung too far, and the impact of harmful drinking on the community demands a new approach.[215]

> The current legislation on the sale and supply of liquor (the 1989 Sale and Supply of Liquor Act and Amendments) has had an impressive impact on the drinking culture in New Zealand, a lot of it very positive. Our region (greater Wellington and Wairarapa) now enjoys a 'cafe culture' at least on a par with cities overseas. Unfortunately, liberalising of supply has also had a detrimental effect on our city and particularly on youth as seen in the early hours of the morning, with intoxicated people inflicting harm on themselves and others. There is a need to change the culture of drinking in New Zealand to support the positive aspects and reduce the negative aspects of consuming alcohol. The law is one important tool to both lead and support culture change including that driven by local communities…
>
> …In 50 years we will look back on the decisions made now about alcohol. The opportunity for positive change has never been greater and we have a model to follow. Reducing the harms due to alcohol, like tobacco will take a long-term, sustained effort.

4.20 That the country's police force and key members of its medical and judicial professions, all of whom have first-hand experience of alcohol-related harm, are among the strongest advocates for change, will be testament enough for many. Children's Commissioner Dr John Angus summed up the case for change in this way:[216]

> The mortality and morbidity data regarding alcohol-related deaths and injuries provides a gruesome picture of the impact of drinking behaviours and attitudes of young and older New Zealanders alike. The statistics alone are cause to review and reform this country's liquor laws.

4.21 Some argue these harms are substantially offset by the benefits we have described and any increased regulatory restrictions, such as interfering in the alcohol market, must be based on evidence of a net financial benefit to society.

4.22 Several submitters highlighted the limitations of framing the debate about liquor law reform in purely economic terms whereby the costs and benefits associated with alcohol consumption are reduced to a simplistic equation. In its submission, the Salvation Army characterised this as a "morally-dubious line of argument because it assumes that the harm caused by alcohol and the pleasure derived from it are exact opposites that can somehow be measured in monetary terms and traded off through simple arithmetic".[217]

4.23 We explore these issues in greater depth in chapters 17 and 18 of this report when considering the policy rationales for alcohol taxation and the various attempts at quantifying the "externalities" , or harms borne by those other than the drinker.

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215 Regional Public Health, Greater Wellington (submission dated 30 October 2009) at 6.

216 Submission of The Children's Commissioner (submission dated 4 November 2009) at 9 [4.4].

217 Submission of the Salvation Army (submission dated October 2009) at 12, [2.12.].

4.24 The Salvation Army suggested while there will be inevitable trade-offs between "rights and obligations", a simplistic economic lens is unlikely to yield the best solutions when dealing with a potentially addictive drug capable of generating significant harms not just for the consumer, but for society as a whole:[218]

> In The Salvation Army's view, harm reduction and not finding some notional balance between the risks and returns from alcohol use should be the dominant focus of policy. The present policy focus is more or less one of harm optimisation: that of achieving the least harm for the least inconvenience to the liquor industry and the drinking public. A true harm-minimisation policy would start by looking at how much liquor-related harm can be reduced by (perhaps based on international experience) and then to set about providing the circumstances that might achieve this level of harm reduction.

4.25 While it is critical to assess both the efficacy and cost-effectiveness of alcohol policies, we agree that simply allocating a dollar value cannot adequately capture or measure the myriad direct and indirect harms and benefits associated with the use of alcohol. As we have seen in chapter 3, a significant amount of alcohol-related harm is borne not by the individual drinker but by third parties, including unborn babies, dependent children, families, communities and employers. As the Families Commission pointed out in its submission, the reform of alcohol policy presents New Zealand with a major challenge:[219]

> Alcohol presents society with a dilemma. It is the drug of choice for most people, which is beneficial when used in moderation, and yet causes considerable harm when abused. Much of this harm is visited on families in one form or another. New Zealand has a tolerant attitude to alcohol, and society as a whole is overly accepting of alcohol abuse. We strongly endorse the need for change.

Personal responsibility

4.26 Having determined the need for change, the challenge we face as a society is how best to effect that change. As acknowledged in the consultation summary, many suggested the solution to alcohol-related harm lies primarily with individuals accepting greater responsibility for their own actions rather than with increased government intervention. This view was strongly represented by members of the hospitality sector and their representative body, HANZ.

4.27 Calls for greater personal responsibility and accountability are not, of course, unique to the liquor debate: many people hold the view that a lack of personal responsibility underpins many social problems. Few could argue that a greater sense of responsibility would not go a long way towards resolving many social ills, including the problems associated with excessive alcohol consumption.

4.28 However, as many submitters pointed out, a sense of personal responsibility, along with self-respect and respect for others, are values that are, in the first instance, role modelled by parents and reinforced, or not, by churches, schools,

218 Ibid, 13, [2.12.]

219 Submission of the Families Commission (submission dated October 29, 2009) at 2, [3].

businesses and other public institutions. The law plays a part, too, in so far as it establishes social norms, proscribes unacceptable conduct and provides a deterrent effect.

4.29 In this respect, many industry submitters suggested the provisions of the current law were inadequate. They pointed out while those who manufacture and sell alcohol are heavily regulated and face significant penalties for infringements, the drinking public is free to abuse alcohol with relative impunity. The Distilled Spirits Association of New Zealand articulated this view in the introductory comments of its submission:[220]

> …the policy approach going forward could be improved by prominently emphasising personal responsibility and accountability by individual drinkers in the same way as the current policy holds licensees to account. There are serious consequences for problematic or non-compliant licensee behaviours but little or no consequences for irresponsible individual drinkers. Good parental role modelling, guidance, supervision and responsibility for their children are also vital in fostering a better drinking culture in New Zealand. Providing more restrictions will not stop the abuse of alcohol beverages.

4.30 Few would disagree with these sentiments and our recommendations include several new provisions relating both to individual and parental responsibility. However, as we discuss later in the chapter, individuals do not make decisions about their drinking in a vacuum but in specific contexts where they may be subject to several powerful external influences including peer pressure, social norms and, increasingly, sophisticated and omnipresent alcohol marketing and promotions.

4.31 Significantly, an individual's capacity to self-regulate their alcohol intake and behaviours is often impaired to varying degrees by the effects of the drug itself, making the notion of a "responsible drinker" something of an oxymoron. Evidence of this can be seen in the number of drivers who risk driving under the influence of alcohol after resolving not to.

4.32 In summary, while we agree that increased personal and parental responsibility has an important part to play in reducing alcohol-related harms, this does not abdicate the need for increased social and corporate responsibility. On the contrary, when dealing with a psychoactive substance, the side-effects of which include impaired cognitive function, it is imperative the environment in which an individual makes decisions reinforces behaviours that will reduce harm rather than encouraging or facilitating excess.

Role of the law

4.33 While the law cannot change human nature, it can establish and reinforce societal norms and 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.

220 Submission of the Distilled Spirits Association of New Zealand (submission dated 28 October 2009) at 4.

For example, public education campaigns and messages about personal responsibility will not be effective if the laws regulating the sale of alcohol actually *facilitate* rather than discourage harmful drinking. Leading Māori health professional Mason Durie suggests the current legislative environment actively undermines efforts to reduce alcohol-related harms:[221]

> It makes little sense, for example, to discourage risky alcohol habits among youth if the laws of the land increase the number of alcohol outlets and lower the drinking age. Confused laws regarding alcohol advertising are equally illogical: discouraging alcohol use on the one hand and marketing alcohol products on the other.

4.34 In our Issues Paper, we emphasised that the levels of alcohol-related harm being experienced in this country, including levels of violent offending, are not simply a product of more liberal liquor laws. Rather, they are likely to be the product of a host of demographic, social, cultural and environmental changes.

4.35 Problems associated with youth drinking, for example, cannot simply be explained by the lowering of the minimum purchase age or development of alcohol products targeting the youth market. Factors as simple as the growth in the youth population and increased youth incomes and as complex as changing social mores and in how our schools and families are functioning may form part of the answer.

4.36 Quantum leaps in communication technology and the unprecedented reach and sophistication of global media and marketing, including alcohol marketing, have also undoubtedly played a part in shaping consumer expectations and behaviours.

4.37 Nor are binge drinking and deliberate intoxication unique to New Zealand or even those countries that inherited drinking cultures from Britain. Researchers examining the practice of heavy drinking *before* going to licensed premises, a clearly established trend in this country, suggest this phenomenon "may be symptomatic of a 'new culture of intoxication' apparent in European and other countries whereby young people drink and use other drugs with the strategic and hedonistic goal of achieving drunkenness and other altered states of consciousness".[222] They go on to note that in the United Kingdom regular heavy drinking has become the norm for many young people:

> It is no longer a marginal phenomenon to be found among subcultures of poor or troubled youth; rather 'determined drunkenness seems to be a mainstream phenomenon, occurring in all social classes, in larger cities as well as in the countryside, among girls as well as boys'.

4.38 Police and public health experts in many countries, including Australia, the United Kingdom, France and the United States of America, are all grappling with these issues and working to identify effective policies to address what the British Medical Association's Board of Science describes as the "epidemic" of alcohol misuse.

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221 M Durie *Ngā Kāhui Pou: Launching Māori Futures* (Huia Publishers, Wellington, 2003) at 151.

222 S Wells, K Graham and J Purcell "Policy implications of the widespread practice of 'pre-drinking' or 'pre-gaming' before going to public drinking establishments – are current prevention strategies backfiring?" (2009) 104 Addiction at 4–9.

Alcohol: A modifiable risk factor

4.39 A critical starting point for much of this work internationally is the recognition that while alcohol consumption is just one of the many factors contributing to social and health harms, unlike many of the other factors, alcohol consumption is a *modifiable risk* factor. Indeed, as Wellington Hospital Emergency Department physician Paul Quigley pointed out in his submission to this review, "[a]lcohol is currently the leading *preventable* cause of illness and injury to New Zealand's most productive age group 16–30 year olds".[223]

4.40 As discussed in chapter 3, a growing body of evidence supports a causal relationship between alcohol, aggression and violent offending, including family violence. In New Zealand, we also experience abnormally high rates of child assaults, youth suicide and injury. Our binge drinking culture is a significant contributor to these negative outcomes.

4.41 Furthermore, in the two decades since our liquor laws were liberalised, evidence about the nature and level of risk associated with alcohol has advanced significantly, leading to revisions of recommended drinking limits. The World Health Organization's International Agency for Research on Cancer recently classified alcoholic beverages as "carcinogenic to humans", and the level of certainty regarding alcohol's potential to cause cancer is the same as that for asbestos, formaldehyde and tobacco.[224]

4.42 As noted in our Issues Paper, perhaps the greatest challenge this new evidence presents is in relation to the effects of alcohol on adolescents and young people. For example, New Zealand research has found 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.[225] Heavy drinking among teenagers and young adults is associated with poorer brain functioning, particularly in terms of attention and visuospatial skills,[226] and alcohol has detrimental effects on adolescents' livers, hormones, bone density and brain structure.[227]

4.43 A submission from Brainwave Trust Aotearoa, an organisation that disseminates information about recent advances in neuroscience, set out in simple terms the implications of the latest research into brain maturation for adolescent drinking:[228]

> Alcohol affects the developing teen brain differently from the affect on an adult's brain. Research suggests that adolescents are more vulnerable than adults to the

223 Submission of Doctor Paul Quigley MbChB, FACEM Emergency Medicine Speciality, Wellington Hospital (submission dated 29 October 2009) at 1.

224 International Agency for Research on Cancer Consumption of Alcoholic Beverages (summary of data reported to be published in Volume 96 of the IARC Monographs) (available at http://monographs.iarc.fr/ENG/Meetings/96-alcohol.pdf).

225 C L Odgers and others "Is it Important to Prevent Early Exposure to Drugs and Alcohol Among Adolescents?" (2008) 19 Psychological Science at 1037.

226 S Tapert, L Caldwell and C Burke "Alcohol and the Adolescent Brain: Human Studies" (2004/2005) 28 Alcohol Research and Health at 205.

227 National Institute on Alcohol Abuse and Alcoholism "The Effects of Alcohol on Physiological Processes and Biological Development" (2004/2005) 28 Alcohol Research and Health at 125.

228 Submission of Brainwave Trust Aotearoa (submission dated 30 October 2009) at 4, [5.2].

affects of alcohol on learning and memory. Not only do they react differently to the initial affects of alcohol, studies suggest that adolescents are also affected differently than adults by repeated, heavy drinking, particularly the repeated withdrawals associated with binge drinking.

Research, including rat studies, has shown that after alcohol is "washed out", adult cells recover but adolescent cells remain "disabled".

4.44 Increasingly, this evidence is being reflected in the advice health officials are giving regarding alcohol use and young people. For example, the evidence-based *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* state:[229]

> Parents and caregivers should be advised that children under 15 years of age are at the greatest risk of harm from drinking and that for this age group, not drinking is especially important.
>
> For young people aged 15–17 years the safest option is to delay the initiation of drinking for as long as possible.
>
> If drinking does occur it should be at low risk levels and in a safe environment supervised by adults, Drinking to intoxication is particularly risky in this age group.

4.45 Alcohol surveys indicate about half of the country's 12 to 17 year olds drink at least occasionally. About 20% of these drinkers indicate drinking weekly. While the prevalence has not changed markedly over the past decade, the age of onset of first drinking appears to have dropped.[230] The total volume of alcohol consumed by 14 to 19 year olds increased between 1995 and 2000, and the proportion of drinkers in this age group who reported drinking more than two drinks on a typical drinking occasion increased between 1995 and 2004.[231]

4.46 The gulf between best practice and the social norms around adolescent drinking in New Zealand is large and possibly widening. Any changes to the policy settings need to be bold enough to signal a significant shift reflecting the strength of evidence. They also need to be measurable and mutually reinforcing.

4.47 Of equal significance for future generations is the disproportionate impact of alcohol-related harms on Māori and Pacific communities. Patterns of intermittent binge drinking are most pronounced among Māori and Pacific peoples, with the latest drug and alcohol survey showing Māori men and women were over 1.5 times more likely to drink large quantities of alcohol on a weekly basis than non-Māori. As discussed in chapter 3, the implications of these disparities for the economic, social and cultural wellbeing of Māori and Pacific communities are profound.

229 National Health and Medical Research Council *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Canberra, 2009) at 4 < www.nhmrc.gov.au > [*Australian Guidelines*].

230 *Ministry of Health Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009) at 25.

231 R Habgood and others *Drinking in New Zealand: National Surveys Comparison 1995 and 2000* (Alcohol and Public Health Research Unit, Auckland, 2001) at 4; SHORE/Whariki *Unpublished Research Data Relevant to the Minimum Purchase Age for Alcohol in New Zealand* (Memo to the Ministry of Health, Auckland, 2006) at 2.

4.48 Little of the research relating to alcohol's risks was available to those responsible for overseeing the liquor law reforms of the past two decades. With respect to the advances in our understanding of the developing human brain, the Brainwave Trust Aotearoa noted:[232]

> We are the first generation of adults and policy makers to have access to this material. Even as recently as 1999 when the decision was made to lower the drinking age in New Zealand, knowledge about brain development in adolescence was not known. We seek to ensure that policies are developed using all the facts that are available.

4.49 Numerous submitters to this review have encouraged us to adopt an evidential approach to policy development. In our view, the evidence is clear: a recalibration of the laws governing the sale of alcohol is required. Given the speed of research advances concerning the effects of alcohol on the human body, and the requirement in our terms of reference to future proof our recommendations by "having regard to present and future social conditions and needs", we believe new laws must adopt a more precautionary approach than is currently applied.

Population versus targeted strategies?

4.50 Finally, we turn to the central challenge raised by the Salvation Army earlier in this chapter: identifying what harms can be reduced by means of the law and crafting the policy package that might best achieve these goals.

4.51 From the evidence, there can be no doubt a key aspect of reducing acute forms of alcohol-related harm in this country lies in reducing the incidence of intoxication and heavy sessional drinking. Given that, for many drinkers, including a large proportion of young drinkers, getting drunk is the point of drinking, this goal presents a major challenge for the law. As discussed in chapters 20 and 21 of this report many submitters wish to see the law criminalise public drunkenness again. Suffice to say we do not believe the reintroduction of such a law would eliminate drunkenness given its prevalence and the fact over 70% of drinking occurs in private settings where such a law cannot reach. We do, however, believe the offensive behaviours of those who are intoxicated should be vigorously prosecuted under the numerous offences already on our statute books.

4.52 Targeting the harmful and offensive behaviours of individual drinkers is a relatively straightforward matter provided there is sufficient police resource and a will to devote those resources to the task. Targeting problem drinkers individually, however, is a far more difficult task.

4.53 A common entreaty from the industry was to ensure moderate and responsible drinkers were not unfairly penalised because of the "irresponsible actions of a small minority" of harmful drinkers. The submission of the Distilled Spirits Association of New Zealand epitomises this sentiment:[233]

> The Association also considers that harm can be ameliorated by having a legislative framework that is targeted directly at high risk individuals and behaviours rather than the population at large.

232 Submission of the Brainwave Trust Aotearoa (submission dated 30 October 2009) at 1 [1.7].

233 Submission of the Distilled Spirits Association New Zealand (submission dated 28 October 2009) at 3.

4.54 As a matter of principle, we have said that as far as possible policies should target the greatest harm and interfere as little as possible with New Zealanders' freedoms. However, we have also been mandated to adopt an evidence-based approach to policy formulation and, as the following discussion shows, reconciling these two principles with the evidence is not always a simple exercise.

4.55 For example, on the basis of the evidence, a highly effective targeted policy might be to prohibit all young men from drinking alcohol until the age of 30. Young men aged 18 to 29 suffer the greatest burden of alcohol-related mortality as a proportion of all-cause mortality, hospital presentations for alcohol-related injuries, alcohol-related offending and alcohol-use disorders.[234] Such a policy would, of course, rightly fail as highly discriminatory and a gross infringement of the rights of young men.

4.56 Throughout the consultation, young people repeatedly pointed out to us that their behaviours reflected those of the adults around them and a drinking culture honed and defined by many generations before them.

4.57 However, policies broadly directed at delaying adolescent drinking and limiting alcohol consumption until brain maturation is complete, are strongly supported by the evidence, both in terms of risk and efficacy, and meet the requirement for targeted interventions.

4.58 Furthermore, as we have seen in chapter 3, drinkers do not cleave neatly into two distinct groups, "responsible" and "irresponsible". While it is indisputably the case that a minority of about 10–15 % of drinkers are consuming at the most risky levels, about 25 % are drinking at a level known to significantly increase their risk of harm. Plus, a much larger proportion of drinkers, whose average consumption levels may be moderate or low, occasionally drink at high-risk levels. University of Otago epidemiologist Professor Jennie Connor characterised the problem in this way:[235]

> Many [New Zealanders] drink in a low-risk manner and reap the social benefits. However for a large sector of the population there is a dominant pattern of heavy intermittent drinking episodes, the worst pattern for the drinker's own health outcomes, and the worst for damage to those around them.

4.59 Paradoxically, as discussed in chapter 3, it is not necessarily the heaviest drinkers who generate the most harm. International research indicates those whose total alcohol intake may be moderate or even low, but who binge or drink to intoxication on occasion, account for a large burden of acute harms.[236]

> Although the heaviest drinkers have a much higher risk of various alcohol-related harms compared with other drinkers, it is not necessarily the heaviest drinkers who

234 K Lee and L Snape "The role of alcohol in maxillofacial fractures" (2008) 121 New Zealand Medical Journal at 2978; G Humphrey, C Casswell and D Han "Alcohol and injury among attendees at a New Zealand emergency department" (2003) 116 New Zealand Medical Journal at 298; R Stevenson *National Alcohol Assessment* (New Zealand Police, Wellington, 2009) 50; J E Wells, J Baxter and D Schaaf *Substance Use Disorders in Te Rau Hinengaro: The New Zealand Mental Health Survey* (Alcohol Advisory Council of New Zealand, Wellington, 2006) at 43.

235 J Connor "The knock-on effects of unrestrained drinking" (2008) New Zealand Medical Journal Vol 121 No 1271.

236 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 69.

account for most of the alcohol burden. Particularly with respect to acute alcohol-related harms it is often found that most of the harms are not attributable to the heaviest drinkers, who constitute a distinct minority, but rather to the remaining majority of light or moderate drinkers (Jones *et al.* 1995 ; Leifman 1996 ; Stockwell *et al.* 1996 ; Skog 1999 ; Gmel *et al.* 2001 ; Rossow and Romelsjö 2006).

4.60 This finding may seem counterintuitive at first glance, but can be explained by the fact that drinkers whose average consumption is moderate or light comprise the largest group of drinkers numerically. Acute harms are associated with heavy sessional drinking and intoxication. Most of the episodes of intoxication occur among the large number of people whose *total* consumption is not particularly high and who get intoxicated relatively infrequently rather than the small number of people who drink most heavily.[237] The result is that most of the acute harm is actually experienced by the majority of the drinking population. This phenomenon is known as the "prevention paradox".

4.61 The prevention paradox is particularly relevant in populations where the prevalence of drinking to intoxication is high.[238] As mentioned above, drinking to intoxication is common among young people, Māori and New Zealanders in general. Similarly, the majority of alcohol consumed in New Zealand is consumed in heavy drinking sessions. This suggests interventions that reduce total consumption will reduce the number of heavy drinking sessions in the total population and this in turn will reduce total harm.

4.62 However, it is not a question of adopting population-wide strategies in lieu of targeted strategies. Both are needed. Complementing population-based strategies must be policies that target those groups experiencing and generating disproportionate amounts of harm. For example, price strategies targeting low-cost alcohol will impact disproportionately on the young and problem drinkers who, research shows, choose low-cost alcohol products.

4.63 While several submitters have raised concerns about the regressive nature of such policies, the research clearly indicates alcohol misuse is driving inequalities and impacting heavily on Māori and Pacific peoples. Reducing the prevalence of binge drinking within these groups will lead to significant reductions in harm and result in net benefits. The challenge is to ensure communities likely to be most affected by price policies receive effective support to address alcohol-related issues.

4.64 Before leaving this issue, it is worth noting the supposed conflict between the interests of responsible and irresponsible drinkers is perhaps not as acute as those running this argument would claim. The recommendations put forward in this report represent a retreat from some of the most liberal aspects of the current regulations but they do not represent a return to wowserism. And, as University of Otago epidemiologist Professor Jennie Connor points out,

237 I Rossow and A Romelsjö "The extent of the 'prevention paradox' in alcohol problems as a function of population drinking patterns" (2006) 101 Addiction 84 at 89.

238 Ibid, at 89.

the moderate and responsible drinker will be little impacted by policies targeting alcohol misuse by virtue of the fact that by definition their consumption is moderate.[239]

> Population-based approaches – such as increasing the price of alcohol, reducing access, and enforcing licensing laws – reduce hazardous drinking, and have their most marked effect on young people and heavy drinkers. They have little impact on the moderate drinker, except to reduce their risk of harm from the drinking of others.

4.65 Crucially, the evidence shows a significant proportion of so called "moderate" drinkers who are not harming others by their consumption, may nonetheless be drinking in a manner that places them at a significantly increased risk of dying from a variety of alcohol-related causes. To cite just one example, the significant increases in women's drinking may have implications for rates of breast cancer in the future. Women who consume the equivalent of at least three standard drinks a day face a 30–40 % increased risk of breast cancer compared with non-drinkers. This increased risk for the population may be exacerbated by changes in several other risk factors, including trends towards earlier onset of menstruation and late, or no, childbearing. As the Cancer Society pointed out in its submission: "[u]nlike these other risk factors, alcohol intake is potentially modifiable".[240]

Policy implications

4.66 From the discussion above it is clear our objectives require both targeted and population-wide strategies that will impact not only on total population consumption but also on patterns of episodic binge drinking and, in particular, the prevalence of heavy drinking by young people.

4.67 Short of prohibition, there are no mechanisms by which the law can *directly* intervene in how New Zealanders drink. Internationally, however, there is good evidence about the types of policies that can influence both consumption and the level of alcohol-related harm experienced by a community.

4.68 Quite simply, making alcohol more expensive and less available will put a brake on consumption by increasing the *full price* consumers pay to drink. The *full price* of alcohol includes not just the purchase price but also the resources required to obtain it and the potential costs of possessing or consuming it.[241] Policies that restrict supply (such as a minimum purchase age) and place limits on trading hours and outlet density or create offences for drinking in certain places (for example, liquor bans) all increase the *full price* of alcohol.

4.69 Research on the relationship between availability and both consumption and harm is discussed in detail in chapter 6. Many of the policies that flow from the evidence on availability relate to the licensing regime and the criteria adopted for who can sell alcohol and under what conditions. The submissions revealed strong support for widening the grounds on which licences can be refused and,

239 J Connor "The knock-on effects of unrestrained drinking" (2008) Vol 121 New Zealand Medical Journal at 3.

240 Submission of the Cancer Society (submission dated 29 October 2009) at 5, Appendix [1].

241 M J Paschall, J W Grube and K Kypri "Alcohol control policies and alcohol consumption by youth: a multi-national study" (2009) 104 Addiction at 1849.

in particular, taking into account the social and health impacts of granting a licence. Our recommendations in this area do not represent a wholesale change in approach but rather a tightening of availability that is in line with both the evidence and majority of submitters.

4.70 The most significant changes we are recommending, however, fall outside the ambit of the current regulatory framework and involve interventions around price and advertising. The Laking Committee, whose report shaped the 1989 Act, specifically excluded price from its investigations. As outlined in chapters 17 and 18, the international literature shows price is a key determinant of both population-level consumption and alcohol-related harms. We regard pricing policies as the central plank of any reform package aimed at reducing alcohol-related harm.

4.71 An estimated two-thirds of all alcohol consumed in New Zealand is drunk away from licensed premises,[242] which suggests measures designed to enhance host responsibility and restrict the trading hours of licensed premises are only part of the answer. One of the consequences of our highly competitive liquor retail market has been to depress off-licence alcohol prices to levels that are facilitating excessive consumption and that do not reflect the risks associated with the misuse of this product. In our view, this high-volume/low-price retail sales model is helping to fuel binge drinking and drinking to intoxication in environments where little parental or societal influence is currently moderating behaviour.

4.72 Similarly, we are persuaded by both the strength of the evidence and weight of public submissions that the unfettered advertising and promotion of alcohol is incompatible with the objective of harm reduction. As outlined in chapter 19, the evidence shows a correlation between exposure to alcohol advertising and the onset of drinking and quantity of alcohol consumed by adolescents. Of equal concern is the extent to which alcohol advertising has become imbued with cultural significance for young people at a stage when they are forming their identities.

4.73 Interestingly, policies relating to advertising and price elicited the strongest response from submitters, with 2,281 of the 2,939 submitters commenting on advertising and 2,015 on price. Of these, 86% supported banning or restricting all advertising of all alcohol in all media. With respect to price policies, 76% supported introducing a minimum price for alcohol and 77% supported raising the level of excise tax.

4.74 In recommending a new approach to alcohol regulation, we are not resiling from the position that many positive changes have resulted from the decades of reform. Many of those positive changes will be enhanced by our recommendations because they will support those operating in a responsible fashion and investing in sustainable business models that properly reflect the risks and responsibilities accompanying the right to sell alcohol.

242 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) at 13.

4.75 The evidence does, however, suggest the free market principles underlying the current legislative framework may be inimical to the object of the Act – harm reduction.

4.76 The rest of this report examines in detail the evidential basis for the various elements of our policy recommendations. The report and recommendations are organised around the three central alcohol policy strategies: supply controls, demand reduction and problem limitation.

4.77 To be effective, the policies in each of these three areas must form part of a well-integrated and mutually reinforcing package. For example, to raise the purchase age but do nothing about advertising that constantly reinforces the message that drinking is the key to social, sexual and sporting success would be counterproductive. Similarly, we cannot impose new restrictions on the manner in which bars and clubs operate while allowing the unfettered promotion and sale of cheap alcohol by supermarkets and off-licence retailers.

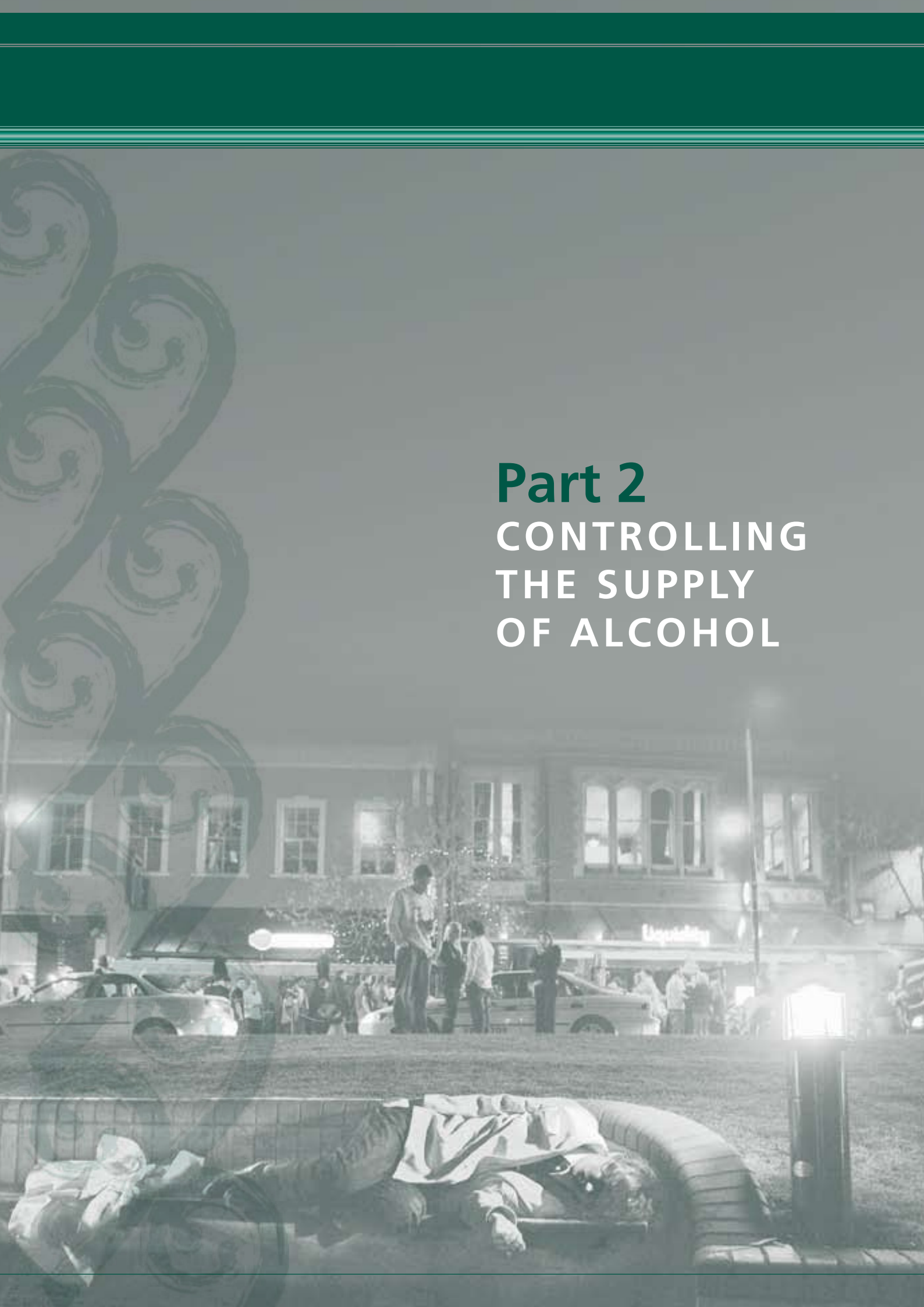
4.78 Finally, this policy package contains both targeted and population-wide strategies and requires increased responsibility and accountability from the individual, community, corporates and state. The need for a "whole-of-community" approach to alcohol misuse was reinforced by the United States' Acting Surgeon General Kenneth P Moritsugu in the Surgeon General's *Call to Action to Prevent and Reduce Underage Drinking*, who wrote:[243]

> 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.

4.79 The extent to which the harmful use of alcohol is preventing our young people and sections of the Māori and Pacific populations 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 alcohol-related harm through our taxes, rates and levies.

4.80 As a country at the start of the second decade of the 21st century, we face significant social and economic challenges. Meeting these challenges will require an educated, socially cohesive, productive and healthy population. Reducing the human and economic cost of harmful drinking will contribute to a better future for all New Zealanders and is within our reach.

243 *The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking 2007* (United States Department of Health and Human Services, Rockville, MD, 2007) at vi.



Part 2
CONTROLLING THE SUPPLY OF ALCOHOL

Part 2

An introduction

The alcohol market is influenced by supply and demand. However, because alcohol is a legalised drug, the government intervenes in the market by regulating how alcohol is sold and supplied. These measures, known as supply controls, are premised on the assumption that controlling alcohol's availability will help moderate consumption and thereby influence the level of alcohol-related harm that occurs in New Zealand.

The most fundamental supply control measures in New Zealand are the requirements that all those selling liquor must be licensed and that it is illegal to sell alcohol to a person under the age of 18 years. The central pillar of the existing framework is the Sale of Liquor Act 1989, which establishes the alcohol-licensing system.

Supply control policies can also include measures that determine not only who can sell alcohol but the types of businesses that can be licensed, the places in which they can operate and the conditions under which they can trade. The current legislation is minimalist in its approach to regulating many of these facets of supply.

In Part 2 of this report we set out the case for a new Act. Our objective is to ensure the alcohol laws are more directly aligned to alcohol harm reduction goals, more responsive to the needs of local communities, and better attuned to the different risks associated with the sale and supply of alcohol.

Part 2 covers the following:

- the case for regulating the sale of alcohol and why a new approach is needed (chapter 5);
- the potential impact of the number and density of alcohol outlets on the levels of alcohol consumption, harmful drinking and community degradation (chapter 6);
- the criteria on which a licence may be granted or objected to (chapter 7);
- new criteria for selling takeaway alcohol (chapter 8);
- new licence conditions (chapter 9);
- restructuring of the licence decision-making bodies (chapter 10);
- risk-based licensing fees, renewal of licences and manager's certificates (chapter 11);
- club licences (chapter 12);
- special licences (chapter 13);
- removal of exemptions from the current licensing regime (chapter 14);
- the unique position of licensing trusts (chapter 15); and
- the purchase age for alcohol (chapter 16).

Chapter 5

Regulating the sale and supply of alcohol

IN THIS CHAPTER, WE:

- Introduce the theory behind regulating the availability of alcohol.
- Provide an overview of the regulatory tools and current licensing scheme in New Zealand.
- Discuss our recommendations regarding the need for a new Act to replace the Sale of Liquor Act 1989, the need for a new object provision to drive the interpretation of the new legislation, and the use of the word "alcohol" rather than "liquor" in the new legislation.

TOOLS FOR REGULATING THE AVAILABILITY OF ALCOHOL

5.1 The rules regulating the availability of alcohol – who can buy it, who can sell it and where and when – will be a feature of any set of liquor licensing laws. Rules that have sought to restrict the availability of alcohol have a long history. *Drinking Vessels of Bygone Days* records that during the Middle Ages:[244]

> [I]n an endeavour to decrease drunkenness, King Edgar introduced the peg or pin tankard. He ordained that certain cups with pins or nails set in them should be made and that any person who drank past the mark or peg at one draught should forfeit a penny, of which half should be given to the accuser and half to the town in which the offence was committed.

5.2 Over the decades, New Zealand's liquor laws have likewise contained several measures designed to restrict the availability of alcohol. The temperance movement was largely responsible for an early licensing regime that placed tight controls on the sale of alcohol. These restrictions remained more or less in place until the 1960s. While the Sale of Liquor Act 1989 fundamentally liberalised licensing laws, it still contains several important availability restrictions.

5.3 The most significant of these is the core requirement that a licence is required to sell liquor. This ensures that only people judged suitable to sell liquor are permitted to do so. The imposition of conditions attached to a licence also allows

244 G J Monson-Fitzjohn *Drinking Vessels of Bygone Days: From the Neolithic Age to the Georgian Period* (H Jenkins, London, 1927) at 47.

some control to be exercised over the manner in which alcohol is sold, as with a requirement, for example, that non-alcoholic drinks be made available for consumption on licensed premises.

5.4 In some countries, governments retain a monopoly over liquor licences. In most Canadian provinces and some states in the United States, for example, spirits can only be purchased from state-run retail stores. While the revenue that governments receive may partly explain their continued existence, government monopolies on liquor licences are often supported on the basis that outlets are less likely to proliferate under state control, and that retail outlets are more likely to operate responsibly given that their profit motive is different from privately owned operators.[245] New Zealand has a form of licence monopoly through the four remaining licensing trusts (Portage, Waitakere, Invercargill and Mataura) that hold the exclusive right to be granted an off-licence and on-licence for hotels and taverns in their respective districts.

5.5 Age restrictions are another important aspect of the law governing the availability of alcohol. Such restrictions are common worldwide. All states in the United States have a minimum purchase age of 21 – an age restriction that each state must adhere to in order to retain all its allocated federal highway funds.[246] Currently, New Zealand has a minimum purchase age of 18 years for alcohol purchased from licensed premises. Minimum purchase-age laws recognise the special risks alcohol poses to young people. In a sense, such laws constitute alcohol prohibition selectively applied to one segment of the population.

5.6 Rules around the hours and days when retailers are permitted to sell alcohol also play a role in regulating the availability of alcohol. Trading hours restrictions limit the times when licensed premises are able to sell alcohol, typically by fixing set times in statute or by making particular trading hours a condition of a liquor licence. Restricting the days on which licensed premises can trade also influences the opportunity to purchase alcohol. While Sunday trading in New Zealand came into effect with the Sale of Liquor Amendment Act 1999 for both off-licence and on-licence premises, several states in the United States for instance continue to impose so-called "blue laws" prohibiting various forms of Sunday alcohol sales.[247]

5.7 Often liquor laws also specify the types of premises that can be granted a liquor licence. Under current law, service stations cannot be granted a liquor licence. Before the Sale of Liquor Act 1989, supermarkets and grocery stores were not permitted to sell alcohol. The 1989 Act changed the law so both types of premises could be granted an off-licence in respect of wine sales.

5.8 Laws may also specify the types of alcohol products licensed premises are able to sell. Thus, the Sale of Liquor Amendment Act 1999 extended the types of alcohol products that supermarkets and grocery stores are permitted to sell

245 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 136–138 [*Alcohol: No Ordinary Commodity*].

246 "The 21 club" *The Economist* (London, 22 August 2009) at 29.

247 M J Stephey "America's quirky alcohol laws" *Time* (United States, 9 July 2009) <www.time.com>. Prior to the 1999 Act, the only off-licence premises permitted to sell alcohol in New Zealand on Sundays were vineyards selling wine they had produced themselves.

to include beer and wine, but not spirits or spirits-based drinks. By contrast, a specialist off-licence liquor store in New Zealand is able to sell the full range of liquor products.

5.9 Laws regulating alcohol availability can also extend to controls over the number of outlets that are granted a liquor licence, as well as the density of outlets operating within a particular geographic area. The restriction on outlet numbers was historically one of the defining features of New Zealand's liquor laws. But the Sale of Liquor Act 1989 moved away from a licensing regime that concerned itself with outlet numbers, instead focusing on applicant suitability, with the result that licence numbers have nearly doubled since 1990.[248]

WHY SHOULD THE LAW REGULATE AVAILABILITY?

5.10 Some laws regulating the availability of alcohol are generally well accepted. The idea that a licence should be needed to sell alcohol, for example, is rarely disputed.

5.11 Yet on what grounds should the law impose restrictions on such matters as trading hours and days, the types of premises that can sell alcohol, and the number and density of liquor outlets? In other words, what is the purpose of restricting alcohol availability in these ways?

5.12 The primary concern regarding high availability of alcohol is that increased availability may contribute to increased alcohol consumption and harms, either nationwide or at a neighbourhood level. As discussed in chapter 2, consumption levels and patterns of alcohol consumption are influenced by numerous factors that operate at both an individual and a population level. The economy and alcohol's affordability are two important determinants of consumption. Laws regulating the availability of alcohol are also critical factors in this mix.

5.13 As outlined above, there are many facets to availability: the number, type and location of outlets; the hours and conditions under which they trade; restrictions on who may purchase alcohol; and the circumstances under which it can be supplied. It is the combined effect of these policies that determines their efficacy.

5.14 In chapter 6 we examine in detail what the New Zealand and international literature suggests regarding the impact of availability on alcohol consumption and the various harms that can result from it.

5.15 As will become evident from this discussion, changes in the availability of alcohol can have different impacts on different communities depending on the type of alcohol business involved, the environment in which it is trading, and the nature of the community in which it is located. This finding underpins our recommendations regarding the need for alcohol laws that are more responsive to the needs of local communities.

CURRENT LICENSING REGIME

5.16 The Sale of Liquor Act 1989 provides that the sale of liquor to the public or any member of the public requires a licence, of which there are four types:

- on-licences, which authorise the sale and supply of liquor for consumption on the licensed premises, for example in bars and restaurants;[249]

248 Information provided to the Law Commission by the Liquor Licensing Authority (11 February 2010).

249 Sale of Liquor Act 1989, s 7.

- 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;[250]
- club licences, which authorise the sale and supply of liquor for consumption on club premises to club members, their guests, or members of clubs with reciprocal visiting rights;[251]
- special licences, which authorise the holder of the licence to sell and supply liquor for consumption on the premises to anyone attending a particular occasion or event or series of occasions or events.[252]

5.17 People who wish to apply for a liquor licence must lodge an application with their local District Licensing Agency (DLA). Each territorial authority is the DLA for its district.

5.18 Licence applications are forwarded to a local licensing inspector, appointed by the DLA, and also to the Police and a medical officer of health.[253] The licensing inspector must inquire into and file a report on the application. The Police and medical officer of health must each inquire into the application and file a report on it if they have any matters in opposition.

5.19 The application must also be publicly notified in a local newspaper and at the site of the proposed licensed premises. People with an interest in the licence that is greater than that of the general public may lodge an objection with the DLA to the granting of the licence. The grounds for objection are confined to the licence criteria. These essentially require that the applicant has the appropriate planning and building consents and is a "suitable person" who will comply with the legal requirements for holding a licence. In addition, only certain types of premises are eligible to hold an off-licence, for example a stand-alone bottle store, supermarket or grocery store.

5.20 Unopposed licence and general manager applications may be granted by the DLA.

5.21 Any applications (other than for special licences) that are the subject of an adverse report by any of the reporting agencies,[254] or are the subject of an objection by a qualifying member of the public,[255] are referred to the Liquor Licensing Authority (LLA) for consideration.[256] The LLA is a specialist tribunal comprising three or four people, presided over by a District Court judge.

5.22 The Act prescribes mandatory licence conditions and discretionary conditions that may be imposed by the DLA or LLA as appropriate.

250 Ibid, s 29.

251 Ibid, s 53.

252 Ibid, s 73.

253 On-licences and club licences only.

254 Sale of Liquor Act 1989, ss 11, 33, 57 and 78 for initial licences, and ss 20, 43 and 66 for renewals.

255 Ibid, ss 10, 32, 56 and 77.

256 Ibid, ss 21, 34 and 58.

5.23 The LLA also deals with appeals from DLA decisions and applications by enforcement agencies for the suspension or cancellation of a licence where a licensee has breached a provision of the Act or a licence condition, for example, by serving a minor or an intoxicated person. Offences under the Act may be prosecuted in the District Court.

Key weaknesses of the regime

5.24 The prime weakness of the current regime is the narrow basis on which an objection may be made in respect of a licence application. This has effectively left communities with little say in the number, type and location of licensed premises in their area, enabled a proliferation of outlets in some areas, and likely contributed to alcohol-related harm.[257]

5.25 The off-licence eligibility provisions in the Sale of Liquor Act 1989 are unclear, and many dairies have been licensed because of the difficulty in differentiating between a dairy and a grocery store. This has also contributed to a proliferation of off-licence outlets.[258]

5.26 The types of conditions that may be imposed on licences are narrow and outdated, and do not provide licensing decision-makers with appropriate means with which to limit alcohol-related harm arising from particular premises.[259]

5.27 The functioning of the DLAs is also a key area requiring reform, as their performance is extremely variable. In chapter 10 we recommend that DLAs be abolished and replaced with new bodies called District Licensing Committees (DLCs).

5.28 Licence fees are insufficient to enable DLAs to undertake their functions properly, and there is no differentiation in licence fees and renewal procedures for high- and low-risk premises.[260]

5.29 Although it was intended that licences be easy to get and easy to lose, in reality it is easy to get a licence and hard to lose one.[261]

5.30 The object of the Act is too broad, and is not specifically included in the statutory decision-making criteria, which has caused confusion regarding the proper status of the object of the Act. Our recommendation for a new object provision is discussed below.

NEED FOR A NEW ACT

5.31 We recommend the Sale of Liquor Act 1989 be repealed and replaced by a new Act called the Alcohol Harm Reduction Act.

5.32 In light of the significant alcohol-related harms experienced by communities, a new approach to the sale and supply of liquor is required in New Zealand. In order to have a new approach, an entirely new statute is called for; a patch-up job will not suffice.

257 See chapter 7.

258 We discuss new criteria for selling takeaway alcohol in chapter 8.

259 Wider powers to impose licence conditions are set out in chapter 9.

260 We recommend a new risk-based fee and licence renewal scheme in chapter 11.

261 We deal with enforcement of licence breaches in chapter 20.

5.33 To ensure the integrity of the legislation, its content should be wholly revised to reflect a new object clause and a shift to a greater emphasis on harm reduction.

5.34 The existing Sale of Liquor Act 1989 is a complex law with more than 250 sections. It has been amended on 12 occasions since its enactment. Acts of Parliament that are heavily amended easily lose their shape and accessibility. The Sale of Liquor Act 1989 already suffers from this deficiency. This is partly as a result of the amendments made to the original bill on the floor of the House pursuant to the conscience vote, and partly as a result of subsequent amendments.[262] Section 36 is the obvious example of such a provision. Further amendments would exacerbate the problems with the Act and make it even less coherent as a whole.

5.35 The Act is one that is used by many people who are not legally qualified. Publicans, bar managers, police officers and local authority licensing inspectors, for example, need to understand the Act and be able to use it. It needs to be made as clear and accessible as possible, which will require a complete redraft.

5.36 A further amendment bill would be highly complex and difficult for members of the public to make select committee submissions on, as the effect of the amendments would not be apparent on the face of the bill, and there are many amendments that need to be made to the existing legislation.

5.37 There was considerable support in submissions for the introduction of a completely new Act, including from some retailers and local authorities. Few submitters who commented on this point were happy to leave the legislation as it is.

OBJECT OF THE ACT

5.38 In our view, the object section should set out the purposes of the legislation in greater detail than in the 1989 Act. Section 4(1) of the Sale of Liquor Act 1989 provides:

> 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.

5.39 We believe the object of the new legislation should not set out the reasons for the legislation in such a general way, but should acknowledge the multiplicity of issues that the Act is intended to address. Setting out the object with greater precision will give the statute a better prospect of achieving its purpose and will also ensure the central principles underpinning the scheme are clear. This is particularly important because we intend that the object will drive the decisions made under the new legislation.

5.40 The object of the 1989 Act states that the Act is only intended to achieve "that which can be achieved by legislative means". We have made it clear that we understand the problems New Zealand is facing in relation to alcohol-related harms cannot be addressed through changing the law alone. We do not doubt that a legislative licensing regime can only go so far. The legislation will speak for itself in terms of the measures it puts in place. We do not consider it necessary to articulate in the object provision that the legislation is only intended to achieve that which is possible to achieve through legislation.

262 Law Commission *Review of the Regulatory Framework for the Sale and Supply of Liquor Part 1: Alcohol Legislation and the Conscience Vote* (NZLC R106, 2009).

5.41 The use of the term "reasonable system" to describe the regime being established by the legislation is an important phrase from the object of the 1989 Act, which should be continued in the object of the new Act. Industry submitters, such as Lion Nathan, have emphasised to us that "reasonableness" is a key feature of the legislation that must be set out in the Act's object. We recognise it is essential that, in addition to providing a focus on the key alcohol-related harms that the Act aims to prevent, the object of the Act should include the establishment of a reasonable system for the sale, supply and consumption of alcohol. Lion Nathan has advised it would support an object that includes recognition that the control of the sale and supply of alcohol is for the benefit of the community.[263] We agree this is a helpful way of describing the purpose of the licensing regime, and have included this in our proposed object.

5.42 Some industry submitters have expressed a preference for retaining the object of the 1989 Act. However, our review has shown us that fundamental changes are needed to the way in which we regulate the sale, supply and consumption of alcohol. Many sectors of New Zealand society have told us clearly that there are problems with alcohol-related harms that are not adequately addressed by the current regime. While several elements of the proposed scheme are consistent with the existing legislation, a new focus is needed if New Zealand is to achieve a reduction in alcohol-related harms. We consider it to be essential that the object of the new Act sets out aims that relate directly to the broad spectrum of alcohol-related harms. We are convinced that the current state of alcohol-related harms means a new approach is warranted. The object of the new Act should signal this. The legislation needs to take a wider focus than that of simply contributing to the reduction of liquor abuse. Preventing liquor abuse is clearly important, but there are wider effects of alcohol use and misuse that should be emphasised, such as crime, disorder, public health, accidents, the amenity of public places and the resource use of our public services. The problems related to alcohol in New Zealand are at a point where a more proactive approach to addressing harms is needed.

5.43 The Alcohol Advisory Council of New Zealand (ALAC) believes the primary object of any new legislation should be the reduction of alcohol-related harm and the specific objectives elucidating this should be set out in the object provision in order to provide guidance to agencies and authorities working in the sector.[264]

5.44 We recommend that the object should be as follows:

> The object of this Act is to establish a reasonable system for the sale, supply and consumption of alcohol for the benefit of the community as a whole, and in particular to:
>
> (a) Encourage responsible attitudes to the promotion, sale, supply and consumption of alcohol;
>
> (b) Contribute to the minimisation of crime, disorder and other social harms;
>
> (c) Delay the onset of young people drinking alcohol;
>
> (d) Protect and improve public health;
>
> (e) Promote public safety and reduce public nuisance; and
>
> (f) Reduce the impact of the harmful use of alcohol on the Police and public health resources.

263 Submission of Lion Nathan (submission dated 29 October 2009) at 11.

264 Submission of the Alcohol Advisory Council of New Zealand (submission dated 23 October 2009) at 22.

5.45 In proposing this object, we have been concerned that it should be clear and workable. We have tried to ensure it is not too long or complex, and the specific purposes set out are within the realm of a legislative scheme. The particular purposes set out in the proposed object align to the types of alcohol-related harms that have been identified. We see that the primary reasons why there must be a system of regulation applying to the sale, supply and consumption of alcohol are crime and disorder; individual and community health impacts, especially the risks associated with young people; risks to public safety and public amenity; and strain on Police and public health resources. We have not attempted to define each term used in the object. They are not intended to prescribe specific measures, but to be flexible and to recognise the important values that New Zealanders want to protect.

5.46 In considering how we can propose improved licensing legislation, we have learned much from legislation recently passed in several Australian states and in the United Kingdom. We have noted a significant degree of similarity in the object provisions in the legislation among these Australian states, the United Kingdom and Scotland. Our proposed object borrows from the aims set out in these statutes that best express the intention of our proposed legislation, and in some cases adapts the wording where it fits the New Zealand context to do so.[265]

5.47 In its submission, Lion Nathan raised the concern that the "specific and complex nature of the objects risk creating confusion as to how they are meant to be achieved by licensing decisions alone, and could create inconsistency in decision-making".[266] We have refined the proposal, and do not consider the recommended object poses any greater risk of confusion or inconsistency in decision-making than the object of the current Act. The rules and systems applying to the sale, supply and consumption of alcohol will be set out clearly in the body of the Act. We would argue that an object that explicitly addresses specific types of harms resulting from alcohol use allows for greater consistency in decision-making and is clearer to apply.

5.48 Clearly, licensing legislation alone cannot achieve all of the objectives; many elements of New Zealand government and society will be required to work together to achieve them. However, it is important they are identified as they are central to the rationale as to why the proposed legislation takes the form it does.

265 Proposed object (a) is similar to one of the objects of the New South Wales Liquor Act 2007 (NSW), s 3(2)(b). Proposed objects (b) and (e) are similar to some of the licensing objectives in the United Kingdom and Scotland's licensing statutes, with proposed object (d) also reflecting one of the licensing objectives of the Scottish legislation (Licensing Act 2003 (UK), s 4(2)(a)–(c); Licensing (Scotland) Act 2005 (Scotland), s 4(a)–(d)).

266 Submission of Lion Nathan (submission dated 29 October 2009) at 12.

DEFINITION OF ALCOHOL

5.49 It is necessary to define "alcohol" in order to establish the bounds of the authority of the legislation to regulate its sale and supply. While in most cases it will be clear whether the sale and supply of a substance is covered by the legislation, there are some substances that are more marginal. We want to ensure the new legislation clearly covers all ingestible alcohol that may cause intoxication in humans. However, we also want to exclude substances that, while technically containing alcohol, because of their nature do not pose any danger of intoxication.

5.50 We are satisfied that the definition of "liquor" in the Sale of Liquor Act 1989[267] achieves what it needs to achieve in defining the liquor that should be regulated. We do recommend, however, that throughout the legislation the term "alcohol" be used in place of "liquor". The term "alcohol" is now more commonly understood than liquor. Consequently, we recommend the definition in the new legislation provides:

> Alcohol means 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% or more alcohol by volume.

5.51 The definition should provide further detail in order to include certain substances that we want to be sure fall within the definition and to exclude other substances that should not be regulated by this Act. We recommend the definition of "alcohol" specifically state that it includes non-beverage alcohol products that are intended for human imbibing or ingestion. This will ensure substances such as alcohol ice-blocks, jellies, vapours and pastes are included.

5.52 We also recommend the definition specifically exclude the following:

- perfume;
- chocolate;
- cakes and baked items;
- substances intended for medicinal or pharmaceutical use.

5.53 Perfumes and alcohol for medicinal or pharmaceutical use have previously been excluded through an exemption to the Act applying to perfumeries and pharmacies.[268] It is our view that it is neater to exclude these substances from the definition of alcohol.[269] In 1997, the Liquor Review Advisory Committee recommended the exclusion of liqueur chocolates from the legislation as a matter of commonsense.[270] We would add baked items to this list, as it would be similarly difficult for these to cause intoxication.

267 The Sale of Liquor Act 1989, s 2 states:

> Liquor means 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 percent or more alcohol by volume.

268 Sale of Liquor Act 1989, s 5.

269 This issue is discussed further in chapter 14 in relation to exemptions from the Act.

270 Liquor Review Advisory Committee *Liquor Review: Report of the Advisory Committee* (March 1997) at 43.

RECOMMENDATIONS

R1 The Sale of Liquor Act 1989 should be repealed and replaced by a new Act called the Alcohol Harm Reduction Act.

R2 The new alcohol legislation should include the following object provision:

> The object of this Act is to establish a reasonable system for the sale, supply and consumption of alcohol for the benefit of the community as a whole, and in particular to:
>
> (a) Encourage responsible attitudes to the promotion, sale, supply and consumption of alcohol.
>
> (b) Contribute to the minimisation of crime, disorder and other social harms;
>
> (c) Delay the onset of young people drinking alcohol;
>
> (d) Protect and improve public health;
>
> (e) Promote public safety and reduce public nuisance; and
>
> (f) Reduce the impact of the harmful use of alcohol on the Police and public health resources.

R3 The definition of "alcohol" in the new legislation should provide:

> Alcohol means 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% or more alcohol by volume.

Chapter 6

Why the availability of alcohol matters

IN THIS CHAPTER, WE:

- Explore the reasons why the availability of alcohol is important and, therefore, why it needs to be regulated.
- Examine the research evidence regarding the association between outlet density and consumption, outlet density and harm, and outlet density and neighbourhood degradation.
- Look at the implications of this research for licensing legislation.

INTRODUCTION 6.1

Before discussing in detail in the following chapters the elements of a proposed new licensing regime, we first consider research on the effects of the physical availability of alcohol. In this chapter we focus specifically on the association between alcohol *outlet numbers* and *density* and three variables: alcohol consumption, alcohol-related harms and community degradation. These research findings help shape our proposed new licensing system and in particular underscore the need for a licence decision-making process that is responsive to different contexts and communities.

OUTLET DENSITY AND CONSUMPTION 6.2

Outlet numbers and density have been an area of particular interest to international researchers as many countries around the world have shifted to a more liberalised licensing regime in past decades. Accordingly, there is a growing body of research that has examined this particular aspect of alcohol availability. In addition, the public consultation undertaken as part of the Law Commission's review has made it clear that alcohol outlet placement and density is one of the most pressing issues around the sale of alcohol for many communities.

Outlets and population-level consumption

6.3 Before the Sale of Liquor Act 1989, the law on issuing liquor licences was characterised by a "needs" test. A licence would only be granted if an area were judged to require an additional outlet. In other words, sufficient licences were to be issued to cover demand, but no more. The underlying assumption was that demand could be stimulated beyond its natural level by the addition of surplus outlets.

6.4 This approach was rejected by the Working Party on Liquor, chaired by Sir George Laking (the Laking Committee). The 1986 Laking Report recommended doing away with the needs test. In the Laking Committee's view, licences should be granted on the basis of applicant suitability, rather than restricting outlet numbers in an attempt to influence the amounts of alcohol people consumed. In arriving at this conclusion, the Laking Committee stated that:[271]

> 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.

6.5 And later:[272]

> It appears to us…that where liquor is freely available through a very large number of outlets, increasing that number does not increase average consumption.

6.6 Clearly, in the view of the Laking Committee, there was a disconnect between outlet numbers and consumer demand for alcohol products. This approach was carried through to the Sale of Liquor Act 1989. It has been argued by industry that a decrease in per capita consumption in the decade immediately following the passing of the Sale of Liquor Act 1989 – a statute that led to the existence of many more liquor outlets – has proved this view to be correct.

6.7 Yet, as discussed in Part 1 of this report, population levels of alcohol consumption are influenced by both legal factors (that is, licensing laws) and non-legal factors. The latter can include demographic and economic variables, generational lifestyle differences, and changes in cultural norms and expectations around drinking. Consequently, it is difficult to isolate and determine the precise impact of increased outlet numbers on total population alcohol consumption.

6.8 Nor does aggregate consumption tell us *how* people are drinking. As discussed in Part 1, patterns of consumption are highly predictive of the level and types of alcohol harms that are experienced by a community. In New Zealand we have a pattern of heavy episodic drinking associated with high levels of acute harms. Understanding how alcohol's availability impacts on consumption levels and drinking behaviours within different groups and in different settings is therefore vital.

271 Report of the Working Party on Liquor *The Sale of Liquor in New Zealand* (1986) at 18 [*Laking Report*].

272 Ibid, at 34.

Outlets and neighbourhood-level consumption

6.9 Research suggests a discernible relationship between a high concentration of outlet numbers (usually referred to as high outlet density or outlet "clustering") and alcohol consumption at a neighbourhood level (as opposed to a whole-of-population level).[273] The World Health Organization's Expert Committee on Problems Related to Alcohol Consumption has indicated that outlet clustering can be associated with increased local levels of alcohol consumption.[274] The Committee pointed in particular to an apparent relationship between outlet clustering and the extent of underage drinking.[275] A study by Chen, Gruenewald and Remer in 2008 found that alcohol outlet density in California was significantly related to the likelihood and frequency of adolescents acquiring alcohol.[276] A similar study, also in California, found that off-licence outlet density was positively associated with the ability of 14 to 16 year olds to purchase alcohol from a store without identification.[277]

6.10 Several other international studies have also pointed to an association between outlet density and local levels of alcohol consumption. For example, in a 2000 study Scribner and others found that outlet density at a neighbourhood level in New Orleans was significantly related to alcohol consumption.[278] A 2008 United States study found that alcohol outlet density was associated with the quantity of alcohol consumed in Louisiana, although not in Los Angeles.[279] Some studies have pointed to associations between high outlet density around

273 Outlet density is generally determined on the basis of the size of a *geographic* area. Researchers are concerned with the consequences of the spatial relativities between outlets, that is to say the consequences of having relatively high numbers of outlets in the same physical location. Outlet density on the basis of *population* can produce a misleading picture of outlet density if the geographic area is not also taken into account. For instance, in a rural area where the population is thinly spread the outlet density measurement may be high despite there being comparatively few licensed premises. Hence the predominantly rural Mackenzie Country region in the South Island was reported as having the highest outlet density of all regions in the country despite having many fewer outlets than most urban areas: see Simon Collins "Manukau low on liquor outlet list" *New Zealand Herald* (Auckland, 5 January 2009) at A2.

274 World Health Organization *Expert Committee on Problems Related to Alcohol Consumption* (World Health Organization, Geneva, 2007) at 26.

275 Ibid.

276 M Chen, P Gruenewald and L G Remer "Does Alcohol Outlet Density Affect Youth Access to Alcohol?" (2009) 44 Journal of Adolescent Health 582.

277 A J Treno, W R Ponicki, L G Remer and P J Gruenewald "Alcohol Outlets, Youth Drinking, and Self-reported Ease of Access to Alcohol: A Constraints and Opportunities Approach" (2008) 32 Alcoholism: Clinical and Experimental Research 1372.

278 R Scribner, D Cohen and W Fisher "Evidence of a structural effect for alcohol outlet density: A multilevel analysis" (2000) 24 Alcoholism: Clinical and Experimental Research 188.

279 M Schonlau and others "Alcohol Outlet Density and Alcohol Consumption in Los Angles County and Southern Louisiana" (2008) 3 Geospatial Health 91.

college campuses and heavy drinking among students.[280] New Zealand research by Kypri and others published in 2008 found similar results in relation to outlet density, particularly off-licence outlets, and tertiary student drinking.[281]

6.11 Two important New Zealand studies into the effects of outlet density have added further weight to the relationship between density and local-level consumption. A 2008 study using samples in Auckland found that the typical quantity of alcohol drunk in a teenage "drinking session" was predicted by, among other factors, outlet density.[282] Interestingly these results mirror the findings of an Australian study, which likewise reported significant associations between off-licence density and high-risk drinking among 16 to 24 year olds.[283]

6.12 The second study was research of some magnitude. Having mapped 92% of all operational liquor outlets in New Zealand, the study found statistically significant associations between density of off-licences, bars and clubs and the prevalence of binge drinking.[284] Once the results were controlled for demographic and socio-economic variables, the association between binge drinking and off-licences remained the strongest. The authors reported "a 4% increase in binge drinking associated with each extra off-licence within 1km of home".[285]

6.13 It must be acknowledged, however, that the studies on outlet density and neighbourhood-level alcohol consumption have shown mixed results. For example, a study by Pollack and others in 2005 found no relationship between outlet density and consumption amongst 82 Californian neighbourhoods.[286] In this study, levels of alcohol consumption tended to be greater in higher socio-economic neighbourhoods even though more liquor outlets were concentrated in lower socio-economic areas. While a 1993 study by Gruenewald of 38 states in the United States found that outlet density was associated with higher sales of wine and spirits, this finding was not replicated at the neighbourhood level in five Californian neighbourhoods.[287] In a Canadian time-series study by Trolldal, outlet

280 See, for instance, F J Chaloupka and H Wechsler "Binge drinking in college: The impact of price, availability, and alcohol control policies" (1996) 14 Contemporary Economic Policy 112; E R Weitzman, A Folkman, K L Folkman and H Wechsler "The relationship of alcohol outlet density to heavy and frequent drinking and drinking-related problems among college students at eight universities" (2003) 9 Health Place 1; R A Scribner and others "The contextual role of alcohol outlet density in college drinking" (2008) 69 Journal of Alcohol and Drugs 112.

281 K Kypri, M L Bell, G C Hay and J Baxter "Alcohol outlet density and university student drinking: A national study" (2008) 103 Addiction 1131.

282 T Huckle and others "Density of Alcohol Outlets and Teenage Drinking: Living in an Alcogenic Environment is Associated with Higher Consumption in a Metropolitan Setting" (2008) 103 Addiction 1614.

283 M Livingston, A M Laslett, and P Dietze "Individual and Community Correlates of Young People's High-risk Drinking in Victoria, Australia" (2008) 98 Drug and Alcohol Dependence 241.

284 J Connor, K Kypri and M Bell "Alcohol outlet density and alcohol-related harm" in *Proceedings of the Australasian Epidemiological Association ASM, Dunedin, August 31-September 1, 2009* in (2009) 16 The Australasian Epidemiologist 25.

285 Ibid.

286 C E Pollack, C Cubbin, D Ahn and M Winkleby "Neighbourhood deprivation and alcohol consumption: Does the availability of alcohol play a role?" (2005) 34 International Journal of Epidemiology 772.

287 P J Gruenewald "Small area estimates from a geostatistical perspective: Current status and future directions" in R Wilson and M DuFour (eds) *The Epidemiology of Alcohol Problems in Small Geographic Areas* (National Institute on Alcohol Abuse and Alcoholism, Maryland, 2000) at 245.

density rarely predicted alcohol consumption across 20 samples.[288] It appears then that increased outlet density *can* contribute to increased alcohol consumption within some neighbourhoods, but that this will not always be the case. In other words, the risk posed by outlet clustering in terms of increased alcohol consumption will vary from one community to another.

6.14 One factor that heightens the risks of increased consumption is the relationship between density and price. Where there are several outlets concentrated in one area, particularly off-licence outlets, the discounting of alcohol products – whether beer, wine or RTDs – is one of the commonly used means by which outlets compete with one another. It is well accepted that lower prices can stimulate demand for alcohol and facilitate heavier consumption.[289] This is a point that segments of the industry have conceded. In its submission, Lion Nathan acknowledged the links between the proliferation of liquor outlets, price and consumption:[290]

> Lion does however accept that high density or the clustering of outlets can promote lower prices through discounting and promotions, which can entice buyers to consume liquor due to the attractively lower prices. As the Commission notes, market saturation requires outlets to lower prices in order to sustain their profitability on a volume of sales basis.

6.15 This link between density and lower pricing is particularly important in the New Zealand context because smaller off-licence premises already face significant price pressure from supermarkets. Increased outlet competition at a local level further increases pressure to offer lower-priced alcohol products to get customers in the door. This observation is confirmed by the University of Waikato's Population Studies Centre in the third of a series of reports, commissioned by ALAC, on outlet density in South Auckland: "In Manukau City, lower prices were observed in areas with a higher density of liquor outlets, consistent with expectations".[291]

6.16 There is no escaping the reality that high outlet density is more common in lower socio-economic neighbourhoods than higher socio-economic neighbourhoods. A recent University of Otago study found that lower-decile New Zealand neighbourhoods are characterised by greater outlet density than higher-decile areas.[292] This study found that the average distance a person had to travel to get to a liquor outlet was 50 % greater in the least deprived areas compared to the most deprived areas.[293] The Population Studies Centre research into Manukau City found that off-licence liquor outlets tend to locate in areas of high social

288 B Trolldal "Availability and sales of alcohol in four Canadian provinces: A time series analysis" (2005) 32 Contemporary Drug Problems 343.

289 See T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 119 [*Alcohol: No Ordinary Commodity*].

290 Submission of Lion Nathan (submission dated 29 October 2009) at 10.

291 M P Cameron and others *The Spatial and Other Characteristics of Liquor Outlets in Manukau City* (Impact of Liquor Outlets Research Report No. 3, Population Studies Centre, University of Waikato, Hamilton, 2009) at 17.

292 G C Hay, P A Whigham, K Kypri and J D Langley "Neighbourhood deprivation and access to alcohol outlets: A national study" (2009) 15 Health and Place 1086.

293 Ibid, at 1088.

deprivation and high population density.[294] From a policy perspective it should be of concern that areas that may be more susceptible to increased levels of alcohol consumption on account of high outlet density are the same communities where people are likely to have the lowest levels of disposable income.

6.17 A further factor to consider is that the high concentration of liquor outlets in particular areas of New Zealand can make the barriers to purchase very low. Public submissions to the Commission have stated that having so many outlets concentrated in any given area can facilitate impulsive alcohol purchases. Certainly high outlet density makes the convenience factor high because trading hours are often long and purchasing alcohol may not require any transport or planning that might otherwise act as a deterrent to the purchase. In addition, some outlets conduct their business in such a way that impulsive alcohol purchases are encouraged. For example, some off-licence outlets sell single cans of beer or RTDs rather than the traditional "packaged" bottles or cans. This allows small but frequent alcohol purchases.

OUTLET DENSITY AND ALCOHOL-RELATED HARMS

6.18 A second issue identified by researchers in terms of outlet clustering is a higher incidence of crime and anti-social behaviours within the surrounding area. A group of internationally renowned alcohol researchers have concluded that "there is a substantial body of evidence linking gradual changes in outlet density to alcohol-related problems, particularly violence".[295]

6.19 As with studies on the link between outlet clustering and neighbourhood consumption, studies in this area are by no means singularly conclusive. Even those studies that do show significant correlations are usually subject to various methodological limitations. Nevertheless, the theme that has emerged from this collection of studies has become increasingly clear: the higher the density of outlets, the greater the likelihood of alcohol-related problems.

6.20 A recent *Lancet* article reviewing policies designed to reduce alcohol-related harms noted that:[296]

> …an increased density of alcohol outlets is associated with increased amounts of alcohol consumption among young people, with increased numbers of assault, and with other harms such as homicide, child abuse and neglect, self-inflicted injury, and with less consistent evidence, road traffic accidents.

6.21 The major New Zealand study by Connor and others referred to earlier asked respondents to report the extent of alcohol-related harms associated with their own drinking. The study found statistically significant associations between outlet density and alcohol-related harms held for all four outlet types examined (off-licences, bars and pubs, clubs and restaurants).[297] Of these outlet types,

294 M P Cameron and others *The Impact of Liquor Outlets in Manukau City – A report to the Alcohol Advisory Council of New Zealand* (Impact of Liquor Outlets Research Summary Report, Population Studies Centre, University of Waikato, Hamilton, 2010) at 17.

295 See T Babor and others *Alcohol: No Ordinary Commodity (OUP, New York, 2010)* at 131.

296 P Anderson, D Chisholm and D C Fuhr "Effectiveness and Cost-effectiveness of Policies and Programmes to Reduce the Harm Caused by Alcohol" (2009) 373 Lancet 2234, at 2238.

297 J Connor, K Kypri and M Bell "Alcohol outlet density and alcohol-related harm" *Proceedings of the Australasian Epidemiological Association ASM, Dunedin, August 31-September 1, 2009*, in The Australasian Epidemiologist 2009.

the greatest effect on harm scores was the density of clubs, followed by off-licences. Controlling for demographic variables slightly weakened the association with off-licences, but not so for clubs.

6.22 Several studies have found associations between outlet density and assaults and other physical violence using population samples in Norway,[298] California,[299] New Jersey,[300] Victoria,[301] and Sydney and rural New South Wales,[302] amongst other areas.

6.23 A 2003 Californian study found increased self-reported rates of driving after drinking, particularly amongst young people, in high outlet density areas.[303] Friesthler and others reported that child abuse and neglect in California were positively correlated with the density of licensed premises.[304] A longitudinal study following the civil unrest in Los Angeles in 1992 reported a significant association between changes in rates of gonorrhoea and outlet density.[305]

6.24 The New Zealand research into outlet density around university campuses discussed earlier also found associations between density and a variety of alcohol-related harms. The authors concluded that:[306]

> In a national university student population of 333,000, in a given 4-week period, each additional off-licence alcohol outlet within 1km of respondents' residences would therefore be associated with an estimated 5,570 more alcohol-related problems among drinkers (e.g. blackouts or episodes of physical aggression) and 10,130 additional second-hand effects (e.g. being insulted or humiliated or having property damaged).

6.25 The Population Studies Centre's 2009/10 research into outlet density in Manukau City has provided evidence that higher liquor outlet density of both on- and off-licences is associated with higher numbers of total police events. In particular, off-licence density is associated with higher levels of anti-social behaviours, drug and alcohol offences, family violence, property abuse, property damage, traffic offences and motor vehicle accidents. On-licence density is associated with higher levels of dishonesty offences and property damage. The study indicated that off-licence density has a greater marginal effect on total

298 T Norstrom "Outlet Density and Criminal Violence in Norway: 1960–1995" (2000) 61 Journal of Studies on Alcohol 907.

299 R Lipton and P Gruenewald "The Spatial Dynamics of Violence and Alcohol Outlets" (2002) 63 Journal of Studies on Alcohol 187.

300 D Gorman, P Speer, P Gruenewald and E Labouvie "Spatial Dynamics of Alcohol Availability, Neighbourhood Structure and Violent Crime" (2001) 62 Journal of Studies on Alcohol 628.

301 M Livingston "Alcohol outlet density and assault: A spatial analysis" (2007) 103 Addiction 619.

302 R Stevenson, B Lind, and D Weatherburn "The Relationship Between Alcohol Sales and Assault in New South Wales, Australia" (1999) 94 Addiction 397.

303 A J Treno, J Grube and S Martin "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.

304 B Freisthler, L Midanik and P Gruenewald "Alcohol Outlets and Child Physical Abuse and Neglect: Applying Routine Activities Theory to the Study of Child Maltreatment" (2004) 65 Journal of Studies on Alcohol 586.

305 D A Cohen and others "Alcohol Outlets, Gonorrhea, and the Los Angeles Civil Unrest: A Longitudinal Analysis" (2006) 62 Social Science and Medicine 3062.

306 K Kypri, M L Bell, G C Hay and J Baxter "Alcohol outlet density and university student drinking: A national study" (2008) 103 Addiction 1131 at 1135.

police events than on-licence density, as an increase in off-licence density by one (per 10,000 population) in a census area unit is associated with 59 additional police events (per 10,000 population) per year while one additional on-licence is associated with 42 extra police events.[307]

6.26 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 harm. For example, Roman and others found in their study of the District of Columbia that density of on-licence outlets predicted aggravated assaults, but the same was not true for off-licences.[308] But concentration of both types of outlet predicted high levels of disorderly conduct.

6.27 A study conducted by the Australian National Drug Research Institute found that outlet density in Western Australia was strongly associated with levels of assault and drink-driving offences.[309] Again, the type of premises was relevant to the findings, with hotels, taverns and liquor stores proving to be strong predictors of alcohol-related harms, but less so for club licences, restaurants and nightclubs.

6.28 Michael Livingston from the Turning Point research centre in Victoria, Australia used data between 1996 and 2005 to provide a compelling picture of the effect of increasing outlet density.[310] His longitudinal study of the metropolitan areas of Melbourne revealed that as the density of outlets increased so too did the rates of physical violence. Livingston also found that types of outlets had different effects for different areas within Melbourne. The association between density and violence was stronger for off-licence outlets in suburban areas, but stronger for hotels, nightclubs, bars and restaurants in inner-city areas.

6.29 To be clear, these studies do not conclude that outlet density "causes" alcohol-related harms. Because of the number of variables involved, any such causative links would be difficult to establish. However, many of the studies do show associations between higher outlet density on the one hand, and crime and anti-social behaviours on the other, strongly suggesting that the former is likely to be a contributing factor for the latter.

6.30 The association between outlet density and alcohol-related offending is not something that exists simply in overseas research literature. One of the clearest New Zealand examples comes from Queenstown. The relatively small central business district area in the town has a high concentration of on-licence premises.

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307 M P Cameron and others *The Impact of Liquor Outlets in Manukau City – A report to the Alcohol Advisory Council of New Zealand* (Impact of Liquor Outlets Research Summary Report, Population Studies Centre, University of Waikato, Hamilton, 2010) at 17. "Total police events" are based on all police attendances recorded in the New Zealand Police database from 1 July 2008 to 30 June 2009. A police attendance may not necessarily equate to an offence. A "census area unit" is a geographical area for which much statistical data collected by New Zealand agencies is available. In an urban area, census area units correspond roughly to suburbs.

308 C Roman, S Reid, A Bhati and B Tereshchenko "Alcohol Outlets as Attractors of Violence and Disorder: A Closer Look at the Neighbourhood Environment" (A Report for the National Institute of Justice, Washington DC, 2008) I–VIII.

309 T Chikritzhs, P Catalano, R Pascal and N Henrickson "Predicting Alcohol-related Harms From Licensed Density: A Feasibility Study" (National Drug Law Enforcement Research Fund, Hobart, 2007) X–XV.

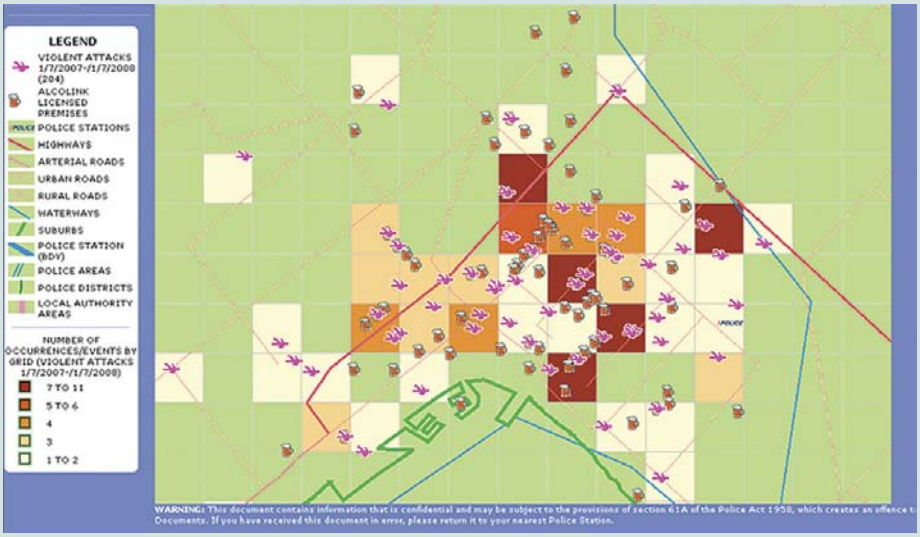
310 M Livingston "A Longitudinal Analysis of Alcohol Outlet Density and Assault" (2008) 32 Alcoholism: Clinical and Experimental Research 1074.

As at 2009, there were 93 on-licence premises in the central business district, 41 of which were pubs, bars or clubs.[311] The central business district is undoubtedly a vibrant and energetic part of the town, which attracts many people, tourists included.

6.31 Nevertheless, Police data suggest that the Queenstown central business district is characterised by high levels of physical assaults. Figure 6.1 shows the recorded "violent attacks" within the central business district over a one-year period mapped against the location of licensed premises in the same area. The chart shows that most attacks occurred close to licensed premises. Generally speaking, the more tightly clustered the outlets, the more attacks that occurred in the immediate vicinity.

6.32 Certainly a time-series analysis over the course of several years would give a more precise picture of the relationship between outlet density in Queenstown and levels of physical violence. This said, on the basis of this cross-section sample alone, the association between the two is strong. Indeed, the Queenstown Lakes District Council has worked hard to implement a variety of policies to mitigate alcohol-related harms in the central business district area.

FIGURE 6:1
VIOLENT ATTACKS IN QUEENSTOWN CENTRAL BUSINESS DISTRICT AREA 2007–2008



Source: New Zealand Police, Alco-link data.

6.33 Police data recently collected in Tauranga show a similar pattern of violent occurrences close to licensed premises and to the routes of patrons after they have left licensed premises.[312]

311 Clive Geddes "The Challenges of Planning for Alcohol in a Community: Party in Paradise" (Presentation to the ALAC Working Together Conference, Wellington, 15 May 2009).

312 New Zealand Police *Intelligence Report: Tauranga CBD Alcohol Analysis* (22 February 2010).

6.34 There may be some validity to the concern that by reducing the density of outlets, and thereby "shifting" outlets to another area, alcohol-related problems will be displaced elsewhere. Yet it is equally the case that many of the harms that are associated with outlet density can be an indirect by-product of outlets being physically located close together.[313] In terms of a clustering of on-licence premises, for example, having lots of pubs and bars together can mean large numbers of people – many of whom are under the influence of alcohol – coming together in one area. Fights can break out between intoxicated patrons moving between different licensed premises. Queues from neighbouring bars can run into each other resulting in aggression and fighting. Patrons shift from bar to bar in search of price promotions used to attract customers. As the number of outlets in an area increases, the risk that these types of harms will occur also increases. Thus, reducing outlet density is likely to reduce rather than merely displace much of the offending and anti-social behaviours that are associated with outlet clustering.

OUTLET DENSITY AND COMMUNITY DEGRADATION

6.35 A third consequence of high outlet density is that it may contribute to a variety of "secondary harms" that impact negatively on a local community.

6.36 Liquor outlets can attract criminal and anti-social behaviours over and above that which is directly related to the consumption of alcohol. For example, off-licence liquor stores can attract graffiti and other forms of vandalism and property damage.[314] The pressure to compete with other liquor retailers in an area can also encourage large, obtrusive alcohol price advertisements and product branding on shop fronts, adjoining walls and sandwich boards. Both of these can significantly lower the aesthetic value of an area, which in turn has flow-on effects for the community.

6.37 As with price discounting, when several liquor outlets are located close to one another some outlets will stay open late into the night as a means of gaining a competitive advantage. This can make these stores especially vulnerable to robberies, as there may be few people around and some off-licence stores have poor lighting and little in the way of security measures in place (for example, CCTV cameras).

6.38 Outlet clustering may also contribute to a reduction in the quality of public amenities. It is not uncommon for people to consume alcohol that has been purchased from an off-licence in public areas close to the point of sale. This can impact negatively on a community's use of its public spaces.[315] For example, a community park may become unusable because it is riddled with broken glass bottles. People may avoid using particular bus stops because they are known to be drinking hangouts. Again, as the number of outlets increases, the negative impact on public amenities is likely to increase.

313 See generally K Graham and R Homel *Raising the Bar: Preventing Aggression In and Around Bars, Pubs and Clubs* (Willan Publishing, Devon, 2008) at 177–180.

314 See for instance N Donnelly and others "Liquor Outlet Concentrations and Alcohol-related Neighbourhood Problems" (2006) 8 Alcohol Studies Bulletin 1, at 7. See also William Mace "Fear on the Streets" *Manukau Courier* (Auckland, 31 July 2008) at 1.

315 See, for example, Simon Collins "Broken Bottles Society's Hangover" *New Zealand Herald* (Auckland, 5 January 2009) at A2.

6.39 Thus the occurrence and accumulation of secondary harms associated with high outlet density can contribute to the degradation of community wellbeing. Certainly it is a point that has been made strongly and repeatedly in submissions to the Law Commission. There is a sense that in some areas, especially lower socio-economic neighbourhoods where outlet density is more common, outlet clustering, cheap liquor products, and obstreperous alcohol brand and price advertising have come to dominate the environment in which the people of the community live, and that the creation of these "alcogenic" living environments has significantly impacted on the amenity values and welfare of those communities.

IMPLICATIONS OF OUTLET DENSITY

6.40 The conclusion that can be drawn from the above discussion is that the risks posed by outlet density will vary from neighbourhood to neighbourhood. For some areas, a concentration of outlets may be associated with increased consumption, particularly amongst younger people, higher levels of harmful drinking as evidenced by more alcohol-related crime or anti-social behaviours, or a variety of secondary harms that can undermine community wellbeing. Equally, high outlet density in other areas may have little or no effect in terms of these three outcomes. While the research is certainly not unanimous, the body of studies indicating that outlet density can be problematic for some communities is substantial.

6.41 It is the strong view of the Law Commission that New Zealand's liquor laws must provide for two things. First, communities must be able to voice their views about outlet density and have those views taken into account when licensing decisions are made. Second, the licensing decision-maker must be able to decline a liquor licence on the basis, amongst other grounds, of the risks posed to a community by outlet density in terms of increased local levels of alcohol consumption, alcohol-related crime or anti-social behaviours, or community degradation.

6.42 To be clear, the Law Commission is not suggesting that there must be fewer liquor outlets than there are currently, although this may be a consequence of any new licensing regime. Specific numerical restrictions on the numbers of liquor outlets are both artificial and unwise. A "needs"-based test is equally problematic. The Commission is certainly not advocating a return to an era of the 1970s "booze barns" where one very large pub catered for an equally large suburban area. As many people will recall, booze barns brought their own unique set of problems. What we are saying is that the licensing law must be able to address concerns around the deleterious effects of outlet density.

6.43 Moreover, the system must be sufficiently flexible to take into account the nuanced difficulties that are associated with outlet density. Take Manukau as an example. Some of the strongest submissions concerning problems associated with outlet density have come from people and organisations in this area. Several other submissions have suggested that in fact outlet density in Manukau is considerably lower than in other cities, such as Auckland, Wellington and Christchurch.[316] These figures have been generated by calculating density on the basis of population alone, rather than on the geographic size

316 See, for example, submission of the Retailers' Association (submission dated 13 July 2009).

of the area in which the outlets are located. As explained earlier, this method of calculating density is less helpful because many of the negative effects of outlet density arise from their physical proximity to each other.[317]

6.44 Yet, even if density in Manukau were to be measured on a population basis, particular aspects of high outlet density may still be considered problematic. As the Retailers' Association has noted,[318] Manukau has a noticeably higher proportion of off-licence premises compared to Auckland, Wellington, and Christchurch. Given that off-licence premises were most strongly associated with binge drinking in the Connor and others study,[319] it may be considered desirable to reduce the number of off-licence premises in particular in order to reduce the extent of alcohol-related harms in the area. The law should be capable of allowing this to happen; as the law currently stands, it cannot.

6.45 We readily acknowledge that this view constitutes a significant departure from the Laking Report's approach to this important issue. As discussed earlier, the Laking Committee considered there to be no relationship between outlet numbers and per capita levels of alcohol consumption. Our position is, first, that it is difficult to know exactly what influence outlet numbers have on per capita – that is, nationwide – consumption, but that high outlet density may result in high levels of neighbourhood alcohol consumption, particularly for young people. Second, a growing body of research indicates that outlet density is associated with high levels of harmful drinking, as well as with a variety of secondary harms that pose risks to community wellbeing. Much of the research examining the impacts of outlet density was not available when the Laking Committee prepared its report in the mid 1980s.

6.46 This said, both national and international research and the experiences of several New Zealand communities with liquor outlets point to the current law in this area as being inadequate. The "hands-off" approach in the current law whereby a licence is virtually guaranteed provided an applicant is deemed to be suitable and Resource Management Act 1991 requirements are satisfied is no longer appropriate. In short, the licensing system must be sufficiently flexible to empower a decision-maker to decline a licence application when the risks posed by density are considered to be too high for a particular area.

6.47 The following chapters look at the adequacy of the current licensing laws to respond to the different circumstances and to mitigate harms in the context of these conclusions, and provide recommendations for how the licensing system can be improved.

317 See footnote 3.

318 Submission of the Retailers' Association (submission dated 13 July 2009).

319 J Connor, K Kypri and M Bell "Alcohol outlet density and alcohol-related harm" *Proceedings of the Australasian Epidemiological Association ASM, Dunedin, August 31-September 1, 2009*, in The Australasian Epidemiologist 2009;16:25.

Chapter 7
Licence criteria

IN THIS CHAPTER, WE:

- Outline the current law relating to the criteria for securing a licence to sell alcohol.
- Examine the shortcomings of the present legislative provisions.
- Discuss our recommendations for wider criteria to be met by licence applicants (and corresponding grounds on which to turn down a licence application).

SALE OF LIQUOR ACT 1989

7.1 The criteria for securing a licence also serve as the grounds on which a licence application may be declined. They are therefore the centrepiece of the licensing system. Currently, every application for an on-, off- 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.

7.2 In determining an application for an on-licence, the licensing decision-maker is obliged by the statute to have regard to the following criteria:[320]

(a) The suitability of the applicant.

(b) The days on which and the hours during which the applicant proposes to sell liquor.

(c) The areas of the premises or conveyance, if any, that the applicant proposes should be designated as restricted areas or supervised areas.

(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 relating to:

- the sale and supply of non-alcoholic refreshments and food;
- the sale and supply of low-alcohol beverages; and
- the provision of assistance with or information about alternative forms of transport from the licensed premises.

320 Sale of Liquor Act 1989, s 13.

(f) Whether the applicant is engaged, or proposes to engage, in:
- the sale and supply of any other goods besides liquor or food; or
- the provision of 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 matters dealt with in any report by the police, a licensing inspector or a medical officer of health pursuant to section 11.

7.3 The criteria for off-licences are similar to those in (a) to (d) and (f) to (g) above.[321]

7.4 The criteria for club licences are similar to those in (a) to (e) and (g) above, and also include the following:[322]

- 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.

7.5 Before granting a club licence, the licensing decision-maker must be satisfied the consumption of liquor is not the predominant purpose for which the premises are or will be used.[323]

7.6 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.[324]

7.7 Objections to an application may only be made by persons with a "greater interest in the application than the public generally",[325] on the basis of the licence criteria listed above.

7.8 The decision-maker must not take into account any prejudicial effect that the granting of the licence may have on the business conducted pursuant to any other licence.[326]

Problems with the current regime

7.9 The Liquor Licensing Authority (LLA), which is the specialist tribunal that deals with liquor matters, has itself stated:[327]

> If an applicant is suitable and had 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.

321 Sale of Liquor Act 1989, s 35.

322 Ibid, s 59.

323 Ibid, s 59(2).

324 Ibid, s 75.

325 Ibid, ss 10, 32, 56 and 77.

326 Ibid, ss 13(2), 35(2) and 59(3).

327 *The 515 Club Inc* (LLA, PH 835/03, 31 October 2003) at [18].

Lack of community input

7.10 There is little scope under the present Act for communities to have a say in licensing decisions.

7.11 A common theme in the consultation was the disempowerment many people feel because the existing legal framework effectively discounts the views of the local community when making decisions about where and how alcohol is sold. Several people told us the category of people who can object to a licence application needs to be widened, but the real concern of many was that even though they lived in the neighbourhood there was no basis on which they could object to a licence application other than in relation to the suitability of the applicant. That the community had alcohol-related problems and locals did not want any more liquor outlets in the area was no basis for an objection. Community groups are increasingly expressing their concerns about alcohol and its impacts,[328] as our consultation demonstrates. They want more say in decisions about where and how alcohol is sold, supplied and consumed in their neighbourhoods.

7.12 Some territorial authorities have local alcohol policies in place. These are not presently required or specifically recognised by the Act, and are therefore limited in their scope. Local alcohol policies commonly contain:[329]

- 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 District Licensing Agency's (DLA's) approach to enforcement of the Act.

7.13 The licensing decision-makers are not bound by local alcohol policies, but the LLA has given weight to them in several decisions.[330] The LLA has actually encouraged territorial authorities to develop such policies,[331] and noted that the weight it attaches to a local alcohol policy may be affected by the existence or adequacy of the public consultation that preceded it.[332] The status of local alcohol policies was clarified recently by the Court of Appeal in *My Noodle Ltd v Queenstown Lakes District Council.*[333] The court upheld the High Court decision that the LLA 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.[334]

7.14 If a local authority does not have a local alcohol policy, there is even less scope under the present Act for communities to have a say in licensing decisions.

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328 See for example *B & D Co 2008 Ltd* (LLA, PH 0001/2009, 6 January 2009).

329 Controller and Auditor-General *Liquor Licensing by Territorial Authorities: Performance Audit Report* (November 2007) at 18.

330 See, for example, *Y P Parker* (LLA, PH 1131/97, 14 July 1997); *Re My Noodle Ltd and Others* (LLA, PH 008/2010, 13 January 2010).

331 *Jones; Evolution Foods Ltd* (LLA, PH 224/01, 13 June 2001).

332 *Samson Pehi* (LLA, PH 1460/95, 10 July 1995).

333 *My Noodle Ltd v Queenstown Lakes District Council* [2009] NZCA 564.

334 *My Noodle Ltd v Queenstown Lakes District Council* (2008) NZAR 481 (HC), French J.

7.15 As there is no statutory definition of "suitability" of the licence applicant, and this is the only licence criterion that does not go towards the particulars of how the premises will operate, "suitability" has developed into the ground on which the widest considerations can come into a decision on a licence application.

7.16 It appears that in some decisions of the LLA in the last few years, the suitability of the applicant has been used as the ground through which wider concerns have been addressed. For instance, in *B & D Co 2008 Ltd*[335] the LLA's decision to decline an off-licence was ostensibly based on the fact the applicant did not demonstrate suitability because she did not appear at the hearing. However, the community's concern about the risk of harm from the licence appeared to influence the suitability finding.

Unclear status of the object of the Act

7.17 In the past, there have been conflicting judicial decisions on the role of section 4, which contains the object of the Sale of Liquor Act 1989, in relation to the legislative provisions dealing with the criteria for granting and renewing licences. In *Re Goldcoast Supermarket Ltd*, Wild J held that the LLA had no power to refuse the granting 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.[336] In his view, the specific licence criteria were the only matters that could be taken into account:[337]

> 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.

7.18 In a subsequent decision, Fisher J took a different approach, albeit in relation to the section setting out the licence renewal criteria, rather than the licence application criteria.[338] 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.

7.19 Fisher J held that:[339]

> 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.

7.20 Fisher J concluded that the criteria for a renewal were not to be interpreted in any narrow or exhaustive sense.[340] In the view of his Honour, the LLA 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

335 *B & D Co 2008 Ltd* (LLA, PH 0001/2009, 6 January 2009).

336 *Re Goldcoast Supermarket Ltd* [2001] 2 NZLR 769 (HC), Wild J.

337 Ibid, at [35].

338 *Walker v Police* AP 87/01, 31 May 2005.

339 Ibid, at [26].

340 Ibid, at[29].

the terms on which they should be granted. This included the statutory object in section 4. This did not mean the object takes priority over the other considerations expressly listed in the section.

7.21 The approach taken by the Court of Appeal in *My Noodle* favours an interpretation that includes consideration of the object of the Act in addition to the particular statutory criteria for the granting or renewal of a licence. The Court of Appeal held:[341]

> In our view, the Authority was entitled to give precedence to the overriding statutory object in s 4. The specific statutory criteria must be interpreted having regard to that purpose. …
>
> [T]he Authority is not required to be sure that particular conditions will reduce liquor abuse. It is entitled to apply the equivalent of the precautionary principle in environmental law.

Inability to take into account density issues

7.22 Unlike in the current legislation, the control of the number of licensed premises was explicitly provided for in the Sale of Liquor Act 1962. Under this Act, 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".[342] The practical effect of these measures was a strong tendency to protect existing interests.

7.23 The 1989 Act removed this provision, thus removing the protectionist element, but did not provide an alternative means by which to address issues arising from the number of outlets already in a particular area when considering new licence applications. Planning laws have proved ineffective in plugging this gap.

7.24 Under the Town and Country Planning Act 1977 (the forerunner to the Resource Management Act 1991) it was not permissible for local authorities to seek to limit the number of premises that were the subject of the separate liquor licensing regime (for example, liquor stores and petrol stations) through the medium of the district plan. Rather, the vehicle for this was the Sale of Liquor Act 1962.

7.25 The Resource Management Act 1991 was not therefore drafted in an environment in which planning controls were available to operate, in effect, as a licensing tool.

7.26 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 1991 is an environmental statute. It does not set up licensing regimes and does not serve as one.[343]

341 *My Noodle Ltd v Queenstown Lakes District Council* [2009] NZCA 564 at [72], [74].

342 Sale of Liquor Act 1962, s 75(4).

343 Except in so far as water rights are concerned, where a "first in first served" rule applies.

7.27 Limits on the location of licensed premises can be enforced through the Resource Management Act 1991. The difficulty with using this statute for this purpose, however, is that the environmental focus of the Resource Management Act means it is unlikely to be the best tool for the task. Control of the location of licensed premises for purposes other than environmental ones would be much better dealt with in liquor licensing legislation. The apparatus of the Resource Management Act is also not well suited to implementing restrictions on the number or size of licensed premises as an availability control. Those with particular expertise in alcohol-related harm and licensing matters are much better equipped to deal with such issues.

7.28 The focus of the Sale of Liquor Act 1989 is the imposition of controls on the sale of liquor and the fixing and maintenance of standards in that regard. Given that, it is preferable the necessary powers relating to restrictions on the density of licensed premises and the minimising of associated harms be conferred by and through an Act dealing with the sale of liquor, rather than an environmentally focused statute such as the Resource Management Act 1991.

7.29 In its annual report for the 12 months ended 30 June 1996, the LLA noted that the Sale of Liquor Act 1989 allows:[344]

- 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.

7.30 It summed up the difficulties with the current regime as follows:[345]

> 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.]

344 Liquor Licensing Authority "Report of the Liquor Licensing Authority for the 12 months ended 30 June 1996" (presented to the House of Representatives pursuant to s 98(2) of the Sale of Liquor Act 1989, Wellington, 1996).

345 Ibid, at 3.

ISSUES PAPER PROPOSALS

7.31 In our Issues Paper, *Alcohol in Our Lives*,[346] we stated that 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.[347] This is because it would be too inflexible and would create an artificial value in a licence that would be unnecessarily restrictive. We did, however, signal that the Commission favours allowing the licensing decision-makers to refuse a licence on wider grounds than are 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.

7.32 We received 897 submissions commenting on licence criteria and objections. Of these, 47% commented that they supported changing the law to allow a refusal of licences on wider grounds. The submissions also showed there was strong support across stakeholders to allow licensing decision-makers to refuse licences on wider grounds, particularly taking into account the social and health impacts of the licence.

7.33 One issue that needs to be borne in mind is the predictability of decisions. We have had complaints in the public hearings that even under the existing law it is hard to predict what might happen and the risk is that under the approach recommended below it would be even more difficult to advise a potential licensee regarding whether they will succeed in an application or not. There is potential for licensing decisions to become more complex, but this is an inevitable trade-off for increased grounds on which to decline a licence.

THE WAY FORWARD

Planning approval

7.34 We recommend that Resource Management Act and Building Code approvals for proposed licensed premises continue to be required as a prerequisite to the consideration of a licence application. It is important proposed licensed premises comply with the relevant district plan in terms of permitted land use, just as any other business is required to do. Additional requirements should be provided for under the new alcohol legislation.

Suitable person

7.35 If the grounds are widened on which an application for a licence may be declined, the need to use the suitability ground for a wider purpose than that for which it was intended is removed.

346 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) [*Alcohol in Our Lives*].

347 Ibid, at 221.

7.36 In our view, it is necessary and reasonable to maintain a licence criterion that addresses the personal characteristics of the applicant and allows an application to be declined where it is envisaged that harm could arise as a result of the personal characteristics of a licence applicant.

7.37 This is consistent with the approach used in the Australian states. Victoria, New South Wales and Queensland all address suitability of the applicant either as a ground on which a licence application may be refused or as a factor about which the decision-maker must be satisfied before the licence can be granted.

- The Victorian Liquor Control Reform Act 1999 uses the phrase "suitable person".
- The New South Wales Liquor Act 2007 uses the phrase "fit and proper person".
- The Queensland Liquor Act 1992 takes a slightly different approach, in that it lists the factors to which the decision-maker is to have regard in deciding if someone is a "fit and proper person". Regard must be had to:[348]

  (a) whether the applicant demonstrates knowledge and understanding of the obligations of a licensee or permittee of the relevant kind under this Act; and

  (b) whether the applicant is a person of good repute who does not have a history of behaviour that would render the applicant unsuitable to hold the licence or permit applied for; and

  (c) whether the applicant demonstrates a responsible attitude to the management and discharge of the applicant's financial obligations.

7.38 The Queensland approach makes it clear which considerations come into the analysis regarding an applicant's suitability for the position. However, simply using a description such as "suitable" does allow the decision-maker the flexibility to consider any matters regarding the applicant that may be relevant to the decision. We recommend retaining a requirement for a suitable person, without trying to define all that is encompassed by this term. This would enable the body of case law built up by the LLA to continue to be relevant under new legislation.

Systems, staff and training

7.39 In our view, the statute should specifically require an examination of whether the applicant has the appropriate systems, staff and training to comply with the law and manage any risk before a licence is granted.

Local alcohol policies

7.40 Local alcohol policies are an important means of facilitating community input into licensing decisions. As noted by the Court of Appeal in *My Noodle Ltd v Queenstown Lakes District Council*:[349]

> Policies promote consistency of decision making, they provide guidance to applicants and allow for wider community input and consideration at a broad[er] policy level than is possible in the context of individual licensing applications.

348 Liquor Act 1992 (Qld), s 107.

349 *My Noodle Ltd v Queenstown Lakes District Council* [2009] NZCA 564.

7.41 We recommend each territorial authority be formally required to adopt a local alcohol policy. This proposal was supported by both the Police and Alcohol Advisory Council of New Zealand (ALAC) submissions to the Law Commission. Local authorities were also generally supportive of this recommendation.

7.42 One of the issues we have examined is whether local alcohol policies should be mandatory or optional. We are convinced they should be mandatory for all local authorities. The Police submission stated there is no district in New Zealand that is free from alcohol-related harm. Such harm is so significant nationwide we consider it reasonable to require each district to turn its mind to how alcohol should be dealt with in its area. We also share ALAC's concern that if local alcohol policies continue to be voluntary, some of the local authorities that would most benefit from a policy (that is, local authorities in areas of high social deprivation, with a high number of priority populations, and/or with high numbers of on- and off-licences) may not develop one. ALAC's analysis of information on territorial authorities and 2006 statistical data on sub-populations and low incomes shows of the 31 councils that do not currently have an alcohol policy in place:

- over half (18 councils) have a high proportion of at least one of ALAC's priority populations (that is Māori, Pacific peoples or young people) resident in their area, with seven of the 18 councils having high proportions of all three priority populations;[350]
- about one-third (10 councils) are in the top 20 of all territorial authorities for having the highest percentage of on- or off-licences per head of population, with four of the 10 councils also having a high proportion of at least one priority population resident in their area;[351]
- almost 40% (12 councils) are in the top 20 of all territorial authorities with the highest proportion of populations with low incomes resident in their area, with three of the 12 councils having the highest proportions overall.[352]

7.43 Policies need not be complex documents, and Local Government New Zealand and ALAC are likely to be able to provide assistance in their development. We think that a requirement for all councils to have a local alcohol policy would not impose an unreasonable burden on them.

Content

7.44 Local alcohol policies should be given a clear legal status in the governing legislation, and be required to be consistent with the object of the new alcohol legislation. Policies should be required to include:

- a stocktake of the number, type and hours of licensed premises in the district;
- the demographic and socio-economic make-up of the local population, and overall health indicators;
- a broad assessment of the range and level of alcohol-related problems occurring within the district;
- permitted areas for licensed premises;

350 Submission of the Alcohol Advisory Council of New Zealand (submission dated 23 October 2009) at 42.

351 Ibid, at 43.

352 Ibid.

- areas, if any, subject to liquor ban bylaws; and
- a local process for managing intoxicated people in public places through collaboration of police, ambulance and health services.[353]

7.45 The statute should provide that local alcohol policies may also include:

- a strategy for reducing alcohol-related harm in the district;
- local restrictions on the national maximum hours prescribed in the statute for the opening and closing of licensed premises;[354] and/or
- areas in the district that may reasonably be identified as having reached or being close to reaching saturation levels in terms of the cumulative impact of licensed premises (there being a rebuttable presumption that further licences will not be granted in those areas).

7.46 The information on the demographic and social make-up of local populations is already available via Statistics New Zealand, and the medical officers of health could advise on any particular health issues prevalent in the community and known levels of alcohol-related harm in the relevant area.

7.47 As alcohol policies address social rather than environmental issues, permitted areas for certain types of premises in local alcohol policies may be more restrictive than those provided for under district plans.

7.48 In the United Kingdom, local authorities may adopt a special policy on cumulative impact to recognise that in some areas, where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may arise. The effect of adopting such a special policy is to create a rebuttable presumption that applications for new licenses in an identified area that are likely to add to the existing cumulative impact will normally be refused, unless the applicant can demonstrate there will be no negative cumulative impact on one or more of the licensing objectives.[355] Before a special policy is made, there must be evidence that crime and disorder or nuisance are happening and are caused by customers of licensed premises, or that the risk of cumulative impact is imminent. Special policies in the United Kingdom are usually intended to address the impact of a concentration of licensed premises selling alcohol for consumption on the premises. We envisage that saturation areas identified in local alcohol policies in New Zealand could also include areas where a high concentration of off-licences is causing problems in a community. We do not support local alcohol policies being able to include a quota for licensed premises, as this would not take into account the individual characteristics and impact of the relevant premises.

Status

7.49 We consider that local alcohol policies should be required to be taken into account by the licensing decision-makers before any licence decision is made. A policy should not be absolute, however. Licensing decision-makers should

353 See the discussion on the need for a local process for managing intoxicated people in chapter 24, which deals with treatment issues.

354 See the discussion on hours in chapter 9.

355 Department for Culture, Media and Sport (UK) "Guidance issued under s 182 of the Licensing Act 2003", 28 January 2010, at 105 < www.culture.gov.uk > .

consider applications on a case-by-case basis and decide whether the particular circumstances of a case justify a departure from the policy. In the ordinary course of things, we would expect that decisions would be consistent with the relevant policy.

7.50 In chapter 10, we recommend a new tribunal with extended powers to replace the LLA, called the Alcohol Regulatory Authority (the Authority). If the Authority retained the ability to make the final decision on a licence (subject to rights of appeal to the High Court), this would ensure a degree of flexibility to allow legitimate exceptions to a local alcohol policy in appropriate cases.

Procedure

7.51 In preparing the proposed policy, councils should consult with Police; licensing inspectors; medical officers of health; local iwi and hapū, as Māori suffer a disproportionate amount of alcohol-related harm; and any other persons they consider appropriate. Public consultation on the proposed policy should be undertaken pursuant to the special consultative procedure under section 83 of the Local Government Act 2002. In our Issues Paper we noted this is a resource-intensive process and the costs associated with it must be balanced against the need to ensure sufficient consultation. Having considered the matter further, we are of the view that the special consultative procedure is the most appropriate method of consultation for a matter of the significance of alcohol. This is consistent with the requirements for class 4 gambling ("pokie" machine) venue policies and it is difficult to see why alcohol should be treated differently when it is an even greater social problem. Most local authority submissions that commented on local policy consultation were supportive of the use of the special consultative procedure. To avoid unnecessary costs, the proposed alcohol policy could be consulted on in tandem with the triennial consultation on long-term council community plans undertaken by local authorities. The policies should be updated at least every six years, and could be consulted on in tandem with every second long-term community plan. The statute should also specifically provide for the possibility of two or more territorial authorities combining to develop a proposed policy for their combined districts. Those in the Wairarapa may wish to do this, for example. It is important, however, that the size of the areas covered by the policy should not be so large that the policy loses its effectiveness as a tool for reflecting community views.

7.52 Once a policy has been consulted on and agreed by the local authority, the statute should allow those who submitted on the proposed policy to appeal aspects of it to the Authority before it is formally adopted. This would be similar to the manner in which district plans are dealt with by the Environment Court pursuant to clause 14 of the First Schedule of the Resource Management Act 1991. This would ensure a degree of national consistency and quality control in local alcohol policies.

7.53 In addition, the Authority could provide guidelines and expectations that local authorities could look to when developing their local alcohol policies. The Authority could also offer an advisory function by commenting on draft alcohol policies at the request of an individual District Licensing Committee.

7.54 We favour the imposition of additional licence conditions on existing licences that may be inconsistent with a new local alcohol policy and a sinking lid approach to licences, rather than the revocation of existing licences that become inconsistent with some aspect of a new policy.

Object of the Act

7.55 Although the ambiguity concerning the relationship between the object of the Act and the licence criteria has now largely been clarified by the Court of Appeal, we recommend the legislation specifically requires the licensing decision-maker to take the object of the Act into account when determining any 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 were amended to better reflect a harm-minimisation focus in the legislation, as recommended in chapter 5.

Social impact

7.56 We remain of the view that to reduce harms arising from liquor outlets, 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 consideration of the local impacts of liquor licences.

7.57 Social impacts are taken into account in licensing decisions in several Australian states, including New South Wales, Queensland and Western Australia.

7.58 The Law Commission received significant support for the idea of providing stronger legal avenues for communities in order to have their views heard both at the council table where alcohol policies are devised and at the point when individual licensing decisions are made.

7.59 Although we consider there are good arguments to support the introduction of a specific requirement that licence decision-makers take into account the impact of a proposed licence on the wellbeing of the local or broader community, we have been persuaded that such a licence criterion may create too much uncertainty for licence applicants, be difficult to operate in practice, and lead to unreasonable delays and numbers of appeals in the licence decision-making process. Although it was not the intention, many people interpreted this criterion as requiring an applicant to provide a social impact assessment, which has recently been abandoned in New South Wales because of costs and delays. Further, we consider the impact on the community would be a relevant factor in a licensing decision-maker's assessment of whether an applicant met the other recommended criteria, such as the object of the Act, the relevant local alcohol policy, and the affect on the local amenity.

Amenity impact

7.60 Victoria does not have a social impact requirement in its licensing decisions. 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.[356]

7.61 Under the Liquor Control Reform Act 1998, "amenity" is defined as follows:

> The amenity of an area is the quality that the area has of being pleasant and agreeable.

7.62 In the Resource Management Act 1991, "amenity values" is defined as:[357]

> Those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

7.63 Factors that may be taken into account in determining whether the granting, variation or relocation of a licence would detract from, or be detrimental to, the amenity of an area include:

- the presence or absence of parking facilities;
- traffic movement and density;
- noise levels;
- the possibility of nuisance or vandalism;
- the harmony and coherence of the environment; and
- any other prescribed matters.

7.64 We think there is merit in including amenity impact as a separate ground for consideration by a licensing decision-maker on any licence application. We anticipate that consideration of this ground could include a consideration of whether there is a concentration of outlets in the particular area and, if so, the impact of that concentration (cumulative impact), even if the location of the proposed premises is not within any saturation area identified in the relevant local alcohol policy. In this way, density issues could be addressed by way of the local alcohol policy and also by an assessment of the likely amenity impact of granting an individual licence application. A recent planning decision of the Victorian Civil and Administrative Tribunal (VCAT), which is also the appeal body for licensing decisions in Victoria, proposed three key considerations for assessing the cumulative impact of licensed premises:[358]

- the density of licensed premises in an area;
- the mix and type of licensed premises; and
- existing amenity levels.

356 Liquor Control Reform Act 1998 (Vic), s 42.

357 Resource Management Act 1991, s 2.

358 *Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & Ors* (P1995/2008) VCAT [2008].

7.65 The decision detailed recommended guidelines for assessing cumulative impact, which would provide a useful basis for guidelines to be developed by the Alcohol Regulatory Authority.[359]

7.66 The types of matters relevant to cumulative impact may include outlet type, the types of other licensed premises in the area, transport options, the mix of businesses in the area, the size of venues in the area, pedestrian movements, venue design, venue capacity, clientele, venue management, proposed trading hours, and criminal and nuisance activity in the area.

7.67 Decisions of VCAT may provide useful assistance in determining amenity considerations.

General Agreement on Trade in Services considerations

7.68 As a party to the General Agreement on Trade in Services (GATS), New Zealand has agreed to open up the market to overseas service suppliers of distribution services (including wholesale and retail services relating to alcohol). This includes a requirement not to impose limitations on the number of service suppliers, including on the basis of any regional sub-divisions.[360] There is potential for measures to address the density of licensed premises to breach this GATS commitment. However, it can be argued that the recommended licence criteria would not constitute such a breach. Although we have recommended that saturation areas may be included in local alcohol policies, these would not be absolute, and would require an examination of the particular application. Similarly, amenity considerations would not lead to a fixed limit on the number of licensed premises. The United Kingdom and Australia are signatories to similar commitments under the GATS as New Zealand, and their regulatory regimes contain similar provisions to those that we have recommended. Further, Article XIII provides for an exception to the commitments where this is "necessary" to maintain public order or protect human health.[361] In light of the harm detailed in Part 1 of this report, and the evidence in chapter 6 on the link between outlet density and alcohol-related harm, we consider there are good arguments to be made that the recommended licence criteria are necessary to maintain public order and protect human health.

359 We discuss the Alcohol Regulatory Authority further in chapter 10.

360 Marrakesh Agreement Establishing the World Trade Organization (opened for signature 15 April 1994), annex 1B General Agreement on Trade in Services (entered into force 1 January 1995), Article XVI 2(a).

361 This is a high standard to meet, requiring an examination of the strength of the link between the policy and its rationale, whether less trade-restrictive measures are reasonably available to meet the same policy objective, and whether the policy is applied in a manner that is non-discriminatory toward foreigner service-suppliers.

RECOMMENDATIONS

> Continued next page

R4 Every local authority should be required to adopt a local alcohol policy.

R5 In preparing the proposed policy, councils should consult with local iwi and hapū, Police, licensing inspectors, medical officers of health, and any other persons they consider appropriate.

R6 Public consultation on the proposed policy should be undertaken pursuant to the special consultative procedure under section 83 of the Local Government Act 2002.

R7 Policies should be required to include:

- a stocktake of the number, type and hours of licensed premises in the district;
- the demographic and socio-economic make-up of the local population, and overall health indicators;
- a broad assessment of the range and level of alcohol-related problems occurring within the district;
- permitted areas for licensed premises;
- areas, if any, subject to liquor ban bylaws; and
- a local process for managing intoxicated people in public places through collaboration of police, ambulance and health services.

R8 Local alcohol policies may include:

- a strategy for reducing alcohol-related harm in the district;
- local restrictions on the national hours prescribed in the statute for the opening and closing of licensed premises; and/or
- areas in the district that may reasonably be identified as having reached or being close to reaching saturation levels in terms of the cumulative impact of licensed premises (there being a rebuttable presumption that further licences will not be granted in those areas).

R9 Local alcohol policies should be renewed at least every six years, in conjunction with every second long-term council community plan in the relevant area.

R10 Two or more territorial authorities should be able to develop a joint proposed policy for their combined districts.

R11 Once a policy has been consulted on and agreed by the local authority, those who submitted on the policy should be able to appeal aspects of it to the Alcohol Regulatory Authority.

RECOMMENDATIONS

R12 Resource Management Act and Building Code approvals for proposed licensed premises should continue to be required as a prerequisite to the consideration of a licence application.

R13 When considering any licence application, licensing decision-makers should be required to take into account:

- whether the applicant is a suitable person;
- the object of the Act;
- the provisions of the relevant local alcohol policy;
- whether the amenity or good order of the locality would be lessened by the granting of the licence; and
- whether the applicant has the appropriate systems, staff and training to comply with the law and manage the risks.

R14 Where existing licensed premises are inconsistent with a new local alcohol policy, conditions should be imposed to reduce the inconsistency as much as possible.

Chapter 8

New criteria for selling takeaway alcohol

IN THIS CHAPTER, WE:

- Examine the current legislation on off-licence eligibility and identify the problems with this.
- Look at alternative approaches to off-licence eligibility before proposing a new approach.
- Discuss restrictions on the types of alcohol that may be sold by different alcohol retailers.
- Address the placement of alcohol within supermarkets.
- Explain how new legislation should apply to caterers.
- Propose an approach for ensuring that internet sales are appropriately addressed.

ELIGIBILITY

Restrictions on licence eligibility

8.1 Section 36 of the Sale of Liquor Act 1989 imposes special restrictions on the "types of premises" that are eligible for an off-licence. It provides as follows:

> (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 case,–

(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.

8.2 The effect of section 36 is to create seven types of premises that are eligible for an off-licence. These are as follows:

(1) an on-licence (in the case of a hotel or tavern);
(2) a club (although not a sports club);
(3) a specialist liquor manufacturer or retailer;
(4) a supermarket of at least 1,000 square metres;
(5) a grocery store where the principal business is the sale of main order household foodstuff requirements;
(6) a premises in an area where the sale of liquor in premises described in (4) or (5) would not be economic (for example, an isolated rural area); and
(7) a premises where the sale of liquor would be an appropriate complement to the kinds of goods sold in the premises (but not a supermarket or grocery store, or where the sale of food is the principal business).

8.3 In addition, section 36(3) specifically excludes dairies and service stations from being eligible for an off-licence.

8.4 We consider that the law should continue to impose special restrictions on eligibility for an off-licence. However, the current law in this area is problematic, and a new approach is essential.

Problems

Section 36

8.5 Section 36 is a muddled provision that has created several practical and legal difficulties.[362] It is a product of the conscience vote traditionally used in the House of Representatives for liquor bills. Our first report into New Zealand's liquor laws drew attention to the legislative difficulties that can result from conscience voting.[363] It suggested standard party-based voting would be preferable for future liquor legislation. As outlined in that report,[364] the passage of section 36 through the House provides an obvious and tangible illustration of why we arrived at that position.

Dairies

8.6 A key difficulty with section 36 has been around the terms "dairy" and "grocery store". The latter is eligible for an off-licence (under section 36(1)(d)(ii)), while the former is not (because of section 36(3)).

8.7 The distinction between dairies and grocery stores has become blurred since the Sale of Liquor Act 1989 was passed. Traditionally, a dairy was a small shop in a suburban area that sold goods such as butter, milk, bread and confectionery. 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. Compounding the problem is that traditional dairies tend nowadays to sell 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. The Liquor Licensing Authority (LLA), the specialist tribunal that deals with licensing, summarised the problem in its annual report to Parliament for the 15 months ended 30 June 1991:[365]

> 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.

362 See the comments in Liquor Licensing Authority *Annual Report for the 12 Months ended 30 June 1997* [1996–1999] XXV AJHR 406.

363 Law Commission *Review of the Regulatory Framework for the Sale and Supply of Liquor Part 1: Alcohol Legislation and the Conscience Vote* (NZLC R106, 2009).

364 Ibid, at 31–34.

365 Liquor Licensing Authority *Annual Report of the Liquor Licensing Authority for the 15 months ended 30 June 1991* (presented to the House of Representatives pursuant to s 98(2) of the Sale of Liquor Act 1989, Wellington, 1991) at 11.

Grocery stores

8.8 If it is unclear exactly what a dairy is, it is no easier to determine what constitutes a "grocery store". The Act attempts to distinguish a grocery store as being one where the "principal" business is the sale of "main order household foodstuff requirements".[366] But the legislation does not give any guidance as to what constitutes "main order household foodstuff requirements". The LLA has come up with its own definition as being "the items the majority of New Zealand families purchase once a week from either a supermarket or a grocery".[367]

8.9 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. The LLA has held that "principal" means mainly, first in rank or first in importance. It does not mean total or almost all.[368] The LLA has previously stated that in determining the principal business of any store it endeavours to apply a broad commonsense approach, and has laid down criteria to provide guidance based on the share of turnover derived from the sale of main order household foodstuffs, the number and range of items available in store, and the size and layout of the premises.[369] In *SAI (NZ) Ltd* the LLA 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".[370]

8.10 In our view, the attempt to define eligibility by store type is fraught given the rapidly evolving retail sector and changing consumer habits. The food and grocery market is now highly diversified in terms of both products and types of retailers. The emergence of the modern convenience store clearly exemplifies this. Many of the food items that can be purchased from a supermarket can now also be purchased at a convenience store. Conversely, supermarket shelves are filled with convenience-type foods from potato chips, confectionery, snacks and soft drinks, through to pre-prepared "heat and eat" meals and takeaway food. Put another way, many of the food lines sold in supermarkets today would have difficulty satisfying the turnover test laid down in *SAI (NZ) Ltd.*

8.11 The LLA recognised the significance of this convergence between store types in the early 2000s when it ruled convenience stores could be treated as grocery stores for the purpose of section 36(1)(d)(ii).[371] However, in recent times the LLA has pulled back from this position and now regards convenience stores as being ineligible for a liquor licence under section 36(1)(d)(ii), using a stricter interpretation of the law.[372] The LLA's recent decision on the licence renewal of a Night 'n Day store in Christchurch reiterated the ineligibility of convenience

366 Sale of Liquor Act 1989, s 36(1)(d)(ii).

367 *B & D Sima Ltd* (LLA, PH 397/1992, 21 February 1992) at 3.

368 *Caltex NZ Ltd* (LLA, PH 167/2001, 25 May 2001) at [41].

369 *Jay & H Co Ltd* (LLA, PH 155/2001, August 2000).

370 *SAI (NZ) Ltd* (LLA, PH 0018/2009, 14 January 2009) at [14].

371 *Caltex New Zealand Ltd* (LLA, PH 167/2001, 25 May 2001).

372 *The Woodward Group Ltd* (LLA, PH 1415/2008, 3 October 2008).

stores when it found that in order to award an off-licence to a grocery store it must be satisfied shoppers go to the store primarily to purchase their main order household food requirements rather than for impulse food purchases.[373]

8.12 The LLA stated that its "relaxed interpretation of a grocery store in 2001, has led to unrealistic expectations that inappropriate businesses could qualify for a grocery-style off-licence".[374] The LLA has acknowledged there has been a proliferation in the number of off-licences granted to convenience stores that in reality were "nothing more than ambitious dairies", and the reduction in the number of this type of off-licence might well encourage the reduction of liquor abuse.[375]

Appropriate complement

8.13 A further difficulty with off-licence eligibility is the so-called "appropriate complement" off-licence under section 36(2)(b). This section opens the door to any type of premises gaining an off-licence (other than a service station or dairy), but is limited by the requirement that the sale of liquor "would be an appropriate complement to the kinds of goods sold in the premises".

8.14 This section has generated considerable uncertainty.[376] This is because the statute provides no guidance as to the kinds of goods that *are* a suitable match for liquor. The only certainty is they cannot be food or groceries by virtue of the section 36(4) restriction. This section has caused particular difficulties for delicatessens, for instance. The High Court has ruled that delicatessens are ineligible for an off-licence precisely because their principal business is the sale of food.[377]

8.15 In the absence of adequate statutory guidance, the LLA has been reduced to making largely subjective determinations as to whether the products that an applicant sells (or intends to sell) have sufficient synergies with alcohol. In *Combined Rural Traders Society Ltd*, for example, the LLA ruled that a store providing mainly rural and agricultural supplies did not meet section 36(2)(b):[378]

> We do not accept that liquor "goes together" with the goods in the store, nor that it completes the range of goods on display. There may be a link between a hard working farmer and having a drink at the end of a tiring day, but not only is that argument not relevant to the criteria, it could be applied to many vocations.

373 *C H & D L Properties Ltd* (LLA, PH 1249/2009, 11 November 2009). At the time of writing, an appeal in the High Court against this decision was pending.

374 *The Woodward Group Ltd* (LLA, PH 1415/2008, 3 October 2008) at [51].

375 *C H & D L Properties Ltd* (LLA, PH 1249/2009, 11 November 2009) at [43].

376 See, for example, *Wine and Spirit Merchants of New Zealand Inc v James Gilmour and Co Ltd* [1997] NZAR 134 and *Lopdell v Deli Holdings Ltd* (2002) NZAR 227 (HC).

377 *Lopdell v Deli Holdings Ltd* (2002) NZAR 227 (HC), Randerson J.

378 *Combined Rural Traders Society Ltd* (LLA, PH 957/2008) at [35]. The LLA's approach was affirmed by the High Court in *Combined Rural Traders Society Ltd v Batcheler* HC Christchurch CIV-2008-409-1813, 12 February 2009, Chisholm J.

8.16 The difficulty is that while the outcome of this particular case may seem appropriate to many people, any law that requires a tribunal to make a "gut-feeling" assessment as to whether certain types of products "go together" with alcohol leaves too much room for uncertainty and confusion. Any such law is tantamount to an invitation for future litigation.

Alternative approaches to off-licence eligibility

8.17 Most Australian states also impose statutory restrictions on the types of premises that are eligible for an off-licence. The relevant laws in Queensland, Victoria and New South Wales are briefly outlined below.

Queensland

8.18 Eligibility for an off-licence is tightly controlled in Queensland. Only holders of a "commercial hotel licence" are eligible to operate off-licence premises.[379] In practice, the commercial hotel licence covers pubs and taverns. A hotel may obtain approval to operate up to three "detached bottle shops" away from the main hotel premises.

8.19 A "subsidiary off-premise licence" also allows the sale of liquor for consumption away from licensed premises.[380] The subsidiary off-premise licence covers caterers, stores selling gift baskets and florists. Supermarkets and party equipment hire premises are explicitly prohibited from being granted a subsidiary off-premise licence.

Victoria

8.20 In Victoria, specialist liquor stores and supermarkets are eligible for a packaged liquor licence (the New Zealand equivalent of an off-licence). Section 24 of the Liquor Control Reform Act 1998 provides that:

> The Director must not grant a packaged liquor licence unless satisfied that the predominant activity to be carried on in the area set aside as the licensed premises is the sale by retail of liquor for consumption off the licensed premises.

8.21 Particular types of premises are prohibited from being eligible for a packaged liquor licence. These are as follows:[381]

- a drive-in cinema;
- a petrol station (although some exceptions are possible);
- a milk bar;
- a convenience store;
- a mixed business;
- premises that are primarily used by people under the age of 18 years; and
- any class of premises designated as being ineligible for a packaged liquor licence.

379 Liquor Act 1992 (Qld), s 60(1)(d).

380 Ibid, ss 68–69A.

381 Liquor Control Reform Act 1998 (Vic), s 22.

8.22 The prohibition on milk bars, convenience stores and mixed businesses is not absolute. There is a relatively narrow exemption for the Director of Liquor Licensing to grant a licence for these types of premises in a "tourist area", or "an area with special needs" without "adequate existing facilities or arrangements for the supply of liquor in the area".[382]

New South Wales

8.23 New South Wales generally does not restrict the types of premises eligible for a packaged liquor licence. Section 31 of the Liquor Act 2007 regulates off-licence eligibility for "general stores". General stores are defined as a convenience store, mixed business shop, corner shop or milk bar 240 square metres or less. The law is framed in such a way it creates a presumption that these types of smaller premises will *not* be eligible for a packaged liquor licence. This presumption may be overcome, however, if the licensing authority is satisfied that:[383]

(a) In the neighbourhood of the premises concerned, no other take-away liquor service is reasonably available to the public, and

(b) the grant of the licence would not encourage drink-driving or other liquor-related harm.

8.24 Both service stations and takeaway food outlets are ineligible for a packaged liquor licence.[384]

A new approach to off-licence eligibility in New Zealand

Off-licence eligibility

8.25 As we have seen, eligibility for an off-licence is one of the most vague and confusing aspects of the current Sale of Liquor Act 1989. The law must provide greater certainty in this area, while reflecting harm minimisation objectives and the public's interest in having reasonable access to off-licence alcohol.

8.26 We recommend the types of premises eligible for an off-licence to sell alcohol to the public be reduced to the following categories:

(1) a specialist alcohol retailer[385] or manufacturer;

(2) a food retailer;[386] and

(3) a premises for which an on-licence is held (but not a restaurant, nightclub or entertainment venue).

8.27 In addition, the law should allow the licensing decision-maker a narrow ability to grant licences to any other type of retailer if it considers no other off-licence alcohol retailer is reasonably available to the public, and the grant of the licence would not encourage alcohol-related harm.

382 Liquor Control Reform Act 1998 (Vic), s 22(2).

383 Liquor Act 2007 (NSW), s 31(1).

384 Ibid, s 31(2).

385 The definition of "specialist alcohol retailer" would require that the principal business of the premises is the sale of alcohol.

386 The definition of "food retailer" would exclude premises where food is sold with the intention that it be consumed on the premises.

8.28 The law should expressly prohibit certain types of premises from being eligible for an off-licence. These should be as follows:

- a service station; and
- a takeaway food outlet.

8.29 Clubs that hold an off-licence should be allowed to continue to hold their licence. However, no further off-licences should be granted to clubs.

Our rationale

8.30 As we have discussed, the current position reflects an unsatisfactory combination of historical precedent, liberalisation and the at times contradictory evolution of case law in response to a rapidly evolving retail sector. We acknowledge that the categories we recommend are partly a product of the history and it is impossible to start with a clean slate. The eligibility criteria we have arrived at attempt to balance several objectives, some of which can appear conflicting: for example, harm reduction versus "reasonable access"; and fairness and consistency versus non-proliferation. But underlying them all there remains one overriding principle: that alcohol is not an ordinary commodity and so the circumstances in which it is sold must reflect its "special" nature as a legalised drug.

8.31 A significant body of submitters to this review argued that under the current regime the special nature of alcohol and its potential for harm have been obscured. These submissions argued that the proliferation of retail alcohol outlets, including the licensing of "dairies" (expressly against Parliament's intention), and the aggressive price promotion by retailers have led to the over-commercialisation of alcohol and caused the consumer to lose sight of its status as a drug. For instance, the Alcohol Drug Association of New Zealand submitted that it supports the removal of alcohol from supermarkets and convenience stores because it considers that a substance with the characteristics of a class B drug should not be provided by such retailers.[387]

8.32 Throughout this report, and indeed in many of the submissions and public consultation meetings, there runs a constant tension between an acknowledgment of alcohol's status as a potentially harmful and addictive drug and its role as a social lubricant and product enjoyed regularly by thousands of New Zealanders. A point of commonality in the great majority of submissions, however, was the desire to see New Zealand's drinking culture evolve to one where alcoholic beverages are consumed in moderation and regarded as a complement to food and socialisation rather than as a means of intoxication.

8.33 The premise that New Zealanders' attitude to drinking would take on a more Mediterranean hue if only alcohol were treated as a "normal" part of life rather than a "forbidden fruit" formed part of the supermarkets' case for gaining access to alcohol sales. Initially, supermarkets were restricted to selling wine but 10 years later the supermarkets lobbied at the time of the 1999 reforms for access

387 Submission of the Alcohol Drug Association of New Zealand (submission dated 30 October 2009) at 11.

to the retail beer market. In its submission on the Sale of Liquor Amendment Bill (No 2), Foodstuffs (NZ) Ltd argued supermarkets were a preferable outlet for liquor than specialist liquor stores:[388]

> In fact, we go a step further by asserting that supermarkets and grocery stores probably offer a better environment for the sale (of) alcohol than the traditional specialist liquor outlet. This is because supermarkets have strong incentives to cross merchandise alcohol with food. This cross-merchandising activity puts the psychological perception of alcohol drinking in a more normal context than that presented in a specialist liquor store setting.

8.34 At that time, Foodstuffs stated it had 20% of the nation's wine sales. Today, according to an industry newsletter, wine and beer sales together provide the two supermarket chains with their largest single revenue stream.[389] Between them, Progressive Enterprises and Foodstuffs now account for 58% of all wine sales and 33% of beer sales.[390]

8.35 A significant number of submitters argued supermarkets have achieved this market dominance by exploiting their licence to sell alcohol and that their sales and promotional strategies have been less about "cross-merchandising" with food and more about maximising sales volumes through aggressive pricing and strategic placement of alcohol in store. Many submitters advocated removing supermarkets' right to sell alcohol altogether.

8.36 Similarly, submissions revealed a strong objection to the proliferation of alcohol sales in small suburban mixed-business retailers, including dairies. The basis for these objections ranged from perceptions that such outlets were simply inappropriate environments for the sale of alcohol and undermined its special status, through to arguments about the risks of sales to minors and the overall contribution to alcohol-related harm.

8.37 While restricting all alcohol sales to specialist liquor retailers has considerable support from submitters and appeal as a harm-reduction strategy, in our view this would unreasonably restrict access for consumers who, for two decades now, have enjoyed the convenience of purchasing alcohol as part of their household's supermarket shop.

8.38 Furthermore, setting aside the criticisms of supermarkets' approach to alcohol retailing, we believe in principle the continued association between food and alcohol remains valid as part of an overall strategy to foster a more responsible and moderate drinking culture as articulated in the objectives of our proposed Alcohol Harm Reduction Act.

8.39 This does not mean that all retailers who sell food should automatically become eligible to sell liquor. However, it does mean that we consider the now well-established link between alcohol and food retailing should continue, provided other criteria reflecting alcohol's potential for harm can be adequately

388 Foodstuffs (NZ) Ltd "Submission to the Justice and Law Reform Committee on the Sale of Liquor Amendment Bill (No 2) 1998" at 5.

389 "Liquor: Big Retail Changes Coming?" Supermarket News (September 2009) Vol. 2, Issue No. 7 at 2.

390 New Zealand Retailers' Association *Alcohol in New Zealand: A report to the NZRA by Nielsen* (Wellington, 2009) at 21–22.

factored into the decision-making process. We are therefore proposing that the association with food will remain a necessary but not sufficient condition for the granting of an off-licence if liquor is to be sold alongside other products. This proposal mirrors the mandatory requirement that all on-licence premises have food available to patrons at all times.

8.40 In reaching this position we are also mindful of the need to balance the requirements of fairness and consistency with the need to arrest the proliferation of liquor outlets. The law currently expressly prohibits the licensing of dairies and yet, because of the convergence of store types outlined earlier, dairy-like businesses now frequently sell alcohol. Perversely, though, genuine food-based businesses, including delicatessens and some specialist food stores, have at times been unable to obtain licences. Given the precedent established by licensing supermarkets, this is palpably unfair and unjustified from a harm-reduction perspective.

8.41 That said, it is our intention that the definition of a "food retailer" in the new Act will be designed to prevent dairy-like businesses from qualifying. We agree with submitters that the proliferation of licences to such small mixed businesses frequented by unsupervised minors is simply inappropriate and contrary to Parliament's intention.

(1) Specialist alcohol retailer or manufacturer

8.42 Specialist alcohol retailers (that is, stores in which the principal business is the sale of alcohol) are the most appropriate type of premises to sell off-licence alcohol given that the retail of alcohol is their core business.

8.43 A specialist alcohol manufacturer should also be permitted an off-licence to allow sales to the public. A winery with a cellar door is the clearest example, but equally this could extend to a brewery or distillery selling liquor to the public for consumption off the premises.

8.44 Internet-based liquor retailers would also be eligible under this category provided their core business is the sale of off-premises liquor. Supermarkets selling liquor online would have to be eligible under the food retailer category, given that they could not be considered specialist alcohol retailers.

(2) Food retailers

8.45 The legislation should include a provision setting out the test for "food retailer" as follows:

(1) To qualify as a food retailer, sales of "food" must comprise at least 50% of the retailer's annual sales turnover.

(2) Applicants for an off-licence as a food retailer would be required to submit accounts to show they meet the requirements of (1) before they can be considered eligible for an off-licence.

(3) For the purposes of (2), "food":

- means any product intended for ingestion by humans as food or beverage, or any ingredient used in the preparation of such food or beverage, that can reasonably be considered an everyday household grocery item;
- excludes any confectionery, ice cream, soft drink or ready-to-eat takeaway food; and
- excludes any alcohol.

8.46 We consider that this is a workable test. It provides greater clarity than the current Act regarding the type of premises that can be considered eligible for an off-licence on the basis of an association with food. It sets apart those stores where a legitimate association between the food products sold and the sale of alcohol can be established. The provision is intended to stem the proliferation of alcohol sales in outlets whose business is based on fast-moving consumables not typically used in meals: confectionery, carbonated beverages, snack items, and ready-to-eat items, such as hot pies. Such stores are generally frequented by children and young persons. We envisage that pre-prepared meals requiring heating would be classified as food.

8.47 The measurement of 50% of the retailer's annual sales turnover means the test is focused on the type of trade undertaken at the premises.

8.48 The test lines up fairly closely with the position now reached by the LLA that main order household foodstuffs would "generally not include impulse purchases of food items such as confectionery" but would be the food items typically purchased by the majority of New Zealand families for the preparation and consumption of food at home.[391] The test adopts the LLA's position, reiterated recently in *C H & D L Properties Ltd*, that confectionery, drinks and takeaway food are not the types of food products that make a store an appropriate retailer for the sale of alcohol.[392]

8.49 We envisage that dairies and convenience stores will not typically meet the definition of a food retailer. For instance, once confectionery and drinks were removed from the turnover figures of the Victoria Night 'n Day Foodstore in *C H & D L Properties Ltd*, main order food lines comprised just 30% of the goods sold in the store.[393]

8.50 There may be some stores that are on the margins of this definition and it is unclear whether they should be regarded as eligible for an off-licence. Where a store is not obviously eliminated from eligibility under the food-retailer test, but because of the type of store it is undesirable that it sells alcohol, the general licence criteria, discussed in chapter 7, would provide a basis on which the licence could be declined.

391 *M K Devereux Ltd* (LLA, PH 1532/2008, 11 November 2008) at [26].

392 *C H & D L Properties Ltd* (LLA, PH 1249/2009, 11 November 2009) at [49]–[51].

393 Ibid.

(3) Premises for which an on-licence is held

8.51 Under section 36(1)(a) of the Sale of Liquor Act 1989, the holder of an on-licence is eligible for an off-licence in respect of the same premises. This form of off-licence eligibility is currently available only for hotels and taverns.

8.52 We consider it appropriate that on-licence premises of this sort continue to be eligible for an off-licence. In the past, the earliest off-licences were premises licensed to serve alcohol on-premises that developed as purveyors of alcohol for off-premises consumption also. Today, these establishments can be particularly important in rural areas where there is no supermarket or specialist liquor store, and where the local on-licence acts as an "over the counter" off-licence.

8.53 However, in our view it is not desirable that restaurants, nightclubs or entertainment venues be granted an off-licence in respect of the same premises given the heightened risk of drink driving as well as problems associated with late-night consumption of liquor purchased from an off-licence. For this reason, the law should be framed in such a way that eligibility for an off-licence under this category does not extend beyond the types of on-licences that are currently covered. The provision is likely to require careful drafting to ensure it correctly restricts the types of on-licences that qualify for an off-licence.

8.54 Clubs (but not sports clubs) are currently eligible for an off-licence under section 36(1)(b) of the Sale of Liquor Act 1989. We consider it to be inappropriate for clubs (including sports clubs) to hold off-licences. As many submitters have made plain, the primary purpose of clubs should be to provide for the social enjoyment of members *within* club premises.[394] Selling off-licence liquor for consumption away from the clubrooms is inconsistent with this principle. This position is not new. It was recommended by the Working Party on Liquor (Laking Committee) in 1986 but not enacted.[395] We recommend clubs that currently hold an off-licence continue to be eligible to hold it but that no new off-licences should be granted to clubs.

Reasonable access exception

8.55 Given the types of premises that will be eligible for an off-licence, the we consider that the Act needs the flexibility to accept other types of premises in narrow circumstances. This exception would apply particularly to remote rural locations where it is not feasible for a specialist alcohol retailer or food retailer to operate. An applicant would need to show that the public in the area does not have reasonable access to another off-licence retailer.

394 Submission of Sporting Clubs Association of New Zealand (submission dated 20 October 2009) at 2.

395 Report of the Working Party on Liquor *The Sale of Liquor in New Zealand* (October 1986) at 53–54 [*Laking Report*].

Ineligible premises

8.56 We are of the view that the current restriction making service stations ineligible for an off-licence should be continued, given the risks associated with drink driving. We note the nature of some service stations has changed. Some supermarkets for example operate petrol pumps within their car parks. The law will need to be defined in such a way as to recognise this.

8.57 We also take the view food takeaway outlets should likewise be ineligible for an off-licence. Despite the association between alcohol and food, the risk of outlet proliferation would be too great were takeaway outlets eligible for an off-licence. Takeaway food outlets are also often frequented by unsupervised minors.

Duty-free stores

8.58 Duty-free stores are addressed in separate legislation. Sales of alcohol at international airports to passengers on aircraft departing from or arriving in New Zealand are authorised by the Civil Aviation Act 1990 and are exempt from the Sale of Liquor Act 1989.[396] Consequently, it is not necessary for a duty-free store, which only supplies alcohol after a person has been through customs when departing or before they come back through customs after arriving, to obtain a liquor licence. We do consider the new licensing legislation should cross-reference to this provision of the Civil Aviation Act 1990 to clarify the status of duty-free stores.

RETAIL RESTRICTIONS

Spirits and spirit-based drinks

8.59 The Sale of Liquor Act 1989 permits supermarkets and grocery stores to sell only wine, beer or mead. They are not permitted to sell spirits or spirit-based drinks (that is, ready-to-drink (RTD) drinks).[397]

8.60 From a competition perspective, it can be argued that it would be fairer to allow supermarkets and grocery stores to sell all types of alcohol. The Distilled Spirits Association of New Zealand and Diageo, which primarily markets spirits brands in New Zealand, argue that "alcohol is alcohol" and not only is it illogical to distinguish between spirits and other types of alcohol, it creates an unfair commercial playing field in the alcohol market.[398] Diageo argues that allowing spirits to be sold in supermarkets would provide greater convenience and choice for consumers.[399] It is difficult to maintain the distinction on the basis of the percentage of alcohol by volume, as RTDs have a lower alcohol percentage than wine and some beers. The Distilled Spirits Association of New Zealand recommends supermarkets and grocery stores be allowed to sell all types of alcohol below a certain percentage of alcohol, such as 15% or 23%.[400] Independent Liquor, which primarily manufactures beer and spirits, decided not to argue for spirits to be made available for purchase at supermarkets.[401]

396 Civil Aviation Act 1990, s 96.

397 Sale of Liquor Act 1989, s 37(3).

398 Submission of the Distilled Spirits Association of New Zealand (submission dated 28 October 2009) at 9; submission of Diageo (submission dated 29 October 2009) at 4–5.

399 Submission of Diageo (submission dated 29 October 2009) at 5.

400 Submission of Distilled Spirits Association of New Zealand (submission dated 28 October 2009) at 9.

401 Submission of Independent Liquor (submission dated 30 October 2009) at 12.

8.61 Nevertheless, spirits drinking can give rise to special problems.[402] Intoxication can be achieved much more rapidly when drinking beverages with high alcoholic content such as spirits. International evidence shows overdoses from strong spirits are much more common than overdoses from fermented beverages. For instance, Mäkelä and others (2007) found that fatal alcohol poisoning and aggressive behaviour seem to be more strongly associated with spirits than with other types of alcoholic beverages.[403]

8.62 Specialist liquor stores are generally designated as supervised areas as a condition of their licence. This means minors can only enter if accompanied by a parent or guardian. Some may be designated as restricted areas, which means minors cannot enter at all. We recommend it should be mandatory for specialist alcohol retailers to be designated as supervised areas.[404] We see this as important for giving the sale of spirits the degree of caution it requires.

8.63 Consultation and submission feedback has made it clear there is no public appetite for an expanded role for supermarkets and grocery stores in the sale of alcohol. Even acknowledging the validity of the commercial or convenience arguments, it is not viable to consider opening the spirits market up to supermarkets and grocery stores given the current climate of concern for alcohol-related harm. Neither of the two major supermarket companies has submitted that supermarkets should be able to sell spirits. Progressive Enterprises, which operates Foodtown, Woolworths and Countdown supermarkets, recognises there is no public support for such a change.[405]

8.64 Because of the purchasing power of the two supermarket chains, it is likely supermarkets would apply the same retailing model to spirits and spirit-based drinks as they have done for beer and wine, namely high volume/low margin sales, coupled with low-priced spirits as a lever to attract people in store. Any such development would be highly undesirable from a harm-reduction perspective. We consider the sale of spirits and spirit-based drinks for off-premises consumption should be limited to specialist alcohol retailers or manufacturers and premises for which an on-licence is held.

Specialist alcohol retailers stocking food

8.65 This issue becomes more complicated when specialist alcohol retailers branch out into other product lines. It is standard practice for specialist alcohol stores to stock a small range of food items. However, when food items become a considerable proportion of a liquor store's stock, the store is competing for market share with food retailers.

8.66 Although normally a specialist alcohol retailer would be allowed to sell spirits and RTDs, we do not think it appropriate for such a store to do this if food products are a sizeable proportion of the store's business.

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402 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010), at 31 [*Alcohol: No Ordinary Commodity*].

403 P Mäkelä, H Mustonen and E Österberg "Does beverage type matter?" (2007) 24 Nordic Studies on Alcohol and Drugs 617.

404 This recommendation is discussed further in relation to licence conditions in chapter 9.

405 Submission of Progressive Enterprises (submission dated October 2009) at 10.

8.67 Allowing these stores to sell spirits and RTDs would give them an unfair commercial advantage over food retailers in being able to sell spirits and RTDs with food. This would undermine the aim of ensuring that spirits and RTDs are not sold in food stores.

8.68 The LLA recently considered a licence renewal application from a bottle store that had established a delicatessen within the premises and was operating as a mixed business. It declined the application on the basis that the store no longer met the definition of a premises in which the principal business is the sale of liquor. The LLA did not consider it was sufficient that alcohol sales made up over 50 % of the store's trade. Otherwise, a range of convenience stores and food retailers would be able to stock the full range of alcohol products so long as they kept alcohol sales above the 50 % threshold, thus opening the floodgates to stores to sell spirits and RTDs with food.[406]

8.69 We propose that the new legislation allows specialist alcohol retailers (that is, retailers with the principal business of selling alcohol) to sell some food products. The trend towards mixed-business models, which encourage the complementing of alcohol with quality food, needs to be acknowledged.

8.70 However, if a specialist alcohol store is stocking more than a minimal amount of food products, it should not be permitted to sell spirits and RTDs.

8.71 Additionally, the law would need to make clear that to meet the "principal business" requirement the stocking of other product lines would need to be consistent with and supplementary to its status as a specialist alcohol retailer.

Adjacent stores and stores within stores

8.72 Although supermarkets are currently prohibited from selling spirits, a practice has recently arisen in which a supermarket operates a liquor store stocking a full range of alcohol products either within or adjacent to the supermarket's premises. These liquor stores are often positioned in the foyer of a supermarket. While they have separate doors, checkouts and possibly branding, supermarket shoppers must walk past the entrance to the store when entering the supermarket. Advertising of the beer, wine and spirits sold in the liquor store may be displayed on the walls of the store within the supermarket foyer.

8.73 Licensing bodies have previously allowed applications for stores of this nature. For instance, Foodstuffs operates a Henry's Beer, Wine and Spirits store within Pak'n Save supermarket in Porirua. However, recently, the LLA considered the issue in depth in General Distributors Ltd.[407] In this case, Progressive Enterprises sought to establish a stand-alone bottle store, "Countdown Liquor", within the physical footprint of a Countdown supermarket in Christchurch. The entrance to the store was to be in the foyer of the supermarket. In its application, Progressive Enterprises was candid in acknowledging that the store was an opportunity to expand its sales and profit growth through the sale of liquor other than beer or wine.[408]

406 *Lion Liquor Retail Limited* (LLA, PH 1238/09, 28 October 2009).

407 General Distributors Ltd (LLA, PH 712/08, 28 May 2008).

408 Ibid, at [7].

8.74 The LLA declined the application. It reasoned that Parliament had made its intention clear in the Sale of Liquor Act 1989 that supermarkets were not to sell spirits.[409] The LLA considered that the establishment of a bottle store within the supermarket footprint would "lead to the inevitable conclusion that the Act had been liberalised further, to allow supermarkets to market and sell all types of liquor".[410] It was concerned that the granting of the off-licence would result in the discounting of RTDs. The positioning of the store and its proximity to the supermarket meant the LLA did not consider there was sufficient separation between the store and the supermarket to create the impression they were two separate businesses.[411]

8.75 The different practices regarding the issue of the permissibility of a store within a store indicate the law needs clarification. In our view, the proposed legislation should directly address this issue.

8.76 A supermarket having a separate store for selling alcohol may not in itself be problematic. In fact, it may be a commendable way of ensuring that alcohol is not treated as an ordinary product within the supermarket. However, if the law is to restrict supermarkets to selling beer, wine and mead (as is our recommendation), then there seems little point in allowing supermarkets to circumvent the intent of that restriction by operating a store that sells spirits and spirit-based drinks within a supermarket.

8.77 Progressive Enterprises' submission argues that supermarkets have a proven track record of compliance with the law on the supply of alcohol to minors, and these standards would apply to any supermarket-related liquor entity in close proximity to one of their supermarkets.[412] We do not doubt this would be the case. However, the potential for alcohol-related harm resulting from opening the spirits market up to supermarkets through the use of stores within stores overrides these considerations.

8.78 The Sale and Supply of Liquor and Liquor Enforcement Bill currently before the House of Representatives provides an elegant solution that the Law Commission endorses. The Bill provides that a liquor store within a supermarket or grocery store, or adjacent to and owned or controlled by a grocery store or supermarket,

409 Ibid, at [67]–[68].

410 Ibid, at [65].

411 Ibid, at [63]–[67].

412 Submission of Progressive Enterprises (submission dated October 2009) at 10.

would only be able to sell wine, beer and mead.[413] We recommend this restriction be incorporated into the new Act, but we think the restriction should apply only to stores within the physical footprint of a supermarket or grocery store, and not to adjacent stores (that is, stores that are beside the supermarket or grocery store but in a separate building or that have a completely separate entrance). We understand that in submissions on this Bill there were strong objections to discriminating against liquor stores adjacent to supermarkets on the basis of ownership. We think a blanket restriction applying to adjacent stores would be inequitable.

Single area restriction

8.79 Concerns about the way in which alcohol is sold in supermarkets can be addressed by applying a mandatory condition on supermarkets regarding the placement of alcohol within the store.

Current law and practice

8.80 The Sale of Liquor Act 1989 does not provide specific rules regarding where supermarkets can display their alcohol. In 1990, the LLA considered the first application from a supermarket seeking an off-licence.[414] It held that the only possible justification for restricting the area within which wine could be sold in the supermarket would be that such a restriction would result in greater control over the sale of wine to prohibited people. The LLA was satisfied this objective could be achieved by other means.[415] The LLA also found a condition proposed by the licensing inspector to limit the maximum net floor area used for retail display of wine to no more than 1% of the supermarket's licensed premises was unnecessary.[416]

8.81 Currently, alcohol is displayed prominently throughout supermarkets. It is often positioned near the entrance, the checkouts, beside commonly purchased household goods, or in other areas through which shoppers must walk. Commonly, displays of alcohol are found on aisle ends.

413 Clause 18 of the Sale and Supply of Liquor Enforcement Bill 2008 (254–1) proposes to introduce the following subsection (3B) after subsection (3A) of s 37 of the current Act:

> (3B) Subsections (3) and (3A) apply to premises as if they were premises to which section 36(1)(d) applies if—
>
> (a) they are situated (wholly or partially) within a shop; or
>
> (b) they are adjacent to premises to which section 36(1)(d) or (1A) applies (the other premises), and—
>
> (i) their licensee holds a licence in respect of the other premises; or
>
> (ii) a person who is their owner or lessee, or who occupies them under a licence (not being a licence within the meaning of this Act) is the owner or lessee of the other premises, or occupies the other premises under a licence (not being a licence within the meaning of this Act); or
>
> (iii) their licensee and the owner, lessee, or occupier of the other premises are a reporting entity and subsidiary, a subsidiary and reporting entity, or 2 subsidiaries of a reporting entity.

414 *Application by Douglas-Oliver Corporation* [1990] NZAR 411.

415 Ibid, at 424.

416 Ibid, at 425.

Concerns about the placement of alcohol in supermarkets

8.82 The placement of alcohol in supermarkets is of concern because it impacts upon its price and availability, both of which are key factors affecting levels of alcohol-related harm.

8.83 Because of their size, supermarkets are able to sustain low profit margins on some products due to their high volumes of products and wide range of product categories. Because of their large-quantity purchases and dominating market position, supermarkets have greater bargaining power with suppliers, which they may use to negotiate lower prices.[417] By lowering prices, supermarkets may increase their sales, gain a greater market share and further reinforce their marketing position.[418]

8.84 Strategic product placements are a key aspect of the high volume/low margin retail model favoured by supermarkets to sell alcohol. The use of multiple product placement points and key positions, such as at the entrance and aisle ends, for displays of discounted liquor allows supermarkets to solicit unplanned alcohol purchases. This ensures that supermarkets are selling high volumes of alcohol. When combined with their purchasing power, this strategy allows supermarkets to keep prices low. Research commissioned by the Alcohol Advisory Council of New Zealand shows supermarkets sell beer and wine from 5–10% cheaper on average than traditional bottle stores.[419]

8.85 Our understanding is that prominent displays of alcohol products in a store facilitate further discounting of alcohol. Exactly where alcohol is placed in a store can form part of the commercial arrangement between a supermarket and its suppliers. A supermarket may receive a rebate on a product from the producer if the product is displayed in a highly visible position in the store. This rebate can be used to discount the price of the product.

8.86 The same concerns do not apply to the same extent for smaller food retailers as their size means they are considerably less able to engage in this marketing strategy.

8.87 The placement strategy of supermarkets ensures that alcohol is highly visible. This increases the likelihood of casual impulse purchases of alcohol, something the LLA has sought to discourage by removing liquor licenses from convenience stores.[420]

417 Business and Economic Research Limited *Report to Alcohol Advisory Council: Effects of the Entry of Supermarkets into the Liquor Market* (Wellington, 2007) at 9.

418 Ibid, at 13.

419 Ibid, at 24.

420 *M K Devereux Ltd* (LLA, PH 1532/2008, 11 November 2008) at [26].

8.88 Moreover, the prominence of alcohol in supermarkets places unhealthy pressure on vulnerable groups such as children and young people, and those with alcohol dependency problems. One non-government organisation suggested restrictions on the positioning of alcohol within supermarkets should apply so that:[421]

> …people do not have to walk through aisles with alcohol if they are not intending to purchase. This would help to mitigate the normalisation of alcohol, so that children are not unintentionally paraded through rows of alcohol while they are accompanying their parents to buy groceries.

Life is made much harder for those with alcohol addictions when they are unavoidably confronted with alcohol displays during their necessary visits to the supermarket. As one submitter stated:[422]

> How hard is it for an alcoholic to buy food each week and walk past the alcohol displayed strategically around the shop? Addiction is a powerful force and [supermarkets] make alcoholics lives harder.

8.89 In a recent decision on the renewal of a supermarket off-licence, the LLA dealt with an appeal from an objector concerned about the display of alcohol throughout the supermarket and particularly in the entrance.[423] Although the LLA found that the Act did not allow it to impose conditions regarding where alcohol was displayed in the store, it considered the supermarket's practice of "displaying thousands of bottles of liquor where they can best dominate the view of members of the public (including young people) as they enter the supermarket" led to some doubt about the applicant's suitability.[424] As a result, the LLA renewed the licence for just 18 months and advised that the applicant will be required to produce a business plan addressing such matters as the display of alcohol and advertising within and outside the store at its next renewal. In making the decision, the LLA commented:[425]

> In summary, given current concerns about the impact of liquor abuse on our communities we wonder whether the time has not come for some supermarkets to consider marketing liquor more conservatively and in keeping with their status as a supermarket.

421 Submission of Auckland City Injury Prevention Forum (submission dated 22 October 2009).

422 Submitter's name supplied and withheld (submission dated 31 October 2009).

423 *Bernard O'Shaughnessy* (*Newtown New World)* (LLA, PH 006/2010, 13 January 2010).

424 Ibid, at [24].

425 Ibid, at [29].

International comparisons

8.90 Area restrictions have been implemented in several Australian states. In Victoria, the area of a store where the predominant activity being carried out is the sale of liquor must be designated as a licensed premises.[426] In practice, this means a specific area of the store must be set aside, but it does not require alcohol to be in a separate room: it can be in an aisle. Alcohol cannot be dispersed around the store with other products. There is currently debate in Victoria as to whether the law should require greater separation than this.[427]

8.91 The approach in New South Wales is more restrictive. The law requires "adequate separation" of the alcohol and the rest of the store, which has meant the alcohol area is physically defined by walls or barriers. Patrons are required to enter and leave via point of sale, which also must be located within the defined area.[428]

Submissions comment

8.92 There was a widespread perception among submitters that the prominence and distribution of alcohol within supermarkets is contributing to alcohol-related harm. Members of the public, non-governmental organisations from the community and health sectors and local authorities have all expressed strong support for limiting the areas of a supermarket in which alcohol may be displayed, and have made numerous suggestions regarding how this could be achieved.[429]

8.93 Supermarket operator Foodstuffs does not support any regulation being placed around the layout of a store in relation to alcohol.[430] It pointed to the LLA decision in *Douglas-Oliver Corporation* as supporting this.[431] However, 19 years on from that decision, the matter is likely to be regarded in a different light. There are concerns about the placement of alcohol in supermarkets that are additional to just preventing sales of alcohol to minors, which was the main focus of that decision.

8.94 Foodstuffs' view is that supermarkets need the flexibility to display alcohol outside of their previously well-defined liquor departments because of growth in liquor sales and product range, dynamic product ranges, the preference for promotion aisles containing all discounted products, and liquor's greater share of store sales during peak periods.[432]

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426 Liquor Control Reform Act 1998 (Vic), s 11(3)(aa).

427 Email from the Victorian Department of Justice to the Law Commission regarding the separation of alcohol in stores in Victoria (24 November 2009).

428 Email from Communities NSW to the Law Commission regarding the separation of alcohol in stores in New South Wales (26 November 2009).

429 Suggestions in submissions include: cordoning off an area for alcohol; restricting access by underage persons to the area; not displaying alcohol at point of sale, entry and aisle ends; having separate aisles; restricting the proportion of the floor area or shelf space used for alcohol sales; and not allowing alcohol to be placed beside basic food items.

430 Submission of Foodstuffs (NZ) Ltd (submission dated 30 October 2009) at 8.

431 *Application by Douglas-Oliver Corporation* [1990] NZAR 411.

432 Submission of Foodstuffs (NZ) Ltd (submission dated 30 October 2009) at 9.

Our proposals

8.95 We accept that a single-area restriction would constitute an interference in the way that supermarkets operate. Yet the proposed new Act would represent a paradigm shift in the way that alcohol is sold in New Zealand. It is appropriate that supermarkets share some of the responsibility for addressing alcohol-related harm because of the large share of the alcohol market in their control.

8.96 The challenges relating to fluctuating alcohol stocks are not insurmountable. A single-area restriction could still allow for greater or lesser amounts of shelf or floor space to be used for alcohol so long as it remained in a single area. Product placement restrictions in supermarkets are not unprecedented given the existing restrictions on cigarette placement. We recognise there will be a cost to retailers in setting up their alcohol areas in accordance with the proposed Act's requirements. However, this is likely to be a one-off cost in most instances.

8.97 Supermarkets have in the past expressed a willingness to adapt store layouts to reduce the risk of alcohol-related harm. In its submission to the Select Committee on the Sale of Liquor Bill in 1988, Progressive Enterprises acknowledged it was possible to create separate areas in its supermarkets in order to restrict the access of minors to alcohol.[433]

8.98 We propose a "single-area restriction", similar to the requirements of the Victorian legislation. This would seem to be a sufficient control on the placement of alcohol within a supermarket. To impose a greater degree of separation, similar to that in New South Wales, would appear to impose too great a cost on retailers at this stage. The law would restrict the display of all alcohol products to one area. Conceivably this could be more than one aisle if the supermarket required this. However, there should be no displays of alcohol products at the supermarket's entrance or at checkouts, as these positions seem to be areas of particular vulnerability for supermarket patrons.

CATERERS

8.99 Under the Sale of Liquor Act 1989, an off-licence may be granted to a person who is conducting the business of a caterer.[434] A caterer's off-licence:[435]

> …shall authorise the holder to deliver liquor from the premises described in the licence and sell it on any other premises for consumption on those premises by persons attending any reception, function, or other social gathering promoted by any person or association of persons other than the holder of the licence.

8.100 Unlike other off-licences, caterers may serve alcohol on a prohibited day and they do not have to display a copy of their licence or a sign displaying their opening hours.[436] The licensing authorities may impose conditions relating to the supply of alcohol and non-alcoholic drinks.[437] Caterers pay a fee of $132 annually.

433 Progressive Enterprises Ltd "Submission to the Select Committee on the Sale of Liquor Bill 1988".

434 Sale of Liquor Act 1989, s 51(1).

435 Ibid, s 51(2).

436 Ibid, s 51(4).

437 Ibid, s 51(3).

8.101 The High Court has held that the reception, function or social gathering at which a caterer serves alcohol must be private in nature and that the caterer must provide food.[438] The LLA has expressed a view that when alcohol is being sold under a caterer's off-licence at premises other than those described in the licence, the premises at which the alcohol is served becomes the "licensed premises" for the purposes of the Act. Consequently, the Act requires either the licensee or a manager to be on duty at premises where caterers are serving alcohol.[439]

8.102 We are satisfied this regime is currently working well and should continue. We are not aware of any specific problems with the sale of alcohol by caterers. However, we regard the sale of alcohol by caterers as more akin to an on-licence than an off-licence. Although alcohol is not always, and in some cases never, served at the caterer's own premises, the alcohol is always provided for consumption on the premises at which it is sold and served. Because managers are required to be present when caterers serve alcohol, caterers are always providing a supervised drinking environment. We consider it would be more logical for licence decision-makers to consider caterers for on-licences rather than off-licences. This will ensure the decision-makers take the correct approach to the licensing criteria and conditions that should be applied to a caterer in order to minimise alcohol-related harm. We recommend, therefore, that caterers be required to obtain on-licences, and when the existing off-licences of caterers are up for renewal, they are renewed as on-licences.

INTERNET SALES

8.103 Currently a retailer that qualifies for an off-licence may use the licence to sell alcohol through the internet. Several retailers sell alcohol in this way. Some are retailers selling a range of alcohol products to consumers; some are alcohol manufacturers selling their own products directly to consumers.

8.104 The Sale of Liquor Act 1989, however, does not explicitly contemplate sales through the internet. This has led to a few anomalies in the way in which the law applies to these companies. For instance, they are required to display their licence and opening hours at the licensed premises even if customers never visit those premises.

8.105 There are several issues that will become more significant if our recommendations are introduced. Many websites selling alcohol currently monitor the age of purchasers by requiring them to have a credit card, which banks only issue to those over 18 years. Many also require the purchaser to declare that they are over 18 before they will sell any alcohol. This issue will become more complex if the alcohol purchase age is 20 years.[440]

8.106 Many websites operate for 24 hours a day, although delivery will only take place during the working hours of courier companies. National maximum hours could have an impact on internet businesses.[441]

438 *Bar Systems (NZ) Ltd v Wellington DLA* [1996] 3 NZLR 100 at 107–108.

439 *Bar Systems (NZ) Ltd* (LLA, PH 2134/1995) at 109.

440 Our recommendations regarding the legal alcohol purchase age are discussed in chapter 16.

441 The introduction of national maximum hours is recommended in chapter 9. We recommend that off-licences should not be able to open before 9am and after 10pm.

8.107 In recent years, off-licences have been issued to retailers selling alcohol via the internet. The LLA has considered relevant the hours during which alcohol may be delivered, the delay between order and delivery and the method of purchase, but has issued licences with only the standard conditions relating to the signage and display of the licence at the premises.[442] The LLA has previously declined a licence to a company planning to facilitate internet sales because it did not have a physical premises at which the business was going to be conducted.[443] In its report to Parliament in 2007, the LLA expressed the view that the Act needs to be reviewed to provide greater control over off-licence sales via the internet, such as requiring the display of a licence on the licensee's website homepage.[444]

Our proposals

8.108 Ordering from websites is now an important method used by many New Zealanders to purchase alcohol. The legislation undoubtedly needs to provide for this form of alcohol sales. We are aware that internet retailers generally market to older purchasers. Much of the alcohol sold over the internet is only sold in large quantities, such as six or 12 bottles of wine, which obviously requires a more significant financial outlay than the purchase of a smaller quantity at a store. Additionally, internet alcohol purchases always involve a delay between the order and delivery, usually of at least 24 hours. All of these factors mean alcohol sold over the internet is less likely to result in casual, unplanned purchases and purchases by young people. This means compared with the sale of alcohol at a store there is likely to be less risk of alcohol-related harm. Yet there still must be adequate safeguards to prevent harm.

8.109 We recommend that in most ways internet alcohol retailers should have the same requirements as other off-licences: the same restrictions on the types of retailer that can obtain an off-licence, and on the types of alcohol that can be sold, should apply to internet retailers. We consider it is important that the licence should relate to physical premises, even if alcohol is not going to be sold directly to consumers at those premises and even if the alcohol will not be stored there. This would ensure that inspectors and police always have a place that they can visit to address an issue with the licensee or manager.

8.110 However, we do think there should be some special requirements and exemptions for internet retailers because of the type of business they are operating. We recommend that an internet retailer should be required to display its licence on its website as well as at its physical premises. To put mandatory safeguards in place around the age of internet purchasers, we recommend the legislation require that purchasers must declare they are over the alcohol purchase age, and the consequences of making a false representation to a licensee, manager or employee are clearly explained. The legislation should also require that the only possible method of purchase for a member of the public is by credit card. However, it should be possible for a company purchasing alcohol over the internet to pay by other means.

442 See, for instance, *1-Day Liquor Ltd* (LLA, PH 1489/2009, 24 December 2009); *Floravin Ltd* (LLA, PH 1430/2008, 7 October 2008).

443 *Cellarsoft Ltd* (LLA, PH 427/2002, 20 August 2002).

444 Liquor Licensing Authority *Annual Report of the Liquor Licensing Authority 2007* (Wellington, 2007).

8.111 We do not consider it is necessary for the national maximum hours to apply to websites selling alcohol because the delivery of the alcohol is delayed and does not occur at night. Consequently, websites should be exempt from the hours requirements in the legislation. However, hours restrictions should apply to the times at which the alcohol can be delivered. We recommend deliveries must not take place before 6am or after 10pm. The earlier start time than that recommended for off-licences in general in chapter 9 is to reflect the unalterable reality that courier companies commonly deliver earlier than 9am. We think that the delivery of alcohol at these times is unlikely to be problematic.

8.112 Additionally, we recommend internet alcohol retailers should be exempt from the requirement that an off-licence must display its opening hours at its physical premises. While internet retailers should continue to be required to appoint a manager in order to sell alcohol, and the manager should be responsible for compliance with the legislation and licence conditions, we consider it should not be necessary for a manager to be on duty at all times when alcohol is sold. It is not practical or necessary for a manager to be present at an internet retailer's physical premises at all times when alcohol may be purchased over the internet.

8.113 As is the case currently, internet sites that provide a forum for suppliers to advertise alcohol and facilitate transactions between suppliers and purchasers, but are not party to the transaction themselves, will not be required to obtain a licence. However, they will be subject to the offences relating to unacceptable promotions.[445]

RECOMMENDATIONS

R15 The types of premises that are eligible for an off-licence should be reduced to the following:

- a specialist alcohol retailer or manufacturer;
- a food retailer where food, excluding confectionery, ice cream, soft drinks or ready-to-eat or takeaway food, comprises at least 50% of the annual sales turnover; and
- premises for which an on-licence is held (but not a restaurant, nightclub, entertainment venue or club, including sports clubs).

R16 Any other type of retailer should be able to be granted an off-licence if no other off-licence alcohol retailer is reasonably available to the public, and the grant of the licence would not encourage alcohol-related harm.

R17 The legislation should expressly prohibit the following types of premises from being eligible for an off-licence:

- a service station; and
- a takeaway-food outlet.

445 This is discussed in chapter 19.

RECOMMENDATIONS

R18 Only specialist alcohol retailers or manufacturers and premises for which an on-licence is held should be able to sell spirits or RTDs under an off-licence. To be a specialist alcohol retailer, a store should be required to have the sale of alcohol as its "principal business". The legislation should allow specialist alcohol retailers also to sell some food and other products. However, if the amount of food products in a specialist alcohol retailer is more than minimal, it will not be permitted to sell spirits and RTDs. Also, the stocking of non-food product lines needs to be consistent with and supplementary to a store's status as a specialist alcohol retailer.

R19 A specialist alcohol retailer within a supermarket or grocery store should only be able to sell wine, beer and mead.

R20 Supermarkets should be required to keep liquor in one place on the premises (known as a "single-area restriction") as a condition of their licence. This will prevent supermarkets placing alcohol at the end of aisles, in doorway entrances and among other goods.

R21 Caterers should be required to obtain an on-licence rather than an off-licence, but the law applying to caterers should otherwise remain unchanged.

R22 Internet alcohol retailers should be required to:

- display their licence on their website as well as at their physical premises;
- make purchasers declare that they are over the legal alcohol purchase age and explain clearly the consequences of making a false representation to a licensee, manager or employee; and
- accept credit card payments as the only method of purchase by members of the public.

R23 Internet alcohol retailers should be exempt from:

- the national maximum hours requirements, but deliveries should not be permitted before 6am or after 10pm;
- the requirement that an off-licence must display its opening hours at its physical premises; and
- the requirement for a manager to be on duty at all times when alcohol is sold.

Chapter 9
Conditions on licences

IN THIS CHAPTER, WE:

- Examine the current powers to impose conditions on licences to sell alcohol.
- Discuss the mandatory and discretionary conditions that should apply to such licences.
- Explore the evidence relating to the impacts of restricting the opening hours of licensed premises before proposing new restrictions on opening hours.
- Look at the existing restrictions for selling alcohol on prohibited days and propose adjustments to these.

CURRENT LAW

9.1 In preceding chapters, we outlined the liquor licensing system, discussed the criteria for securing a licence to sell alcohol and the specific limits on off-licence eligibility. A licence permits the licensee to sell alcohol in accordance with the conditions of the licence. In this chapter, we discuss various appropriate licence conditions.

9.2 The current Sale of Liquor Act 1989 prescribes both mandatory and discretionary licence conditions. For example, for on-licences, it is a mandatory condition that the licensee must have a reasonable range of non-alcoholic drinks available for consumption on the premises. The prohibited days, discussed later in this chapter, are also a mandatory condition for on-licences.

9.3 For on-licences, the licensing decision-maker "may" impose conditions relating to the following matters:[446]

(a) the days on and hours during which liquor may be sold;
(b) the provision of food for consumption on the premises;
(c) the sale and supply of low-alcohol beverages;
(d) the provision of assistance with, or information about, alternative forms of transport from the licensed premises;
(e) any other matter aimed at promoting the responsible consumption of liquor;
(f) the steps to be taken by the licensee to ensure the provisions of the Act relating to the sale of liquor to prohibited persons are observed;

446 Sale of Liquor Act 1989, s 14.

(g) the designation of the whole or any part or parts of the premises as a restricted or supervised area;[447]

(h) the people or types of people to whom liquor may be sold or supplied.

9.4 In determining whether to impose conditions for on-licences and, if so, what conditions, the licensing decision-maker may have regard to the site of the premises in relation to neighbouring land use.[448]

9.5 Similar provisions apply regarding conditions for other types of licences.[449]

GENERAL LICENCE CONDITIONS

9.6 The range of conditions that may be imposed in respect of a licence under the 1989 Sale of Liquor Act is much narrower than under the 1962 Act. Unlike the 1962 Act, the current Sale of Liquor Act does not contain provisions empowering the licensing body to impose such conditions not inconsistent with the Act as the licensing body thinks fit.[450] Although licence conditions may be imposed relating to "any other matter aimed at promoting the responsible consumption of liquor", discussions with police and liquor licensing inspectors indicate that, generally, a narrow range of conditions is sought by the reporting agencies.

Issues Paper position

9.7 In our Issues Paper, *Alcohol in Our Lives*, we said we thought there was merit in allowing the licensing bodies to impose any reasonable condition on the licence considered appropriate for the purpose of giving effect to the object of the Act. As an example, we said 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.[451] 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 Liquor Licensing Authority (LLA), the statutory tribunal responsible for licensing, on the basis that they show 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.

9.8 We pointed out that greater discretion may give rise to greater variances between licence conditions in different areas.

9.9 The submissions that commented on licence conditions were generally supportive of widening the ability for licensing decision-makers to make licence conditions. In its submission, the Alcohol Advisory Council of New Zealand (ALAC)

447 A restricted area means a designated part of the premises where people who are under the age of 18 years shall not be admitted. A supervised area means a designated part of the premises where a person under the age of 18 years may not be admitted unless accompanied by their parent or guardian.

448 Ibid, s 14(7).

449 Ibid, ss 37, 60 and 80.

450 For example, Sale of Liquor Act 1962, s 111.

451 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 140 [*Alcohol in Our Lives*].

supported the ability for licensing decision-makers to impose any reasonable condition on a licence, and proposed that effective guidance should be provided on what a reasonable condition would be to ensure consistency and remove the risk of costly legal challenges.[452]

9.10 The submission from the New Zealand Police was strongly supportive of the proposal to allow the licensing decision-makers to impose a wide range of licence conditions for the purpose of reducing alcohol-related harm:[453]

> Police considers this to be one of the key proposals from the Law Commission, and one that would provide Police and other agencies with many more tools to address alcohol-related harm, particularly offending and victimisation.

9.11 Other submissions expressed concern at the possible breadth of licence conditions and suggested conditions be tailored to promote patron safety and minimise crime and disorder, reduce public nuisance and promote host responsibility. It was suggested this approach would ensure the objectives are appropriately linked to the specific power that will best ensure those objectives are achieved.[454]

International comparisons

9.12 Other jurisdictions have significantly wider powers to impose wider conditions on licences as a tool for reducing alcohol-related harm. In January 2010, the United Kingdom announced new mandatory licensing conditions that will:[455]

- ban irresponsible promotions, such as drinking games, speed drinking, women drink for free, and all you can drink for £10;
- ban the dispensing of alcohol directly into the mouth;
- ensure the provision of free tap water for customers;
- ensure small measures of beers, spirits and wines are made available to customers.

9.13 The New South Wales legislation allows the Director-General of Communities NSW to impose, vary or revoke conditions on a liquor licence that are not inconsistent with the Act.[456] The process followed allows licensees a right of response to proposed conditions. The Office of Liquor, Gaming and Racing has also issued the *Directors' Policies and Standards*, setting out controls that may be imposed on a licence or adopted as a best practice. After three months of imposing a condition, the office invites feedback from licensees about the implementation and efficacy of the conditions. Conditions may be amended. High-risk venues have mandatory special conditions imposed.[457] Failure to adhere to these conditions attracts heavy penalties.

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452 Submission of the Alcohol Advisory Council of New Zealand (submission dated 23 October 2009) at 6.

453 Submission of New Zealand Police (submission dated 31 October 2009) at 23.

454 Submission of Lion Nathan (submission dated 29 October 2009) at 17.

455 Home Office *Safe. Sensible. Social. Selling Alcohol Responsibly: Government Response to the Consultation on the Code of Practice for Alcohol Retailers, England and Wales* (Home Office, 2010) at 3 < www.homeoffice.gov.uk > .

456 Liquor Act 2007 (NSW), s 54.

457 Ibid, sch 4.

9.14 The Victorian legislation provides that the Director of Liquor Licensing may impose any conditions he or she thinks fit on the grant of an application, including a condition that the grant is not effective until any requirements specified in the grant have been met.[458] Specific provisions are made for conditions relating to matters such as CCTV.[459] It is a condition of every licence that authorises the supply of liquor outside ordinary trading hours that the licensee "does not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the hours outside ordinary trading hours to which it relates".[460]

9.15 The Queensland legislation also provides wide powers to impose licence conditions, including in relation to training course certificates for particular people, lockouts, crowd controllers, CCTV, drinking practices, and incident and training registers.[461]

9.16 The Scottish legislation provides for mandatory conditions and for regulations to be made adding to those conditions. In addition, a licensing board may impose such other conditions as it considers necessary or expedient for the purposes of any of the licensing objectives.[462]

Conclusions on general conditions

9.17 Licence conditions are an important tool for reducing alcohol-related harm. We recommend that mandatory statutory conditions placed on on-licence and club premises should include:

- the provision of food for consumption on the premises;
- the sale and supply of low-alcohol beverages and soft drinks;
- the provision of free drinking water;
- the provision of assistance with, or information about, alternative forms of transport.

9.18 Discretionary conditions for on-licence and club premises, depending on the circumstances, should include:[463]

- the provision of CCTV cameras, including requirements for their location and number;
- the provision of seating;
- no serving in glass containers at specified times;
- the number of door staff required;
- no shots or particular types of drinks to be served after specified times;
- a limit on drinks sizes after specified times;

458 Liquor Control Reform Act 1998 (Vic), s 49.

459 Ibid, s 18B.

460 Ibid, s 17.

461 Liquor Act 1992 (Qld) Division 6, Subdivision 2.

462 Licensing (Scotland) Act 2005, ASP 16, s 27.

463 The existing discretionary conditions regarding the following matters should also be retained: the days on which and the hours during which alcohol may be sold (within national maximum hours as discussed later in this chapter); the steps to be taken by the licensee to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed; the designation of the whole or part of the premises as a restricted or supervised area; the persons or types of persons to whom alcohol may be sold or supplied.

- a limit on the number of drinks per customer;
- restrictions on permitted drinking vessels;
- no alcohol service for a specified time before the closing of the licensed premises;
- conditions relating to management, for example, a requirement for multiple managers at large establishments;
- provision of transport for patrons.

9.19 For off-licences, we recommend a mandatory condition for specialist liquor stores to be designated as supervised areas, which would mean that people under the purchase age could not enter the store unless accompanied by a parent or guardian, and a discretionary power to impose conditions relating to lighting and security measures.[464] For supermarkets, there should be a mandatory condition for a single area restriction, as discussed in chapter 8. Restrictions on what off-licences can sell are also discussed in chapter 8. We discuss conditions for special licences in chapter 13.

9.20 Rules regarding prohibited days for all licences are discussed later in this chapter, and in chapter 13 regarding special licences.

9.21 Many of the recommended new conditions are drawn from those that have been imposed in New South Wales, which were designed to deal with alcohol-related offending late at night. A recent study on the effect of the New South Wales conditions was inconclusive.[465] We have visited New South Wales and discussed the developments there with the Office of Liquor, Gaming and Racing. We consider the recommended conditions are suitable for the New Zealand environment. Furthermore, they will provide future proofing for developments that have occurred in New South Wales, but have not yet become a significant problem in New Zealand.

9.22 We also consider the licensing decision-makers should be able to impose any reasonable condition on all licences designed to minimise harm. This would enable the licensing decision-makers to tailor conditions to the particular risks posed by a particular licence. The Alcohol Regulatory Authority, which is the tribunal we recommend in chapter 10 to replace the current LLA, should issue guidelines on the types of conditions that are suitable to address particular risks. This would ensure consistency across the country. Although all public law decision-makers are required to act reasonably, as a reminder and an additional safeguard, there should be a specific legislative requirement for conditions to be reasonable.

464 The existing discretionary conditions regarding the following matters should also be retained: the days on which and the hours during which alcohol may be sold or delivered (within national maximum hours as discussed later in this chapter); the designation of the whole or part of the premises as a restricted or supervised area; the steps to be taken by the licensee to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed; the persons or types of persons to whom alcohol may be sold or supplied.

465 New South Wales Bureau of Crime Statistics and Research "Liquor Licensing Enforcement and Assaults on Licensed Premises" (October 2009) Crime and Justice Statistics Issue Paper No 40. It was impossible to isolate the effect of the conditions from everything else that was going on in the administration and enforcement of the regulatory regime.

9.23 The United Kingdom is considering regulations to require information at the point of sale to help customers understand the alcohol content of drinks and the links between excessive or binge drinking and health risks.[466] These regulations may include a requirement to display information about the alcohol unit content of a representative sample of drinks offered for sale. The proposals are in response to confusion amongst members of the public about the number of units in different drinks and the current guidelines on consumption, and are designed to help people make informed choices about levels of alcohol consumption.[467] We have observed similar confusion in New Zealand, and consider our own statute should provide a power for regulations to be made concerning the provision of point of sale information about the alcohol unit content of drinks and health information. There should be consultation before any regulations are made pursuant to this power, and developments in the United Kingdom are likely to be relevant to whether the power should be used.

HOURS

9.24 As discussed in chapter 6, in relation to the density of alcohol outlets, the availability of alcohol affects the level of alcohol-related harm. In addition to density of outlets, the hours in which alcohol may be sold is also a factor affecting the availability of alcohol and, therefore, the level of alcohol-related harm.

9.25 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, clientele and style of operation.[468] A territorial authority's local alcohol policy will also be a relevant factor.

9.26 In recent years, there has been a trend towards later and 24-hour trading of alcohol in New Zealand. The LLA has advised that 712 on-licences, 237 off-licences and 2 club licences are permitted to sell alcohol at any time, and a further 2,038 on-licences, 306 off-licences and 12 club licences are permitted to sell alcohol after 2am.[469] Before the last decade, the general approach of the LLA was where there were residential neighbours to taverns and hotels, a closing time of around 11pm on week nights and 12 midnight or 1am the following day on Friday and Saturday nights was considered appropriate. Taverns and hotels in other areas were commonly licensed until 3am.[470]

Connection between hours of sale and alcohol-related harm

9.27 Before 1989, the law placed restrictions on the hours in which alcohol could be sold. The Sale of Liquor Act 1962 prevented on-licence sales from occurring after 10pm or 11pm and before 9am in many cases. Off-licence sales were usually restricted to between 8am and 7pm. On the recommendations of the Working Party

466 Home Office *Safe. Sensible. Social. Selling Alcohol Responsibly: A Consultation on the New Code of Practice for Alcohol Retailers, England and Wales* (Home Office, 2009).

467 Ibid, at 23.

468 *Tonto Investments Ltd* (LLA, 1210/95, 21 July 1995) at 7.

469 Information provided to the Law Commission by the Liquor Licensing Authority (11 February 2010).

470 *KR and CA Burton* (LLA, 2020-2025/95, 7 September 1995) at 7.

on Liquor (the Laking Committee), the government moved away from restricting hours in the Sale of Liquor Act 1989. Based on evidence considered at the time, the Laking Committee concluded that:[471]

> …the abandonment of any legislative provision imposing minimum or maximum hours for hotels and taverns would have little if any impact on the total time they are open for business or on consumption. Economic factors such as costs and profitability would be more powerful restraints.

The Laking Committee predicted that the changes to hours, which it recommended, would not result in any major increase in the number of outlets trading past the then maximum hours because of factors such as the already high level of availability of alcohol, the cost of labour at late hours, and lack of sufficient patronage to support large numbers of late-night or early morning outlets.[472] In its view, the policy was justified on the basis of convenience to the public that the rigidity of the law at that time excluded.[473]

9.28 There is now clear evidence this assumption was wrong. Many premises in New Zealand have taken up 24-hour and late-night/early morning licensed hours. In some places in New Zealand, there are high levels of patronage of bars and nightclubs throughout the night. An Auckland City Police report on 24-hour licensing found that violent crime in Auckland was occurring in 2007 with the same distribution across the 24-hour period as it had in 1998, indicating that 24-hour licensing had not spread the workload of violent crime as expected.[474] There is now significant public concern about the harm caused by night-time drinking culture and practices, such as drink driving, neighbourhood disruption and crime.

9.29 The trend towards liberalisation of trading hours has been mirrored in many other countries, as has the concern about resulting alcohol-related harm. This has prompted research in recent years into the effects of extended trading hours.

9.30 In 2007, the World Health Organization's Expert Committee on Problems Related to Alcohol Consumption took note of the evidence:[475]

> …that while extending times of sale can redistribute the times when many alcohol-related incidents occur, such extensions generally do not reduce rates of violent incidents and often lead to an overall increase in consumption and problems. In general, reducing the hours or days of sale of alcohol beverages results in fewer alcohol-related problems, including homicides and assaults.

9.31 Current international expert opinion is that changes in hours of sale of alcohol will be associated with changes in alcohol-related harms.[476] Following the trend to liberalise days and hours of sale of alcohol in many countries, several recent studies have investigated the effects of increased late-night trading hours. In 2009,

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471 Report of the Working Party on Liquor *The Sale of Liquor in New Zealand* (1986) at 38 [*Laking Report*].

472 Ibid, at 62.

473 Ibid.

474 New Zealand Police *24 Hour Licensing Hours in Auckland City: A Paper Prepared by Senior Sergeant Ben Offner, Sergeant Bryce Law and Barry Hyde* (Auckland, 2008).

475 World Health Organization *Expert Committee on Problems Related to Alcohol Consumption* (World Health Organization, Geneva, 2007) at 26.

476 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 133.

Stockwell and Chikritzhs published a systematic review of studies published in England since 1965 regarding the changes to alcohol trading hours for on-premises consumption. The review concluded that the balance of reliable evidence from available international literature suggests extended late-night trading hours led to increased liquor consumption and related harm.[477] Canadian studies by Vingilis and others in 2005 and 2007 examined the extension of trading hours from 1am to 2am in Ontario using a variety of date sources, and found while there was no impact on motor vehicle injuries in the province, there were significant increases in other injuries (such as assault and fall-related injuries).[478] In Iceland, Ragnarsdóttir and others found the introduction of unrestricted opening times in Reykjavik, compared with the previous relatively early closing times (11.30pm on weeknights and 2am on weekends), were related to significant increases in injuries, police work and drink driving.[479] A series of studies in Western Australia in 2002, 2006 and 2007 found an extension of hotel closing times from midnight to 1am resulted in increases in assaults and impaired driver road crashes.[480]

9.32 Research from the United Kingdom has also found increased rates of alcohol-related acute problems following increases in trading hours.[481] Evaluations relating to the most recent change in the United Kingdom's licensing laws, which allowed 24-hour trading, have not provided such a clear-cut picture. It appears this change has not resulted in higher overall levels of alcohol consumption and crime but in a temporal displacement of alcohol-related violence, with incidents shifting forwards into the early hours of the morning.[482] Researchers have concluded that evaluation of this change is difficult because some small extensions in trading had occurred before the new legislation[483] and the uptake of extended licensing hours had been relatively limited.[484]

477 T Stockwell and T Chikritzhs "Do relaxed trading hours for bars and clubs mean more relaxed drinking? A review of international research on the impacts of change to permitted hours of drinking" (2002) 2 Crime Prevention and Community Safety 153.

478 E Vingilis and others "Road safety impact of extended drinking hours in Ontario" (2002) 37 Accident Analysis and Prevention 549; E Vingilis and others "Impact of extended drinking hours in Ontario on motor-vehicle collision and non-motor-vehicle collision injuries" (2007) 68 Journal of Studies on Alcohol and Drugs 905.

479 T Ragnarsdóttir, A Kjartansdóttir and S Davidsdóttir "Effect of extended alcohol serving-hours in Reykjavik" in R Room (ed) *The Effects of Nordic Alcohol Policies: Analyses of Changes in Control Systems* (Publication No 42. Nordic Council for Alcohol and Drug Research, Helsinki, 2002) 145.

480 T Chikritzhs and T Stockwell "The impact of later trading hours for Australian public houses (hotels) on levels of violence" (2002) 63 Journal of Studies on Alcohol 591; T Chikritzhs and T Stockwell "The impact of later trading hours for hotels on levels of impaired driver road crashes and driver breath alcohol levels" (2006) 101 Addiction 1254; T Chikritzhs and T Stockwell "The impact of later trading hours for hotels (public houses) on breath alcohol levels of apprehended impaired drivers" (2007) 102 Addiction 1609. In addition, Chikritzhs and Stockwell found increased blood alcohol levels among male drivers aged 18–25 years who were apprehended during the later trading hours.

481 See, for instance, J C Duffy and A C Pinot De Moira "Changes in licensing law in England and Wales and indicators of alcohol-related problems" (1996) 4 Addiction Research and Theory 245; A Newton and others "Impact of the new UK licensing law on emergency hospital attendances: A cohort study" (2007) 24 British Medical Journal 532–34; P Babb *Violent Crime, Disorder and Criminal Damage Since the Introduction of the Licensing Act* (2nd ed, Home Office Online Report 16/07, London, 2007) < www.homeoffice.gov.uk > .

482 NICE Centre for Public Health Excellence "Interventions on Control of Alcohol Price, Promotion and Availability for Prevention of Alcohol Use Disorders in Adults and Young People" (University of Sheffield, Sheffield, 2009) at 147.

483 P Hadfield Bar *Wars: Contesting the Night in Contemporary British Cities* (OUP, Oxford, 2006).

484 M Hough and G Hunter "The 2003 Licensing Act's impact on crime and disorder: An evaluation" (2008) 8 Criminology and Criminal Justice 239.

9.33 While most studies have looked at the impacts of increasing the hours of sale, a Brazilian study has examined how restrictions on hours of sale affected the rates of alcohol-related harm. Duailibi and others found a new law in Diadema requiring on-premises alcohol outlets to close at 11pm, after most bars had previously had 24-hour trading, resulted in a reduction of around nine murders per month.[485] Similarly, an Australian study has found strong evidence that introducing restrictions on late-night opening hours in Newcastle, New South Wales in 2007 reduced the incidence of assault.[486]

9.34 Evidence from the New Zealand Police regarding the reduction of on-licence opening hours in Timaru in 2007 shows this measure resulted in a reduction in recorded violent offending, especially in weekends where recorded violence halved in Timaru's inner city after 3am. Significantly, the evidence suggested that violence was not simply displaced to an earlier time but the total number of incidents reduced.[487]

9.35 Research has found that restrictions on hours of sale have greater impacts on heavier drinkers. A study by Smith (1986) demonstrated that patrons of extended-hours taverns are an especially heavy drinking segment of the population, and, therefore, the kind of drinker most likely to be affected by any restrictions.[488]

9.36 This international research indicates there is a relationship between hours of sale of alcohol and alcohol-related harm, by showing both an increase in harm when hours are increased and a decrease in harm when hours are reduced. This signifies that limiting trading hours for the sale of alcohol is a key policy lever for reducing alcohol-related harm.

9.37 Comment in submissions has shown there is a strong appetite for reduced trading hours in New Zealand.

9.38 The New Zealand Police has been at the forefront of dealing with the increased levels of intoxication and alcohol-related offending that have occurred as a result of extended trading hours. The Police strongly considers there should not be 24-hour trading of alcohol in New Zealand.[489] Reducing opening hours is a way of enabling better enforcement of alcohol laws by the Police. Longer hours means the number of police officers is spread over a longer period of time. ALAC agrees the trend towards 24-hour licensing is contributing to increasing alcohol-related harm including night-time disorder, violence and problems for the Police.[490]

9.39 It is clear extended alcohol trading hours are straining not only Police resources, but those of hospital emergency departments. Evidence provided by submitters from Wellington Hospital's Emergency Department indicates that, on Sunday mornings,

485 S Duailibi and others "The effect of restricting opening hours on alcohol-related violence" (2007) 97 American Journal of Public Health 2276.

486 C Jones and others "The impact of restricted alcohol availability on alcohol-related violence in Newcastle, NSW" (2009) 127 Crime and Justice Bulletin 1.

487 New Zealand Police *Policing Fact Sheet: Licensed premises trading hours* (October 2009).

488 D I Smith "Comparison of patrons of hotels with early opening and standard hours" (1986) 21 International Journal of the Addictions 155.

489 Submission of New Zealand Police (submission dated 31 October 2009) at 28.

490 Submission of the Alcohol Advisory Council of New Zealand (submission dated 23 October 2009) at 7.

the service burden on the department peaks at 1am, but continues until about 5am.[491] Similarly, a submitter from Christchurch Hospital's Emergency Department advised there has been a significant increase in alcohol-related attendances as the 24-hour accessibility of alcohol has increased in Christchurch.[492]

Our proposals

Off-licences

9.40 We propose that off-licenses should be required to close no later than 10pm at night and not open again until 9am.

9.41 Much of the public concern with the increased availability of alcohol is in relation to opening hours for off-licence premises. By limiting off-licence hours as we propose, the law would restrict the opportunity for drinkers to combine nights out at on-licensed premises with the drinking of alcohol from off-licensed premises through "pre-loading" or "post-loading", both of which contribute to the problem of binge drinking and consequent harms. The measure also addresses the association of smaller off-licensed premises with night-time disorder, vandalism and crime, which is particularly problematic in areas of economic deprivation.[493]

9.42 We proposed trading hours of between 8am and 10pm in our Issues Paper. Restricting the opening hours of off-licences was supported by 78 % of submitters, including the New Zealand Police[494] and ALAC.[495]

9.43 The Police supports a change to restricted off-licence opening hours as it believes this would encourage people into more regulated and supervised drinking environments and away from unsupervised street or "car boot" drinking.[496] We agree with the Police that, while this measure will not on its own reduce pre-planned drinking at home, it will eliminate opportunities to purchase more alcohol, which often occurs once people are already intoxicated and prone to making poor decisions about their alcohol consumption.[497]

9.44 We have shifted our proposed earliest opening time for off-licensed premises from 8am to 9am. This change was as a result of concern expressed during our consultation. Many people felt it is more appropriate for licensed premises to open after schools have started in the morning. This means the opportunities for young people to gain access to alcohol before school starts are reduced.

9.45 We acknowledge this will affect the business of off-licence premises that currently trade after 10pm or before 9am. We understand that, currently, few grocery stores have licences allowing trading after midnight, but that bottle stores, taverns and hotels would be affected. Additionally, many premises actually trade

491 Submission of Dr Paul Quigley MbChB, FACEM, Emergency Medicine Speciality, Wellington Hospital (submission dated 29 October 2009) at 5–6.

492 Submission of Dr Paul Gee (submission dated 30 October 2009) at 1.

493 See chapter 6.

494 Submission of New Zealand Police (submission dated 31 October 2009) at 7.

495 Submission of the Alcohol Advisory Council of New Zealand (submission dated 23 October 2009) at 44.

496 Submission of New Zealand Police (submission dated 31 October 2009) at 28.

497 Ibid.

well within their licence hours. Supermarket chain, Progressive Enterprises has already voluntarily reduced the opening hours of some of its supermarkets.[498] Evidence of the effect of reducing the hours of its Countdown supermarket in Papakura, Auckland in 2008 from 24 hours to 7am to 11pm shows that within a 500-metre radius of the store the number of incidents to which police were called was less than half that of the previous year.[499]

9.46 The response from retailers to our proposed maximum hours has been mixed. Foodstuffs is willing to accept opening hours of 8am to 10pm, although it suggests temporary extensions to hours should be allowed during peak sales times, such as the pre-Christmas period.[500] Progressive Enterprises opposes not being able to sell alcohol after 10pm because it considers this a constraint on responsible consumers, and argues supermarkets are safe places to purchase alcohol at night and add to the vibrancy of town centres through night-time trading.[501] Although we agree with this, our view is that these limits are necessary because of the problems of alcohol-related harm. Supermarkets will continue to be able to open after 10pm without selling alcohol and contribute to the night-time economy in this way.

9.47 The New Zealand Retailers' Association submitted that if a reduction of trading hours is to be imposed, stores should be given flexibility in cut-off times, such as a 15-minute window to facilitate sales to customers who are in a queue waiting to be served at the time sales of alcohol close.[502]

9.48 Unsurprisingly, the on-licence industry is supportive of measures to restrict the hours of off-licensed premises. The Hospitality Association of New Zealand considers the trend towards much greater off-premises and unsupervised consumption is contributing to alcohol misuse and that alcohol consumption during later hours is best done supervised in an on-premises environment.[503]

9.49 We discuss hours for internet sales of alcohol in chapter 8, which deals with off-licences.

On-licences and club licences

9.50 We recommend the maximum hours for on-licenses and club licences should be from 9am to 4am, with a mandatory one-way door requirement if premises are open after 2am. This means people cannot enter after 2am but those already on the premises do not have to leave until 4am or the premises' closing time, whichever is earlier.

9.51 Submissions from members of the public were supportive of restricting the opening hours of on-licensed premises. Nearly 600 submitters thought restricting the sale of alcohol at on-licences after a specified time was a good idea.

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498 Submission of Progressive Enterprises (submission dated 30 October 2009).

499 Email from New Zealand Police to Law Commission regarding impact of reduction of hours of Countdown Papakura (23 November 2009).

500 Submission of Foodstuffs (NZ) Ltd (submission dated 30 October 2009) at 4–5.

501 Submission of Progressive Enterprises (submission dated 30 October 2009) at 8.

502 Submission of New Zealand Retailers' Association (submission dated 30 October 2009) at 11.

503 Submission of Hospitality Association of New Zealand (submission dated 30 October 2009) at 11.

9.52 We are aware of concerns that a uniform closing time would place constraints on transport and policing resources, potentially creating increased risks of drinking and driving, and violence, vandalism, loitering, noise and other disorderly behaviour associated with large numbers of people vacating premises around the same times.[504] Indeed, New Zealand has seen evidence of the harm of rigid closing times, with the "six o'clock swill" and then "10 or 11 o'clock swill", which occurred as a result of past legislation.[505] We agree with the Police that the benefits of earlier closing times in reducing alcohol-related harm and offending outweigh the negative impacts.[506]

9.53 Again, we recognise the business of some premises would be affected by this change. There is a concern there will be reduced profits for some premises. It is likely some drinkers would shift their behaviour so their consumption begins at an earlier time but the reduced consumption of alcohol, which is the aim of these and our other recommendations, will undoubtedly result in a fall in profits. The uniform national maximum closing time makes this more likely because patrons will not simply be able to shift to a premises with a later closing time.

One-way door

9.54 The requirement that on-licences that are open after 2am have a one-way door policy has advantages over a uniform closing time. The policy is designed to prevent a large number of people coming out of bars and nightclubs at the same time and increasing the potential for disorder and crime. Instead, patrons will be able to stay in the last premises they enter before 2am until they wish to leave (as long as it is before 4am), meaning the times of departure will vary among patrons. The rationale for having a one-way door requirement relates to the fact that many of the alcohol-related law and order problems often occur when intoxicated people interact out on the streets. The movement of people between bars and nightclubs during the night increases the likelihood of intoxicated people interacting, which in some cases leads to violence and disturbances. The difficulty with introducing a universal maximum closing time is that many people within an entertainment precinct will be leaving bars and nightclubs and going out on to the streets to make their way home at the same time. This creates a higher risk of alcohol-related crime and other harms, and would be a difficult period to police. The one-way door requirement means patrons are more likely to leave an entertainment precinct at different times because once they leave a premises after 2am they cannot re-enter it or another premises. This arrangement will help to alleviate the potential for harm in entertainment precincts at night.

9.55 Nearly 300 submitters supported having extended trading hours to 4am for premises that operated a one-way door policy. The Police thinks the one-way door policy could be useful in some places but not others.[507]

9.56 A one-way door policy was implemented from October 2006 to March 2007 in central Christchurch as part of the Christchurch Central Business District Alcohol Accord. This voluntary intervention involved a one-way door policy on

504 Ibid.

505 Liquor Review Advisory Committee *Liquor Review: Report of the Advisory Committee* (March 1997) at 50.

506 Submission of New Zealand Police (submission dated 31 October 2009) at 28.

507 Ibid.

Thursday, Friday and Saturday nights aimed at reducing crime and violence in the inner city by 10%. The policy originally aimed for a 3am one-way door, but licensees negotiated for this to be shifted to 4am and for the option of operating a cover charge as an alternative to the one-way door policy.[508]

9.57 An evaluation of the Christchurch initiative by ALAC found the goal of a 10% reduction in alcohol-related crime and violence in the inner city was not met. The evaluation found, however, there were reductions in some subsets of crime, such as offences and serious violence offences on Saturday/Sunday nights.[509] There was also an impact on perceptions of safety and crime levels. The majority of licensees reported their turnover had not been adversely affected by the policy.[510]

9.58 One-way door policies have been implemented in Victoria, New South Wales and Queensland. The licensing legislation in each of these states provides for the declaration of a "lockout" to prevent patrons entering after a specified time. Under the Queensland Liquor Act 1992, all premises for which a licence or permit is held for on-premises consumption of alcohol that are open between 3am and 6am are subject to a lockout provision. This Act provides:[511]

> (1) It is a condition of the licensee's or permittee's licence or permit that a patron of the licensed premises or the premises to which the permit relates must not be allowed to enter the premises at or after 3a.m. during the trading period.
>
> *Example of an entry—*
>
> A patron of licensed premises leaves the premises and a short time later re-enters the premises. The re-entry is a separate entry of the premises.
>
> (2) For licensed premises, the condition does not apply in relation to a resident, or a guest of a resident while in the resident's company, who is entering the premises.
>
> (3) The licensee or permittee must comply with the condition.

9.59 A 2009 study done on the impact of a lockout declaration introduced in the Gold Coast, Queensland provides some indication that the policy resulted in a reduction in the number of alcohol-related offences requiring police attention. Alcohol-related offences, particularly those related to disturbances and sexual offences, were significantly reduced after the lockout was introduced.[512]

9.60 Under the Victorian Liquor Control Reform Act 1998 a late-hour entry declaration can be made to establish a lockout time for licensed premises in a particular area.[513] A temporary late-hour entry declaration can be made in areas where there has been alcohol-related violence or disorder and it is reasonably likely a declaration would be effective at reducing or preventing this.[514] The Act establishes procedural

508 Alcohol Advisory Council of New Zealand *Evaluation of the Christchurch City One-way Door Intervention* (ALAC, 2007) at 7.

509 Ibid, at 8.

510 Ibid.

511 Liquor Act 1992 (Qld), s 142AB.

512 G R M Palk, J D Davey and J E Freeman "The impact of a lockout policy on levels of alcohol-related incidents in and around licensed premises" (23 March 2009) Police Practice and Research: An International Journal < www.informaworld.com > .

513 Liquor Control Reform Act 1998 (Vic), s 68B.

514 Ibid, s 68CA.

requirements for putting a declaration in place, including allowing licensees to object to the declaration and request a review. A similar provision is included in the New South Wales legislation.[515]

9.61 As a consequence of community concern and the nature and increasing severity of alcohol-related violence in Victoria, particularly in the Melbourne central business district, a temporary three-month lockout was introduced from 3 June 2008. The declaration prevented licensees from allowing patrons to enter or re-enter the premises after 2am. The decision impacted around 487 late-night venues.[516] An evaluation of the temporary lockout found that, despite significant limitations impacting on its effectiveness,[517] there were several positive trends during the lockout. These included a reduction in total reported assaults in the City of Melbourne and Port Phillip between 8pm and midnight, a decrease in reported assaults, a reduction in assault-related ambulance transports and presentations to hospital emergency departments and a decrease in drunk-related police callouts.[518] However, there was an increase in some aspects of reported violence during certain periods of the lockout, such as assaults between the hours of midnight and 2am, and an increase in alcohol-related presentations as a proportion of total hospital emergency presentations on Friday and Saturday nights.[519]

9.62 Given that we are recommending a mandatory one-way door policy to operate for all on-licences open after 2am, the Queensland provision is the most useful model for how this could be legislated in New Zealand.

Casinos

9.63 The Gambling Act 2003 allows casinos to sell alcohol for consumption in a casino during the hours the casino is open, regardless of the Sale of Liquor Act.[520] We do not propose to alter this, and the new legislation should refer to this provision of the Gambling Act.

Local discretion

9.64 The recommended closing times should be mandatory. The proposed Act should not allow territorial authorities to set maximum trading hours that are longer than these hours in their local alcohol policies, or allow District Licensing Committees (DLCs), the decision-making committees we recommend in chapter 10, to set longer hours as a condition of a licence. We agree with ALAC that permitting some areas to have later closing times than others would not allow

515 Liquor Act 2007 (NSW), ss 87–90.

516 KPMG *Evaluation of the Temporary Late Night Entry Declaration* (Department of Justice, Victoria, 2008) at 4.

517 The principal limitation was that around 25% of premises, including 54% of nightclubs, covered by the lockout were granted stays from the Victorian Civil and Administrative Tribunal under s 87A(1) of the Liquor Control Reform Act 1998 (Vic), which meant they were able to trade as normal past 2am with a few additional conditions.

518 KPMG *Evaluation of the Temporary Late Night Entry Declaration Department of Justice* (KPMG, Victoria, 2008) at 6.

519 Ibid, at 7.

520 Gambling Act 2003, s 173.

for the concentration of resources to prevent harm, and would incentivise the transference of harm to areas with longer opening hours and other harmful behaviours, such as drink driving.[521]

9.65 However, the law should allow territorial authorities to restrict hours further under their local alcohol policies, and the evidence suggests this may be justified from a harm-reduction perspective.

9.66 An important point made in submissions was that flexibility is needed to allow some areas to have more restricted hours of alcohol sales. Several submissions from local authorities outlined the importance of having the ability for local views to shape decisions on opening hours.

PROHIBITED DAYS

9.67 Under the Sale of Liquor Act 1989, there are certain days on which the sale of alcohol is prohibited for some types of licensed premises, but not for others. It is a mandatory condition of all on-licences held by hotels and taverns (but not other types of on-licence premises) that they may not sell alcohol on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day (the prohibited days), unless the purchaser is living on the premises or is on the premises for the purpose of dining.[522] It is a mandatory condition of all off-licences that alcohol may not be sold or delivered on the prohibited days, unless an exception applies.[523]

9.68 We think the licence conditions regarding the prohibited days should reflect the general law relating to business in New Zealand. Currently, the Shop Trading Hours Act Repeal Act 1990 requires almost all shops to be closed on these three-and-a-half days.[524] We do not think the new sale of alcohol legislation should apply different rules relating to trading days than applies to other types of stores.

9.69 We acknowledge the prohibited days do adversely affect the business of licensed premises. The tourism and travel industry would likely be assisted by their elimination. Many submitters, particularly from the retail and hospitality industries, were in favour of the prohibited days being removed for the reason that this law is no longer necessary or relevant. For a significant number of people, the rules around the prohibited days are outdated and inconvenient.

9.70 However, many other submitters argued the prohibited days should be retained. It was considered these days provide a further limit on the availability of alcohol. They allow many people who work in the hospitality industry to have a day off to spend with their families. It was felt that three-and-a-half days per year is not a large limitation on the commercial right to sell alcohol. Many also argued the sacrosanct nature of these days should be respected for historical or religious reasons. As mentioned in our Issues Paper, although New Zealand is a largely secular society, a significant proportion of New Zealanders affiliate with the Christian religion[525] and recent attempts

521 Submission of the Alcohol Advisory Council of New Zealand (submission dated 23 October 2009) at 7.

522 Sale of Liquor Act 1989, s 14(s).

523 Ibid, s 37. Under s 37(1A) it is a condition of an off-licence that sells and makes grape or fruit wine on the premises or from grapes or fruit harvested from land on which the premises are situated that they may sell or deliver grape or fruit wine on Easter Sunday.

524 Certain exceptions apply pursuant to ss 4 and 4A of the Shop Trading Hours Act Repeal Act 1990.

525 Statistics New Zealand *QuickStats About Culture and Identity* (Wellington, 2006) < www.stats.govt.nz > .

to change the general Easter shop trading hours have failed in Parliament.[526] A significant number of submitters thought the law should go further and return to the prohibition on alcohol sales on Sundays in order to have one whole day per week where alcohol availability is restricted.

9.71 It appears the prohibited days have some ability to limit alcohol-related harm. Data from the Police National Alcohol Assessment illustrates the number of alcohol-related apprehensions for the Easter weekends from 2005 to 2007 were less than for other weekends before and following the Easter weekend. The number of alcohol-related apprehensions on Anzac Day and over the week of Christmas did not show the same trend, but showed higher rates of apprehensions involving alcohol than at comparable times. The data suggests the number of apprehensions over Anzac Day fluctuates depending on what day it falls.[527] In its submission, the New Zealand Police advised that it considers if liquor is to be sold on the prohibited days, one of the likely consequences is an increase in alcohol-related offending on the days falling on the traditional drinking nights (Thursday to Saturday).[528] ALAC's view is that increasing the number of prohibited days would reduce alcohol availability and therefore alcohol-related harm, but acknowledges this is unlikely to be a practical and reasonable response to the harm that occurs, and would unfairly impact on responsible New Zealanders.[529]

Off-licences

9.72 We recommend the prohibited days should continue to apply to off-licences until such time as the general shop laws are changed. The situation with regard to on-licences is less clear cut.

On-licences

9.73 In our Issues Paper, we outlined the inconsistency issue in the prohibited days law as it applies to on-licences. Some types of premises, such as restaurants, nightclubs, bowling alleys and movie theatres, are entitled to sell alcohol without the requirement that patrons must be dining. The different rules and exceptions, as well as the now blurred lines between what constitutes the different types of on-licences, has meant this law is difficult to understand and enforce. The Police finds this problematic and wants the law clarified.[530] Several retailers in the hospitality industry have suggested the current rules are unworkable and there should be a level playing field between all premises with an on-licence. It does seem unfair that some types of premises are treated differently to others and gain a commercial advantage as a result. We expressed a preference that either all on-licenses should be prohibited from selling alcohol unless purchasers are dining, or the restrictions should be lifted.

526 For example, the Easter Sunday Shop Trading Amendment Bill 2006 (42-2).

527 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 83 < www.police.govt.nz > .

528 Submission of New Zealand Police (submission dated 31 October 2009) at 30–31.

529 Submission of the Alcohol Advisory Council of New Zealand (submission dated 23 October 2009) at 8.

530 Submission of New Zealand Police (submission dated 31 October 2009) at 30.

9.74 We consider some restrictions should remain for on-licences on prohibited days if they are to continue for off-licences. Requiring that alcohol can only be served with a meal encourages responsible drinking on these days, which is likely to have some effect on reducing alcohol-related harm on these days.

9.75 We recommend the same test be applied to all on-licences to determine whether alcohol can be sold on a prohibited day. It is no longer useful to distinguish between types of on-licences. For a hotel or tavern, the Sale of Liquor Act 1989 currently allows alcohol to be served on a prohibited day to any person who is on the premises "for the purpose of dining".[531] This test is somewhat difficult to apply and enforce because it is ambiguous about how close in time the serving of alcohol must be to the dining. Because of the difficulties inherent in determining a person's intention for being present at a premises, we consider the legislation can be improved by allowing the serving of alcohol to any person to consume on a premises "in association with eating a meal". The Queensland Liquor Act 1992 provides a useful model for how this type of test can operate. This Act authorises the sale of alcohol "in association with eating a meal" on a prohibited day if alcohol is supplied on premises:[532]

(a) to a consumer who has indicated a genuine intention of eating a meal on the premises, within 1 hour before the consumer orders the meal; or

(b) after the consumer orders the meal and before he or she finishes eating it; or

(c) within 1 hour after the consumer has finished eating the meal; and at no other times.

9.76 A provision like this provides a clear timeframe in which the sale of alcohol can occur. It would provide a universal test to determine whether alcohol can be sold at an on-licence. It is easy to understand. It will be clear for consumers and on-licence operators. We do not think this law will result in greater enforcement difficulties than exist currently. We do acknowledge this will adversely impact upon premises that can currently serve people on prohibited days without the dining requirement. However, the law should be consistent across all types of on-licences.

Club licences

9.77 The same rules that apply to on-licences regarding prohibited days should apply to club licences. Consequently, clubs will only be able to serve alcohol to members and guests who are at the club for the purpose of dining. This is a significant change because the sale of alcohol on-premises by clubs is currently not restricted by the prohibited days. We do not see any justification for clubs being treated differently to on-licences in this regard.

Start times

9.78 Our Issues Paper raised a practical difficulty with the prohibited days in that the Sale of Liquor Act 1989 does not specify the hour at which these days begin. In line with the common law, the LLA takes the view that the prohibited days begin at midnight the previous night. We are concerned this unnecessarily increases the disruption to licensees' businesses on what is effectively the

531 Sale of Liquor Act 1989, ss 14(2).

532 Liquor Act 1992 (Qld), s 10.

night before the prohibited days. On-licences must close at midnight on the night before a prohibited day. This leads to a large number of people being forced on to the streets at once and places pressure on transport options. Several submitters commented they would like the law to allow businesses to continue to be open after midnight the night before a prohibited day.

9.79 We consider the law would be more rational if it allowed premises to remain open until their normal closing time during the night before a prohibited day (that is, the early morning hours of the prohibited day). As a corollary, premises should not be able to reopen at midnight at the end of the prohibited day. In order not to undermine the concept of a prohibited day, on-licence premises should be prohibited from opening (except to patrons who are eating a meal) for at least a 24-hour period following the closing time in the night before the prohibited day (other than Anzac Day). Premises may reopen in the morning of the day after the prohibited day from the start of their normal licensed hours (or from 1pm on Anzac Day). For example, a premises could close at 2am on Good Friday, but would then not be able to reopen for normal sale until the Saturday morning. This recommendation will not result in longer licensed hours near to prohibited days. Neither will it reduce the hours in which licensed premises can open. This is more sensible than the existing law because it allows business as usual for a licensed premises on the day and night before a prohibited day and on the day following a prohibited day.

RECOMMENDATIONS > Continued next page

R24 Mandatory statutory conditions placed on on-licence and club premises should include:

- the provision of food for consumption on the premises;
- the sale and supply of low-alcohol beverages and soft drinks;
- the provision of free drinking water; and
- the provision of assistance with, or information about, alternative forms of transport.

R25 Discretionary conditions to be imposed on on-licence and club premises depending on the circumstances should include (in addition to specified existing conditions):

- the provision of CCTV cameras, including requirements for their location and number;
- the provision of seating;
- no serving in glass containers at specified times;
- the number of door staff required;
- no shots or particular types of drinks to be served after specified times;
- a limit on drinks sizes after specified times;
- a limit on the number of drinks per customer;
- restrictions on permitted drinking vessels;
- no alcohol service for a specified time before the closing of a licensed premises;
- conditions relating to management, for example, with a requirement for multiple managers at large establishments;
- the provision of transport for patrons.

RECOMMENDATIONS

R26 For off-licences, there should be a mandatory condition for specialist alcohol retailers to be designated as supervised areas, and a discretionary power to impose conditions relating to lighting and security measures (in addition to specified existing conditions).

R27 For supermarkets, there should be a mandatory condition for a single area restriction.

R28 The licensing decision-makers should be able to impose any reasonable condition designed to minimise harm on all licences.

R29 The Alcohol Regulatory Authority should issue guidelines on the types of conditions that are suitable to address particular risks.

R30 There should be a power to consult and make regulations concerning the provision of point of sale information about the alcohol unit content of drinks and health information.

R31 Off-licences should be required to close no later than 10pm at night and not reopen until 9am.

R32 On-licences and licensed clubs should be required to close no later than 4am, with a mandatory one-way door from 2am, and not reopen until 9am. The one-way door requirement means people cannot enter after 2am but do not have to leave until 4am or the premises' closing time, whichever is earlier.

R33 The legislation should refer to the Gambling Act 2003 exception to the national maximum hours for casinos.

R34 When setting the trading hours for a licence, the licensing decision-makers should not be able to set maximum trading hours that are longer than the national maximum hours.

R35 Territorial authorities should have the discretion to restrict hours further than the national maximum hours under local alcohol policies.

R36 All sales of alcohol at an off-licence should be prohibited on Good Friday, Easter Sunday, Christmas Day, and Anzac Day before 1pm.

R37 Sales of alcohol at any on-licence or licensed club on a prohibited day should only be authorised if the alcohol is sold and supplied in association with the eating of a meal. Alcohol should be considered to be sold and supplied in association with the eating of a meal if it is provided to a consumer after he or she orders a meal and before he or she finishes eating the meal, or within one hour before he or she orders the meal or after he or she finishes the meal.

R38 On prohibited days, on-licenses should be able to remain open until their usual closing time on the night before the prohibited day, but must remain closed for a 24-hour period from this time.

Chapter 10
Licensing bodies

IN THIS CHAPTER, WE:

- Discuss the role of District Licensing Agencies and our proposals for them to be abolished and reconstituted as new District Licensing Committees.
- Detail our recommendations for changes to the Liquor Licensing Authority, including renaming it as the "Alcohol Regulatory Authority".
- Outline our recommended changes to the process for consideration of licence applications.

DISTRICT LICENSING AGENCIES

Current role

10.1 People who wish to apply for a liquor licence must lodge an application with their local District Licensing Agency (DLA). Each territorial authority is the DLA for its district.

10.2 The functions of a DLA are to:[533]

- consider and determine applications for the grant of unopposed off-, on- and club licences;[534]
- grant unopposed applications for licence renewals;
- consider and determine applications for temporary authority to carry on the sale and supply of liquor;
- consider and determine applications for special licences;
- grant unopposed applications for renewal of managers' certificates;
- conduct enquiries and make such reports as may be required by the Liquor Licensing Authority (LLA) under section 95 of the Sale of Liquor Act 1989.

533 Sale of Liquor Act 1989, s 100.

534 Ibid, ss 21, 34, 58 and 76.

10.3 The Sale of Liquor Act 1989 designates the chief executive of each local authority as the Secretary of the DLA;[535] however, the local authority may delegate any powers, duties or discretions to any committee as it considers necessary.[536] The DLA must appoint at least one inspector to hold the powers conferred under the Act.[537]

Issues Paper proposals and feedback

10.4 In our Issues Paper, *Alcohol in Our Lives*,[538] we highlighted several issues associated with the performance of DLAs, and outlined reforms we thought should be carried out in respect of them. We said they needed to be restructured and enhanced. This was because their performance around the country was extraordinarily variable. Some were close to inactive and never met, having delegated their functions to officials.

10.5 We said the law should require higher levels of performance and reporting from DLAs. We suggested inspectors employed by the DLAs should receive mandatory training. We stressed the level of fees set for issuing licences should be sufficient to ensure DLAs can properly perform their functions, including enforcement.

10.6 Importantly, we also said it was necessary to ensure the decisions of DLAs are independent of the council itself:[539]

> 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.

10.7 We have consulted extensively on these proposals with the New Zealand Police, local authorities and liquor licensing inspectors around New Zealand. The consultation was supportive, and suggested the only viable alternative model would be a centralised system of control, similar to the way in which the Licensing Control Commission used to operate under the 1962 Sale of Liquor Act. This would mean inspectors would be attached to the Ministry of Justice or some other central agency, like the Department of Internal Affairs.

10.8 Although this has merit in terms of independence, the establishment costs and set-up difficulties involving such a new structure would likely be substantial, and we therefore do not find it an attractive option. It would also isolate inspectors from other council staff with whom they must interact on a daily basis.

10.9 A small number of submissions supported abolishing DLAs and instead having a central function being retained by the LLA or a specially established tribunal. However, in our view, it is better to take the existing arrangements and try to revise them so that a better and more robust structure can be prescribed by statute and followed consistently all around New Zealand. We consider this would be a significant improvement on the current arrangements where the performance is highly variable, unpredictable and sometimes inappropriate.

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535 Ibid, s 102.

536 Ibid, s 104.

537 Ibid, s 103.

538 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 222, [12.22]–[12.24] [*Alcohol in Our Lives*].

539 Ibid, at 222.

New District Licensing Committees

10.10 We recommend DLAs be abolished and replaced with new bodies called District Licensing Committees (DLCs). A DLC would be a committee of the local authority, but with a statutory overlay preserving some of its work from control by the full council. This structure should be familiar to local authorities, which currently have several such committees.

10.11 The membership of a DLC should consist of a councillor selected for the task by the council, and two members of the community appointed by the council. The application process should be publicly advertised, and selection of community members should be in consultation with the New Zealand Police, licensing inspectors and medical officers of health. There should be a requirement for members to have particular knowledge and experience in areas specified in the statute, such as:

- public health;
- the social issues of the particular community in which the DLC is situated;
- the liquor industry (but not be currently participating in this);
- law enforcement (but not be currently participating in this); or
- legal or regulatory matters.

10.12 Where there are insufficient councillors to sit on a DLC, a local authority could appoint a legally qualified hearings commissioner in place of the council representative, similar to what is done in the resource management context. Two or more local authorities could also join to establish a joint DLC for their combined area if it was considered the workload would warrant this.

10.13 The functions of the new DLCs should be different from those of the predecessor organisations. In particular, under the recommended model, they would deal as a committee with all licence applications, whether they were opposed or not. DLAs do not currently deal with opposed applications for on-, off- or club licences. The inability to deal with all applications, lack of training and resources for DLAs, and lack of criteria on which to decline a licence have all contributed to problems with the functioning of DLAs and ability of local authorities to take ownership of local alcohol issues.

10.14 The main functions of DLCs should be to:

- consider and determine all applications for licences;
- hold hearings on opposed applications;
- impose conditions on successful licence applications, in accordance with the statute and any national guidelines developed by the new Alcohol Regulatory Authority (as discussed below);
- determine applications for managers' certificates;
- process or determine licence renewals under a new streamlined process (discussed in chapter 11);
- consider and determine amendments to licence conditions upon application by an inspector or the New Zealand Police;
- gather information, monitor and keep records on licences within the district;
- report regularly to the Alcohol Regulatory Authority.

10.15 It is intended that DLCs be constituted to be bodies rather like independent commissioners undertaking Resource Management Act consent hearings under the Resource Management Act 1991. In this respect, members would need to be trained in a similar way that councillors who hold hearings under the Resource Management Act have been trained under the "Making Good Decisions Programme" developed by the Ministry for the Environment and Local Government New Zealand. Obviously, this training will need to have a special component in relation to liquor. In its decision-making processes on licences, the committee would have to function judicially. The experience requirements for committee members and additional training should ensure DLCs are well-equipped to undertake their functions.

10.16 Inspectors need independent statutory powers to object to applications and prosecute licence breaches. Chief executives and councillors must not intervene in these independent functions. It is a distinct and deliberate feature of the recommended policy that local authorities will not be able to interfere with DLC decisions on licence applications or renewals.

10.17 It is envisaged the DLCs would meet and consider all local applications for licences, whether they were opposed or not. Applications that were not the subject of an objection by the public or an adverse report by an inspector, the local police or medical officer of health could be dealt with on the papers by the DLC. DLCs should hold hearings on all applications that are the subject of an objection or an adverse report. There are likely to be more opposed applications if, as we have recommended, there are increased grounds for declining a licence than presently exist. Those who may appear before the LLA would continue to have standing to appear at hearings on licence applications held by DLCs and the new Alcohol Regulatory Authority discussed below.

10.18 The DLCs should also be empowered to impose a wide range of conditions on successful licence applications, as discussed in chapter 9.

10.19 It is appropriate for some decisions, for example, in relation to unopposed managers' certificates and licence renewals, to be able to be delegated to the Secretary of the DLC. This would enable the DLC to consider the most important applications without becoming overloaded. The Secretary should be a full-time position. Any such delegation would need to be carefully prescribed in the statute.

10.20 All decisions made by a DLC should be appealable by anyone appearing before the DLC to the Alcohol Regulatory Authority, which should have full power to substitute its own decisions for those of the DLC.

10.21 While it is important a DLC be housed within the structure of the district council, there are elements of independence that are needed to ensure fairness of decisions.

10.22 In particular, it will be necessary to ensure liquor licensing inspectors have independent statutory powers to prosecute and object to applications, and that chief executives and councillors cannot interfere with these functions. It was made plain to us in the enquiries we conducted that such interference is common in some areas.

Auckland

10.23 The situation for Auckland is different from the rest of New Zealand as a result of the Local Government (Auckland Council) Act 2009. Section 15 of that Act makes the governing body, that is, the Auckland Council, responsible for all the regulatory decisions conferred on it by the Sale of Liquor Act 1989.

10.24 We note that section 15 requires the Auckland Council to consider any views or preferences expressed by a local board if the decision affects, or may affect, the responsibilities or operation of the local board or wellbeing of communities within its local board area.

10.25 In our view, licensing decisions clearly affect the wellbeing of communities, and it would be necessary for the governing body to systematically secure the views of local boards before arriving at a liquor policy for the Auckland Council itself. Because there are such a large number of liquor outlets in Auckland, and the number of people governed by the new council will be large, the components of a local alcohol policy for Auckland will likely be different from one area to another.

10.26 We doubt the arrangement we propose for other parts of New Zealand will be adequate for Auckland. In particular, the need to systematically secure the views of many local communities will be required. Furthermore, a single DLC of three people would not be sufficient to handle the volume of work in Auckland. The new legislation should therefore enable councils to have a pool of DLC members and to establish more than one DLC for its area, as needed. We have not prescribed a number, as this would have to be worked out by the Auckland Council. Other large councils may also wish to establish more than one DLC if the workload warranted this.

New licence application notification process

10.27 In our Issues Paper, we stated it is unclear if the current licence notification process is working effectively for either the public or licence applicants.[540] The current process requires licence applicants to 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. This is expensive, and 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.

10.28 We recommend that, on receipt of an application for a licence, the DLC should notify the application on a designated website and require the applicant to affix a notice in a prescribed form to the proposed site. The DLC should also notify residents within 200 metres of the proposed premises. This would ensure the people likely to be most affected by new licensed premises were aware of the application and had an opportunity to be heard on it if they wished.

540 Ibid, at 150.

10.29 In addition, all applications should be forwarded to a local licensing inspector, the New Zealand Police, and a medical officer of health. Licensing inspectors should report on all applications. The Police and medical officers of health should report only if they have any concerns.

LICENSING INSPECTORS

10.30 Licensing inspectors are at the centre of the licensing scheme. They are required to report on all licence applications, and have statutory powers to monitor licensee compliance with licence conditions. It has become clear in the course of our consultation that the role of licensing inspectors should be more clearly defined in the statute. Inspectors are often referred to as part of the DLA, but they have a separate function, which should be better reflected in the new Act. In our view, inspectors should be employed by the local authority, which would enable them to maintain essential links with other areas of the council.

10.31 The New Zealand Institute of Liquor Licensing Inspectors Incorporated submitted that:[541]

> …the role of Inspector must be enhanced including consideration that the role should be a full time dedicated role and that it encompass application processing, compliance activities including CPOs [Controlled Purchasing Operations] and education components. We support the proposal to raise the professionalism of inspectors via recognition of prior learning and/or a formal qualification and training.

10.32 The statute should expressly provide that inspectors have reporting, monitoring, educative and enforcement roles in the licensing system. We discuss compliance monitoring and enforcement in chapter 20.

10.33 In light of fiscal restraints in territorial authorities, we consider that inspectors who wish to appeal against a decision of a DLC should only do so with leave of the Alcohol Regulatory Authority to ensure resources are not spent without proper cause. The appeal fee should also be waived for enforcement officers.

Training

10.34 The Local Government Industry Training Organisation (ITO) currently manages a qualification for local government compliance officers who deal with liquor licensing and enforcement. The training programme is based primarily on on-the-job training and assessment. It covers the role of compliance officers and preparing for hearings as well as knowledge of the legal system, the Sale of Liquor Act 1989, liquor licensing and host responsibility understanding.

10.35 Several submitters, including the Society of Medical Officers of Health,[542] supported training requirements for liquor licensing inspectors and DLAs.

10.36 We support requiring training for licensing inspectors, particularly because the new legislation will involve a greater role for licensing inspectors and a new legal scheme. We recommend this be considered by Local Government New Zealand, in the context of the creation of the new DLCs.

541 Submission of New Zealand Institute of Liquor Licensing Inspectors (submission dated 31 October 2009) at 5.

542 Submission of Society of Medical Officers of Health (submission dated 3 November 2009).

MEDICAL OFFICERS OF HEALTH

10.37 The Sale of Liquor Act 1989 requires that applications for on-licences and club licences are forwarded to the local medical officer of health, who may report to the DLA on the application if there are concerns relating to it. Medical officers of health have no statutory reporting role in relation to off-licences and special licences.

10.38 Medical officers of health have a diverse range of powers and responsibilities in addition to those regarding alcohol. Our consultation showed that the medical officer of health role has, in most cases, been delegated to public health workers specialising in liquor issues. In addition to their statutory role, these practitioners undertake a range of associated programmes and services aimed at reducing alcohol abuse.

10.39 Like the New Zealand Police and DLAs, it appears that service delivery from the health sector with respect to the Sale of Liquor Act 1989 and related issues, has been uneven across the country. This is exacerbated by the comparatively few powers and responsibilities given to medical officers of health under the legislation.

10.40 We consider new legislation should strengthen public health participation in the licensing framework. To this end, the Act should recognise the delegation of the medical officer of health role to designated health officers. The input of medical officers of health will be critical to the development of local alcohol policies. All licence applications should be forwarded to the medical officer of health, who must report on the application if there are concerns with it. The recommended grounds on which a licence application can be refused will increase the scope for medical officer of health input into licence application decisions. Further, medical officers of health should have the same powers of entry into licensed premises as licensing inspectors. We consider, however, that medical officers of health should not have statutory powers to take applications for suspension or cancellation of a licence to the Alcohol Regulatory Authority. In our view, medical officers of health should be required to report any concerns regarding the operation of any licensed premises to a licensing inspector, and provide support for enforcement actions brought by the Police or licensing inspectors. The statute should also make clear that the functions of medical officers of health include education of licensees and collaborating with licensing inspectors and the Police on alcohol harm reduction strategies.

LIQUOR LICENSING AUTHORITY

Current role

10.41 The main functions of the LLA under the Sale of Liquor Act 1989 are to:[543]

- consider and determine applications for the grant and renewal of on-, off- and club licences as may be referred to it by any DLA;
- consider and determine applications for the granting and renewal of managers' certificates as may be referred to it by any DLA;
- consider and determine appeals from DLA decisions.

543 Sale of Liquor Act 1989, s 91.

Issues Paper proposals and feedback

10.42 In our Issues Paper, we stated that we favoured the retention of the LLA, and proposed it be given enhanced powers and functions.[544] The majority of submissions that addressed the issue of the role of the LLA were supportive of this.

10.43 In consultation discussions, several people stressed the need for a body to oversee the performance of DLAs to enhance consistency in decision-making and best practice.

New Alcohol Regulatory Authority

10.44 The identity of the regulator is an important issue in any scheme to regulate alcohol. We favour retaining a specialist tribunal attached to the Ministry of Justice. The LLA has earned widespread public confidence. However, it requires, in our view, a variety of enhanced functions that will call for it to be reorganised with expanded powers. The new organisation should be named the Alcohol Regulatory Authority (the Authority) to reflect its expanded focus. We consider its main function should be to hear appeals from decisions of the DLCs and applications for suspension or cancellation of licences. Enforcement actions are discussed in chapter 20. First instance decisions should be made at the DLC level, although there should be scope for DLCs to refer applications to the Authority for determination in certain circumstances, such as excessive workload.

10.45 The Authority should comprise two District Court judges who are specifically designated by the Chief District Court Judge. One judge should sit in Auckland (where the bulk of current applications are made), and the other should cover the rest of New Zealand. There may be occasions that make it desirable for them to sit together in precedent setting cases.

10.46 We recommend the Authority not have lay members as at present. This is because we envisage more of the Authority's work will be focused on appeals and enforcement activity than previously. This would also help to meet the costs of an additional judge.

10.47 The expanded functions of the Authority should include:

- monitoring and reporting to Parliament on annual trends in its case load, alcohol consumption, marketing, and alcohol-related harm in New Zealand;
- making rulings on promotions of alcohol by both on- and off-licensees;
- issuing practice notes and guidelines on matters within the Authority's jurisdiction;
- monitoring and auditing the performance of DLCs and local alcohol policies;
- enhancing the flow of data and information concerning licensing matters.

544 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 146–147.

10.48 These expanded functions are necessary to enable the Authority to act proactively and head off difficulties before they arise, rather than lying in wait for proceedings to be brought for its determination. There is a series of interpretation problems in the application of the law that guidelines and interpretative rulings would help to improve. Several public bodies have functions that involve both issuing guidance and individual decision-making, for example: the Commerce Commission, New Zealand Parole Board, Office of the Ombudsmen and Privacy Commissioner. In the case of the Authority, we anticipate this would include developing guidelines in relation to the following matters:

- the content of local alcohol policies, including matters to be considered in relation to the cumulative impact of licences;
- recognising intoxication;
- which discretionary licence conditions are appropriate in particular circumstances;
- what constitutes an irresponsible promotion for the purposes of the amended offence provision to replace the current section 154A of the Sale of Liquor Act 1989, discussed in chapter 19.

10.49 Furthermore, in some areas, such as in relation to what constitutes a breach of the irresponsible promotions provision, it may be necessary for the Authority to give binding rulings in advance of the relevant promotion being undertaken. Several public authorities have a similar power, for example, the Commissioner of Inland Revenue.[545] This is well within the scope of New Zealand's constitutional practice. The adjudication functions of the Authority will not be changed by the recommended additional powers. The result of these powers should be increased certainty and predictability in licensing decisions and the enforcement of the law.

10.50 An Executive Officer should be created to administer the Authority and carry out the policy work related to its expanded functions. This officer will need to be a person with a policy background. In particular, monitoring the DLCs, and preparing and researching guidelines will require policy and research capability. A small staff would be necessary. Many of these functions are not performed by the LLA currently. The Executive Officer should consult on draft guidelines before they are finalised and signed off by the two judges.

10.51 The LLA currently has the powers of a commission of inquiry pursuant to section 110 of the Sale of Liquor Act 1989. We recommend, rather than cross-referencing to the Commissions of Inquiry Act 1908 or its successor, the new alcohol legislation should set out in full the duties and powers of the Authority and DLCs. These should mirror those contained in the Inquiries Bill presently before Parliament, which include the power to award costs.

545 Tax Administration Act 1994, Part 5A.

10.52 There should also be a requirement that DLCs and the Authority conduct hearings with as little formality as is consistent with a fair and efficient process.

10.53 Generally, the licensing bodies should operate under a presumption that hearings are held in public and are able to be reported.

10.54 We recommend there should be a general appeal on the merits against a decision of the Authority to the High Court. This is a standard provision to ensure the development of the law in this area remains under the control of superior courts.

RECOMMENDATIONS

R39 District Licensing Agencies should be replaced by new District Licensing Committees.

R40 The membership of each District Licensing Committee should consist of a councillor selected for the task by the relevant council, and two members of the community appointed by the council.

R41 If there are insufficient councillors, councils should be able to appoint a commissioner in place of the councillor representative on the District Licensing Committee.

R42 The process for appointment of community members to the District Licensing Committee should be publicly advertised, and the selection of community members should be undertaken in consultation with the New Zealand Police, licensing inspectors and medical officers of health.

R43 There should be a requirement for community members to have particular knowledge and experience in areas specified in the statute, such as:

- public health;
- the social issues of the particular community in which the District Licensing Committee is situated;
- the liquor industry (but not be currently participating in this);
- law enforcement (but not be currently participating in this); or
- legal or regulatory matters.

RECOMMENDATIONS

> Continued next page

R44 The functions of District Licensing Committees should be to:

- consider and determine all applications for licences;
- hold hearings on all opposed applications;
- impose conditions on successful licence applications, in accordance with the statute and any national guidelines developed by the Alcohol Regulatory Authority;
- determine applications for managers' certificates;
- process or determine licence renewals under a new streamlined process;
- consider and determine amendments to licence conditions upon application by an inspector or the Police;
- gather information, monitor and keep records on licences within the district; and
- report regularly to the Alcohol Regulatory Authority.

R45 Two districts should have the power to form a combined District Licensing Committee if the workload would warrant this.

R46 The statute should permit a District Licensing Committee to delegate unopposed applications for managers' certificates and licence renewals to the Secretary of the District Licensing Committee, which should be a full-time position.

R47 All District Licensing Committee members should receive training to enable them to undertake their functions properly.

R48 The statute should enable councils to have a pool of District Licensing Committee members and to establish more than one committee for its area, as needed.

R49 On receipt of an application for a licence, the District Licensing Committee should notify the application on a designated website, notify residents within 200 metres of the proposed premises and require the applicant to affix a notice in the prescribed form to the proposed site.

R50 All licence applications should be forwarded to a licensing inspector, a medical officer of health, and the New Zealand Police. Licensing inspectors should report on all applications. The Police and medical officers of health should report only if they have any concerns relating to the proposed licence.

R51 Inspectors should be employed by the local authority.

R52 Licensing inspectors should have independent statutory powers.

RECOMMENDATIONS

R53 The statute should expressly provide that inspectors have reporting, monitoring, educative, and enforcement roles.

R54 The statute should provide for delegation of the medical officer of health functions to designated health officers.

R55 The statute should state that the functions of medical officers of health include education of licensees and collaborating with licensing inspectors and the Police on alcohol harm reduction strategies.

R56 Local Government New Zealand should consider requiring training for licensing inspectors.

R57 Decisions made by a District Licensing Committee should be appealable by anyone appearing before the committee to the Alcohol Regulatory Authority, although inspectors should be required to first obtain leave to appeal from the Alcohol Regulatory Authority.

R58 The appeal fee should also be waived for enforcement officers.

R59 The Liquor Licensing Authority should be replaced by a new Alcohol Regulatory Authority.

R60 The main function of the Alcohol Regulatory Authority should be to hear appeals from decisions of the District Licensing Committees and applications for suspension or cancellation of licences.

R61 The expanded functions of the Alcohol Regulatory Authority should include:

- monitoring and reporting to Parliament on annual trends in its case load, alcohol consumption, marketing, and alcohol-related harm in New Zealand;
- making rulings on promotions of alcohol by both on- and off-licensees;
- issuing Practice Notes and guidelines on matters within the Authority's jurisdiction;
- monitoring and auditing the performance of District Licensing Committees and local alcohol policies;
- enhancing the flow of data and information concerning licensing matters.

R62 The Alcohol Regulatory Authority should comprise two District Court judges. One judge should sit in Auckland, and the other should cover the rest of New Zealand.

RECOMMENDATIONS

R63 An Executive Officer should be created to administer the Alcohol Regulatory Authority and carry out the policy work related to its expanded functions.

R64 Guidelines should be consulted on by the Executive Officer, and signed off by the two judges.

R65 The legislation should set out in full the duties and powers of the Alcohol Regulatory Authority and District Licensing Committees, which should mirror those contained in the Inquiries Bill presently before the Parliament. This includes the power to award costs.

R66 There should also be a requirement that the Alcohol Regulatory Authority and District Licensing Committees conduct hearings with as little formality as is consistent with a fair and efficient process.

R67 There should be a general appeal on the merits against a decision of the Alcohol Regulatory Authority to the High Court.

Chapter 11

Licence fees, renewals and managers

IN THIS CHAPTER, WE:

- Outline the current liquor licence fees framework.
- Provide international examples of risk-based licence fee models.
- Discuss our recommendations for a new risk-based licence fee framework.
- Discuss changes to the licence renewal process.
- Examine the training requirements for managers.

LICENCE FEES

11.1 Licence fees are set out in the Sale of Liquor Regulations 1990. They range from $63 for a special licence to $776 for other licence applications. There is no variance in the fees payable for different types of premises. For example, a small cafe or club is subject to the same fees as a large bar. Special licence fees are all the same, regardless of how many events or occasions are covered by the licence, or the type of event.

11.2 We noted in our Issues Paper, *Alcohol in Our Lives*, that currently many territorial authorities fund liquor licensing by up to 50% from rates.[546] The submissions we received reinforced this.[547] It appears some local authorities minimise the shortfall (and consequent burden on ratepayers) by minimising staffing, which inevitably leads to reduced monitoring and enforcement activities.

11.3 The general view of local authority submitters was that all costs associated with licensing should be borne by the licensees, and ratepayers should not be subsidising this. The fee structure therefore needs to be sufficient to cover all administration, reporting, monitoring and enforcement costs.

546 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 150 [*Alcohol in Our Lives*]; Local Government New Zealand Submission to the Justice and Electoral Committee on the Sale and Supply of Liquor and Liquor Enforcement Bill (254-1).

547 For example, submission of Ashburton District Council (submission dated 23 October 2009) at 4.

11.4 We also stated in our Issues Paper that it may be preferable for licence fees to better reflect the level of risk 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 cafe that is only open during the day.

11.5 Although we acknowledged there were good arguments in favour of enabling local authorities to set their own licensing fees so each District Licensing Agency's costs could be more closely reflected in the fees and charges, our consultation has persuaded us it would be better to continue to have nationally consistent fees set by regulation.

11.6 The submissions strongly supported the introduction of a risk-based licence fee system and for licence fees to properly reflect the actual costs in processing and reporting on licence applications, compliance monitoring and enforcement activities.

International comparisons

Victoria

11.7 A new alcohol licensing fee structure came into effect in the Australian state of Victoria on 1 January 2010, which includes application fees and annual risk-based renewal fees. The model developed drew on a report prepared by the Allen Consulting Group into alcohol-related harm and the operation of licensed premises.[548]

11.8 Allen Consulting found that, while there is no agreed hierarchy of risk factors in the literature, five factors are significant in terms of empirical evidence and feasibility as a basis for risk-based licensing, namely:[549]

- operating hours;
- patron intoxication;
- crowding;
- staff and management practices;
- venue type.

548 The Allen Consulting Group *Alcohol-related harm and the operation of licensed premises* (Report to the Department of Justice, Victoria, 2009).

549 Ibid, at vii.

11.9 Allen Consulting took this analysis further by empirically testing these relationships in a Victorian setting, as well as assessing the relevant causal contribution of the risk factors. The analysis included an assessment of risk factors for opening hours, patron intoxication and venue type, but did not include risk factors for crowding and staffing and management practices, because the data set did not contain information regarding these risk factors. The modelling suggested three licensed-venue risk factors – venue type, late opening hours and venue infringements for intoxication – were all positively correlated with offences in or near licensed premises. Specifically, the results indicated that licensees with the following characteristics were associated with higher rates of offences:[550]

- licensees who had received one or more infringements for patron intoxication;
- licensees offering gaming facilities (where the evidence was stronger for hotel gaming relative to club gaming);
- licensees whose premises were open after 1am on Wednesday to Friday and/or Saturday nights.

11.10 The data analysis indicated that restaurants presented a lower risk than other types of licences. Therefore, the base fee for a restaurant and cafe licence is weighted lower than other licences.[551] Because the proportion of alcohol supplied for off-premises consumption is significantly higher than that supplied for on-premises, it was considered the contribution to alcohol-related harm is likely to be higher. The base fee for packaged liquor and late-night packaged liquor licences therefore has a higher weighting than other licences.[552]

11.11 All licensees are required to pay a base fee applicable to their licence category.[553] For example, the base fee for a restaurant, cafe, vigneron[554] or restricted club licence is AU$397.00. For a general or late-night on-premises licence (on-licence), the base fee is AU$795.00. The base fee for a late-night packaged liquor (off-licence) is AU$1,590.00.

11.12 Risk fees may be added to the base fee and are determined by two factors:

- operating hours; and
- compliance history.

550 Ibid, at viii.

551 Department of Justice (Victoria) *Liquor Control Reform Regulations Regulatory Impact Statement* (Department of Justice (Victoria), 2009) at iii.

552 Ibid.

553 Department of Justice (Victoria) "Annual licence renewal fees" (2009) Fact Sheet < www.justice.vic.gov.au > .

554 A Vigneron's Licence authorises the licensee to supply liquor produced on the licensed premises in accordance with the licence for consumption on or off the premises.

11.13 The risk fees are cumulative, meaning the risk fee for operating hours is added to the risk fee for compliance history. Not all licences will be required to pay a risk fee.

11.14 As the data analysis and literature indicated, the size of a venue magnifies the risk associated with a licence, therefore a scale-based venue-capacity multiplier is applied to annual licence renewal fees to take into account the higher risk posed by larger venues compared with smaller venues.

11.15 Each licence category has different risk fees for operating hours.[555] For example, an on-premises licence operating from 11.01pm to 1.00am would attract a risk fee of AU$1,590.00. The risk fee increases to AU$3,180.00 for operating hours of 1.01am to 3.00am, and AU$6,360.00 for on-premises licences operating after 3.00am. A risk fee of AU$4,770 applies for packaged liquor licences trading outside ordinary trading hours.

11.16 Risk fees also apply to all licences with a poor compliance history. The risk fees for compliance history are determined by the number of paid infringements or successful prosecutions for the following offences:

- supplying alcohol to an intoxicated person;
- permitting a drunk or disorderly person on the premises;
- supplying alcohol to a minor;
- permitting a minor on licensed premises.

11.17 Risk fees for compliance history will not apply until 1 January 2011.

Queensland

11.18 A new risk-based liquor licensing fee model came into effect in Queensland on 1 January 2009.[556] Each licensee must now pay, on an annual basis, a set base fee according to licence type. Licensees must also pay additional annual fees according to the level of risk that is posed to the community's safety and amenity by the licensee's premises. The levels of risk are determined by each licensee's trading hours, service practices and compliance history. Licensees who follow practices in these areas that focus on harm minimisation will pay less in licensing fees. Premises that trade outside the hours of 10am to 12 midnight must pay higher licence fees in order to do so. In addition, licensees are evaluated on their previous year's compliance activities. If licensees receive warning letters to management, infringement notices or are prosecuted in one year, they will be liable for up to AU$20,000 extra in liquor licence fees the following year. The new annual liquor licence administration fees are between around AU$2,700 and AU$30,000 for each hotel, depending on the risk level.

555 Ibid.

556 Office of Liquor and Gaming Regulation "Annual liquor licence fees" <www.olgr.qld.gov.au>.

Conclusion

11.19 It is important that, in New Zealand, the licensing, monitoring, compliance and enforcement activities of the District Licensing Committees (the committees we recommend to replace the DLAs) and their inspectors, plus some of the Police costs of monitoring licensed premises, be funded through licence fees, rather than a combination of fees and ratepayer contributions. Many existing aspects of the present law are not enforced because of resource constraints, and this should be remedied. Licence application fees and annual renewal fees should be developed to reflect the relative levels of risk posed by the different types of licences. For example, premises such as restaurants, cafes, rest homes, small clubs and vineyards are likely to present a lower risk than other types of licences, and therefore the base fee for these types of premises would be lower than for other licences. We are attracted to a model that comprises a base fee for the type of premises, with an additional risk component. Hours, venue capacity and compliance history will be relevant factors in assessing the risk component. The fees for special licences should reflect the number of events covered by the special licence and the risks of alcohol-related harm that arise from the event. Factors such as the type of event, number of people attending and opening hours will impact upon this.

11.20 We recommend a risk-based licence application fee and annual renewal fee scheme be established by regulation. The detail of such a scheme will require further work. Before introducing a risk-based fee structure, an analysis of the full costs involved in alcohol licensing, monitoring and enforcement should be undertaken. Categories of risk could be developed on the basis of the literature, but ideally an analysis would be undertaken of common features of New Zealand premises that are associated with a high level of alcohol-related harm. There should be consultation with stakeholders on a draft fees model before any regulations are put in place.

LICENCE RENEWALS

11.21 New liquor licences currently last for one year after issue. To continue trading, an application for renewal must be made within that time. Public notice requirements apply to renewal applications.[557]

11.22 The current process for consideration of a licence renewal application is similar to the original licence application, with opposed renewals being dealt with by the Liquor Licensing Authority. If there is no objection, the District Licensing Agency must issue the renewal. In considering an application for the renewal of an on-licence, the Liquor 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;
- any matters dealt with in any report on the renewal application by the Police, licensing inspector or medical officer of health.[558]

557 Sale of Liquor Act 1989, ss 23, 46 and 69.

558 Ibid, s 22.

11.23 Similar, but not identical provisions apply in respect of off-licences[559] and club licences.[560] Objections to a renewal may be made by anyone with a greater interest than the general public on the grounds of the renewal criteria.

11.24 A licence renewal may be granted for up to three years, after which time the licensee must apply for a further renewal and publicly advertise the application.

11.25 In our Issues Paper we said 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.[561] Few submissions dealt with this point, and those that did had mixed views.

11.26 We consider there should be a streamlined renewal system for low-risk premises. We envisage premises such as restaurants, cafes, theatres, rest homes and vineyards would be categorised as low risk. Some clubs may also be considered low risk on the basis of their size and composition of their membership, hours and compliance history. If they have had no compliance issues in the preceding year, premises categorised as low risk should be granted a yearly licence renewal on the basis of payment of an annual fee. This would reduce compliance costs for low-risk premises and provide an incentive for them to maintain high standards of compliance.

11.27 If there are compliance issues for any of these premises, in addition to any enforcement action available, an inspector should be able to require the licensee to formally apply for a licence renewal within three years of the date on which the licence was last renewed. An annual fee should still be payable.

11.28 For other licenses, the requirement to apply for a licence renewal every three years should continue. However, an annual fee should be payable, rather than a three-yearly licence renewal fee. To reduce the compliance burden, we consider the advertising requirement should be amended for licence renewals to require only a physical notice in a prescribed form affixed to the premises, and notification on the applicable District Licensing Committee website.[562]

MANAGERS

11.29 The Sale of Liquor Act 1989 requires that managers of licensed premises must hold a manager's certificate. There are two types of managers' certificates: general and club.[563] In considering an application for either certificate, the licensing decision-makers must have regard to the applicant's character and reputation, experience, convictions, relevant training and any matter raised in a licensing inspector's report or Police report.[564] Managers' certificates are valid for one year.[565]

559 Ibid, s 45.

560 Ibid, s 68.

561 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 151.

562 This website is recommended in chapter 10.

563 Sale of Liquor Act 1989, ss 116–117.

564 Ibid, s 121.

565 Ibid, s 122.

11.30 We are satisfied the position of manager, authorised through a manager's certificate, is an essential part of the licensing system. With the exception of the removal of the club manager's certificate,[566] we recommend the role of manager is kept much as it is.

11.31 Additionally, the new legislation should require BYO only restaurants to have a manager with a general manager's certificate present at all times that alcohol is allowed to be consumed. BYO only restaurants are currently exempt from this requirement. Because these premises are not immune from the risks associated with excessive or prohibited alcohol consumption, and the BYO environment may in fact encourage heavier drinking because the alcohol is cheaper and open vessels are not allowed to be removed from the premises, we see no reason why a qualified manager should not be required.

Managers' qualifications

11.32 Regulations stipulate that general manager's certificate applicants must hold a Licence Controller Qualification through the Hospitality Standards Institute.[567] The qualification comprises two New Zealand Qualifications Authority (NZQA) 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 over to obtain the qualification.[568] It is designed to equip someone with a working knowledge of the Sale of Liquor Act 1989, with an emphasis on the requirements of host responsibility and responsible service.

11.33 We are aware of concern regarding the relative ease and speed with which a manager's certificate can be obtained, and that this 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 because a replacement can easily be found. Additionally, submitters expressed concern that the current Act does not differentiate between the risks and responsibilities attached to managing different types of premises, such as large and small premises or on- or off-licences.

11.34 The submitters that commented on this issue were generally in favour of more stringent criteria for managers and other staff at licensed premises. Several submitters were concerned that training for managers is inadequate. One NZQA accredited and registered training provider raised the issue that the Licence Controller Qualification duplicates the confirmation of the two unit standards by NZQA. It was argued this is unnecessary, adds additional compliance costs and creates delays in issuing the certificate.[569]

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566 This is discussed in chapter 12.

567 Sale of Liquor Act 1989, s 117A; Sale of Liquor Regulations 1990, regs 21AA and 21AAB. The Licence Controller Qualification comprises two National Certificate of Educational Achievement (NCEA) units: unit 4646 (demonstrate knowledge of the Sale of Liquor Act 1989 and implications for licensed premises) and unit 16705 (demonstrate knowledge of host responsibility requirements as a duty manager of licensed premises). The Hospitality Standards Institute is an industry-led training organisation recognised under the Industry Training Act 1992 with the role of developing and monitoring NZQA unit standards and qualifications for the hospitality industry.

568 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 200.

569 Submission of New Zealand Hospitality Training Ltd (submission dated 29 October 2009).

11.35 Research suggests host responsibility training tends to decrease bad serving practices such as "pushing" drinks and to increase "soft" interventions such as suggesting food or slowing service, but is less likely to increase actual refusal of service to intoxicated individuals. Conclusions are mixed about whether training has an effect on service to intoxicated patrons or on intoxication levels of patrons.[570] One recent review of several studies concluded there is no reliable evidence that interventions in the alcohol server setting are effective in preventing injuries. The effectiveness of the interventions on patron alcohol consumption was found to be inconclusive.[571]

Our proposals

11.36 Changes to licensing legislation will naturally result in the review of the current unit standards required for a general manager's certificate. Given the concern expressed in submissions and consultation that the current training is insufficient, we suggest the contents and rigour with which the unit standards are taught and tested need to be reviewed. This should be carried out by the Hospitality Standards Institute or other appropriate body. We recommend this review consider whether different training requirements should apply to on- and off-licences and whether it is necessary for licensing regulations to continue to provide for Licence Controller Qualification certification given that confirmation of completion of the unit standards may be sufficient.

Other staff

11.37 We are concerned there is no legal requirement for security or door staff to have training in the obligations of licensees under the Sale of Liquor Act 1989. 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.

11.38 However, door staff at licensed premises could also soon be subject to a statutory regime. The Private Security Personnel and Private Investigators Bill is currently being considered by Parliament.[572] It would replace the Private Investigators and Security Guards Act 1974, which regulates the private security industry and private investigators and their staff. The Bill includes provisions that require personnel providing crowd-control services (including bouncers on licensed premises) to be licensed, regardless of whether they are employed by a business offering security services for hire or a business offering some other service (for example, a bar). The Bill makes it possible to specify training requirements as a condition of the licence and requires that guards and crowd controllers must be trained. The training requirements are expected to significantly improve safety for the security staff and also those with whom they come into contact. In particular, it is expected to improve safety for bar patrons, bar staff and crowd controllers.[573] We support the proposed provisions for licensing and training of crowd controllers as set out in this Bill.

570 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 151.

571 K Ker and P Chinnock "Interventions in the alcohol server setting for preventing injuries" (2008) 3 Cochrane Database of Systematic Reviews 1 at 2.

572 Private Security Personnel and Private Investigators Bill 2008 (297-1).

573 Private Security Personnel and Private Investigators Bill 2008 (297-1) (Explanatory Note).

11.39 While we consider it is important all staff in licensed premises should have the proper training to ensure they understand the law and the appropriate means of minimising alcohol-related harm, we think training requirements for other staff should not be prescribed in law. Licensed premises are the responsibility of licensees and managers. They should determine how appropriate staff training should be achieved in their particular premises.

RECOMMENDATIONS

R68 A risk-based licence application fee and annual renewal fee scheme should be consulted on and established by regulation.

R69 Premises categorised as low risk and that have had no compliance issues in the preceding year should be granted a yearly licence renewal on the basis of payment of an annual fee.

R70 If there are compliance issues for any low-risk premises, a licensing inspector should be able to require the licensee to formally apply for a licence renewal within three years of the date on which the licence was last renewed. An annual fee should still be payable.

R71 Three-yearly applications for licence renewals should continue to be a requirement for premises not categorised as low risk, but these premises should also pay an annual fee, rather than a three-yearly licence renewal fee.

R72 Licence renewal applications should be advertised by way of notification on the applicable District Licensing Committee website, and a physical notice in a prescribed form affixed to the premises.

R73 The Hospitality Standards Institute or other appropriate body should review both the content of the unit standards required for manager's certificates and the rigour with which the unit standards are taught and tested.

Chapter 12
Club licences

IN THIS CHAPTER, WE:

- Examine the current law relating to club licences.
- Discuss reforms relating to the licence requirements from which clubs are exempted, club manager requirements, people to whom clubs can sell alcohol, and the qualification of a club for a club licence.

CURRENT LAW

12.1 Historically, clubs have been important players in the licensing system, and continue to be significant sellers and suppliers of alcohol. Currently, the following groups qualify for club licences as long as they also meet the licence criteria applying to all licence applicants:[574]

(a) Any chartered club; or

(b) Any club that has as its object, or as one of its objects, participating in or promoting any sport or other recreational activity, otherwise than for gain; or

(c) Any other voluntary association of persons (whether incorporated or not) combined for any purpose other than gain.

12.2 A "chartered club" includes any club that, prior to the commencement of the Sale of Liquor Act 1989, held a charter granted under the 1962 Sale of Liquor Act, the Licensing Act 1908, or any former licensing Act, and any club that is:[575]

> …a voluntary association of persons combined for promoting the common object of private social intercourse, convenience, and comfort and providing its own liquor, and not for the purposes of gain:

To qualify for a club licence, the predominant purpose for which the club's premises are used must be something other than liquor consumption.[576] As with other licence types, there are several criteria that the licensing decision-maker must have regard to before the club licence can be granted.[577]

574 Sale of Liquor Act 1989, s 2 (definition of a "club").

575 Ibid, s 2 (definition of a "chartered club").

576 Ibid, s 59(2).

577 Ibid, s 59(1). The criteria that apply to clubs and not other licence types are the days and hours during which the premises is used for the club's activities (s59(1)(c)) and the proportion of the club's membership who are prohibited persons (s59(1)(e)).

12.3 The main difference between a club licence and an on-licence, other than that the licence holder must meet the definition of a "club", is that clubs are authorised only to sell alcohol to their members, their members' guests and visitors who are members of other clubs with which the club has reciprocal visiting rights.[578] In this respect, clubs are not serving alcohol to the public. There are a small number of the requirements of an on-licence that do not apply to club licences. The material differences are that a manager does not need to be present when alcohol is being sold under a club licence[579] and a manager only requires a club manager's certificate rather than a general manager's certificate.[580] These differences in requirements represent a degree of leniency towards clubs because of the assumption they are not selling alcohol to the public and they self-regulate the behaviour of their members, thereby reducing the risk of alcohol-related harm. The view that clubs provide an environment where there is a low risk of alcohol-related harm was articulated in the submission of the Sporting Clubs Association of New Zealand.[581]

PROPOSED REFORMS RELATING TO CLUBS

12.4 We have no desire to recommend a complete removal of this leniency for clubs in comparison with on-licences, where there is a low risk of alcohol-related harm. We are aware, however, that there is a minority of clubs where risk of alcohol-related harm is high and there is much less justification for different treatment. Submitters expressed particular concern in relation to sports clubs because of occurrences of sales to minors and to intoxicated people, and because of the problems of associating sport and alcohol. The New Zealand Police advises some clubs are operating as de facto on-licences by selling to members of the public.[582] On the other hand, we understand many clubs are small operations and find the existing licensing requirements, even under club licences, to be expensive and difficult to meet.

12.5 We have considered removing club licenses from the licence categories. We are concerned about the perception there is not a level playing field between clubs and other on-premises licensees when it comes to the licence requirements. Several submitters, including on-licence retailers and the Hospitality Association of New Zealand, expressed concern about clubs not being as accountable as other licensed premises. However, we recognise that, historically, clubs have had a distinct place in the licensing system, and the aim of reducing alcohol-related harm is unlikely to be advanced by not having club licences.

578 Ibid, s 53.

579 The requirement under section 115(1) of the Sale of Liquor Act 1989 for a manager to be on duty when liquor is sold or supplied applies only when alcohol is served to the public. As clubs are not serving to the public, this requirement does not apply to clubs.

580 Sale of Liquor Act 1989, s 117(3).

581 The submission of Sporting Clubs Association of New Zealand (submission dated 20 October 2009) at 2 quoted an article from Charter Clubs of New Zealand, which outlined that clubs exist for private social intercourse, convenience and comforts; they do not push the sale of liquor because the club is not run to make a profit; clubs restrict their membership to people who are likely to maintain reputable conduct; and the provision for drinking alcohol is in a leisurely and comfortable manner while seated.

582 Submission of New Zealand Police (submission dated 31 October 2009) at 16.

12.6 We understand much of the concern arises from some clubs not abiding by the conditions of their licences and not being subject to as much scrutiny from licensing inspectors and the Police as on-licences. We are aware that, in some areas, clubs are now being given more attention by inspectors, and this has resulted in club licence suspensions by the Liquor Licensing Authority, the statutory tribunal that deals with licensing.[583] We consider the fact some clubs are not abiding by the conditions of their licences is not reason enough to remove the club licence altogether, but that the rules relating to clubs should be enforced more rigorously. In addition, the new Act should require increased supervision of the sale of alcohol in clubs.

Exemptions for clubs

12.7 We propose that club licences should continue to differ from on-licences in the following ways.

(a) Designation of restricted and supervised areas – unlike other licensed premises, it should not be mandatory for a club to designate the whole or part of its premises as a restricted or supervised area (however, the licensing decision-maker should be able to do so as a condition of the licence, as is currently the case).

(b) Presence of a manager – where 20 or fewer people are present on club premises, the presence of a manager on duty should not be required.

(c) Display of a sign – clubs should be exempt from having to display a sign outside of the premises stating the days and hours on which it is open.

(d) Presence on premises outside of licensed hours – it should not be an offence for people to be present on club premises outside of licensed hours.

12.8 These distinctions essentially mean the club licence will stay as it is. The major change relates to the presence of a duty manager. The current legislation allows clubs not to have a duty manager present because the club is not selling alcohol to the public. We propose that only clubs with 20 or fewer people present would be exempt from having a manager on duty. This is a more rigorous requirement than currently exists for clubs. The central controls relating to the supply of alcohol on-premises are through the manager. There are certification requirements for managers that allow scrutiny to be given to the appropriateness of the people acting as managers. Clubs are required to appoint managers. We see no reason why the manager should not be required to be present in clubs where alcohol is being served to a sizable number of customers. The exception to this, when 20 or fewer people are present in the club premises, would apply to small clubs and club events where it would be too onerous to require a manager to be present. This concession recognises these small clubs and events are unlikely to cause alcohol-related harm.

583 For instance, *Taradale Club Inc* (LLA, PH 1072/2009 – PH 1073/2009, 21 September 2009).

Manager's qualifications

12.9 Under the current legislation, clubs do not require a manager with a general manager's certificate, but can have a manager with a club manager's certificate. The core difference between the two types of certificate is that a general manager's certificate requires completion of a Licence Controller Qualification and a club manager's certificate does not.[584] However, in granting a club manager's certificate, the licensing decision-maker does have to have regard to any relevant training the applicant has undertaken.[585] All other provisions relating to manager's certificates, for instance, applications, renewals, duration and criteria, apply the same rules in respect to club manager's certificates as for general manager's certificates.

12.10 We have been struck by submissions put forward by club organisations, such as Clubs New Zealand[586] and the Royal New Zealand Returned and Services' Association (RNZRSA),[587] making a case for increased age, experience and training requirements in order to obtain a manager's certificate in clubs as well as in other on-licences. Club organisations provide access to host responsibility training for their members, ensuring that assistance is available for clubs in meeting training requirements. We are, therefore, convinced there is no need to differentiate between a club manager's certificate and a general manager's certificate.

Renewal of licence and licensing fees

12.11 We have heard from club organisations that, for smaller clubs, the costs associated with licensing fees and renewals of licences can be prohibitively high and are not commensurate with the low levels of alcohol being sold. Our proposed changes to the licence renewal process and the way that licensing fees are set should address these concerns.[588]

People to whom clubs can sell alcohol

12.12 In their submissions, several clubs and club organisations expressed a desire to be able to sell alcohol to wider classes of people than those they can currently sell to under a club licence – their members, guests of members and visitors who are members of other clubs with which the club has reciprocal visiting rights. Clubs New Zealand has suggested it should be open for a licensing decision-maker to allow clubs to serve alcohol to a person invited by the club's management, guests of a member of another club, a member of a sporting organisation or their guest visiting a club to participate in or observe a sporting activity, a potential club member, an out of town visitor and other visitors attending social and cultural activities, funerals or work or social functions. The reason provided in submissions for a widening of the ambit of club licences was the convenience of being able to serve other types of people who are frequently in clubs.[589]

584 Sale of Liquor Act 1989, ss 117 and 117A.

585 Ibid, s 121.

586 Submission of Clubs New Zealand (submission dated 30 October 2009) at 10.

587 Submission of the Royal New Zealand Returned and Services' Association (submission dated 30 October 2009) at 7.

588 See chapter 11.

589 Submission of Clubs New Zealand (submission dated 30 October 2010) at 13–14.

12.13 We are aware of the importance of balancing the need to allow some flexibility to clubs where the current rules are unduly restrictive and do not serve the object of the legislation, with the need to ensure that the fundamental nature of clubs justifies them having a degree of leniency. What makes a club theoretically deserving of special treatment in licensing is that they have a degree of control over and responsibility for the people to whom they serve alcohol because they are club members or their guests. Widening the classes of people to whom clubs may serve alcohol to include those who the club does not have an ongoing relationship with would erode the basis for the leniency granted to clubs. We, therefore, think there is no justification for clubs to be able to serve alcohol to potential club members, out of town visitors, visitors attending an event, or members of a sporting organisation or their guests under the conditions of a licence for a club. This seems to us to be going too far towards serving alcohol to the public, and would make clubs almost indistinguishable from other licensed premises. Given there is a view among several submitters that any licensing distinction between clubs and other on-licences should be abolished altogether, we do not see there is justification for extending the purview of clubs.

12.14 However, we are open to licensing decision-makers allowing some clubs to serve alcohol to guests of a member of another club with reciprocal visiting rights. This could be a condition of the club licence where the club shows it has the protocols in place to ensure responsible behaviour from these classes of people. The inability to be able to serve alcohol to guests of members of other clubs with reciprocal visiting rights who visit was the most common complaint from clubs in submissions. Given that clubs have a degree of control over these people because of the reciprocal visiting arrangements between clubs, we think the legislation should allow this.

Not-for-profit requirement

12.15 Clubs New Zealand has submitted it would like clubs to be able to gain profit from the sale of alcohol without it disqualifying them from the definition of a "club" as long as the profit is merely incidental to the club's proper purpose. However, we do not agree that this should be altered. Being a not-for-profit organisation is an important part of what defines a club and sets it somewhat apart from other licensed premises.

Proposed RSA licence

12.16 The RNZRSA has proposed a specific RSA licence.[590] It argues this would recognise that RSAs are fundamentally different from other clubs and organisations because of their welfare objectives, and would enable the public to support the veteran and ex-service community. Under the proposal, the RSA licence would allow RSAs to serve alcohol to non-members attending certain events, such as Anzac Day and other commemorations, reunions, advocacy and welfare meetings, community events using RSA premises, sporting events, member-hosted private functions, veterans' funerals and events involving prospective members, without having to obtain a special licence.

12.17 While we respect the position held by RSAs in our society, we consider in the interests of having a rational and simple system of licensing that it would not be appropriate to add a more specific type of licence. In relation to licensing for the sale of alcohol, there are no reasons why RSAs should operate under different conditions from other clubs. RSAs should be required to obtain special licences for events where they want to serve alcohol to the public.

RECOMMENDATIONS

R74 There should be more rigorous enforcement of licensing laws for clubs than there is at present.

R75 The current distinctions between the club licence and on-licence should be retained, with the exception that clubs should only be exempted from having a manager present when 20 or fewer people are present on the premises.

R76 Managers of clubs should be required to have the same qualifications as general managers.

R77 Some clubs should be authorised under the club licence at the licensing decision-maker's discretion to serve guests of a member of a club that has reciprocal visiting rights, but the purview of the club licence should not be expanded further than this.

590 Submission of Royal New Zealand Returned and Services' Association (submission dated 30 October 2009) at 4–5.

Chapter 13
Special licences

IN THIS CHAPTER, WE:

- Examine the current legislation and practice relating to special licences.
- Identify the issues and problems with special licences.
- Compare international approaches to this type of licence.
- Provide recommendations about categories of special licences, additional criteria and conditions, clubs and chartered vehicles obtaining special licenses, and notification, timeframe and fee requirements.

CURRENT LAW

13.1 Special licences are the type of licence available when an applicant wants to sell alcohol temporarily or intermittently, or outside of their standard licence conditions. Special licences are used for a variety of purposes, including allowing later-than-normal opening hours and allowing non-licensees to sell alcohol.

13.2 Under the Sale of Liquor Act 1989, special licences are available for an *occasion or event* (or a series of occasions or events)[591] or for a *social gathering* (or social gatherings).[592] The occasion, event or gathering must simply be for a lawful purpose. If the special licence is a series of events or occasions, they must necessarily be related.[593]

13.3 Special licences for *occasions or events* can authorise the sale of alcohol on a premises or conveyance. Any person or organisation that intends to sell alcohol can apply for this type of special licence. This special licence can authorise the sale of alcohol for on- or off-premises consumption.[594]

13.4 For *social gatherings*, special licences are only available for premises (and not conveyances) that hold an on-licence or club licence. They authorise on-premises consumption only.[595] This type of special licence is used to extend the hours of an on-licence outside of its standard licensed hours or to allow a club to serve people other than club members and their guests.

591 Sale of Liquor Act 1989, s 73.
592 Ibid, s 74.
593 *Invercargill Workingmen's Club Inc* (LLA, PH 50/2002, 14 February 2002) at [106].
594 Sale of Liquor Act 1989, s 73.
595 Ibid, s 74.

13.5 Special licences can be used to authorise the sale and supply of alcohol at any time of any day during the specified hours of the event. For a series of *social gatherings*, the special licence lasts for the period during which the occasions or events last, but not longer than 12 months.[596]

13.6 The licence criteria that must be considered in order for a special licence to be awarded are similar to those applying to an on-licence, with the exception that the nature of the particular occasion, event or series of occasions or events in respect of which the licence is sought must also be considered.[597]

13.7 Public notice is not required for all special licence applications. Whether notice is needed for a special licence application is at the District Licensing Authority's (DLA's) discretion.[598] A wide range of conditions can be placed on special licences, including any condition "aimed at promoting the responsible consumption of liquor", although it is unclear to what extent licensing authorities are exercising this discretion. Like on-licences, it is a mandatory condition of every special licence that a reasonable range of non-alcoholic drinks be available.[599]

13.8 Generally, a manager must be appointed for alcohol to be sold under a special licence, but if the licence holder is an individual a manager is not required.[600]

PRACTICE

13.9 A large number of special licences are awarded each year. In the year to 30 June 2009, nearly 11,000 special licences were awarded.[601] Auckland City Council receives the largest number of special licence applications, with more than 1,200 in the 2008/09 year, while the greater Auckland region made up more than 30% of special licence applications nationally. The Christchurch City Council handles about 800 per year. Smaller councils, such as Waimate, South Wairarapa and Hauraki each received less than 50 special licence applications in the 2008/09 year.[602]

13.10 Special licences comprise a significant portion of a DLA's licensing work. For instance, special licences make up 32% of all licence applications in Manukau City.[603]

ISSUES RELATED TO SPECIAL LICENCES

Criteria and conditions

13.11 The current legislation is uncertain regarding aspects of special licences. It is not always clear for which situations a special licence is necessary and for which it is not.

13.12 Special licences cater to a broad range of events, from public festivals, bar concerts and ticketed parties to wine fairs, club-hosted events and weddings. The current legislation is not structured to target particular types of events with the necessary criteria and conditions.

596 Sale of Liquor Act 1989, s 82(1)(c).

597 Ibid, s 79. See chapter 7 regarding licence criteria for all types of licences.

598 Ibid, s 76(4).

599 Ibid, s 80(1).

600 Ibid, s 84.

601 Figures provided by the Liquor Licensing Authority (15 December 2009).

602 Ibid.

603 Responsible Auckland Regional Project *Responsible Liquor Licensing Model* (Auckland, October 2006) at 22.

13.13 Several territorial authorities find that special licences are easily and quickly granted with little scrutiny of the applications. The public notification requirements and attention given by licensing inspectors and the Police are often less than for other types of licences, or are non-existent. The new legislation needs to allow for increased transparency in assessing the types and number of special licences being granted throughout New Zealand. The new legislation should have mechanisms for appropriate scrutiny to be given where a special licence application poses greater risk of alcohol-related harm.

13.14 There is evidence that a significant proportion of people at special events drink large amounts of alcohol. In a 12-month period, 33% of people who consumed alcohol at special events consumed large amounts, compared with 29.1% at pubs, hotels, restaurants and cafes.[604] This indicates there are frequent sales of alcohol to intoxicated people at special events.

13.15 There may be need for particular care regarding young people drinking at special events. The proportion of 16 and 17 year olds who drank alcohol at special events in the 2007/08 year (20.6%) was more than at bars or nightclubs (13.5%), although it was less than at pubs, hotels, restaurants and cafes (29.9%). The potential for young people to suffer alcohol-related harm at special events is significant because 49.5% of 16 and 17 years olds who drank at special events consumed large amounts of alcohol.[605]

13.16 The regulation of special licences needs to ensure that special licensed events do not allow excessive drinking.

Application to private gatherings

13.17 While the Sale of Liquor Act 1989 does appear to require that a private social gathering in licensed premises outside of ordinary licensed hours or conditions obtain a special licence, it is not clear from the legislation whether a special licence is required for other types of private gatherings. The Act does not create a distinction between public and private events for the purpose of special licences.

13.18 Ordinarily, private events are differentiated from public events because they do not involve the sale of alcohol. However, there is still ambiguity where events involve the supply but not the sale of alcohol. The Sale of Liquor Act 1989 states that special licences authorise the holder to sell *and* supply alcohol. Some DLAs are effectively interpreting this as sell *or* supply alcohol. This means they require special licences for events such as private parties at hired premises, where alcohol is not sold but is supplied. The majority of councils in the Auckland region take this approach. Manukau City Council has advised it sees potential for greater harm where alcohol is supplied or it is a BYO situation in comparison with

604 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009) at 20 and 42; 17.9% of drinkers had consumed alcohol at a special event in the previous 12 months and 5.9% of drinkers (which is 33% of the drinkers who drank alcohol at special events) had consumed large amounts of alcohol at a special event; 64.7% of drinkers had consumed alcohol at pubs, hotels, restaurants or cafes and 18.8% of drinkers (which is 29.1% of the drinkers who drank at pubs, hotels, restaurants or cafes) had consumed large amounts of alcohol at a pub, hotel, restaurant or cafe.

605 Ibid, at 156.

an event where alcohol is sold. It strongly supports the legislation providing the District Licensing Committees (DLCs), the committees we recommend to replace the DLAs, with this power to require a special licence for private events.[606]

13.19 However, submitters expressed concern that the law would be going too far if it required licences for private functions where there was no sale of alcohol. The potential for the law to intrude too far into private arrangements needs to be balanced against the need for control of events through special licences where there is a significant risk of alcohol-related harm.

13.20 Events involving BYO alcohol pose other difficulties. While some DLAs have tried to require BYO events to apply for special licences, a recent High Court decision has indicated this is not possible under the current legislative scheme. *Oddballs Adventure Tours Company Limited v Martin Fergusson*[607] is a decision regarding whether special licences could be granted to several Christchurch bus charter companies that allowed charters involving the consumption of BYO alcohol on board. Charter buses that allow alcohol to be consumed on board are required to be licensed, because drinking alcohol on an unlicensed vehicle carrying passengers for reward is an offence.[608] The High Court found that the wording of the special licence provisions of the Sale of Liquor Act 1989 did not allow a special licence to be granted to a bus charter company in these circumstances, because the alcohol was not being sold or supplied, but only consumed on the bus. The only type of licence that can authorise BYO alcohol consumption is an on-licence.[609] This decision is likely to apply to BYO events at other types of venues. However, the law is less clear that a licence is needed at all when the venue of a BYO event is not a vehicle taking passengers for reward. The law in this area certainly needs clarification so a nationally consistent approach can be taken to BYO events and to alcohol on chartered vehicles.

Use of special licence when standard licence should apply

13.21 The Liquor Licensing Authority (LLA), the statutory tribunal that deals with licensing, has been careful to emphasise that special licences should not be used when a permanent licence should apply.[610] However, there is concern among DLAs that the current special licence regime allows licensees to obtain special licences for events or functions outside of their standard licensed hours on a regular basis. These applications are potentially getting around the more rigorous public notification and assessment processes of an on-licence by applying for special licences rather than a variation in the hours condition of their on-licence.

606 Submission of Manukau City Council (submission dated 30 October 2010) at A5–A6.

607 *Oddballs Adventure Tours Company Limited v Martin Fergusson* HC Christchurch CIV-2008-409-2032, 11 December 2009.

608 Summary Offences Act 1981, s 38.

609 *Oddballs Adventure Tours Company Limited v Martin Fergusson* HC Christchurch CIV-2008-409-2032, 11 December 2009 at [33].

610 *Re an Appeal by the Police* (LLA, PH 1813/92, 3 June 1992) at 4.

Hours and prohibited days

13.22 It is likely special licences will continue to be called upon to extend the trading hours of licensed premises to times that their permanent licences do not cover. We foresee that, if national maximum hours are introduced, there would be applications for special licences to extend trading into times when all premises are otherwise unable to open.

13.23 We think there are not that many occasions when the sale of alcohol should be authorised outside of the national maximum trading hours, but there could be occasions when this is warranted for on-licences only. For instance, televised events, such as international rugby matches, are likely to occur at these times.

13.24 Special licences are also used by on-licences to extend trading into the early morning hours on prohibited days when they would otherwise have to close at midnight. It seems some DLAs grant special licences for this purpose and others do not. The LLA has held that the prohibited days themselves cannot be special occasions or events for which a special licence can be granted.[611] Our proposal regarding prohibited days for all licence types would allow on-licences to remain open until their usual closing time the night before a prohibited day.[612] This would remove the need for licensed premises to obtain special licences to cover these times.

Application to clubs

13.25 Special licences are currently commonly used by clubs. In particular, this is for events at clubs where the club wants to be able to serve alcohol to the public. Submissions from clubs have expressed a desire not to have to obtain special licences for events where they are serving the public, but to have these covered as part of their club licence. Clubs have particularly raised issue with the difficulty of obtaining special licences in time for funerals given they generally do not know many days in advance that a family wishes the club to host a funeral.[613]

13.26 The legislation is unclear as to whether clubs are required to have a special licence for any event that is advertised in a public way. In submissions, clubs advise that DLAs have required this in some cases.[614] This matter should be clarified.

13.27 In chapter 12 we recommend the retention of restrictions on who can be served alcohol under a club licence. As members of the public are not covered by the club licence, public events at clubs would require a special licence. The legislation needs to clarify this and the notice requirements for special licence applications.

611 *Universal Liquor Ltd* (LLA, PH806-807/03, 29 October 2003) at [18]–[22].

612 See chapter 9.

613 Submission of Clubs New Zealand (submission dated 30 October 2009) at 11.

614 Ibid.

Off-premises consumption

13.28 In 1999, the Sale of Liquor Act was amended to allow special licences to be granted for the selling of alcohol for off-premises consumption.[615] This was to provide for manufacturers selling packaged alcohol at trade fairs and festivals. While this was a logical extension of special licences, aspects of the rules applying to special licences were not amended to adapt to this different type of sale.

13.29 Under the Sale of Liquor Act 1989, it is a mandatory condition of all special licences that a reasonable range of non-alcoholic beverages be provided.[616] This condition does not seem rational in relation to special licences for off-premises consumption. The New Zealand Fruit Wine and Cider Makers Association, which represents manufacturers that commonly have stalls at food and wine fairs, has argued this condition should not be mandatory and definitely should not apply in the cases of special licences for off-premises consumption at such fairs.[617]

INTERNATIONAL COMPARISONS

13.30 The situations covered by special licences under the Sale of Liquor Act 1989 are also addressed by several relevant overseas jurisdictions.

Queensland

13.31 Under the Queensland Liquor Act 1992, several permits are available for the sale of alcohol on a temporary basis. A *commercial public event permit* must be obtained for selling or supplying liquor at a public event that is not held in licensed premises.[618] A public event is defined as an event that is not a private event.[619] For a commercial public event permit to be granted, additional criteria must be satisfied on top of those that apply generally to licenses and permits in Queensland, including that the event will not create any undue annoyance, disturbance or inconvenience to residents, the event will not create an unsafe or unhealthy environment for people at the event or residents, and the appropriate planning has been carried out with police and local government.[620] The applicant must submit a proposed event management plan addressing all of these matters.[621]

615 Sale of Liquor Amendment Act 1999, s 52; Sale of Liquor Act 1989, s 73.

616 Sale of Liquor Act 1989, s 80.

617 Submission of New Zealand Fruit Wine and Cider Makers Association (submission dated October 2009).

618 Liquor Act 1992 (Qld), s 102.

619 Ibid, s 101. This section contains the following definitions:

> *private event* means an event or occasion, held at premises other than main premises, if—
>
> (a) the event or occasion is not publicly advertised or is not open to the public or casual attendance; or
>
> (b) attendance at the event or occasion is restricted by personal invitation of the function's host; or
>
> (c) admission to the event or occasion does not involve paying a fee for—
>
> (i) admission; or
>
> (ii) entertainment or services provided at the event or occasion.
>
> *public event*, in relation to a licensee, means an event or occasion held at premises other than the licensee's main premises, that is not a private event.

620 Ibid, s 103.

621 Ibid, s 102.

13.32 A *community liquor permit* is available for events run by a club or non-profit community organisation.[622] This permit is subject to somewhat more lenient requirements and conditions compared with the commercial public event permit. An *extended hours permit* is available for licensed premises to sell alcohol outside of its standard licensed hours.[623]

Victoria

13.33 Under the Victorian Liquor Control Reform Act 1998, a *limited licence* is available for the sale of alcohol at specified times. Like New Zealand's legislation, this Act does not restrict the types of applicants or events that can qualify for this licence.[624]

New South Wales

13.34 The New South Wales Liquor Act 2007 allows the granting of a *limited licence* for a function organised by a non-profit organisation or for a trade fair only.[625] The Act requires that the sale of alcohol be ancillary to the purpose of the function and limits the number of limited licences a licensee can obtain in a year.[626]

Scotland

13.35 Scotland has an *occasional licence* for the sale of alcohol at unlicensed premises but this is only available for holders of an existing licence or for a voluntary organisation. The Licensing (Scotland) Act 2005 limits the number of occasional licences that can be obtained by one voluntary organisation in a year and the number of days per year that can be covered by one voluntary organisation's occasional licences. Applicants are required to provide information about how sales to minors are to be prevented.[627]

OUR RECOMMENDATIONS

13.36 In our view, special licences are a necessary part of the licensing system because they are the best way of regulating the temporary or intermittent sale and supply of alcohol.

Categories of special licence

13.37 We recommend that the legislation set out specific categories of events or occasions that may qualify for special licences. This will clarify when a special licence is available and necessary for alcohol to be served at an event or function. It will give increased certainty to applicants and decision-makers about which situations must be governed by special licences. The categories will increase the transparency of the system because they will allow the licensing authorities to keep track of the number and types of events at which alcohol is being served under a special licence. We want to ensure that special licences do not simply and gratuitously increase the availability of alcohol without a proper purpose.

622 Ibid, s 103D.

623 Ibid, s 103G–I. These provisions allow trading hours to be extended to between 12 midnight and 5am, and 9am and 10am (standard maximum hours are between 10am and 12 midnight).

624 Liquor Control Reform Act 1998 (Vic), s 14.

625 Liquor Act 2007 (NSW), s 36.

626 Ibid, s 36.

627 Licensing (Scotland) Act 2005, s 56.

The system will allow identification and scrutiny of high-risk events, and the tailoring of conditions to suit every type of event, thereby reducing the potential for alcohol-related harm.

13.38 The categories of special licences should be as follows:

(a) public events;
(b) private events at licensed premises;
(c) trade fairs;
(d) extended hours.

13.39 To be granted a special licence, the application would have to be considered against the general criteria applying to all types of licences.[628]

13.40 This structure reduces confusion about the different types of events that can be covered by special licences.

13.41 For all types of special licence applications, a special licence should not be granted if it is more appropriate for an on- or off-licence to apply. DLCs should consider this when determining a special licence application. Regular, predictable hours extensions for events and functions should be dealt with as part of the standard on-licence. The new legislation should, in appropriate cases, allow on-licences to include a specified number of events outside of their standard hours.

(a) Public events

13.42 We recommend that special licences for public events should be available for events or occasions, or a series of events or occasions, excluding private events. "Public events" could be for any locations, and should be defined as those that:

- are publicly advertised or open to the public or casual attendance;
- do not restrict attendance to those personally invited by the function's host; or
- involve a fee or ticket for admission or for entertainment or services provided at the event.

13.43 In contrast "private events" should be defined as those that:

- are not publicly advertised or open to the public or casual attendance;
- restrict attendance to those personally invited by the function's host; and
- do not involve a fee or ticket for admission or entertainment or services provided at the event.

13.44 A similar approach is taken under the Queensland Liquor Act 1992 in establishing the commercial public event permit.[629] It provides a tidy way of clarifying the distinction between public and private events. Drawing the line at this point means it is unnecessary for private gatherings to obtain a special licence, but makes the net wide enough to catch the majority of events where there is potential for alcohol-related harm if the event is not regulated through a special licence. This would mean festivals, public balls and concerts would generally be covered, but birthday parties, corporate events and weddings would not be. We intend that school after-ball parties, which have been identified by the Police

628 See chapter 7.

629 Liquor Act 1992 (Qld), s 102.

as causing problems because they are currently unregulated by sale of alcohol legislation, would be caught by the definition of a public event because they usually involve a fee or ticket for entry. However, attendees under the alcohol purchase age will not be allowed to drink alcohol at the premises because it is a licensed premises,[630] meaning the opportunities for those under the purchase age to drink alcohol at school after-ball parties will be much more restricted than at present.

13.45 The legislation should also be clear that special licences are required both for events where alcohol is sold and events where alcohol is not sold but is supplied. In recommending that the law should take this position, we acknowledge the views of many DLAs and the Police that it is helpful for special licences to be required for some supply-only events because they allow greater control and notification of the event, and limit alcohol-related harm. However, we have stopped short of recommending that all events where alcohol is supplied should be required to obtain a special licence. We consider the law would be encroaching too far into private activity if private parties where alcohol is served were required to obtain a special licence.

13.46 The special licence for public events should only authorise the sale and/or supply of alcohol for consumption on the premises and not of takeaway alcohol.

13.47 The legislation should clarify that public events held at sports stadia, whether involving sports or not, must be covered by special licences. While parts of a stadium, such as corporate boxes or members' bars, may continue to have on-licences, we consider it is important that special licences are used to control the sale and supply of alcohol at public events in stadia. Special licences allow conditions to be tailored to the type of event. This is essential for large-scale events, such as those occurring in stadia, where there is increased potential for harm because of the large numbers of people and the fact that each event has unique risk factors. It will still be possible for a series of similar and related events at a stadium to receive a single special licence.

(b) Private events at licensed premises

13.48 Generally, private events will not require a special licence. The exception is where the private event occurs at an on-licence or a club. In many cases, the premises' standard on-licence or club licence may adequately cover the sale of alcohol at the event. However, where the private event is either:

(a) at an on-licence or club and outside of its licensed hours; or

(b) at a club and involving the sale of alcohol to people outside of those who can be served alcohol under the club licence,

we recommend that a special licence is required.

13.49 A special licence is needed for these types of events because of the nature of the venue. The licence restrictions applying to on-licences and club licences mean many private events would fall outside of the terms of the standard licence.

630 See chapter 16.

13.50 The special licence for private events at licensed premises is also necessary for both events where alcohol is sold and events where alcohol is not sold but is supplied. This category of special licence should only authorise the serving for *on-premises consumption*.

(c) Trade fairs

13.51 A separate special licence category for trade fairs is needed because they are distinct from the first two categories of special licence. Trade fairs are the only type of special licence event that will authorise the sale of alcohol for *off-premises consumption*. Because of this distinction, there are different conditions that will be appropriate for these special licences.

13.52 We recommend that the legislation allow special licences to be granted for manufacturers and wholesalers of alcohol to sell their products at trade fairs and food and beverage festivals. To be a trade fair, it would need to be a temporary event involving multiple vendors of food or beverages. This type of special licence would authorise off-premises consumption of alcohol. However, as with an off-licence, this category of special licence would allow the complementary sampling of the product on the premises.

13.53 We recognise there are types of events where takeaway alcohol sales will be combined with on-premises consumption, for instance, at some food and beverage festivals. These events will require a public event special licence and a trade fair special licence. We envisage that DLCs could address both types of application in a single application form, but that separate conditions could be put in place to address each type of activity.

(d) Extended hours

13.54 Special licences that extend the standard hours of a particular licensed premises are another distinct case requiring a separate category. We recommend that a special licence for extended hours be available for on-licences to extend their trading outside of their normal licensed hours for a genuine event or occasion. We suggest licensed premises should be allowed no more than six special licences for extended hours per year.

13.55 We consider that off-licences should not be able to extend their licensed hours. Unlike on-licences, where there is a controlled drinking environment that allows alcohol-related harm to be minimised, there can be no control or supervision of how alcohol sold at an off-licence is consumed.

Additional criteria for special licences

13.56 In addition to the general licence criteria for a licence to be granted, applicants for any category of special licence will also be required to show that the premises will be properly defined and appropriately monitored.

13.57 We recommend that DLCs have the discretion to require applicants for special licences for large or high-risk events to submit a proposed event management plan detailing how they plan to address matters such as security, monitoring, interactions with residents and health concerns. DLCs should also have the discretion to require special licence applicants for large or high-risk events to undertake the appropriate planning with the Police and local government. If required, these matters would be considered before the decision to award a licence.

13.58 These additional criteria will ensure special licences do not authorise looser access to alcohol than other types of licences.

Conditions for special licences

13.59 Our recommendation in chapter 9 that licensing decision-makers should be able to impose any reasonable condition on all licences designed to minimise alcohol-related harm, is particularly important in the case of special licences. Conditions should be targeted correctly to the type of event and the risk involved. For instance, large events present particular challenges that may need to be addressed through different types of conditions than would normally be applied to another type of licence, such as:

- requiring BYO alcohol at the premises to be banned;
- requiring managers to have large-event training;
- requiring that people cannot leave the venue carrying alcohol;
- specifying at what time during the event sales of alcohol should cease.

13.60 The Alcohol Advisory Council of New Zealand is currently working with the Police, licensing authorities and others on developing guidelines for the management of large events. These guidelines will cover matters such as the containers in which alcohol can be sold, the number of serves per purchase, the availability and promotion of low-alcohol beverages, water and food, and the hours in which alcohol can be sold. These guidelines may prove a helpful resource for DLCs in establishing consistency in the conditions applied to large events.

13.61 We think the only mandatory condition for special licences should be the provision of drinking water. All other conditions[631] should be discretionary because they need to take into account the different types of events that special licences may cover, such as events selling alcohol for on-premises consumption and events selling alcohol for off-premises consumption.

631 That is those that are mandatory for on-licences and licensed clubs and those that are discretionary for on-licences and licensed clubs, which are discussed in chapter 9.

Hours

13.62 We recommend the legislation should allow for any of categories of special licence to authorise the sale of alcohol outside of the national maximum hours or the maximum hours established in local alcohol policies, but there should be a presumption against this. Only where an applicant can show that there are exceptional circumstances applying should a special licence allow the sale of alcohol outside of the national maximum hours. We expect the events that qualify as exceptional circumstances will be rare, such as an event of national significance.

Prohibited days

13.63 Similarly, special licences should generally not be used to authorise the sale of alcohol on a prohibited day. An applicant must show that there are exceptional circumstances applying for a special licence to apply on a prohibited day. For instance, it could be decided that an RSA could obtain a special licence to sell alcohol on the morning of Anzac Day.

Clubs

13.64 We consider there should be limits around how often and for what type of occasion clubs should be able to serve alcohol to the public. Clubs risk losing the very basis on which they argue for differentiation from other on-licences if they regularly serve alcohol to the public. The LLA has suggested that:[632]

> … an Agency might also want to consider the juxtaposition of a special licence … and a club licence. A valid submission could be made that there should be some compatibility with the purposes of the club and that a frequency of public use of club facilities might at some point raise the question as to whether the definition of "*club*" in s 2 still applied.
>
> …
>
> If … clubs hold to the concept of the "chartered club", as they appear to do, and view themselves as being different in nature from licensed businesses where sales of liquor and the profits therefrom are more than ancillary activities, then an Agency might well want to take a more conservative approach in its district to the issue of special licences enabling sales by clubs to the public at large.

632 *Gisborne RSA Club Inc* (LLA, PH301/98, 3 June 1992) at 10.

13.65 Under our proposed scheme for special licences, clubs will be required to obtain a special licence for a public event or a special licence for a private event at a licensed premises if they want to be able to serve the public. We think, if a club is applying for a significant number of special licences for public events, DLCs will have to consider whether it is appropriate for the club to continue to hold a club licence, or whether an on-licence is required.

13.66 We recommend the legislation should allow the fast-tracking of special licences for funerals at clubs. Applicants will rarely have enough time before a funeral to arrange for a special licence under normal procedures.

Chartered vehicles

13.67 We recommend that special licences, like other types of licence, continue to be able to authorise the sale and supply of alcohol on a conveyance.[633] However, the law needs to be clarified regarding whether special licences can authorise the consumption of BYO alcohol on chartered vehicles. Our view is that it is reasonable for alcohol to be sold and/or supplied on a chartered vehicle under a special licence because it will be a supervised drinking environment and will have to meet several criteria and conditions for the licence to be awarded. We do not consider that there is a sound basis for special licences to authorise the consumption of BYO alcohol on chartered vehicles because there will not be any control over how the alcohol is consumed.

Notification

13.68 We recommend the DLCs continue to have a discretion about whether a special licence application needs to be publicly notified. It is important the procedural requirements are generally not too onerous for special licence applications. However, where an event is likely to have a significant impact on residents or cause an increased risk of alcohol-related harm, the law needs to allow for the public to be notified so any objections can be considered.

Timeframe for application

13.69 Where necessary, applicants should be able to apply for special licences well in advance of the event occurring. Consequently, we consider the law should not provide a maximum timeframe inside of which an application can be submitted. There should, however, be a minimum number of days before the event in which the application should be submitted, such as 10 days.

633 A conveyance is currently defined as "any ship, ferry, aircraft, hovercraft, train, coach, or other vehicle used for the transport of persons" (Sale of Liquor Act 1989, s 2).

RECOMMENDATIONS

R78 The legislation should provide for four categories of special licence: public events, private events at licensed premises, trade fairs and extended hours.

R79 In addition to the general licence criteria, applicants for a special licence should be required to show that the premises will be properly defined and appropriately monitored.

R80 Licensing decision-makers should have the discretion to require applicants for special licences for large or high-risk events to submit a proposed event management plan.

R81 It should be a mandatory condition of special licences that the free drinking water is supplied.

R82 Licensing decision-makers should have the discretion to impose on a special licence any reasonable condition designed to minimise harm, including any of the mandatory or discretionary conditions that may be imposed on on-licences or licensed clubs.

R83 The national maximum hours and prohibited days restrictions should apply to special licences unless exceptional circumstances apply.

R84 The legislation should specify that clubs are required to obtain a special licence for a public event or private event at a licensed premises if they want to be able to serve the public.

R85 The legislation should allow the fast-tracking of special licences for funerals at clubs.

R86 District Licensing Committees should have a discretion about whether a special licence application needs to be publicly notified.

Chapter 14
Exemptions

IN THIS CHAPTER, WE:

- Look at the exemptions under the current law and the submission responses to these.
- Examine the arguments for whether or not these exemptions should be retained.
- Provide recommendations relating to exemptions based on the type of alcohol sold, the types of sale and types of premises.

EXEMPTIONS UNDER THE SALE OF LIQUOR ACT 1989

14.1 Sections 5 and 5A of the Sale of Liquor Act 1989 exempt several types of premises from the application of the Act.[634] We indicated in our Issues Paper, *Alcohol in Our Lives*, that we would consider recommending the removal of the existing exemptions from the need to obtain a licence to sell alcohol for New Zealand Police canteens, New Zealand Defence Force establishments, New Zealand Fire Service facilities, the House of Representatives and permanent charter clubs.[635]

Submissions feedback

14.2 Many submissions from the public, local government and treatment and health providers in particular, supported the removal of exemptions on the basis that the same law should apply to all when it comes to the sale of alcohol. Submissions from the specific organisations covered by the exemptions were less supportive of the exemptions being removed.

634 Section 5 of the Sale of Liquor Act 1989 exempts a maker, importer, distributor, or wholesaler selling to a maker, importer, distributor, wholesaler, licence holder or permanent club charter holder; a perfumery; a pharmacy selling alcohol for medicinal purposes only; a supplier of a pharmacy; the House of Representatives; a police canteen; a prison officers' canteen; a fire service canteen; a defence force canteen, mess, ship, defence area or Armed Forces Canteen Council amenity. Section 5A exempts homestays with 10 or fewer guests from the application of the Act.

635 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 220, [12.13] [*Alcohol in Our Lives*].

International approaches

14.3 Examination of sale of alcohol legislation from various Australian states, the United Kingdom and Scotland shows that approaches to exemptions in different countries and states vary considerably. None of the international legislation we examined provided an exemption for police, fire service or prison officer canteens. Some, but not all, of the statutes exempt Houses of Parliament and military establishments. The international experience indicates we should take the approach that best suits the New Zealand situation.

OUR PROPOSALS

14.4 We consider there are important benefits from removing as many exemptions as possible from the legislation. With fewer exemptions, the law is seen to apply equally to all. While this is a factor based on public perception, it is nevertheless a valuable one. The legislation places stringent requirements on licence holders in exchange for the right to sell alcohol. If some organisations that gain the benefits of selling alcohol do not have to follow the same requirements as others, it reduces respect for the law and creates a perception of unfairness. We see that it is especially vital this legislation is implemented and upheld by government-controlled premises, so those responsible for the law are not seen as treating themselves differently from other New Zealanders. Legislation regulating the sale of alcohol should apply equally to all individuals and organisations in New Zealand, including government organisations. The potential for harm that arises from the sale of alcohol anywhere necessitates the application of the licensing regime and host responsibility requirements at any premises where alcohol is sold.

14.5 We understand there would be some cost for premises that were previously exempt from obtaining a licence, but our proposals allow for special arrangements to be made to alleviate this.

Exemptions based on the form of alcohol sold

14.6 Several of the current exemptions apply to premises because of the nature of the alcohol products sold there. Perfumeries and pharmacies do not sell alcohol that is for consumption as a beverage. Our preference is that perfume and alcohol used exclusively for medical purposes are excluded from the definition of alcohol under the Act. This is discussed in chapter 5.

Exemptions for certain types of sale

14.7 The exemption for sale or supply of alcohol from a maker, importer, distributor, or wholesaler to a maker, importer, distributor, wholesaler, licence holder or permanent club charter holder is necessary because this type of sale or supply should not be controlled by this legislative scheme. Since the introduction of the 1989 Sale of Liquor Act, only retail sales have been subject to this legislation. We see no need for this to change under new legislation.

14.8 An exemption for homestays was introduced in 1999.[636] The exemption covers homestay, farmstay and bed and breakfast type accommodation, where 10 or fewer guests stay at a premises that is exclusively or principally used as the private residence of the individual or family operating the premises. The exemption was introduced to cover a particular growing niche of the tourism industry that posed little risk in relation to harm from the sale of alcohol. It is considered these premises are sufficiently akin to private residences that it should not be necessary for the legislation to control the sale of liquor. We think this exemption should be retained in the new legislation.

Exempted premises of certain organisations

14.9 Whether or not the current exemptions for premises of Parliament, the New Zealand Police, New Zealand Fire Service, New Zealand Defence Force and permanent charter clubs should be retained is a more contentious issue.

14.10 We strongly believe that, if New Zealand is to be committed to legislation that seeks to reduce alcohol-related harm by imposing justifiable controls on the sale of alcohol, these government organisations should not fall outside of this legislation. The reasons are both symbolic and practical. All New Zealand premises selling alcohol, especially those controlled by government, should be held accountable to the same rules. While these organisations have internal policies in place that, to a degree emulate the Sale of Liquor Act rules, and they argue they are not environments that result in risky drinking behaviour, we are aware some of the premises have been involved in incidents of alcohol-related harm.[637] We recognise that some of these exemptions have had long histories. However, like the Liquor Review Advisory Committee in 1997,[638] we think any exemptions need to be justified on a contemporary basis and not in relation to historical practices.

14.11 We have been advised that prison officers' canteens are no longer in existence, so we consider there is no reason to retain a statutory exemption for these.

14.12 We propose that Crown bodies currently eligible for the exemption, would not be required to pay a licensing fee to obtain a licence.

New Zealand Defence Force establishments

14.13 There are good reasons for requiring Defence Force establishments to be licensed. There is no reason that the sale of alcohol on Defence Force camps, bases and ships should not be regulated by the same rules as other premises. The Defence Force includes a high proportion of young people. Young people are known to be at higher risk of alcohol-related harm.

636 Sale of Liquor Amendment Act 1999, s 5.

637 See for instance Katherine Newton "Booze still part of police culture – bar sessions 'to unwind'" *The Dominion Post* (New Zealand, 2 March 2009) < www.stuff.co.nz > .

638 Liquor Review Advisory Committee *Liquor Review: Report of the Advisory Committee* (March 1997) at 43.

14.14 The Defence Force is concerned to ensure that its existing military authority and discipline regimes are maintained. It advises that military establishments are well disciplined and are not sources of alcohol-related harm.[639] We do not disagree that the control exercised by the Defence Force over its members and establishments makes the risk of harm lower than in other premises. Nevertheless, we consider the Defence Force should have the responsibility to adhere to the same sets of rules relating to the sale of alcohol as other premises in New Zealand. While there are areas where military law is justifiably divergent from the law applying to civilians, we think that the sale of alcohol is not one of them.

14.15 We recognise the law would need to accommodate the military authority in the way the licensing system operates for the Defence Force so it does not interfere with the existing military chain of command. We believe these difficulties can be overcome by having special enforcement provisions relating to the Defence Force.

14.16 The new legislation should require Defence Force establishments to be licensed. However, we recommend, as a transitional measure, that the legislation automatically grant the existing Defence Force establishments current licences from the date that the Act enters into force. The Defence Force would be required to apply to the appropriate District Licensing Committees (DLCs), the committees we recommend to replace the District Licensing Agencies, for renewals of these licences within two years of the legislation coming into force. At this point they would have to show that the premises met the licensing criteria. They would also be subject to the conditions imposed by the DLCs.

14.17 Licenses for military bars, canteens and stores would be held by the base commanding officer. Legally, this change would require base commanders to be included in the list of people who can hold on- and off-licences. The Defence Force would be required to appoint fully qualified managers for each premises. We understand it is already Defence Force policy for managers to complete the unit standards required for a general manager's certificate.

14.18 We propose that the legislation would delegate to the Chief of Defence Force the authority to monitor and enforce the sale of alcohol law. In practice, this would be achieved under the Defence Force's commanding officer structure and using military police. We think it would be inappropriate for the legislation to give licensing inspectors a power of entry on to Defence Force premises. We think Defence Force premises cannot be subject to applications for varying, suspending or cancelling licences and managers' certificates from external parties. Enforcement and disciplinary matters should, instead, be handled internally.

639 Submission of the New Zealand Defence Force (submission dated 30 October 2009) at 8.

14.19 We consider the neatest way to achieve this is to exempt the Defence Force from the Part of the Act that relates to offences, but to require the Chief of Defence Force to implement codes of practice based on the requirements of this Part of the Act. This would be an approach similar to that employed in the Hazardous Substances and New Organisms Act 1996 in relation to the Defence Force.[640] It would ensure that Defence Force personnel must follow the same rules as anyone else. We recommend that, in order to introduce a measure of external accountability, the Chief of Defence Force be required to report annually to the Alcohol Regulatory Authority, the statutory tribunal we recommend to replace the Liquor Licensing Authority, on the enforcement of the codes of practice.

Police and Fire Service canteens

14.20 The New Zealand Police has advised it will not object to the removal of the exemption for Police canteens, as it considers it should be subject to the same laws as the rest of New Zealand.[641] However, the Police Association,[642] Fire Service Commission and United Fire Brigades Association[643] do not want their exemptions removed. These organisations point to the risk that these canteens would not survive because of the increased costs associated with licensing. They see these canteens as important because they provide opportunities for members to socialise with alcohol when often, because of their role, they cannot prudently socialise at public licensed premises. The Fire Service Commission and United Fire Brigades Association are particularly concerned because of the predominantly volunteer membership of the Fire Service and the role that having service drinking establishments has in attracting and retaining members.

14.21 However, less controlled access to alcohol should not be used as a reward for commendable public service. We think that removing the exemptions would not mean the end of Police and Fire Service canteens. We recommend that Police and Fire Service canteens should be treated as clubs, as this would minimise compliance costs. Like clubs, these canteens would not require a manager to be present if 20 or fewer people are on the premises.

14.22 The legislation should enable the Fire Service Commission to act as the licensee for all Fire Service canteens, because small, voluntary Fire Service stations may not have the infrastructure to manage licence applications. As with the Defence Force, the legislation should automatically grant existing Police and Fire Service canteens club licences from the date the new Act enters into force, but require that they apply for renewals within two years of this date.

640 Hazardous Substances and New Organisms Act 1996, s 3.

641 Submission of New Zealand Police (submission dated 31 October 2009) at 16.

642 Submission of New Zealand Police Association (submission dated 30 October 2009) at 7–9.

643 Joint submission on behalf of the New Zealand Fire Service Commission and United Fire Service Brigades Association (submission dated 31 October 2009) at 4.

House of Representatives

14.23 The exemption afforded to the House of Representatives is difficult to justify. Where alcohol is being sold at Parliament, the risks in terms of alcohol-related harm are the same as for any other premises selling or supplying alcohol. We agree with the Liquor Review Advisory Committee that "it would be ridiculous to suggest that host responsibility strategies should not be observed within the precincts of the House".[644] Those selling alcohol at Parliament should be subject to the same controls and penalties for breaches of the law as anyone else.

14.24 The Clerk of the House of Representatives has expressed a clear preference for retaining the exemption, advising that it has been in place in some form since 1854.[645] The Clerk argues the exemption is necessary to enable the Speaker of the House to maintain control of the administration of the parliamentary precincts.[646] We recognise the necessity of ensuring the Speaker's control is maintained, but do not think this requires the House to be excluded from the licensing system. In the same way that the Defence Force should continue to be responsible for managing the monitoring and enforcement of its licenses, we propose the House's licences be under the control of the Speaker of the House, and the House to be exempt from the Part of the Act that concerns offences. We recommend the legislation authorises the Clerk of the House to hold the relevant licences which should be granted automatically when the Act enters into force, but require renewal applications within two years. The legislation should not give licensing inspectors a power of entry on to Parliamentary premises.

Permanent charter clubs

14.25 Permanent charter clubs are currently exempt from having to obtain a licence to sell alcohol. Permanent charter clubs were authorised by Royal or Queen's Charter before 1908 to sell alcohol on and off premises to their members. There are currently 34 remaining permanent charter clubs. The Sale of Liquor Act 1989 allowed permanent charter clubs to retain their privilege of not requiring a licence.[647] They are required to pay an annual fee, currently $1,035.00. The provisions of the legislation relating to the appointment of managers and the management of licensed premises, the keeping of records and filing of returns, and offences, which apply to club licences, also apply to the holders of permanent club charters.[648] Permanent charter clubs cannot trade on Sundays and cannot extend their trading hours.

644 Liquor Review Advisory Committee *Liquor Review: Report of the Advisory Committee* (March 1997) at 44.

645 Licensing Amendment Act 1854.

646 Letter from Clerk of the House of Representatives to Law Commission regarding the House of Representative's exemption (10 December 2009).

647 Sale of Liquor Act 1989, s 238(1).

648 Ibid, s 238(2).

14.26 Licensing inspectors and the Police are constrained by the fact that permanent charter clubs do not hold a licence under the Sale of Liquor Act 1989. Police may only enter these clubs if they have grounds to believe that an offence is being committed. It is difficult for them to assess and enforce the compliance of these clubs with the requirements of the Act in relation to the sale of alcohol to minors and intoxicated people. It is also not possible to impose sale of liquor conditions on these clubs, such as requiring provision of food for consumption on the premises.

14.27 The 14 permanent charter clubs that made submissions argued for the retention of their exemption on the basis of their historical importance and that the current legislation, which does provide a degree of control over permanent charter clubs, is sufficient.[649]

14.28 In the current environment, such an exemption is difficult to justify. There are no substantive reasons why permanent charter clubs should not be subject to the same regulations as other clubs. They are establishments that sell alcohol, and, consequently, should be responsible for ensuring that they do so responsibly and in a way that does not cause harm. In 1997, the Liquor Review Advisory Committee recommended that permanent charter clubs be treated the same as other clubs, stating "we can see no justification in a statute that aims to contribute to the reduction of liquor abuse by conferring privilages upon some clubs while denying them to others".[650] We agree that some clubs should not be advantaged merely because of when they first obtained their right to sell alcohol. This is an historical anomaly that should not continue in new legislation.

14.29 In practice, there would be little difference for permanent charter clubs to obtain licences because they are already legally required to meet nearly all of the requirements that other clubs do. A licence would provide these clubs with greater flexibility regarding hours than they currently have. Coming within the licensing regime would allow these clubs to demonstrate their commitment to host responsibility and harm minimisation practices.

649 Submission of St Johns Club (submission dated 21 October 2009); submission of Blenheim Workingmen's Club (submission dated 28 October 2009); submission of Invercargill Workingmen's Club (submission dated 27 October 2009); submission of Kaiapoi Club (submission dated 29 October 2009); submission of Napier Cosmopolitan Club (submission dated 28 October 2009); submission of Palmerston North Cosmopolitan Club (submission dated 27 October 2009); submission of South Wairarapa Workingmen's Club (submission dated 30 October 2009); submission of Wanganui Club (submission dated 27 October 2009); submission of Rangitikei Club (submission dated 31 October 2009); submission of Gisborne Cosmopolitan Club (submission dated 31 October 2009); submission of Petone Workingmen's Club (submission dated 28 October 2009); submission of Ashburton Club (submission dated 30 October 2009); submission of Oxford Workingmen's Club (submission dated 29 October 2009); submission of City Club (submission dated 28 October 2009).

650 Liquor Review Advisory Committee *Liquor Review: Report of the Advisory Committee* (March 1997) at 37.

RECOMMENDATIONS

R87 The exemptions based on the form of alcohol sold should be addressed in the definition of alcohol in the new legislation.

R88 The legislation should continue to exclude sales of alcohol from a maker, importer, distributor, or wholesaler to a maker, importer, distributor, wholesaler or licence holder, and sales at homestays.

R89 The exemption for prison officers' canteens should be removed from the new legislation.

R90 The New Zealand Defence Force should no longer be exempted from licensing legislation, but the Chief of Defence Force should be delegated the authority to monitor and enforce the sale of alcohol law, and should be required to report annually to the Alcohol Regulatory Authority.

R91 New Zealand Police canteens and New Zealand Fire Service canteens should no longer be exempted from licensing legislation, but they should be treated as clubs.

R92 The House of Representatives should no longer be exempt from licensing legislation. The Speaker of the House should retain the sole authority to monitor and enforce this legislation.

R93 Permanent charter clubs should no longer be exempt from licensing legislation, but should be required to obtain club licences.

Chapter 15
Licensing trusts

IN THIS CHAPTER, WE:

- Look at the history and current status of licensing trusts.
- Make recommendations for how licensing trusts should be dealt with under new legislation.

LICENSING TRUSTS IN NEW ZEALAND

15.1 Since 1944, licensing trusts have been a part of the sale of alcohol in New Zealand.[651] Although they have declined in number and prominence, licensing trusts continue to play a role under the Sale of Liquor Act 1989. The trusts were initially promoted as a more responsible and accountable alternative to the private trade in controlling the sale of alcohol.[652] They became widespread throughout New Zealand. However, the number of licensing trusts that now continue to have the sole right to establish and operate on-licences in hotels and taverns, and off-licences in their districts[653] has reduced to just four.[654] Other district licensing trusts do not hold these privileges and compete on an open market with all other licences.[655]

15.2 The profits from licensing trusts' commercial operations are returned to their communities through the funding of community projects aimed at promoting, advancing or encouraging education, science, literature, art, physical welfare, and other cultural and recreational purposes, for erecting or maintaining buildings for these purposes, or any other philanthropic purposes.[656] These monopoly licensing trusts allow communities to exercise a degree of control over the operation of licensed premises in their districts. Trustees are elected by the community. The Sale of Liquor Act 1989 makes provision for the privileges of licensing trusts to be challenged by way of a "competition proposal", which is a referendum that the licensing trust is obliged to call if requested by 15% of the electors in the district.[657]

651 L Stewart and S Casswell "Public Control of Alcohol: Licensing trusts in New Zealand" (1987) 82 British Journal of Addiction 643, at 644; Invercargill Licensing Trust Act 1944.

652 Ibid, at 646.

653 Subject to certain exceptions in s 216 of Sale of Liquor Act 1989, such as clubs and manufacturers.

654 Of the 11 trusts listed in Part I of sch 3 Sale of Liquor Act 1989, only the Invercargill, Mataura, Portage and Waitakere Licensing Trusts continue to hold effective monopolies on the sale of alcohol.

655 These trusts are listed in Parts I and II of sch 3 Sale of Liquor Act 1989.

656 Sale of Liquor Act 1989, s 189.

657 Ibid, s 215.

These polls have been the means by which monopoly privileges have been removed from several licensing trusts. Through this legal mechanism, the community has the ability to decide whether it wants the licensing trust to continue to have monopoly trading rights.

15.3 Licensing trusts are somewhat of an anomaly because they retain a degree of trade protection in an Act that is targeted at contributing to the reduction of liquor abuse. Trusts are controversial because they are seen as anti-competitive. In particular, because licensing trusts with monopoly rights have the sole right to establish off-licence premises, the two main supermarket chains (Australian-owned Progressive Enterprises and New Zealand cooperative, Foodstuffs) are unable to sell alcohol in these districts. This is a significant restriction on competition in off-licence alcohol sales. However, the licensing trusts are generally well supported in their communities because of the return of profits to community initiatives. The amount of money available to these communities would almost certainly reduce if the monopoly rights were removed.

15.4 The removal of licensing trusts' monopolies has been considered previously. In doing so, the 1986 Working Party on Liquor (the Laking Committee) made it clear that, in its view, neither public nor private control of liquor sales could claim greater success in the struggle against alcohol abuse, but acknowledged licensing trusts were generally accepted as a valuable community asset and declined to recommend their removal.[658] In 1997, the Liquor Review Advisory Committee recommended the removal of trust monopolies.[659] However, the government determined not to make changes to licensing trusts in 1999.

OUR PROPOSALS

15.5 We consider the reasons are not sufficiently powerful to make major changes to licensing trusts in the new legislation. The community approval of the role of trusts and the democratic means available for the removal of trust monopolies leads us to the conclusion that the new legislation should not alter the law in relation to licensing trusts in a major way.

15.6 Few submitters expressed a desire for the monopoly rights of licensing trusts to be removed. Consultation with the public in areas with licensing trusts indicates there is strong support for retaining the current rights of these trusts. Communities are supportive of the notion that profits made from the sale of alcohol are returned to the community through the funding of projects that benefit a range of local people. There is also a perception that the licensing trusts place greater controls on the proliferation of alcohol outlets. The trusts themselves also argued on this basis for the continuation of their rights. West Auckland Trust Services, which manages the Portage Licensing Trust and Waitakere Licensing Trust, considers that licensing trusts provide the opportunity for communities to monitor the governance and operational activity, and have increased control over licensed activity in the area.[660] The Invercargill Licensing Trust argued that Invercargill has a high level of community wealth in terms of community services and facilities due in part to the role of the trust.[661]

658 Report of the Working Party on Liquor *The Sale of Liquor in New Zealand* (1986) at 81–82.

659 Liquor Review Advisory Committee *Liquor Review: Report of the Advisory Committee* (March 1997) at 83–85.

660 Submission of West Auckland Trust Management Ltd (submission dated 13 November 2009) at 3.

661 Submission of Invercargill Licensing Trust (submission of 30 October 2009) at 3.

15.7 The New Zealand Police has submitted that it considers decisions about the future of licensing trust monopolies should be made by local communities. It notes that staff from West Auckland and Invercargill find there are operational benefits from having a monopoly system, such as only having to deal with one licensee and that any decisions affect all the premises, which creates administrative simplicity.[662]

15.8 Those who made submissions in favour of removing the monopolies of licensing trusts were concerned about the anti-competitive nature of the trusts and the barrier they create to the advancement of local industry and tourism in trust areas. However, we consider if a local community with a licensing trust is of the view that these factors override the benefits of the trust, a competition proposal can be called and the monopoly rights of the trust voted against. We think the government needs to be careful not to override community views where there is a mechanism in place for decision by democratic means. Foodstuffs has suggested the legislation should give licensing trusts the flexibility to enter commercial arrangements allowing other businesses, such as supermarkets, to operate licensed premises on an agency basis.[663] We consider such an amendment would significantly alter the way that licensing trusts operate, potentially undermining the perceived benefits of the trusts. We think there is no public appetite for this type of change.

15.9 Foodstuffs has also suggested amendments should be made to the process by which a poll is called to determine the future of licensing trusts. It has suggested either mandatory periodic competition polls or decreasing the threshold required for the number of voters necessary to sign the petition requesting a poll from 15% to 10%.[664] We have heard no comment on the poll requirements from any of the local communities with monopoly licensing trusts. We are reluctant to recommend changes to the requirements for polls unless there is legitimate community concern about the current arrangements.

15.10 Additionally, Foodstuffs submitted that changes should be made to regulations so that a petition has to be submitted to the Liquor Licensing Authority rather than the licensing trust. Currently, the names, addresses and occupations of all petitioners are required to be given directly to the trust, which raises issues around privacy and natural justice. We agree this could be problematic and requiring petitions to be submitted to the Alcohol Regulatory Authority, the statutory tribunal we recommend to replace the Liquor Licensing Authority, rather than the trust should be considered.

662 Submission of New Zealand Police (submission dated 31 October 2009) at 34.

663 Submission of Foodstuffs (NZ) Ltd (submission dated 30 October 2009) at 20.

664 Ibid.

15.11 We have noted concerns from a few submitters about conflicts of interests arising where local body representatives also have a role on licensing trust boards. Local government representatives have numerous legal obligations relating to conflicts of interest, which should prevent this from being a problem.[665] The Controller and Auditor-General has issued guidance to local government authorities about managing conflicts of interest.[666] Our proposals to make District Licensing Committees (the committees we recommend to replace the District Licensing Authorities) more independent from territorial authorities may go some way towards alleviating this concern. However, we are unable to address this issue directly in this review.

RECOMMENDATIONS

R94 The legal mechanism for monopoly licensing trusts should be retained in the new legislation.

R95 Regulations should require that a petition must be submitted to the Alcohol Regulatory Authority rather than a licensing trust.

665 Local Authorities (Members' Interests) Act 1968.

666 Controller and Auditor-General *Guidance to members of local authorities about the law on conflicts of interests* (Controller and Auditor-General, 2007).

Chapter 16
Age restrictions

IN THIS CHAPTER, WE:

- Summarise the evidence about alcohol-related harm and young people.
- Outline the rationale for, and likely impact of, policy change in relation to the minimum purchase age, drinking in public places, supply to minors, role of parents and age at which people may sell alcohol.
- Recommend changes to existing legislation.

ALCOHOL AND YOUNG PEOPLE

16.1 In our Issues Paper, *Alcohol in Our Lives*, we discussed the high and disproportionate level of alcohol-related harm experienced by young people in New Zealand.[667] We now know young people up to the age of 25, but particularly those under the age of 15, experience more harm per standard drink than older drinkers.[668] Adolescents between the ages of 12 and 17 are more likely than older drinkers to suffer a range of adverse social consequences from their own or other people's drinking. These consequences include unprotected and unwanted sex, violence, assault, arrests and road crashes.[669]

16.2 Young people aged 18 to 29 suffer the greatest burden of alcohol-related mortality as a proportion of all-cause mortality. They also account for a large proportion of hospital presentations for alcohol-related injuries, alcohol-related offending and alcohol-use disorders.[670] In addition, early initiation of drinking can have

667 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 83 [*Alcohol in Our Lives*].

668 National Health and Medical Research Council *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Canberra, 2009) at 63 [*Australian Guidelines*].

669 Ministry of Health *Unpublished Data Analysis of the 2004 New Zealand Health Behaviours Survey – Alcohol Use* (July 2007) at 1.

670 K Lee and L Snape "The role of alcohol in maxillofacial fractures" (2008) 121 New Zealand Medical Journal 2978 at 2979; G Humphrey, C Casswell and D Han "Alcohol and injury among attendees at a New Zealand emergency department" (2003) 116 New Zealand Medical Journal 298 at 300; New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 50 [*National Alcohol Assessment*]; J E Wells, J Baxter and D Schaaf *Substance Use Disorders in Te Rau Hinengaro: The New Zealand Mental Health Survey* (Alcohol Advisory Council of New Zealand, Wellington, 2006) at 43.

adverse effects on physical and cognitive development and increases the risk of later alcohol-use disorders and other mental health problems.[671]

16.3 As noted in chapter 1, the submissions and consultations revealed widespread concern about the impact of alcohol on young people. In particular, concern was expressed about the risks associated with adolescent alcohol use in light of the latest neuroscientific research into brain development, which shows development is now known to continue into the 20s. Alcohol affects the developing brain differently from the adult brain:[672]

> Research suggests that adolescents are more vulnerable than adults to the effects of alcohol on learning and memory. Not only do they react differently to the initial effects of alcohol, studies suggest that adolescents are also affected differently than adults by repeated, heavy drinking, particularly the repeated withdrawals associated with binge drinking.

16.4 In 2009, the Australian National Health and Medical Research Council summed up the risks alcohol poses to those aged under 25:[673]

> Young adults up to the age of 25 should be aware that they are at particular risk of harm from alcohol consumption, due to a greater risk of accidents and injuries, a lower alcohol tolerance than older adults, and an increased risk of cognitive impairment and alcohol dependence in later life. Young adults are advised to drink within the low risk guideline levels and to take steps to minimise their risk of accidents and injury.

16.5 There is good evidence a range of policy interventions is effective in reducing alcohol-related harm to young people:[674]

- Young people are sensitive to changes in price, meaning they increase or decrease their consumption in response to a decrease or increase in price.[675]
- Young people's current and future drinking is influenced by exposure to marketing, including advertising, sponsorship and promotions, suggesting restrictions on marketing may reduce alcohol-related harm to young people.[676]
- Interventions targeting particular products may also be effective given the evidence that particular products aimed at youth markets are associated with heavy drinking.[677]

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671 D H Jernigan *Global Status Report: Alcohol and Young People* (World Health Organization, Geneva, 2001) at 13; C Odgers and others "Is it important to prevent early exposure to drugs and alcohol among adolescents?" (2008) 19 Psychological Science 1037 at 1041; S Tapert, L Caldwell and C Burke "Alcohol and the adolescent brain: Human studies" (2004/2005) 28 Alcohol Research and Health 205 at 206; National Institute on Alcohol Abuse and Alcoholism "The effects of alcohol on physiological processes and biological development" (2004/2005) 28 Alcohol Research and Health 125 at 126.

672 Submission of the Brainwave Trust Aotearoa (submission dated 30 October 2009) at 4, [5.2].

673 National Health and Medical Research Council *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Canberra, 2009) at 85.

674 D H Jernigan *Global Status Report: Alcohol and Young People* (World Health Organization, Geneva, 2001) at 42.

675 F J Chaloupka, M Grossman and H Saffer "The effects of price on alcohol consumption and alcohol-related problems" (2002) 26 Alcohol Research and Health 22 at 32.

676 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 196 [*Alcohol: No Ordinary Commodity*].

677 T Huckle and others "Ready to drinks are associated with heavier drinking patterns among young females" (2008) 27 Drug and Alcohol Review 398 at 398.

- Brief interventions are effective and cost-effective at reducing harmful consumption among young people.
- Availability, including secondary supply and outlet density as well as purchase age restrictions, also influence young people's drinking.[678]

These interventions are discussed in detail in chapters 6 (availability), 18 (price), 19 (advertising and promotions), and 24 (treatment).

16.6 However, one of the interventions with the greatest evidence of effectiveness is increasing the minimum purchase or drinking age. Raising the purchase age has been found to reduce harmful consumption and a range of harms, including drink driving, car crashes, injuries and deaths, and other health and social harms. The reduction in harm benefits older and younger cohorts as well as the group directly affected by the law change.[679]

16.7 In the following discussion we set out the current law and explain the rationale for our recommendations regarding the purchase age together with other legal changes designed to reduce the supply of alcohol to young people.

Current law

16.8 New Zealand, like most other countries, has a minimum purchase age and other restrictions on young people's access to and use of alcohol. It is currently an offence to sell alcohol to anyone under the age of 18, and it is an offence for anyone under 18 to purchase alcohol.

16.9 It is also currently an infringement offence for people under the age of 18 to drink in a public place, including a vehicle, unless accompanied by a parent or legal guardian.[680]

16.10 People under 18 years of age are not permitted in some licensed areas (for example, nightclubs), and are only permitted in others (for example, bottle stores) when accompanied by a parent or guardian. Their ability to work in licensed premises is also restricted.

16.11 Finally, it is also currently an offence for anyone to purchase alcohol with the intent of supplying it to someone under the age of 18. Parents and guardians and people at private social gatherings are exempt from this restriction in both on- and off-licence premises.

678 T Huckle and others "Density of alcohol outlets and teenage drinking: living in an alcogenic environment is associated with higher consumption in a metropolitan setting" (2008) 103 Addiction 1614 at 1617; T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 146.

679 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 139; A C Wagenaar and T L Toomey "Effects of minimum drinking age laws: Review and analyses of the literature from 1960 to 2000" (2002) Supplement No. 14 Journal of Studies on Alcohol 206 at 219; R J Bonnie and M E O'Connell (eds) *Reducing Underage Drinking: A Collective Responsibility* (National Academies Press, Washington DC, 2004) at 161.

680 An infringement offence attracts an instant fine and is not prosecuted in the court unless challenged. It does not result in a criminal conviction.

Youth consumption and harms

16.12 There is no doubt young people aged up to 29 experience a level of alcohol-related harm that is unacceptably high and much higher than that experienced by older adults. It is therefore not surprising this age group has a high prevalence of drinking patterns that place the group at greater risk of harm. One-in-three men and one-in-five women aged 18 to 24 years consume a large amount of alcohol (more than six standard drinks for men and more than four standard drinks for women per occasion) at least weekly.[681] This is higher than all other age groups with the exception of 16- to 17-year-old women.

16.13 Risky behaviours are also more common among this age group. Three-in-ten men aged 18 to 34 report having driven while under the influence of alcohol in the last year. More drivers aged 20 to 24 are involved in alcohol-related fatal road traffic crashes than any other age group.[682]

16.14 It seems clear that, along with other policy and societal changes, reducing the minimum age for purchasing alcohol from 20 to 18 years in 1999 contributed to increased alcohol-related harm to young people in New Zealand.

16.15 There was a significant increase in hospital presentations of intoxicated people aged under 20 in the year following the law change.[683] There have been increases in the trends for rates of prosecutions for excess breath alcohol, road traffic crashes involving alcohol, and fatal road traffic crashes involving alcohol among several youth cohorts in the years after 1999.[684] The increase in alcohol-related crashes among 15 to 19 year olds was higher relative to older age groups in the four years following the law change, and the higher rate of increase in road traffic crashes among the younger age group has continued since.[685] Similarly, as shown in chapter 3, hospital admissions that are wholly attributable to alcohol peak dramatically between the ages of 15 and 29.

681 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009) at 40 [*Alcohol Use Survey 2007/08*].

682 Ibid, at 235; Ministry of Transport *Alcohol and Drug Factsheet* (Wellington, 2009).

683 R Everitt and P Jones "Changing the minimum legal drinking age – its effect on a central city Emergency Department" (2002) 115 New Zealand Medical Journal 9 at 9.

684 T Huckle, M Pledger and S Casswell "Trends in alcohol-related harms and offences in a liberalized alcohol environment" 101 Addiction 235 at 235.

685 K Kypri and others "Minimum purchasing age for alcohol and traffic crash injuries among 15- to 19-year-olds in New Zealand" (2006) 96 American Journal of Public Health 126 at 128; Submission of the Injury Prevention Research Unit, Department of Preventive and Social Medicine, University of Otago (submission dated 9 November 2009) at 7.

16.16 In 2005 and 2009, District Police staff were canvassed on their operational experience of lowering the minimum purchase age for alcohol. The survey findings were summarised in the New Zealand Police submission on this review:[686]

> It is apparent from the information provided by District Police staff that a number of negative outcomes have been detected in youth drinking patterns since the law change in 1999. Specifically, the lowering of 'the drinking age' has been linked to an increase in youth binge drinking and subsequent alcohol-related offending, creating more work for Police and lessening the perception of safety in our communities. There are some indications of a rise in the number of young people being apprehended for drink-driving offences, and an increase in all forms of violence but particularly street violence and other forms of alcohol related disorder.

16.17 Although it is difficult to reach conclusions about trends in the absence of regular, comparable surveys, we might expect these increases in harm given the evidence of changes in the drinking patterns of young people over this period.

16.18 The proportion of 15 to 19 year olds drinking large amounts of alcohol at least once per week increased between 1998 and 2001, although this reached statistical significance only for women aged 15 to 17 years.[687] There was also a significant increase in the proportion of young men and women aged 15 to 17 years drinking enough to feel drunk at least once a month.[688] The total volume of alcohol consumed by 14 to 19 year olds increased between 1995 and 2000, and the proportion of drinkers in this age group who reported drinking more than two drinks on a typical drinking occasion increased between 1995 and 2004.[689]

16.19 Young people may also be starting to drink earlier, based on findings that younger age groups were more likely than older age groups to report having consumed alcohol, having consumed large amounts of alcohol and having consumed enough to feel drunk by the age of 15.[690] Initiation of drinking among younger adolescents is also apparent in the courts, with District Court judges citing many cases of offending among young people that were attributable to alcohol.[691]

686 Submission of New Zealand Police (submission dated 31 October 2009) at 11, [2].

687 C Wilkins and others *Drug Use in New Zealand: National Surveys Comparison 1998 and 2001* (Alcohol and Public Health Research Unit, Auckland, 2002) at 16.

688 Ibid, at 17.

689 R Habgood and others *Drinking in New Zealand: National Surveys Comparison 1995 and 2000* (Alcohol and Public Health Research Unit, Auckland, 2001) at 4; SHORE/Whariki *Unpublished Research Data Relevant to the Minimum Purchase Age for Alcohol in New Zealand* (Memo to the Ministry of Health, Auckland, 2006) at 2.

690 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009) at 25.

691 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 246.

16.20 It is important to stress we do not expect complete abstinence by all young people because this would be unrealistic and potentially counterproductive. The new *Australian Guidelines to Reduce Health Risks from Drinking Alcohol*, developed by the National Health and Medical Research Council in 2009, have identified a sensible middle ground advising (not legislating) about the safest approach to drinking for young people, based on the evidence:[692]

> For children and young people under 18 years of age, not drinking alcohol is the safest option.
>
> **(a) Parents and carers should be advised that children under 15 years of age are at the greatest risk of harm from drinking and that for this age group, not drinking alcohol is especially important.**
>
> **(b) For young people aged 15–17 years, the safest option is to delay the initiation of drinking for as long as possible.**
>
> This guideline does not advocate that young people drink or that adults provide them with alcohol, but that if drinking does occur it should be at a low-risk level and in a safe environment, supervised by adults. Drinking to intoxication is particularly risky in this age group.

Conclusion and policy objective

16.21 The evidence suggests there is a large gulf between current adolescent alcohol use in New Zealand and the Australian evidence-based guidelines. Failing to address this issue will inevitably have serious consequences for the future health and wellbeing of the upcoming generation. To achieve the outcome of reducing alcohol-related harm to young people we need to aim to:

- prevent or delay uptake;
- reduce consumption (frequency, per occasion volume and total volume); and
- reduce the risks of harm when consumption occurs.

Issues Paper position

16.22 In *Alcohol in Our Lives*, we noted that the evidence presented a strong case for increasing the purchase age.[693] Our tentative option was a split purchase age that would leave the minimum purchase age from on-licences at 18 years while increasing the minimum purchase age from off-licences to 20 years. The assumption was this would reduce the supply of alcohol to people under the age of 18 while allowing 18 and 19 year olds to drink in on-licence premises where supervision might mean there was a lower risk of harm.

692 National Health and Medical Research Council *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Canberra, 2009) at 57.

693 New Zealand Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 223.

Consultation and submissions

16.23 As noted in chapter 1, youth drinking and the question of the purchase age elicited strong responses in both the consultation process and submissions. Of the 2,939 submissions we received, 2,272 commented on the options for purchase or drinking age. Most of those who commented supported increasing the purchase age (78%), with 68% preferring 20. A split purchase age was supported by 12%. Some submitters also recommended introducing a minimum drinking age (4%) or increasing the purchase age to 21 years.

16.24 In some cases, those who supported a split purchase age acknowledged it could be a useful compromise:[694]

> We give conditional support to the proposal for a split purchase age as this may be a politically acceptable compromise. However, we note the evidence provides strong support for returning the minimum alcohol purchasing age to 20 years, with no exceptions.

16.25 The New Zealand Police's first preference was for the purchase age to increase to 20 years, however, in its submission the Police said it saw value in the split age proposal and thought it was possible it may curb the extent to which young people "pre-load" before going to bars.[695]

16.26 Irrespective of their position on where the purchase age was set, many wanted to ensure that legislation sent a strong and consistent message about the age at which drinking is sanctioned, making it easier for parents to manage teenage children and reducing access to alcohol by younger teenagers and children:[696]

> We acknowledge that the evidence supports age as a significant factor in the problems of inappropriate and excessive alcohol consumption and that whatever the legal age for alcohol purchase may be, the reality is that it means many young people a few years younger are also able to purchase alcohol because they are assumed to be of legal age. Accordingly we support an increase in the alcohol purchase age from the current 18 years.

16.27 Submitters who supported maintaining the status quo generally did not deny that increasing the purchase age could reduce harm (in fact, many argued for a drinking age of 18 to reduce harm to people under 18 years). Rather, they were concerned about inconsistency with other age-based policies such as driver licensing, voting, purchasing tobacco, marriage and joining the armed forces:[697]

> You're legally an adult at 18. You can do everything else. Why not be allowed to buy alcohol?

694 Submission of the New Zealand Public Health Association – Canterbury Branch (submission dated 29 October 2009) at 2.

695 Submission of New Zealand Police (submission dated 31 October 2009) at 12, [3.8].

696 Submission of the New Zealand Medical Association (submission dated 29 October 2009) at 3.

697 Submission of Sapphire Manihera (submission received 31 October 2009) at 3.

16.28 We are persuaded that, while many regard the split age as a workable compromise, there is stronger support for a simple increase in the purchase age, and the evidence presented to us, as outlined below, does not support the rationale for a split age. Based on the feedback from consultation and the evidence, we have shifted our position from that in *Alcohol in Our Lives* in favour of increasing the minimum purchase age to 20 years for purchasing alcohol from both on- and off-licence premises.

Policy rationale

Criticisms of a split age policy

16.29 The potential for reducing harm by introducing a split purchase age rests partly on the assumption there is a lower risk of harm from drinking on licensed premises than in other locations, particularly private residences.[698] We are not convinced the evidence supports this assumption.

16.30 Consuming large amounts of alcohol on licensed premises is relatively common, particularly among those aged 18 to 24 years, suggesting an increased risk of acute harm. In 2004, 22% of people in this age group reported having consumed large amounts of alcohol in a pub, hotel or tavern and 17% in a nightclub in the last 12 months.[699] This is concerning because there is also evidence that drinking larger amounts of alcohol at licensed premises is associated with increased experiences of alcohol-related harms, including those that impact on employment, finances, health and appearance.[700]

16.31 International and new New Zealand research does not suggest the risk of injury is lower following drinking on licensed premises as opposed to other locations.[701] There is also evidence from a New Zealand longitudinal study to suggest increased access to alcohol through licensed premises at the ages of 15 and 18 is associated with consuming more alcohol and experiencing more alcohol-related problems at the ages of 18 and 21.[702]

698 For example, submission of the Injury Prevention Research Unit Department of Preventive and Social Medicine, University of Otago (submission dated 9 November 2009) at 7.

699 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) at 31.

700 S Casswell, J Zhang and A Wyllie "The importance of amount and location of drinking for the experience of alcohol-related problems" (1993) 88 Addiction 1527 at 1531.

701 S Macdonald and others "Variations of alcohol impairment in different types, causes and contexts of injuries: results of emergency room studies from 16 countries" (2006) 38 Accident Analysis and Prevention 1107 at 1107; R McLean and J Connor (2009) "Alcohol and injury: A survey in primary care settings" 122 New Zealand Medical Journal 21 at 25.

702 S Casswell and J Zhang "Access to alcohol from licensed premises during adolescence: a longitudinal study" (1997) 92 Addiction 737 at 743.

16.32 Police data indicate that, of the alleged offenders who reported the location of their last drink, one-in-four reported it as being on a licensed venue, while the others reported it as being in their home, a private residence or public place.[703] The lower proportion of apprehensions following drinking on licensed premises would be expected given that around 30% of alcohol is consumed on licensed premises.[704] However, the fact this still represents over 15,000 apprehensions per year does not support the assumption that less harm results from drinking on licensed premises.

Conclusion

16.33 There is good evidence that increasing the minimum purchase age will be an effective and cost-effective method of helping to achieve the objectives relating to youth drinking.[705] The Law Commission therefore retains its position that there is a good case for increasing the minimum purchase age and considers the recommendation in this area should be strengthened in light of the evidence of harm occurring on licensed premises. Both the submissions and recent public surveys show strong support for increasing the purchase age. For example:

- a recent poll found 74% of respondents believed lowering the purchase age from 20 to 18 years had a negative effect on New Zealand society;[706]
- in a 2006 survey, 75% of New Zealanders supported raising the drinking age back to 20 years;[707]
- 67% of a sample of parents disagreed with the statement "It's good that the government changed the law to allow 18 and 19 year olds to purchase alcohol";[708] and
- a Police Association survey found 72% of staff supported lifting the purchase age to 20 years.[709]

16.34 We recommend the purchase age be increased to 20 years with no exceptions. We also recommend the necessary changes to related offences to reflect the new recommended purchase age.

16.35 This means it would be an offence to sell or supply alcohol from licensed premises to anyone under the age of 20. Unlike section 157 of the Sale of Liquor Act 1989, we recommend there be no exemption for minors accompanied by a parent or guardian on licensed premises. We also recommend retaining the infringement offence for anyone under the minimum purchase age to purchase alcohol, as in the existing section 162 of the Act.

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703 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 7 < www.police.govt.nz > at 69.

704 B Robertson *Alcohol in Our Lives* (Hospitality Magazine column, 7 August 2009) < www.hanz.org.nz > .

705 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 139.

706 Research New Zealand "Majority think lowering drinking age has been bad for New Zealand" (media release, 12 October 2009).

707 Department of Marketing, Massey University "The Role of Government: International Social Survey Programme" (Palmerston North, April 2007) < marketing-bulletin.massey.ac.nz > at 3.

708 K Kypri, J I Dean and E Stojanovski "Parent attitudes on the supply of alcohol to minors" 26 Drug and Alcohol Review 41 at 43.

709 S Plowman "Nearly three quarters of all Police staff favour raising the drinking age" (2009) April Police News at 55.

Impact

16.36 The cost to government of implementing a change in the minimum purchase age will be low. Most of the cost will be in informing the public and licensees of the new law, including boosting the work done by police, health and local government to enhance compliance at a local level. The Hospitality Association of New Zealand currently provides "18+ cards", which are one of only three forms of acceptable identification for the purposes of purchasing alcohol. If the Association is unwilling to change to producing "20+ cards", another form of acceptable identification that is available to people without a passport or driver licence will be required.

16.37 The cost to the hospitality, retail and alcohol production industries of an increase in the purchase age is unknown. The implementation costs to the industry will be minimal but there will be a reduction in sales to 18 and 19 year olds and in other sales that are followed by supply to people under 20 years of age. This could be significant given that over half of 12 to 17 year olds (around 208,500 people) and nearly nine out of ten 18 and 19 year olds (102,800 people) drink alcohol.[710] In 2000, 18 and 19 year olds consumed around 18,000 litres of pure alcohol, and their average volume of consumption was higher than any other age group.[711] However, given the high risk of harm for younger drinkers, a targeted intervention of this nature seems justified.

Drinking in public places

16.38 It is currently an offence under section 38 of the Summary Offences Act 1981 for any person under 18 years of age to possess alcohol or drink in a public place unless accompanied by a parent or guardian. We recommend extending this offence so it applies to all people under 20 years of age. We also recommend removing the exemption for those accompanied by a parent or guardian.

16.39 It is clear this provision is outdated in many places because liquor ban bylaws mean it is an offence for *anyone* to drink in many public places around New Zealand. Submissions indicated there is a lot of support for maintaining restrictions on public drinking. Our recommendation will help to simplify this situation. This would, for example, prohibit minors from having a drink with their family at a picnic but we do not consider this to be a major problem. Because cars on roads are considered public places, people under the age of 20 will not be permitted to drink or possess alcohol in cars.

710 Calculated from Statistics New Zealand Infoshare estimated resident population at 30 June 2004 and 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) at 11.

711 R Habgood and others *Drinking in New Zealand: National Surveys Comparison 1995 and 2000* (Alcohol and Public Health Research Unit, Auckland, 2001) at 6.

16.40 If there is to be a purchase age of 20 years, exemptions that allow minors to drink in public or on licensed premises are impractical. Legal guardianship does not apply to 18 and 19 year olds so a new legal definition of parent or guardian would be required. In addition, people in the 18- to 19-year-old age group are likely to have less contact with their parents than younger teenagers, so exemptions of this sort could paradoxically provide those aged under 18 with more access to alcohol than 18 and 19 year olds. This also presents a barrier to other exemptions relating to parents or guardians such as that discussed below.

SUPPLY TO YOUNG PEOPLE

16.41 While increasing the age at which young people may legally purchase alcohol would help reduce consumption and harms, it is also critical to address the secondary or social supply of alcohol to young people. Among those aged under 18 who drink, the most common sources of alcohol are friends and family, with only a relatively small proportion attempting to purchase alcohol from licensed premises (15% of drinkers aged 12 to 17 in the last year).[712] This suggests enforcement of the existing purchase age is fairly effective. But a greater reduction in harm may be achieved by reducing *social supply* because minors receive a large proportion of their alcohol from friends or family.

16.42 As noted in chapter 1, public consultation raised concerns about the effect that lowering the purchase age had on the availability of alcohol to secondary school students. Many young people turn 18 while in their final school year and the concern was that since the purchase age was lowered it had become significantly easier for younger peers to obtain alcohol from their older school mates. In its submission, the New Zealand Police described the knock-on effect of lowering the purchase age:[713]

> District staff are reporting that, whereas before the law change, the effective drinking age was around 17–19 years of age, the de facto drinking age is now around 14–17 or even younger. Some districts are reporting that 11 and 12 year olds are now impacted upon by alcohol. Young females are also seen to be drinking to higher levels of intoxication and are subsequently at increased risk of victimisation.

16.43 Although parents frequently supply their underage children with alcohol, the risks may be greater when the alcohol is supplied by other people. A survey in 2005 found parents were the most common source of supply to those aged 14 to 17 years who drink less than two drinks on a typical occasion, whereas friends were the most common source of supply to those who drank six or more drinks on a typical occasion.[714] Most of the friends who supplied alcohol were aged over 18 years.[715] Young people aged 14 and 15 were less likely than 16 and 17 year olds to report friends as the primary suppliers of alcohol.[716] This may be because the younger age group is less likely to have friends aged over 18 who can legally purchase alcohol.

712 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) at 46.

713 Submission of New Zealand Police (submission dated 31 October 2009) at 11, [4].

714 SHORE/Whariki *Unpublished Research Data Relevant to the Minimum Purchase Age for Alcohol in New Zealand* (Memo to the Ministry of Health, Auckland, 2006) at 3.

715 Ibid, at 4.

716 Ibid, at 3.

16.44 If young people drink more when alcohol is supplied by friends than parents it may be possible to reduce the risk of harm by making it more difficult for young people to receive alcohol from people other than their parents. This could be achieved by making it an offence for anyone other than a parent or guardian to supply alcohol to people aged under 18 or by reducing access to alcohol by 18 and 19 year olds, who would presumably be the group most likely to have friends aged under 18 years.

What the law states

16.45 It is currently an offence to *purchase* alcohol with the *intent to supply* it to a person under 18 years of age.[717] Submissions have argued this clause is complicated, narrow (in that it only covers alcohol from licensed premises) and that it is difficult to prove the "intent to supply".[718]

16.46 There are currently exemptions to the rule on supply if the supplier is the parent or guardian of the minor or if the minor is attending a private social gathering.[719] The Sale of Liquor Act 1989 does not define private social gathering, but social gathering has been defined as "[g]atherings for the purpose of social intercourse in the course of which the persons concerned actively participate in a common interest of an occupational, educational, technical, sporting, recreational or cultural nature".[720] In addition, social gatherings should not be particularly frequent or regular, should not have the sole purpose of consumption of liquor and should not be motivated by profit.[721]

16.47 The lack of clarity as to what constitutes a "private social gathering" is producing confusion as to whether, for example, alcohol may be supplied to minors at after-ball parties for high school students. After-ball parties have emerged as an issue of concern for the Police and public in many parts of New Zealand and we have addressed them in relation to special licences in chapter 13 of this report. In brief, we intend that after-ball parties would be caught by the definition of a public event because they usually involve a fee or ticket for entry. This means they would need a special licence to sell or supply alcohol, and would therefore only be able to sell it to people 20 years of age and over. Being licensed premises, those aged under 20 would not be permitted to drink at the event, even with parental consent and/or supervision.

717 Sale of Liquor Act 1989, s 160.

718 For example, submission of the New Zealand Police (submission dated 31 October 2009) at 14.

719 Sale of Liquor Act 1989, s 160(3)(d).

720 *R v Porirua Rugby Football Club* [1979] 2 NZLR 673 at 687.

721 *Police v Merivale Football Club Incorporated* [1958] NZLR 388 at 395.

16.48 Under the current law there is no restriction on the supply of alcohol to minors attending private functions in private dwellings or other unlicensed premises. There is however a significant risk of harm to minors at private parties where they may be supplied alcohol by people other than their parents with no or inadequate supervision. A majority of 16- and 17-year-old drinkers (61%) report having consumed large amounts of alcohol at someone else's home, significantly more than at any other location.[722] There is a case for tightening the exemptions on the offence of supplying alcohol to minors both in the interests of ensuring clarity and reducing harm from private social gatherings at which alcohol may currently be freely supplied to minors.

A new approach to social supply

16.49 Three Australian states (New South Wales, Queensland and Tasmania) have introduced legislation limiting the circumstances under which adults may supply alcohol to minors on private premises.

16.50 In each case the effect of these laws is to make it an offence for anyone to supply alcohol to a minor in a private place unless that person is the minor's parent or guardian[723] or an adult acting in *loco parentis*, that is, in the place of a parent. The provisions allow another "responsible adult" to supply alcohol to a minor provided they have the authorisation of the minor's parent or guardian.

16.51 But the Tasmanian and Queensland provisions go a step further, stipulating that the parent, or approved adult, can only supply alcohol to a minor if that supply is "consistent with the responsible supervision of the youth."[724]

16.52 For the purpose of these Acts assessing whether or not alcohol has been supplied in a responsible manner includes factors such as the adequacy of adult supervision, the age of the youth, levels of intoxication, and the quantity and duration of supply.

16.53 The effectiveness of laws that require parental consent, supervision or presence while minors are drinking have yet to be evaluated, but there is evidence that suggests the risk of harm for minors may be reduced when parents are involved and there is adult supervision. For example:

- While similar numbers of 16 and 17 year olds reported having consumed alcohol at their own compared with someone else's home, more reported consuming large amounts of alcohol at someone else's home (61%) than in their own (27%).[725]

722 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Ministry of Health, Wellington, 2009) at 158.

723 Queensland and Tasmania's provisions include step-parents in the classes of people that may supply alcohol to a minor (Liquor Act 1992 (Qld), s 5; Police Offences Act 1935 (Tas), s 26).

724 Liquor Act 1992 (Qld), s 156A; Police Offences Act 1935 (Tas), s 26.

725 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Ministry of Health, Wellington, 2009) at 158.

- Australian teenagers who drank at home supervised by their parents were more likely to report drinking at lower risk levels, and unsupervised drinkers were nearly seven times more likely to experience alcohol-related harm than supervised drinkers.[726]
- A New Zealand study found parents were most likely to supply alcohol to minors to drink when they were present, followed by when another adult was supervising, and least likely to supply alcohol to drink when there was no adult supervision.[727]
- Parents were the most common source of supply to those aged 14 to 17 years who drink less than two drinks on a typical occasion, whereas friends were the most common source of supply to those who drank six or more drinks on a typical occasion.[728]
- New Zealand 15 year olds typically drank less with family than with peers only, when drinking in their own home and if the alcohol was obtained from an adult rather than self-obtained or received from a peer.[729]
- A majority of parents (59%) agreed no one should supply alcohol to underage people, but many noted they considered parental or other supervision, parental consent, strength or volume and drinking location when deciding whether to supply alcohol.[730]

What we recommend

16.54 In the course of this review we heard from parents anxious to ensure they did not lose the right to introduce their child to alcohol in a responsible manner. We also heard from parents angered by their inability to prevent other people supplying their child with alcohol without their permission and often with little or no adult supervision.

16.55 We believe the law needs to recognise the rights and responsibilities of parents with respect to the supply of alcohol to minors. On that basis we recommend that it is an offence for any person to supply alcohol to a minor on private property unless that person is the minor's parent or guardian or is a responsible adult who has the approval of the minor's parent or guardian.

16.56 We also believe that with the parental right to supply (or to approve another adult to supply) comes a responsibility to supervise the minor's drinking or to take reasonable steps to ensure the alcohol is supplied in a responsible manner.

726 E King, J Taylor and T Carroll *Alcohol Consumption Patterns Among Australian 15–17 year olds from 2000 to 2004* (Department of Health and Ageing Research Report, Sydney, 2005) at 7; N McBride, F Farringdon and R Midford "What harms do young Australians experience in alcohol-use situations?" 24 Australian and New Zealand Journal of Public Health 54 at 57.

727 K Kypri and others "'Think before you buy under-18s drink': Evaluation of a community alcohol intervention" (2005) 24 Drug and Alcohol Review 13 at 17.

728 SHORE/Whariki *Unpublished Research Data Relevant to the Minimum Purchase Age for Alcohol in New Zealand* (Memo to the Ministry of Health, Auckland, 2006) at 3.

729 G M Connolly "Drinking context and other influences on the drinking of 15-year-old New Zealanders" (1992) 87 Addiction 1029 at 1032.

730 K Kypri, J I Dean and E Stojanovski "Parent attitudes on the supply of alcohol to minors" 26 Drug and Alcohol Review 41 at 43.

16.57 Under this law the following new offences would arise:

- Anyone other than a parent or guardian, who supplies alcohol to a minor without the authority of the minor's parent or guardian, commits an offence.
- Any parent or guardian, or person approved to supply alcohol to a minor by the same, who fails to supply in a responsible manner commits an offence.

16.58 We propose that the test for "responsible supply" would include the same elements as the Tasmanian and Queensland law, which are adequacy of adult supervision, age of minors, quantity supplied, duration of supply, presence of intoxication, and availability of food.

16.59 A parent would not be liable in circumstances where the minor had acted without parental knowledge or against parental instructions.

16.60 The new offences are not strict or absolute liability offences and therefore do not meet the Ministry of Justice's guidelines for infringement offences. Under the Queensland provision a person who is convicted of either supplying without consent or failing to provide responsible supervision is liable for a fine up to $6,000. In Tasmania the penalty is $12,000 or 12 months imprisonment.

16.61 In New Zealand a licensee who sells or supplies alcohol to a minor is liable for a maximum fine of $10,000. While the offences are comparable, by definition social supply does not involve commercial gain so in our view should attract a lesser fine. We suggest a maximum fine of $5,000.

16.62 In cases where an adult other than the parent is supplying, it will be the responsibility of that person to ensure the minor's parent provided consent. Such consents could be given either orally or in writing. Cases of forged consent can be dealt with under existing forgery offences.

16.63 There are concerns about how requirements for supervision and consent for those aged under 18 would be enforced. One concern is they may be enforced only in extreme circumstances because they occur in the private realm. We acknowledge this concern, but consider requirements for supervision and consent will nonetheless provide a strong normative signal to minors and give parents greater power to restrict their children's drinking as they consider appropriate.

16.64 While our recommendation is to increase the minimum purchase age to 20, these new supply provisions would only apply to those under 18 because they are specifically designed to recognise the rights and responsibilities of parents and guardians for the young people in their legal care. Those legal responsibilities no longer pertain to those 18 and over.

16.65 Currently, there are exemptions that allow minors to receive alcohol on some licensed premises when accompanied by a parent or guardian. We recommend removing these exemptions. Failing to do so would create an anomalous situation whereby those subject to guardianship could be supplied on licensed premises but 18 and 19 year olds could not.

Age for sellers of alcohol

16.66 Section 161 of the Sale of Liquor Act 1989 restricts the situations in which people aged under 18 may be employed on licensed premises. It is an offence to employ minors in any restricted area on the licensed premises while that area is open for the sale of liquor. There are exemptions for minors employed to prepare or serve meals, clean, repair, maintain, alter, or restock the area or any equipment in the area, remove or replace any equipment, stock-take or check or remove cash. Before 1999, there was also an exemption for people aged 18 or 19 years who were employed as performers in any entertainment. Essentially, the exemptions ensure minors are not employed to sell or pour alcohol at an on-licence, although they may be employed to sell alcohol at an off-licence.

16.67 If the minimum purchase age is to be increased to 20 years it would be best to maintain consistency by increasing to 20 years the age below which someone may not be employed to sell alcohol at on-licence premises. This would assist in reducing access to alcohol by minors who are employed in such premises and reducing the risk that underage sellers might be pressured to sell to other minors. In 2006, pubs, taverns and bars employed 5,515 people aged 15 to 24, some of whom will be aged 18 or 19 and currently employed in restricted areas of licensed premises.[731] These people and their employers will be affected by this change.

RECOMMENDATIONS

R96 Increasing the minimum purchase age to 20 years for all licensed premises including:

(a) making it an offence to sell or supply alcohol on licensed premises to anyone under the age of 20, even if accompanied by a parent or guardian;

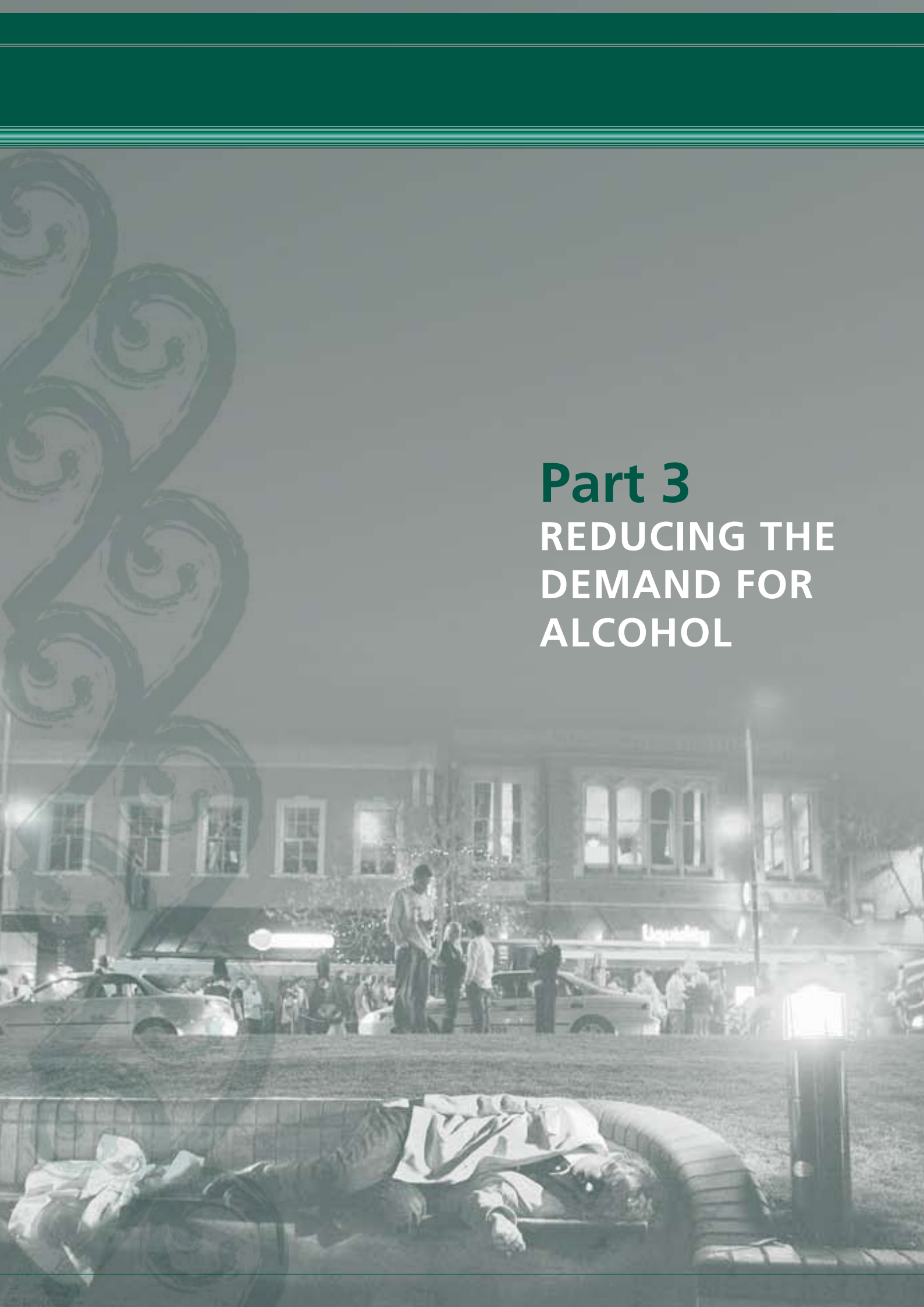
(b) making it an infringement offence for anyone under the age of 20 to purchase or consume alcohol on licensed premises.

R97 Making it an offence for anyone under the age of 20 to drink or possess alcohol in a public place, even if accompanied by a parent or guardian.

R98 Introducing an offence for any person to supply alcohol to a minor under the age of 18 unless that person is the minor's parent or guardian or a responsible adult authorised by the parent or guardian and unless the alcohol is supplied in a responsible manner. This means that any person legally entitled to supply a minor who then fails to supply in a responsible manner, including providing appropriate supervision, also commits an offence.

R99 Increasing the minimum age for people employed to sell alcohol at an on-licence to 20 years.

731 A Whiteford and M Nolan *An Employment Profile of the Hospitality Industry 2007* (Hospitality Standards Institute, Wellington, 2007) at 24.



Part 3
REDUCING THE DEMAND FOR ALCOHOL

Part 3

An introduction

In Part 3 of this report we consider the policies that can influence the demand for alcohol. As discussed in chapter 2, the demand for alcohol is influenced by many individual, demographic, socio-economic and environmental factors.

Demand and supply policies interact in a dynamic fashion. For example, the supply controls discussed in Part 3 are a critical component of the environmental factors influencing the demand for alcohol: for instance, the proliferation of liquor outlets under a liberal licensing regime can lead to market saturation, resulting in heavy promotions and strong price competition between suppliers. This in turn may stimulate demand.

Part 3 focuses on two policy areas that international research has identified as being most effective at reducing demand for alcohol:

- policies that influence the price of alcohol; and
- policies that restrict the advertising and promotion of alcohol.

The three chapters in this part cover the following issues:

- trends in the price and affordability of alcohol in New Zealand and what the international research tells us about how changes in the price of alcohol affect demand (chapter 17);
- how taxation and minimum price regimes can be used to influence the price of alcohol and the justifications for doing so (chapter 18); and
- the promotion of alcohol through advertising, sponsorship and discounting, and the rationale for restricting such promotions (chapter 19).

Chapter 17

Reducing demand: the role of price

IN THIS CHAPTER, WE:

- Provide an overview of the changes in alcohol affordability in New Zealand and the effects such changes play in changing consumption patterns.
- Look at the effect price changes have on different types of drinkers.
- Examine the role that alcohol price changes can have on the levels of alcohol-related harm.

INTRODUCTION

17.1 Consumption of alcohol, as with most other commodities, is affected by changes in price. If the price of alcohol rises, then consumption will decrease: if alcohol becomes cheaper, consumption will rise. The magnitude of consumers' response to alcohol price increases depends on many factors, including the consumers' age, income and drinking habits. Similarly, some alcohol products are more sensitive to price increases than others.

17.2 How sensitive consumers are to increases in the price of a product is described as the product's "price elasticity". In simple terms, it is a measure of the extent to which consumers will buy more or less of a product in response to changes in price. Understanding the price elasticity of alcohol and, in particular, how different consumers are likely to respond to price changes is important when considering pricing policies.

17.3 This chapter discusses the international literature on how changes in alcohol prices affect consumers. There are two ways of assessing this: how the policies affect alcohol consumption at both an aggregate and sub-population level, and how they affect the levels of alcohol-related harm associated with that consumption. We examine both.

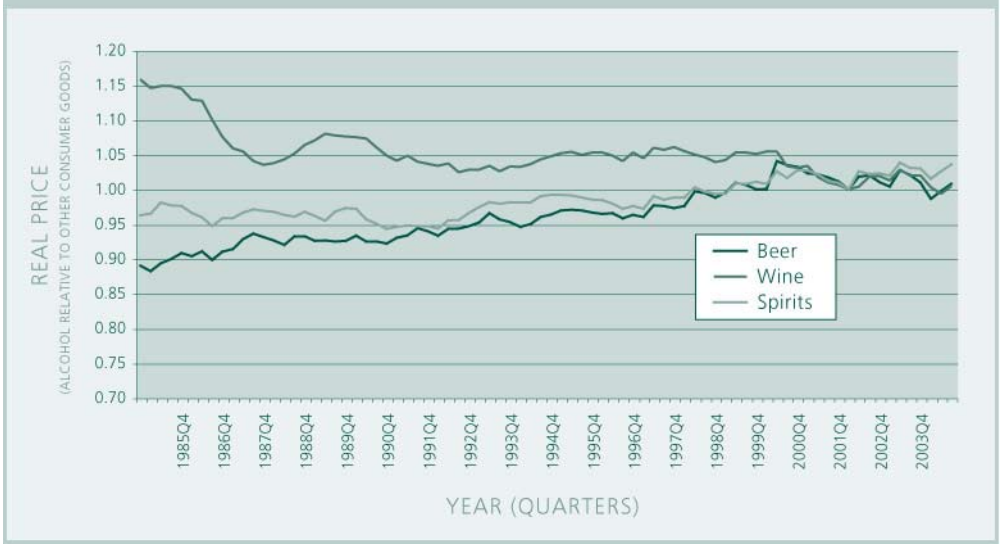
17.4 We begin with an overview of the alcohol market today and the relationship between alcohol prices and affordability.

PRICE AND AFFORDABILITY

17.5 In New Zealand, increases in the price of alcohol have generally kept pace with changes in overall consumer prices. But there has been considerable variation in the price changes across different beverages and within those beverage groupings. Wine, for example, has decreased significantly in relative price terms over the last two decades. A 3-litre cask of wine sold for $15 in 1988. By 2008, it had barely increased in price and could be purchased for an average of $18 to $20. If wine prices had kept pace with inflation, that cask of wine should have been retailing for about $25 in 2008. As shown in figure 17.1,[732] the price of wine increased just 42% between 1989 and 2008 while over the same period general prices (as measured by the "all goods" component of the Consumers Price Index (CPI)) rose by 63%.

17.6 The overall prices for spirits and beers have generally increased at a higher rate than the CPI. Beer prices increased by 85% and spirits by 75% between 1989 and 2008 compared with an increase in the CPI of 63%. However, the growth in "premium" products in beer and spirits categories hides the relative decline in the price of mainstream beers, such as standard draft and lager beer. For example, mainstream beer sold for $10 to $12 a dozen in 1988,[733] little different from the price for which it can be bought today. If these mainstream beers had kept pace with inflation, they should be retailing for $17 to $22 a dozen in 2009, the price currently paid for many "premium" brand beers.

FIGURE 17.1: THE REAL PRICE OF ALCOHOL BEVERAGES 1989–2008



Source: M Wall *Estimating the response of alcohol demand to changes in price and availability of alcohol in New Zealand* Centre for Social and Health Outcomes Research and Evaluation (SHORE), Working paper October 2009, Figure 2 at 5, based on Statistics New Zealand consumer price data.

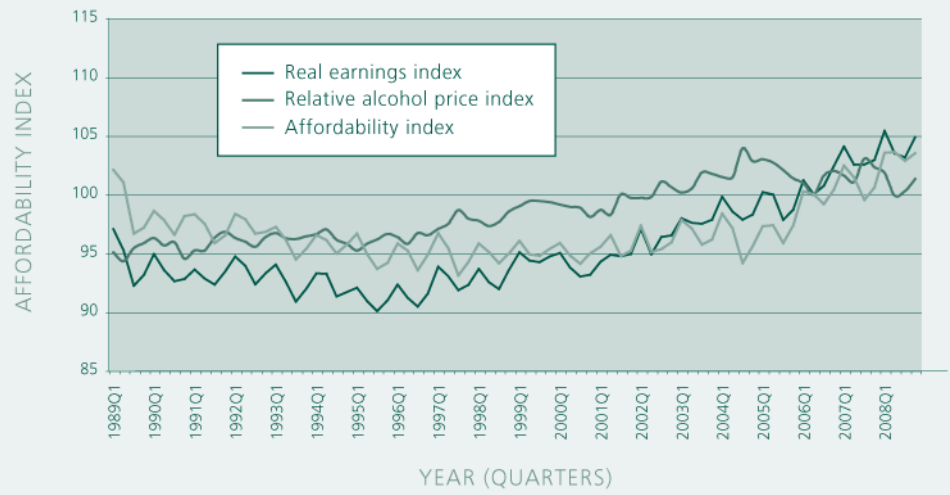
732 The prices changes for beer, wine and spirits are from Statistics New Zealand Consumers Price Indices for all alcoholic beverages (Infoshare), deflated by the price series for all goods, with a base year 2006 (Quarter 2) equal to 1.

733 A sample of advertised prices for mainstream beer in 1988 ranged from $9.80 to $11.95 per dozen 330 ml twist tops, and from $12.75 to $12.99 per dozen 355 ml cans. Swappa crates or flagons were cheaper at around $9.50 equivalent for 330 ml per dozen, and even cheaper "on special". Premium brand beer, although not marketed extensively, was advertised for $21.99 per 330 ml per dozen (the equivalent of $37.74 in 2009 dollars). Information provided to the Law Commission suggests, in 2008, the average supermarket retail price for mainstream beer was around $14.00 per dozen, with some brands retailing down to $10–$11 per dozen on occasion, and premium beer selling at around $20 per dozen.

17.7 The affordability of alcohol depends not just on the "price" of the product, but also on the disposable income of consumers. Affordability increases or decreases depending on changes in the price of alcohol relative to other consumer goods, or by changes in income. An "affordability index" is a way of measuring the joint effects of both price and income.[734]

17.8 In New Zealand, the affordability of alcohol has improved in recent years, but as discussed, the overall changes in price vary considerably between different types of alcoholic beverages and products. There are also considerable variations in the price of alcohol between retail (off-licence) and bars/clubs/cafes (on-licence). A measure of affordability of alcohol in New Zealand is based on average weekly earnings and alcohol prices.[735] An increase in the affordability index indicates goods are more affordable. Weekly earnings have trended up since 2000, which has driven the increased affordability of alcohol products, while at the same time prices for alcohol have risen slightly more than the CPI.

FIGURE 17.2: CHANGES IN AFFORDABILITY OF ALCOHOL IN NEW ZEALAND 1989–2008



Source: Affordability index analysis based on information from M Wall, *Estimating the response of alcohol demand to changes in price and availability of alcohol in New Zealand*, Centre for Social and Health Outcomes Research and Evaluation (SHORE) with Statistics New Zealand consumers price and weekly earnings data.

734 One formal definition of an "affordability index", used by the National Health Service, United Kingdom, and RAND Europe in its evaluation of affordability of alcohol in the European Union, is constructed as follows:

$$\text{Affordability index} = \frac{\text{Real households' disposable income}}{\text{Relative alcohol price index [ie, (alcohol price index/retail price index)*100]}}$$

See L Rabinovich and others *The affordability of alcoholic beverages in the European Union: Understanding the link between alcohol affordability, consumption and harms* (Prepared for the European Commission by RAND Europe, 2009) 25–26 < www.rand.org > .

735 The measure of affordability used by the Centre for Social and Health Outcomes Research and Evaluation (SHORE), see M Wall, *Estimating the response of alcohol demand to changes in price and availability of alcohol in New Zealand*, (SHORE Working Paper, October 2009) is based on average weekly earnings (because of the difficulty in getting data series of household disposable income), with the different price series indexed to equal 100 in 2006 (Quarter 2).

$$\text{Affordability index} = \frac{\text{Average weekly earnings index}}{\text{Alcohol price index}}$$

Both measures, based on Statistics New Zealand consumers price and weekly earnings data, are *relative*, and the resulting "affordability index" is also a relative measure.

17.9 An increase in the value of the affordability index in figure 17.2 indicates affordability has improved (for example, affordability improves when the index moves from 95 to over 100, as it has done since 2004). Alcohol is not a single product and there are several different price and quality points across the different beverage types and retail and hospitality environments. The affordability index masks some of the complexity of price movements that have occurred across products and drinking environments, affecting the affordability of alcohol.

17.10 As noted, prices for wine and mainstream beer products have not kept pace with inflation, becoming increasingly affordable given the rise in earnings. In addition, there has been a major shift to purchasing and consuming alcohol from off-licences, where prices have fallen significantly. For instance, between 2000 and 2008, prices for off-licence alcohol products rose by 19 %, while the CPI for all goods rose by 23 % and weekly earnings rose by 39 %. In sharp contrast, the prices for alcoholic beverages in bars and clubs rose by 45 %.

17.11 In summary, the competitive retail environment, and resulting heavy discounting, coupled with growth in people's earnings, has resulted in alcohol becoming more affordable. The increased affordability and availability of alcohol is likely to have contributed to the 9 % increase in per capita consumption of pure alcohol in New Zealand in the decade between 1998 and 2008.[736] As discussed in chapter 2, aggregate consumption is only one indicator of a country's drinking habits. Of equal importance are the patterns of consumption, in particular, the rates of episodic heavy drinking, or binge drinking.

17.12 While the average price of alcohol products has increased overall, the trends in price data conceal some extraordinarily low-priced alcohol products. The budget-end of the New Zealand retail market has witnessed only minimal price increases over the past two decades, and it is the availability of these cheap products that is of greatest concern to the Law Commission.

Prices and the New Zealand retail environment

17.13 Alcohol sales have become a significant revenue source for supermarkets since they earned the right in 1999 to sell beer as well as wine.[737] Alcohol specials also feature strongly in the marketing strategies of both major New Zealand supermarket chains. As outlined in chapter 2, there has also been strong growth in the number of specialist liquor stores since 1999.

17.14 Supermarkets have sometimes been criticised for engaging in "loss leading", a practice that involves selling alcohol at a lower price than that from which it was purchased from the manufacturer. In other instances, popular products can be offered at "deep discount" because some large retailers are able to use their market power to negotiate large discounts across a range of products, and then use savings to offset the very cheap prices on specific products. This has resulted in strong price competition and widened the gap between on- and off-licence prices.

736 Statistics New Zealand Alcohol and Tobacco Available for Consumption: Year ended December 2008 < www.stats.govt.nz > .

737 "Liquor: Big Retail Changes Coming?" *Supermarket News* (September 2009) Vol. No.2 Issue No 7.

17.15 For example, a Queenstown publican noted in the local media that a bottle of beer could be bought from the local supermarket nearly 19% cheaper than if his company purchased the maximum bulk order (38,880 bottles or 24 pallets) from the brewery directly.[738] Similarly, according to one recent study in the United Kingdom, discounting of alcohol is universal across British supermarkets, with some chains selling own-brand spirit products for less than the excise duty and value-added tax payable.[739]

17.16 Over time, the differential in prices between bars, clubs and cafes (on-premises) and supermarkets and liquor retailers (off-premises) has also affected the way in which people participate in the night-time environment, with more "pre-loading" of alcohol at home before heading out on the town.

17.17 While the availability of cheap alcohol is obviously viewed as beneficial by many consumers, there is concern the easy accessibility of cheap alcohol is resulting in more alcohol being consumed, with people drinking more often or drinking larger amounts. A systematic review looking at the effects of alcohol pricing noted that: "There is strong evidence to suggest young drinkers, binge drinkers and harmful drinkers tend to choose cheaper products".[740]

17.18 Submissions from a number of industry stakeholders expressed concern about the negative impacts the competitive retail environment is having on both the profitability of some sectors of the alcohol industry and on alcohol-related harms, when the sale and supply of alcohol is based on high volumes and heavy discounting.

17.19 For example, the Hospitality Association of New Zealand, with some 2,400 members, stated in its submission: "…the Association accepts that some of the most harmful levels of consumption come from low cost alcohol".[741] And, the role of off-premises alcohol, price and marketing has affected consumption:[742]

> The Association believes that the advent of supermarkets using liquor as a "loss leader", whereby liquor is sold below cost to attract shoppers who will purchase other items alongside liquor, has contributed significantly to the availability and supply of cheap liquor to minors. [And]…the consequence of low cost alcohol products…has seen some aggressive marketing of liquor products that the Association believes has contributed to the significant increase in off-premise and unsupervised consumption of alcohol and potentially also alcohol misuse.

738 J Beech "Publican wants pricing transparency" *Otago Daily Times* (New Zealand, 20 November 2009). An 18-bottle pack of local beer from a Queenstown supermarket was purchased for $21.99, but with a maximum bulk discount for a publican it would cost $28.53 ex-wholesaler/brewer (ie, 18.6% more).

739 C Record and C Day "*Britain's alcohol market: How minimum alcohol prices could stop moderate drinkers subsidising those drinking at hazardous and harmful levels*" (2009) 9(5) Clinical Medicine at 421.

740 A Booth and others *Independent review of the effects of alcohol pricing and promotion (Part A: Systematic Reviews)* (University of Sheffield, ScHARR, for Department of Health, United Kingdom, 2008) at 34 < www.dh.gov.uk >.

741 Submission of Hospitality Association of New Zealand (submission dated October 2009) at 15.

742 Ibid, at 14.

17.20 Similarly, in its submission, Lion Nathan noted that the type and number of liquor outlets affected retail behaviour, price and drinking behaviour: "increased retail competition means liquor retailers are more likely to use price discounting and price promotions to drive business".[743]

17.21 Specialist liquor store, The Mill Liquorsave, also observed that "the higher density the more price competition and cheaper alcohol", facilitating binge drinking and increasing the likelihood of crime and antisocial behaviour.[744] The Mill also noted, while smaller retail liquor outlets may not have the buying power of the larger retailers, they operate on a low-cost business model "which allows selling at lower and lower prices", creating negative consequences for the community.[745]

17.22 While industry concerns about the impact of price discounting reflect the commercial interests of these segments of the alcohol industry, they also reflect concern that an industry focused on high volumes and low margins may ultimately be disadvantageous to the future growth of the sector.

17.23 Unsurprisingly, this view is not reflected in submissions from some liquor retailers, including Progressive Enterprises, the supermarket chain that trades under the Countdown, Foodtown and Woolworths brands. In its discussion of alcohol price and tax policies Progressive Enterprises states that:[746]

> …despite New Zealand supermarkets having been able to sell beer and wine for the last 10 years there has been no significant increase in overall per capita consumption of alcohol over that period.

17.24 Foodstuffs (NZ) Ltd, a chain that encompasses franchise grocery stores New World, Pak'nSave and Four Square, as well as specialist liquor retailers, also questions the linkage between cheaper alcohol and consumption. It notes that its sales data analysis points to a "definite trend away from low price low quality products to higher-priced better quality products" (often higher strength products), and this trend accounts for the rise in consumption.[747] It also notes pricing is only one factor influencing New Zealanders' increasing consumption of alcohol away from on-premise locations (for example, pubs, cafes and bars).

17.25 Progressive Enterprises also disputes that discounting and promotion lead to increased consumption, citing undisclosed "customer purchase behaviour data", which it claims support the contention that consumers taking advantage of price promotions will store rather than consume additional volumes.[748]

743 Submission of Lion Nathan (submission dated 29 October 2009) at 19, [125].

744 Submission of The Mill Liquorsave (submission dated 7 October 2009) at 10, [4.9].

745 Ibid, at 10, [4.11].

746 Submission of Progressive Enterprises Ltd (submission dated October 2009) at 11, [41].

747 Submission of Foodstuffs (NZ) Limited (submission dated October 2009) at 17, [19].

748 Ibid, at 12, [42].

EFFECTS OF PRICE ON DEMAND

Price and income effects on consumption – elasticity

17.26 Governments can adopt several different policies that will result in a change in alcohol prices. These include direct price setting through state ownership or control of the sale of alcohol; legislating to set floor prices or minimum prices; taxation policies such as sales or excise taxes; bans on loss leading and restrictions on price promotions. Policies that tighten the availability of alcohol, such as those recommended in Part 2 of this report, also indirectly affect price because they decrease the level of competition and increase the search costs individuals face when sourcing alcohol.

17.27 The different rationales for using taxation and minimum price policies to intervene in the alcohol market with the objective of reducing consumption and harm are discussed in detail in chapter 18.

17.28 In this chapter, we consider the effectiveness of using price to change consumption and reduce the level of alcohol-related harm. Effectiveness can be assessed by two different but related measures: how price changes affect consumption levels at both a population and sub-population level and, secondly, how price changes are reflected in the levels of alcohol-related harm in a society.

17.29 As discussed in Part 1 of this report, levels of harm are strongly influenced not just by aggregate consumption but by patterns of consumption – that is, how people drink. Price changes that reduce the number of intoxication events in a population can, for example, have a significant effect on levels of acute alcohol-related harm.

17.30 We begin here by examining the relationship between price and consumption. Unfortunately, few studies examine the impact changes in affordability – price and income – have on alcohol consumption. Instead, most research focuses on the relationship between *either* price *or* income on consumption.

17.31 The sensitivity of the relationship between alcohol demand and changes in alcohol price is measured by economists as the "price elasticity of demand",[749] that is, the percentage change in consumption of alcohol following a percentage change in price. Research (outlined in table 17.1) suggests that the price elasticity of demand for alcohol is around –0.5, that is, a 10% increase in price would result in a 5% decrease in consumption.

17.32 The impact of price changes on consumers' demand for alcohol varies between countries, types of consumers (for example, binge or problem drinkers), age groups and across different types of alcoholic beverages.

17.33 There have been a large number of individual studies over a long time period that have estimated the changes in alcohol consumption with respect to changes in both price and income (that is, price elasticity and income elasticity). Three recent

749 *Price elasticity of demand* is a measure of the responsiveness of consumer demand for a good to a price change. Price elasticity is negative for most goods because consumers tend to purchase less of a good at higher prices and more of a good when prices fall. An elasticity of less than –1.0 shows demand is fairly responsive to price changes (*price elastic*), with consumers' demand changing by proportionally more than the change in price. An elasticity between –1.0 and zero shows demand is less responsive to price changes (*price inelastic*), with a price change resulting in a proportionally smaller change in demand, for example, elasticity of –0.2 means a 10% price rise will result in a 2% decrease in demand.

studies have synthesised the results of these many hundreds of individual studies and derived summary estimates of the elasticities. In addition, one recent review for the European Union has looked at the relationship between affordability and demand. The results from these meta-analyses are set out below.

TABLE 17.1: COMPREHENSIVE STUDIES OF THE ELASTICITIES OF ALCOHOL[750]

Price elasticity (mean)				
	Alcohol	Beer	Wine	Spirits
Gallet (2007)*	–0.54	–0.36	–0.70	–0.68
Fogarty (2008)	–	–0.42	–0.61	–0.69
Wagenaar, Salois & Komro (2009)	–0.51	–0.46	–0.69	–0.80
Income elasticity (mean)				
Gallet (2007)*	0.69	0.39	1.10	1.00
Fogarty (2008)	–	0.64	1.11	1.15
Affordability elasticity				
Rabinovich, Brutscher, de Vries, Tiessen, Clift & Reding (2009)	0.22 (Short-run) 0.32 (Long-run)	–	–	–

*Gallet presents the "median" elasticities, where a median short-run price elasticity is –0.52 and long-run price elasticity is –0.816, and long-run income elasticity is 0.860.

17.34 The three meta-analyses demonstrate that price affects the drinking of all types of beverage categories, with beer consumption being generally slightly less responsive to changes in price than wine or spirits. The lower price elasticity for beer across the three reviews is partly a function of the fact that beer is the most popular beverage in many of the countries covered in the studies. Fogarty (2006)[751] notes the dominant beverage tends to be the least responsive to changes in price, so in countries such as New Zealand and Australia beer is relatively inelastic, whereas in countries such as France or Italy it would be wine. However, if the market share of wine continues to rise in New Zealand we could see it becoming less price responsive as it grows in popularity.

17.35 Short-run elasticity estimates tend to be more inelastic than the long-run estimates because people generally have less flexibility to respond to changes in prices, or cannot easily adjust their drinking habits in the shorter term.[752]

750 C A Gallet "The demand for alcohol: A meta-analysis of elasticities" (2007) The Australian Journal of Agricultural and Resource Economics 51 at 124, Table 2; J Fogarty "The demand for beer, wine and spirits: Insights from a meta analysis approach" (2008) American Association of Wine Economists, Working paper no. 31 31–34 at Table 4 < www.wine-economics.org > ; 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" (2009a) 104 Addiction 179–190 at Tables 1–4; L Rabinovich and others *The affordability of alcoholic beverages in the European Union: Understanding the link between alcohol affordability, consumption and harms* (Prepared for the European Commission by RAND Europe, 2009) 35 at 42, Table 4.2 < www.rand.org > .

751 J Fogarty "The nature of the demand for alcohol: understanding elasticity" (2006) British Food Journal 108(4), 316 at 328.

752 C A Gallet "The demand for alcohol: A meta-analysis of elasticities" (2007) The Australian Journal of Agricultural and Resource Economics 51, at 124, Table 2. This meta-analysis records a median short-run price elasticity of –0.52 for alcohol compared with a long-run price elasticity of –0.816, with a smaller gap in income elasticity between long- and short-run (0.68 short-run and 0.86 long-run).

This difference between the price responsiveness means prices may not need to increase by quite as much initially to achieve the same reduction in alcohol consumption over the longer term.

17.36 The income elasticity estimates suggest "some evidence to support the idea that alcohol as a commodity group was more likely to be a necessity than a luxury".[753] Beer is positive and inelastic across both meta-analyses, while wine and spirits are elastic – that is, when income increases, people will increase expenditure on wine or spirits that may be viewed as a luxury item. However, the amount of beer consumed does not change as much when income changes because it may be viewed more as a necessity. This leads to a trend that drinking increases when the economy booms and declines during economic recessions.[754] Although for some groups within society this income effect can run the other way, with research showing that "economic stress and material deprivation can increase alcohol consumption, including binge drinking".[755]

17.37 The most recent analysis of affordability and alcohol consumption builds on the findings from the meta-analyses, that is, a positive relationship between income and alcohol consumption and a negative relationship between price and consumption. The elasticity of affordability, measuring the effect of both price and disposable income on consumption, shows a positive relationship, indicating a 1% increase in affordability is associated with a 0.25% increase in consumption on average.[756]

17.38 New Zealand data on price elasticity suggest similar estimates as that found in the various meta-analysis studies. For example, across eight estimates that were examined beer had a mean elasticity of –0.42, wine –0.56 and spirits –0.42.[757] A recent analysis of New Zealand data shows a price elasticity (long-run) for beer of –0.51, wine –0.53 and spirits, excluding ready to drink (RTD) drinks, –2.51.[758]

Effects of price changes for different groups

17.39 This research shows all drinkers respond to price changes to some degree. A further question for developing policy advice is the effect that price changes have on sub-populations and different types of drinkers. As we know, different patterns of consumption are associated with different risks and harms: those who drink large quantities face increased risk of a range of chronic diseases and disorders, including addiction. Those who drink low average volumes but who binge, or drink to intoxication when they do drink, are at increased risk of acute injury and accidents.

753 J Fogarty "The demand for beer, wine and spirits: Insights from a meta analysis approach" (2008) American Association of Wine Economists, Working paper no. 31 at 53 < www.wine-economics.org > .

754 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 120.

755 L Rabinovich and others *The affordability of alcoholic beverages in the European Union: Understanding the link between alcohol affordability, consumption and harms* (Prepared for the European Commission by RAND Europe, 2009) 35 at 37 < www.rand.org > .

756 Ibid, at 41, 44.

757 J Fogarty "The demand for beer, wine and spirits: Insights from a meta analysis approach" (2008) American Association of Wine Economists, Working paper no. 31 at 25, 'Table 3 Summary details on demand for alcohol by country' < www.wine-economics.org > .

758 M Wall *Estimating the response of alcohol demand to changes in price and availability of alcohol in New Zealand* (SHORE, Working Paper, October 2009) at Tables 2, 4 & 5 (real cost of "beverage").

17.40 The price elasticity meta-analyses referred to in table 17.1 were based on hundreds of individual studies that generally measured the responsiveness of the *average* consumer to a change in price. There have been far fewer studies looking at the responses of sub-populations such as heavy or young drinkers. Measuring the effects of price changes on different patterns of consumption and then translating the results into different national contexts poses many difficulties. These might include inconsistent definitions of "heavy" drinking and the difficulties of capturing changes in episodic heavy drinking, which is a predominant pattern in New Zealand. With these caveats in mind, the following provides a brief summary of the major research findings with respect to price responsiveness among heavy and young drinkers.

Heavy drinking

17.41 The responsiveness of heavy drinkers to price is considered in only a few studies and many were based on individual-level survey data rather than aggregate studies looking at changes in overall consumption across states and provinces. Wagenaar and others (2009a) found that, as expected, such surveys produced smaller effects, given the large variation in alcohol consumption between individuals.[759] This variation is related to the many factors that differentiate individuals – factors that are often unobservable to the researcher. Panel data, which follow a set of individual drinkers over many years, are a much better way of estimating the response to price changes, but there are few such studies.

17.42 Wagenaar and others' (2009a) meta-analysis examined 10 studies looking at the effects of price on heavy alcohol use and found a mean elasticity of –0.28 for heavy drinkers.[760] This compares with –0.51 elasticity for all drinkers as noted in table 17.1. However, as discussed, caution is required in interpreting such meta-analysis for heavy drinkers because of the variations in how consumption is measured – for example, mean harmful drinking versus binge or episodic heavy drinking.[761] These aggregate results may obscure the range of price responsiveness results for heavy or harmful drinkers across the various studies. Some of the findings are discussed in further detail below.

17.43 A high variability in the degree of responsiveness to price changes among light, moderate and heavy drinkers was identified in a United States study.[762] It found the top 10% of drinkers in this study consumed 51% of all alcohol and these heavier drinkers had a price elasticity of –0.49, two-fifths of the responsiveness found for the moderate drinkers (who comprised 50% of all drinkers, and had an elasticity of –1.19). However, the heaviest drinkers (the top 5% of drinkers) showed virtually no response to price change, with an elasticity not significantly different from zero (that is, perfect price inelasticity).

759 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" (2009a) 104 Addiction 185–186.

760 Ibid, at 187, Table 5.

761 R Purshouse and others *Model-based appraisal of alcohol minimum pricing and off-licensed trade discount bans in Scotland* (ScHARR, University of Sheffield, 2009) at 55.

762 W G Manning, L Blumberg and L H Moulton "The demand for alcohol: The differential response to price" (1995) 14 Journal of Health Economics at 138, Table 4.

17.44 This specific finding has been held up by many commentators to show the heaviest drinkers are unresponsive to price changes. However, it is based on United States survey data from 1983, so its currency has been questioned. Given the much lower average drinking rates and binge drinking levels in the United States there are also questions about its international applicability.

17.45 A study of older drinkers found that chronic drinkers, who were defined as those who drank on average more than two drinks daily (and were about 10% of the drinkers in the survey), had an elasticity of –0.28.[763] By redefining chronic drinking more tightly as three or more drinks daily, the study found an elasticity of –0.20.

17.46 However, in contrast to this finding, a recent study using longitudinal data from the same United States Health and Retirement survey found different results in examining the elasticity of demand amongst different sub-groups of older drinkers.[764] This study found, for the majority of older people, price is a significant determinant of demand (elasticity of –1.60). But for a smaller group of older, heavier drinkers, prices do not significantly affect consumption (that is, price inelastic) and this group is least likely to respond to higher taxes.[765]

17.47 Another United States study by Farrell and others (2003) found heavier drinking rates were significantly affected by higher prices for alcohol, with an elasticity of –1.325, and for drinking characterised by dependence or abuse the elasticity was –1.487.[766] The study notes these price responses were surprising in magnitude given the previous findings that moderate drinkers were more responsive to price than heavy drinkers.

17.48 Other studies have looked at how different groups have responded to reductions in alcohol taxes, and the subsequent falls in prices that have occurred as various European countries have reformed their allowances and excise rates in recent years. Mäkelä and others (2007) examined the short-term changes to alcohol consumption amongst various sub-groups in Denmark, Finland and southern Sweden, following price decreases arising from large-scale decreases in taxation and changes in travellers' cross-border alcohol allowances.[767] In contrast to what would be expected, based on standard economic analysis, heavier drinkers did not increase their consumption any more than lighter drinkers.

17.49 In contrast, however, when Switzerland's taxation on spirits decreased, heavier drinkers increased their consumption more than lighter drinkers in the short-term.[768] Although, in the long term, changes in price affected mainly light and moderate drinkers, with heavier drinkers being no more affected by price changes.

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763 D Dave and H Saffer "Alcohol demand and risk preference" (2008) 29 Journal of Economic Psychology at 827, Table 5.

764 P Ayyagari, P Deb, J Fletcher, W T Gallo and J L Sindelar "Sin taxes: Do heterogeneous responses undercut their value?" (2009) National Bureau of Economic Research, NBER Working Paper 15124 < www.nber.org > .

765 Ibid, at 25.

766 S Farrell, W G Manning and M D Finch "Alcohol dependence and the price of alcoholic beverages" (2003) 22 Journal of Health Economics 117–147.

767 P Mäkelä and others "Changes in volume drinking after changes in alcohol taxes and travellers' allowances: Results from a panel study" (2007) 103 Addiction at 181.

768 G Gmel, M Wicki, J Rehm and J-L Heeb "Estimating regression to the mean and true effects of an intervention in a four-wave panel study" (2007) 103 Addiction at 32.

17.50 One further complicating factor in looking at the responsiveness of heavy drinkers is their greater willingness to substitute between beverages when the price of one type of alcohol product changes compared with another, or between on- and off-licence and between higher- and lower-priced products. In other words their cross-price elasticities are very high. These insights have been highlighted in the work of researchers at the University of Sheffield who estimated changes in purchasing behaviour in response to price changes across 16 different beverage types within five different drinker groupings.[769]

17.51 Their modeling revealed that while at an *aggregate level* moderate drinkers are somewhat more price-sensitive than heavy drinkers, heavier drinkers actually had *higher* own-price sensitivity (the impact of a price rise on the consumption of a particular product) than moderate drinkers.[770] However this was counterbalanced by the fact they were also more likely to respond to these price increases by switching to other products or places of purchase (cross-price elasticities). This illustrates the complexity of predicting the impact of price on heterogenous groups of drinkers and the importance of such studies for informing pricing policies.[771] We return to this issue in the following chapter.

17.52 In summary, while any single elasticity measure will not successfully capture the heterogeneity of heavier drinkers' varied responses to price changes, recent modelling and cost-effectiveness analyses have assumed heavy drinkers are one-third less responsive than moderate drinkers to changes in price.[772] However, as discussed above, these global estimates, do not necessarily capture the full picture.

Youth drinking

17.53 Studies indicate young drinkers are another group that responds differently to alcohol price increases. Given the importance of reducing harmful and hazardous drinking among the young it is particularly important to understand the extent to which their drinking can be affected by price. It should be noted much of the research on youth drinking comes from the United States, which has a minimum legal drinking age of 21 years and tighter restrictions around youth drinking. Accordingly, this may limit the transferability of findings around price responsiveness of youth to the New Zealand context.[773]

769 P S Meier, R Purshouse and A Brennan "Policy options for alcohol price regulation: The importance of modelling population heterogeneity" (2009) 105 Addiction at 383-393.

770 Ibid, at 387.

771 R Purshouse and others "Modelling to assess the effectiveness and cost-effectiveness of public health related strategies and interventions to reduce alcohol attributable harm in England using the Sheffield Alcohol Policy Model version 2.0" (Report to the NICE University of Sheffield, 2009) 84 < www.nice.org.uk > .

772 Ibid, at 55.

773 For example, Laixuthai and Chaloupka found young drinkers in America were less price responsive after the drinking age was raised, which further increased the effective cost of drinking. This suggests price changes would have a greater effect in New Zealand because the purchase age is lower, and increasing both the purchase age and prices are likely to have a particularly large impact on reducing alcohol-related harm to young people. Refer A Laixuthai and F J Chaloupka "Youth alcohol use and public policy issues" (1993) 11(4) 70–81 cited in Frank J Chaloupka "The effects of Price on Alcohol Use, Abuse and their Consequences" *Reducing Underage Drinking: A collective responsibility* by R J Bonnie and M E O'Connell (eds) (National Academy Press, Washington DC, 2004) at 550.

17.54 Youth tend to have small incomes and a limited range of expenditures, particularly while still dependent on their parents. Typically, expenditure might include fast food, clothing, petrol/transport and entertainment. Markowitz and Tauras (2006) looked at how changes in the prices of other goods commonly bought by teenagers affect their budget, and the consequential demand for alcohol, marijuana and cigarettes.[774] The authors found, for example, that amongst students with driver's licences, higher petrol prices were associated with a reduced probability of drinking. The implication being that expenditure on petrol is likely to be a complement to drinking. The cost of fast food was also found to influence substance abuse. In this instance, rising fast-food prices could see a reallocation of spending away from pizza and hamburgers towards drinking and smoking. Markowitz and Tauras concluded that, for all youth surveyed, the price elasticity of demand for alcohol averaged –0.37 and was –0.17 for teenagers who drive.[775] The study also found that higher levels of youth incomes and allowances increase the probability and frequency of youth drinking and substance use.

17.55 The meta-analysis by Gallet (2007) examining 14 studies also found teens and young adults were somewhat less responsive to price than adults, with an elasticity of –0.39 for young adults.[776]

17.56 Studies in the United States have shown mixed responses on the impact of prices and taxes on young people's drinking. For example, Grossman and others (1987) found an increase in beer prices affected both the frequency and quantity of drinking by young people.[777] Grossman found a 10 % increase in beer prices would reduce the number of youth who drank frequently – two-to-three times per week – by 8 % and also reduce the number of those who drank heavily – two-to-five drinks of beer per day – by 15 %. However, a recent United States study by Nelson (2008) found changes in beer taxes did not reduce youth and young adult drinking prevalence and bingeing.[778] The limited response of youth drinkers to changes in price may be a function of the wide range of influences on their drinking behaviour, such as a desire to drink as a marker of adulthood or the impact of peer pressure.

17.57 While there is variability in the responsiveness of young people to price changes, overall, the weight of evidence would indicate young people will reduce their consumption as a result of a price increase. Young people appear to be less responsive to price than adult drinkers, but because of the larger volume of alcohol

774 S Markowitz and J Tauras "Even for teenagers, money does not grow on trees: Teenage substance use and budget constraints" (2006) National Bureau of Economic Research, NBER Working Paper 12300 < www.nber.org > .

775 Ibid, at 34, Table 5. Beer own-price elasticity for full sample –0.30 (with regional dummies) and –0.43 (with state fixed effects), and for drivers –0.21 (with regional dummies) and –0.13 (with state fixed effects).

776 C A Gallet "The demand for alcohol: A meta-analysis of elasticities" (2007) The Australian Journal of Agricultural and Resource Economics at 124 and 131. Note, teens are less than 18 years (n = 1) and young adults are aged 18–24 years (n = 13).

777 M Grossman, D Coates and G M Arluck "Price sensitivity of alcoholic beverages in the United States: Youth alcohol consumption" (1987) Advances in Substance Abuse Suppl 1 169, cited in ScHARR (University of Sheffield) "Interventions on control on alcohol price, promotion and availability for prevention of alcohol use disorders in adults and young people" (2009). Commissioned by National Institute for Health and Clinical Excellence (NICE) United Kingdom 43–44 < www.nice.org.uk > .

778 J P Nelson "How similar are youth and adult alcohol behaviours? Panel results from excise taxes and outlet density" (2008) 36(1) Atlantic Economic Journal 89.

young people drink, the absolute reduction in alcohol consumption will probably be greater than for someone who drinks less but has a greater elasticity (that is, moderate adult drinkers).

17.58 Again, the research based on Sheffield University's modelling provides more detailed insights into the responses of different segments of the youth drinking population to price changes. For example, researchers found young male hazardous drinkers "have a strong preference for beer and on-trade sector (bar and pub) drinking."[779] Therefore pricing policies that affected the price of on-trade alcohol were likely to target this group effectively.

Alcohol prices and changes in alcohol-related harms

17.59 An alternative approach to examining the impact of price on heavy and young drinkers is to look at the effects of price on consumption indirectly, that is, via the effects that price has on levels of alcohol-related harm. Changes in the affordability of alcohol may result in short- and long-term changes in a range of negative outcomes from alcohol-related illnesses, road trauma and violent crime. From a government perspective, it is the reduction in these health and social harms that is the primary rationale for policy interventions such as taxation increases.

17.60 Wagenaar and others (2009b) noted of 18 studies examining the effect of price or tax on road traffic crashes, 15 showed that higher prices or taxes were associated with fewer crashes, and three showed no effect.[780] A review of key research on drink driving and price concluded that the magnitude of the effects of beer tax increases on motor vehicle mortality depended on the economic and statistical modelling used.[781] For example, Mast and others (1999) found beer taxes had a smaller impact on drink-driving fatalities once alcohol policy variables, such as liquor availability, drink-driving laws and law enforcement, were included in the models.[782]

17.61 Wagenaar and others (2009b) examined the effects of two separate alcohol-tax increases on alcohol-related deaths in Alaska and found the increases were "associated with significant and substantial reductions in alcohol-disease in Alaska" and the effects were maintained over time.[783] The study found a 23% decrease in deaths of alcohol-related disease for the 1983 tax increase and a 13% decrease for the 2002 tax increase when controlling for changes in population size over time.[784]

779 P S Meier, R Purshouse and A Brennan "Policy options for alcohol price regulation: The importance of modelling population heterogeneity" (2009) 105 Addiction at 389.

780 A C Wagenaar, M M Maldonado-Molina and B H Wagenaar "Effects of alcohol tax increases on alcohol-related disease mortality in Alaska: Time-series analyses from 1976 to 2004" (2009b) 99(8) American Journal of Public Health August at 1464.

781 F J Chaloupka, M Grossman and H Saffer "The effects of price and alcohol consumption and alcohol-related problems" (2002) 26:1 Alcohol Research and Health at 29.

782 B D Mast, B L Benson and D W Rasmussen "Beer taxation and alcohol-related traffic fatalities" (1999) 66(2) Southern Economic Journal at 214.

783 A C Wagenaar, M M Maldonado-Molina and B H Wagenaar "Effects of alcohol tax increases on alcohol-related disease mortality in Alaska: Time-series analyses from 1976 to 2004" (2009b) 99(8) American Journal of Public Health August at 1468.

784 Ibid, at 1467.

17.62 Cirrhosis of the liver is one of the diseases associated with long-term heavy drinking, so we would expect to see changes in the rates of death and illness from this disease if alcohol price increases affected heavy drinkers. Given the long-term nature of the disease there are many chronic and heavy drinkers who, if they make modest changes in their drinking, can affect their chances of dying from the chronic condition. Cirrhosis as a proxy for heavy drinking is particularly related to spirits consumption.

17.63 Spirits is the beverage most associated with cirrhosis in the United States, and Ponicki and Gruenewald (2006) estimated that a $1 increase in distilled spirits would lead to between a 1.7% to 2.6% decline in cirrhosis deaths.[785] An earlier study by Grossman (1993) estimated that a 10% increase in the price of alcohol would reduce cirrhosis deaths by 8.3% to 12.8% after levels of heavy drinking fully adjusted to the price change over future years.[786]

17.64 Conversely, substantive reductions in the price of spirits in Finland following changes in alcohol quotas for travellers and reductions in taxes by a third in 2004,[787] resulted in "a dramatic increase in deaths from alcohol-attributable diseases and poisonings".[788] The largest increase in deaths was from alcohol-induced liver disease, increasing by 29% in 2004 over the previous year. Because liver cirrhosis takes a long time to develop, the sudden increase means alcohol consumption increased considerably among heavy drinkers (who had already damaged their livers) when the price decreased. Another study found a 17% increase in the number of sudden deaths involving alcohol following Finland's 2004 excise tax cuts.[789] A study looking at the effects of the natural experiment in Finland found the greatest effect on alcohol-related mortality was amongst long-unemployed and early-age pensioners (the socially disadvantaged), but, surprisingly, differences between education and socio-economic groups were small.[790]

17.65 A longitudinal study using the natural experiment in Switzerland looked at the effects a decrease in spirit prices, following 1999 alcohol tax changes, had on spirit consumption and alcohol-related problems 28 months after the tax change.

785 W R Ponicki and P J Gruenewald "The impact of alcohol taxation on liver cirrhosis mortality" (2006) 67 Journal of Studies on Alcohol at 934.

786 M Grossman "The economic analysis of addictive behaviour" in ME Hilton and G Bloss (eds) *Economics and the Prevention Alcohol-related Problems* (National Institute on Alcohol Abuse and Alcoholism, NIAAA Research Monograph No. 25, Rockville, MD, 1993) 91, cited in F J Chaloupka, M Grossman and H Saffer "The effects of price and alcohol consumption and alcohol-related problems" (2002) 26:1 Alcohol Research and Health at 30.

787 In 2004, sales tax on alcohol in Finland was lowered by an average of 33% (spirits by 44%), with retail prices falling by around 22% in consequence. Sales and consumption levels rose dramatically – recorded domestic sales in March 2004 (date of the change) were 50% higher than a year earlier, and total per capita consumption increased by 10% from 9.4 litres in 2003 to 10.3 litres in 2004.

788 P Mäkelä and E Österberg "Weakening of one more alcohol control pillar: A review of the effects of the alcohol tax cuts in Finland in 2004" (2009) 104 Addiction 554 at 558.

789 A Koski, R Sirén, E Vuori and K Poikolainen "Alcohol tax-cuts and increase in alcohol-positive sudden deaths – A time series intervention analysis" (2007) 102 Addiction at 362.

790 K Herttua, P Mäkelä and P Martikainen "Changes in alcohol-related mortality and its socioeconomic differences after a large reduction in alcohol prices: A natural experiment based on register data" (2008) 168 American Journal of Epidemiology at 1110.

The results showed an increase in alcohol-related problems, particularly for younger age groups (29 years and younger), with the increase in spirits consumption related to the rise in alcohol-related problems.[791]

17.66 Binge drinking and heavy intoxication are often associated with the acute health problems and injuries seen at hospital emergency departments, with admissions due to alcohol-related fights, domestic violence, sexual assaults, suicide and child abuse. For example, emergency hospital admissions for violence-related injury in England and Wales showed a "strong negative relationship between the price of beer and violent injury", with a 1% increase in beer prices having a –1.18 to –1.30 reduction in violent injury rates.[792]

17.67 Another example of the effects of price on health outcomes was an 8% increase in accidental and violent deaths where alcohol intoxication was the contributory cause, following the reduction in alcohol taxes in 2004 in Finland, and a 12% increase in hospitalisations for intoxication in the same period.[793] However, another study examining the same 2004 large decrease in alcohol prices and increased consumption in Finland, failed to find any such effects for crime outcomes. The study looked at changes in the rates of "interpersonal violence" (reported offences of assault, robbery, rape, domestic violence and so on) in the Helsinki metropolitan area, and although custody rates due to intoxication increased 3%, changes in interpersonal violence rates were less conclusive (for example, domestic violence rates decreased by 7% while assaults increased by 4%).[794]

17.68 Using international crime victimisation survey data, one study shows changes in alcohol price can affect rates of violent crime[795] However, estimates of the effects were difficult to calculate with country fixed effects included, and elasticities were small when these country effects were excluded. Another study looking at the impact of price and outlet density on child homicide rates found responsiveness of child homicide deaths to increases in beer tax rates were fairly inelastic – a 10% increase in beer taxes would reduce child homicide by 1.1–1.6%.[796]

791 M Mohler-Kuo, J Rehm, J-L Heeb and G Gmel "Decreased taxation, spirits consumption and alcohol-related problems in Switzerland" (2004) 65 Journal of Studies on Alcohol (and Drugs) 266 at 272.

792 K Matthews, J Shepherd and V Sivarajasingham *Violence-related injury and the price of beer in England and Wales* (Cardiff University, United Kingdom, Cardiff Business School Working Paper E2006/3, 2006) 11, at 14.

793 P Mäkelä and E Österberg "Weakening of one more alcohol control pillar: A review of the effects of the alcohol tax cuts in Finland in 2004" (2009) 104 Addiction 554 at 559.

794 K Herttua, P Mäkelä, P Martikainen and R Sirén "The impact of a large reduction in the price of alcohol on area differences in interpersonal violence: A natural experiment based on aggregate data" (2008) 62 Journal of Epidemiology and Community Health at 995.

795 S Markowitz "Criminal violence and alcohol beverage control: Evidence from an international study" (National Bureau of Economic Research, Working Paper 7481, 2000) < www.nber.org > .

796 B Sen "The relationship between beer taxes, other alcohol policies and child homicide deaths" 6(1) Topics in Economic Analysis and Policy 1 at 14.

17.69 In summary, different patterns of drinking are associated with different types of harm. Thus pricing policies are likely to be more effective in reducing alcohol-related harms (acute or chronic) depending on how they affect the consumption patterns of different groups of drinkers:[797]

> [P]olicy options that impact on consumption patterns differentially (not just overall volume, but what is consumed where, by whom and over what time-period) also lead to differential effects on health, crime and other social outcomes… .

DISCUSSION

17.70 Studies looking at the impact price changes have on alcohol use by different population groups have produced mixed findings. In part, this reflects the limited number of studies available, the different study designs, as well as the inherent difficulties associated with using self-reported survey data as opposed to gross sales data to identify price-purchasing responses across population groups.

17.71 However, in broad terms, the research suggests all drinkers reduce their consumption of alcohol to some degree in response to price increases. Moderate drinkers are most responsive to price changes in alcohol, while heavier and young drinkers are somewhat less responsive to price changes. However these aggregate findings do not adequately reflect the heterogeneity in price sensitivity demonstrated in the University of Sheffield research discussed earlier.

17.72 There are difficulties in applying the findings on price elasticity generated by countries that have very different alcohol consumption patterns and attitudes to drinking to New Zealand. Studies of youth drinking are also more susceptible to measurement error in the use of retail price data, as many younger drinkers consume large amounts of alcohol "free" at parties or at bars with heavy price promotions operating.[798]

17.73 In New Zealand, it has been estimated about 50% of all alcohol is consumed by the 10% of heaviest drinkers.[799] As discussed in Part 1 of this report, we also know that roughly a third of drinkers have an average daily consumption that increases their risk of dying of an alcohol-related disease or injury to more than 1:100. We also know that among the majority of drinkers whose *average annual consumption* is moderate or low, there are high rates of episodic binge drinking and drinking to intoxication.

17.74 Historically, as discussed in chapter 2, we have seen sharp responses to large rises in alcohol taxes in this country. The doubling of alcohol taxes in 1921 and 1958 saw sharp falls in consumption. Conversely, the increase in the affordability of alcohol in recent years, most notably in take-away alcohol, is likely to be a factor in the moderate increase in average aggregate consumption noted since 1998.

797 P S Meier, R Purshouse and A Brennan "Policy options for alcohol price regulation: The importance of modelling population heterogeneity" (2009) 105 Addiction at 390.

798 F J Chaloupka, M Grossman and H Saffer "The effects of price and alcohol consumption and alcohol-related problems" (2002) 26:1 Alcohol Research and Health 22 at 26.

799 A Wyllie, M Millard and J F Zhang *Drinking in New Zealand: A national survey 1995* (Alcohol and Public Health Research Unit, University of Auckland, 1996) at 14, Table 2.

17.75 However, as discussed, pricing policies do not operate in isolation. Changes in the overall economy, including the rate of inflation and unemployment can all impact on the consumption of alcohol for different groups. The 2008/09 recession is likely to have been a factor in the slight decline in consumption evident in the latest aggregate consumption figures. Other policy changes, including changes to the rates of income or consumer tax, or the availability and cost of student finance, will all mediate the impact of any changes to alcohol pricing policies.

17.76 Similarly, other alcohol policies, such as increases in the purchase age, increased penalties for illegal supply, reduced availability and more restrictive trading hours, will also interact with and influence the impact of pricing policies on groups such as young drinkers.

17.77 The liberalisation in alcohol policies that has accelerated since 1999 has been associated with increased competition and greater affordability, especially for take-away alcohol. As discussed in chapter 3, this has coincided with a range of negative outcomes, including high rates of alcohol-related trauma, and alcohol-related injuries and offending.

17.78 Our analysis also shows there have been increases in hospital admissions across four specific alcohol-related conditions: alcoholic gastritis, alcoholic liver disease, alcohol poisonings and mental and behavioural disorders due to alcohol use. Although these four diagnoses represent a fraction of the alcohol-related hospital admissions it is likely admissions for other causes will be showing similar patterns. The data show a concerning trend in alcohol-related harm both from consuming large amounts in a single occasion and from the effects of drinking at heavy or moderate levels over months or years.

17.79 Given the patterns of heavy episodic drinking in this country, particularly among the young, even moderate reductions in the frequency of heavy drinking occasions, and in the amount of alcohol consumed per occasion, should result in reductions in both acute and chronic alcohol-related harms.

CONCLUSION

17.80 The highly competitive retail environment in the New Zealand alcohol market means alcohol products can be purchased for comparatively low prices, particularly when on promotion or special.

17.81 While the availability of cheap alcohol is obviously viewed as beneficial by many consumers, there is concern the easy accessibility of cheap alcohol is contributing to risky and harmful drinking. A systematic review looking at the effects of alcohol pricing noted that: "There is strong evidence to suggest young drinkers, binge drinkers and harmful drinkers tend to choose cheaper products".[800]

17.82 The growing price differential between bars/cafes/clubs and retail settings has also seen a shift in drinking patterns to off-premises and increasing concern about the amount of alcohol being consumed on private premises and in cars before people enter licensed premises.

17.83 Many individual and environmental factors influence demand for alcohol but price has been shown to be a significant determinant across different drinking behaviours. There is evidence to show a rise in alcohol prices will produce a reduction in aggregate consumption and alcohol-related harms. While aggregate studies indicate younger and heavier drinkers are less price sensitive than moderate drinkers, the evidence suggests these groups favour cheaper products so pricing policies that target the lower end of the alcohol market could offset for lower price sensitivities.

17.84 Also because these two groups of drinkers account for such a large percentage of the total alcohol consumed, in absolute terms even relatively modest reductions in their consumption will have an impact on consumption at an aggregate level.

17.85 The price of alcohol is not only influenced by the tax levels and retail prices, but also by increased costs for consumers arising from other regulatory controls on alcohol. For example, reduced outlet density could increase the price to consumers who may be inconvenienced by having to travel further to purchase alcohol, while bans on advertising could increase "search" costs for consumers. Similarly, increased law enforcement around restricted drinking increases the potential costs for those who drink and drive, or who drink in liquor ban areas.

17.86 The focus in chapter 18 is the impact government policies can have directly on price via two key policy strands – a minimum price scheme and changes in excise taxes.

800 A Booth, P Meier, T Stockwell, A Sutton, A Wilkinson and R Wong *Independent review of the effects of alcohol pricing and promotion (Part A: Systematic Reviews)* (University of Sheffield, ScHARR, for Department of Health, United Kingdom, 2008) at 34 < www.dh.gov.uk > .

Chapter 18
Alcohol pricing policies

IN THIS CHAPTER, WE:

- Outline the current excise tax system and the rationale for taxing alcohol products, including better aligning the costs and benefits to society arising from alcohol use, and reducing alcohol-related harm through adjusting the price of alcohol.
- Examine the key pricing policies available to government to help reduce demand for alcohol and the availability of cheap alcohol products, thereby reducing alcohol-related harm, namely:
  - adjusting the level of excise tax, including reducing the tax on low-alcohol products, raising excise rates; and
  - introducing a minimum price scheme for alcohol.
- Make recommendations on the most effective policies for government to pursue to reduce the availability of low-priced alcohol and reduce harmful consumption of alcohol by New Zealanders.

INTRODUCTION

18.1 In Part 1 of this report we established that alcohol is not an ordinary commodity, but rather a licit drug that causes or contributes to a wide range of health and social harms. It is also the drug of choice for New Zealanders and, when used at low risk levels, is associated with many individual and social benefits.

18.2 Improving the balance of costs and benefits associated with alcohol is one of the major objectives of this review. In chapter 4 of this report we concluded that the level of alcohol-related harm is too high, and in particular the knock-on effects of harmful drinking on others is inflicting an unacceptably high price on families, communities, and society as a whole.

18.3 New Zealand has a persistent pattern of episodic binge drinking or drinking to intoxication that University of Otago epidemiologist Professor Jennie Connor argues is particularly damaging:[801]

> Many [New Zealanders] drink in a low-risk manner and reap the social benefits. However for a large sector of the population there is a dominant pattern of heavy intermittent drinking episodes, the worst pattern for the drinker's own health outcomes, and the worst for damage to those around them.

801 J Connor "The knock-on effects of unrestrained drinking" (2008) New Zealand Medical Journal Vol 121 No 1271.

18.4 Analysis of the Ministry of Health's 2004 health behaviours survey also indicates nearly one-in-three drinkers' average daily consumption places them at a greater than 1:100 risk of dying of an alcohol-related disease or injury.[802]

18.5 Curbing the harms associated with alcohol involves a suite of interacting policy measures. In Part 2 we set out a new framework for the supply of alcohol that will better enable communities to control and ameliorate the negative impacts that can be associated with its sale and supply.

18.6 Here we discuss policies which influence the demand for alcohol. As discussed in the preceding chapter, the demand for alcohol, like all commodities, is responsive to changes in price.

18.7 Pricing policies are one of the most effective strategies available to government to influence alcohol consumption and reduce levels of alcohol-related harm.[803] As outlined in chapter 17, increases in alcohol prices have, in turn, been shown to reduce the level of alcohol-related harm.[804]

> A wide array of evidence suggests that in response to an increase in prices of beer, wine, or liquor, per capita consumption of ethanol falls. What's more, price increases reduce the prevalence of drinking, heavy drinking and bingeing, and appear to reduce the prevalence of dependence and abuse as well.

18.8 There are a number of different mechanisms available to government by which it can influence the price of alcohol, including the use of excise taxes, minimum pricing and policies that restrict price discounting and promotions. The effect of these policies can vary because different types of drinkers will respond differently to changes in price. Population groups also experience different types of alcohol-related harm, so some pricing policies may be more appropriate depending on whether we want to reduce alcohol-related crime, reduce alcohol-related injuries or improve long-term health outcomes.

18.9 Using a targeted tax, or some other form of market intervention to reduce alcohol consumption and harm can be justified on a number of social and economic grounds that we discuss in detail in this chapter. We also make firm recommendations to government in favour of a substantial increase in the current rates of excise tax.

18.10 In doing so we are assisted by the analysis of independent Australian economics consultancy group, Marsden Jacob Associates (Marsden Jacob), which was commissioned by the Law Commission to provide advice on the formulation of taxation policies. Its report, *The benefits, costs and taxation of alcohol: towards an analytical framework* is reproduced in full as Appendix 1.

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802 Ministry of Health *Unpublished Data Analysis of the 2004 New Zealand Health Behaviours Survey – Alcohol Use* (June 2009) [*Ministry of Health Data Analysis*].

803 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 242, [16.3.1].

804 P J Cook *Paying the Tab – The costs and benefits of alcohol control* (Princeton University Press, New Jersey, 2007) at 81.

18.11 In the course of preparing this report we made the Marsden Jacob paper available to New Zealand Treasury. The Treasury said that it regarded the Marsden Jacob Associates report "as a valuable contribution to the existing literature on the consumption of alcohol in New Zealand", and noted that it "presents a balanced consideration of both the economic costs and benefits."

18.12 The chapter is divided into two parts: Part A deals with excise tax, and considers the rationales, options, and costs and benefits associated with using excise tax to influence the price of alcohol. Part B deals with minimum pricing schemes and assesses their potential as a means of reducing the availability of cheap alcohol.

18.13 We begin with a brief explanation of how the current system for excise tax operates in New Zealand.

Part A: Excise tax

CURRENT SYSTEM FOR EXCISE TAX

18.14 Excise taxes are indirect taxes on specific products or transactions. In New Zealand these taxes are only applied to tobacco, alcohol and fuel. Unlike a goods and services tax (GST), excise taxes are not based on the dollar "value" of the product, but on the "quantity" of the specific product. Excise is collected by the New Zealand Customs Service from all local manufacturers of alcoholic beverages and all importers. In the 2008/09, this amounted to excise of $828.85 million, about 1.5% of government total revenue collections. Excise tax is not applied to home-brew products or alcohol products when they are exported. It is also waived for some purchases, such as the duty-free alcohol allowance for international travellers.

18.15 The general approach to excise in New Zealand is to apply a tax rate based on the alcohol content of the products – either in bands or on actual alcohol content (alcohol by volume or "ABV"), with a tax-exempt level for low-alcohol products. The excise system is essentially two tier, with one rate of duty for beer, wine and ready-to-drink (RTD) drinks and a higher rate for spirits and fortified wines. This two-tier framework was established in the 1989 budget following the report from the ministerial-established Sullivan Committee and largely remains in place today.[805]

18.16 The current excise rates are set out in table 18.1, and can be summarised as follows: products with an alcohol content below 14% are taxed at $25.476 per litre of alcohol and products above 14% are taxed at $46.40 per litre (82% higher). The cut-off between the two different rates of excise was originally set at 24% ABV, but was reduced to 14% ABV in 2003 in response to concerns about the alcohol-related harm associated with light spirits consumption.

TABLE 18.1: EXCISE TAX RATES FOR ALCOHOL

Beverages	Description	Excise rate
All low-alcohol beverages	· 1.15% or less ABV	No excise levied
	· more than 1.15% but not more than 2.5% ABV	38.208c per litre of beverage
Beer	· more than 2.5% ABV	$25.476 per litre of alcohol
Wine of fresh grapes and vermouth	· more than 14% ABV, fortified by the addition of spirits or any substance containing spirits (ie, fortified wine, eg, sherry)	$46.400 per litre of alcohol
	· other (such as table wine)	$2.5476 per litre of beverage
Other fermented beverages (such as cider, perry, mead) Spirits (including spirit-based RTDs) Liqueurs and cordials	· more than 2.5% but not more than 6% ABV	$25.476 per litre of alcohol
	· more than 6% but not more than 9% ABV	$2.0380 per litre of beverage
	· more than 9% but not more than 14% ABV	$2.5476 per litre of beverage
	· more than 14% ABV	$46.400 per litre of alcohol

805 D Sullivan and others *Report on the Review of Excise Duties on Alcoholic Beverages and Tobacco Products* (Customs Department, Wellington, 1988).

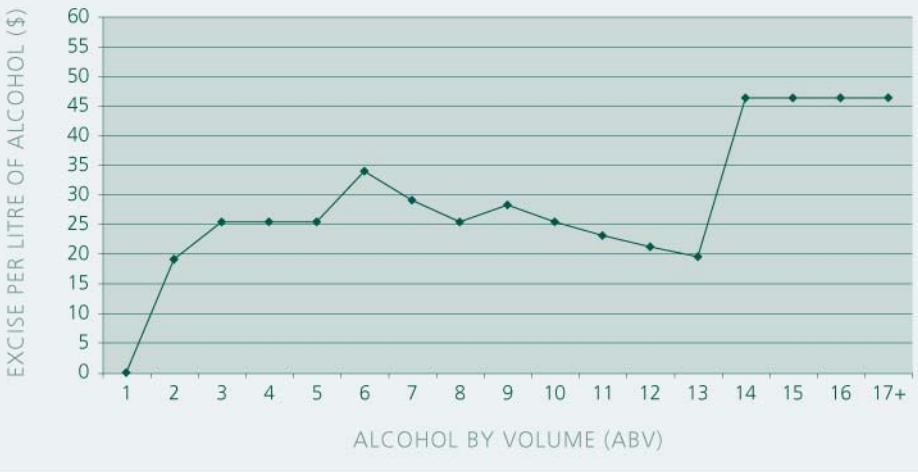
18.17 The two-tier system means that excise tax tends to make up a larger proportion of the retail price on stronger alcohol products, that is, those with more than 14% ABV. Excise taxes on typical products are set out below, showing the proportion of excise paid on average-price beverages.

FIGURE 18.1: EXCISE TAX RATES FOR VARIOUS ALCOHOL PRODUCTS

Source: Law Commission calculations based on current excise rates.

18.18 Some anomalies arise from the combination of alcohol taxes levied on the basis of litres of beverage and litres of pure alcohol. For example, wine is taxed on a per litre basis at the same rate as beer, that is, an effective rate of $25.476 if the wine was 10% ABV. However, wine is often 12–14% alcohol content, but is still effectively taxed at the 10% rate because it is taxed at $2.5476 per litre. A similar tax advantage also occurs for RTDs between the 6–9% alcohol content level. These anomalies are highlighted in figure 18.2.

FIGURE 18.2: ALCOHOL EXCISE TAX RATES FOR NEW ZEALAND, 2009



Source: Law Commission calculations based on current excise rates.

Rationale for excise taxes

18.19 Economists commonly proceed from an ideal of consumer sovereignty, which implies that the market operates most efficiently when people are able to make informed, rational choices that reflect the costs and benefits of their consumption decisions.

18.20 Most however recognise there are instances when the market fails, and when some form of intervention may be justified. The most commonly accepted grounds for such intervention are when:

- individual consumer choices result in *external* costs that are borne by others, for example, the costs the state incurs for alcohol-related accidents and illness. These so called "externalities" contribute to the social costs associated with harmful patterns of alcohol consumption and are commonly referred to as the Pigouvian rationale for excise taxes; or
- individuals underestimate the risks associated with their choices either through an *information failure* or as a result of *self control problems, time inconsistent decision making*, or *"short term irrationality"* (i.e. intoxication).

18.21 While some economists debate the extent to which alcohol's addictive and intoxicating properties undermine classical theories of rational decision making, most accept the Pigouvian rationale for using excise taxes to correct for consumption externalities.

18.22 There is however ongoing debate both internationally and here in New Zealand over where the boundaries between private (internal) and social (external) costs lie with respect to alcohol and what monetary values to assign those costs. We review some of these arguments in the following discussion.

18.23 Alongside these two rationales for intervention is a third rationale known as Ramsey taxation grounds. These relate to the relative efficiencies of alcohol excise taxes as a method of raising revenue for the Crown compared with income taxes in particular.

18.24 Historically, excise taxes were easy for governments to administer and collect. However, in the modern context, the use of direct taxes, such as income tax, and the development of general sales tax regimes such as GST, have dramatically reduced the government's reliance on and use of excise taxes on specific goods.

18.25 Today, excise tax provides only a fraction of total government revenue. In the 2008/09 year, for example, alcohol-related excise amounted to $828.85 million or about 1.5 % of government revenue. In addition to the excise tax a small levy is imposed on all importers' and producers' products to fund the Alcohol Advisory Council of New Zealand (ALAC). This levy provided $12.8 million to fund the Crown entity's work in 2008/09.

18.26 Economists debate the merits and relative efficiency of excise tax over either general sales taxes or income tax and we return briefly to these arguments later in this chapter.

18.27 We begin by reviewing in more detail the rationales that are currently used to justify the imposition of alcohol excise in New Zealand and that we rely on in making our pricing and taxation recommendations.

Market failure

18.28 Currently the primary purpose for excise taxes on alcohol in New Zealand is to minimise alcohol-related harm by using taxes to raise the price of alcohol and thereby reduce consumption and therefore harms. The secondary purpose for an excise tax on alcohol is in covering the net costs to government for the external alcohol-related harm.[806]

18.29 As discussed, alcohol's status as a licit drug with the potential to cause dependency and to impose significant costs on others, marks it out in a number of important ways from other consumer goods and markets.

18.30 Consumers may lack the information to fully assess the risks associated with their alcohol consumption; they may have difficulties maintaining their resolve to drink less and/or their ability to make "good" decisions about their drinking may be impaired by the effects of alcohol on judgement.

18.31 For example, while many people seem to be aware of the immediate and potentially severe consequences of drink driving, many are less aware of recent evidence of the long-term negative health effects associated with more moderate drinking.[807] Many people appear to have only a limited understanding of what constitutes "low risk" drinking or the impact that lifetime exposure to alcohol can have on health. In a survey of health professionals in New Zealand only 1 % of nursing staff and 33 % of doctors could identify the daily and weekly drinking limits as recommended by the Alcohol Liquor Advisory Council (ALAC).[808]

18.32 Fewer still are likely to be aware of the most recent relative risk assessments contained in the Australian government's National Health and Medical Research Council's *Australian Guidelines To Reduce Health Risks from Drinking Alcohol* discussed in chapter 3 of this report.[809]

18.33 Young people, as we have seen, experience greater harms from drinking than older cohorts. Young people frequently engage in risky drinking patterns, along with other risky behaviour, because they underestimate, or do not fully comprehend, the negative consequences of their actions.

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806 Cabinet Policy Committee "Excise Duty on Alcohol: Amendment to the Customs and Excise Act 1996" (Minute of Decision, POL Min (03) 8/4) 9 April 2003.

807 For example, in the recent Australian government's *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (National Health and Medical Research Council, Canberra, 2009), the level of one death for every 100 people is used as a guide to acceptable risk associated with drinking, and, accordingly, based on medical evidence, the guidelines recommend that drinking no more than two standard drinks on any day keeps the risk of alcohol-related disease or injury below that 1: 100 level.

808 J Pulford and others *Alcohol Assessment: The practice, knowledge, and attitudes of staff working in the general medical wards of large metropolitan hospital* (2002) 120 New Zealand Medical Journal at 1257, Table 2 < www.nzma.org.nz > .

809 National Health and Medical Research Council *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Canberra, 2009) < www.nhmrc.gov.au > [*Australian Guidelines*].

18.34 One solution to these types of information failures associated with harmful drinking is for government intervention to take a more direct form, for example, public education campaigns or alcohol-labelling requirements. An increased understanding of the risks of drinking would enable fully informed individuals to make better decisions on what level of risk they were prepared to accept when drinking. However, as discussed in chapter 23, research suggests that education campaigns to address risky drinking behaviour are far from effective. Conversely, the evidence (particularly in relation to price points) suggests pricing policies, such as excise tax, can be most effective in reducing consumption and alcohol-related harm.

18.35 Economists studying people's behaviour have also found that consumers may act against their own best interests and engage in behaviour they later regret and would not do again if they had sufficient time to think about their choices. Behavioural economics has identified instances of time-inconsistent preferences and self-control problems, particularly in relation to the use of cigarettes, alcohol and other drugs. Even television viewing provides an example of over-consumption – people are watching more television but tend to miscalculate the costs of watching to the point of regretting the amount of viewing and displaying difficulties in choosing satisfactory content.[810]

18.36 Some might argue if there are self-control consumption problems generally, why stop at taxing just alcohol and cigarettes – why not potato chips, chocolate, ice cream or television viewing? The argument for government intervention in alcohol and cigarettes is their addictive properties and the high level of harm associated with their use and associated behaviours.

18.37 Taxes can assist with these "self-control" problems by providing a commitment device for reductions in harmful behaviours in the future through higher prices today – that is, consumers have a price incentive to control their short-term desire for drinking in the interests of their own long-term wellbeing – the "internality" costs.[811] For example, it is estimated the internal costs of smoking dwarf the external costs, with most of the harm accruing to the smoker rather than society.[812]

> At standard values of the value of a life/year, we estimate above that a pack of cigarettes costs US$35.64 in terms of lost life expectancy, roughly 100 times the level of externalities from smoking. This suggests that simply relying on externalities to determine optimal policy can lead to very large mistakes.

810 M Gui and L Stanca *Television viewing, satisfaction and happiness: Facts and fiction* (Department of Economics, University of Milan – Bicocca, 2009, Working Paper 167) at 17.

811 T O'Donoghue and M Rabin *Optimal Sin Taxes* (2006) 90 Journal of Public Economics 1825–1849 < www.econ.berkeley.edu > ; M Haavio and K Kotakorpi "The political economy of sin taxes" (2009) CESIFO Working Paper 2650 < www.cesifo-group.de > ; N Badenes-Plá and A M Jones *Addictive goods and taxes: A survey from an economic perspective* (Hacienda Publica Espanola/Revista de Economic Publica, Instituto de Estudios Fiscales, 2003) 167-4/2003 at 123; J R Hines Jr "Taxing Consumption and Other Sins" (2007) 21(1) Journal of Economic Perspectives at 49.

812 J Gruber and B Koszegi "Tax incidence when individuals are time-inconsistent: The case of cigarette excise taxes" (2004) 88 Journal of Public Economics 1959 at 1980.

18.38 The effective use of excise taxes to address "internalities", as in the case of externalities discussed next, depends on the degree to which consumers' drinking responds to higher prices, particularly for those consumers, such as the young, who are most likely to make ill-informed choices or face self-control or commitment problems.

Negative externalities/Pigouvian tax grounds

18.39 The harmful use of alcohol imposes costs not just on individuals, but also on the rest of society. Individual consumers do not recognise the external costs (externalities) that can arise from their alcohol consumption. The purpose of the tax is to increase the "private price" of alcohol to a point where it better equates to the "public costs" arising from alcohol consumption so that individual consumers recognise the true costs to society in their individual purchasing decisions.

18.40 In chapter 3 of this report we set out in detail the impacts of harmful drinking on others, including families and the victims of alcohol-related crime and businesses impacted by lower productivity and absenteeism. Alcohol-related costs to government include the costs of emergency treatment at public hospitals, alcohol-related injuries paid for by the accident insurance system, and the costs to the police, courts and corrections system of alcohol-related assaults and violence.

18.41 Economists propose that if taxes could "internalise" the costs imposed on society from socially harmful activities (such as, pollution), then people would make better private decisions about engaging in such activities, and the money raised from such taxes could cover the costs of such harm.

18.42 Excise taxes are, therefore, user "charges" for the financial, physical and psychological costs that consumers of alcohol impose on others, so these costs are reflected in the price paid by drinkers. By imposing these "external costs" on alcohol products, consumers will adjust their consumption to a "socially optimal level" – that is, people will drink in less harmful ways. However there is debate among economists over what "harms" should be included in any estimate of social costs and how to place a dollar value on those "harms" as well as how to measure the benefits associated with alcohol use.

18.43 For example one criticism of "cost of illness" studies used to help quantify social costs has been the lack of a clear distinction between the "internal" or private costs of drinking and "external" or societal costs. For example, some would argue the large estimates for the loss of a life arising from one's own drink driving should be counted as an internal or personal cost, and only the life lost by an innocent victim counted as an external cost.

18.44 Similarly, some commentators[813] argue that lost production and wages due to harmful alcohol use (a large portion of many social cost estimates, and estimated in New Zealand by Business and Economic Research Limited (BERL) at $1.8 billion[814]) are not social costs, but are personal or internal costs fully borne by the consumers of alcohol. The extent to which sickness absences, unemployment, lower productivity as a result of a hangover, or shorter working lives because of illness/death, should count as external costs depends on the extent to which wages reflect these various alcohol-related labour costs.

18.45 If employers can easily ensure that wages reflect the lower productivity of those staff who "party hard", then there is no externality. But if employers cannot easily distinguish the marginal outputs of staff, or easily determine who is genuinely ill and who is "hung-over", then wages cannot be adjusted, and there are externalities for the business and the workers' colleagues.

18.46 The debates over what harms to include in estimates of social costs extend to what dollar value to put on those harms. For example, in counting the "cost" of an alcohol-related sexual assault, should the estimates be limited to the actual tangible costs generated by the crime, such as costs incurred by the victim, the hospital, the courts and police? Should they also include the intangible costs that arise as a consequence of the crime, such as the emotional harm and lifestyle changes made by the victim? Or should they count the amount a person would be willing to pay to avoid a sexual assault in the first place?[815]

18.47 Nor are estimates of externalities comprehensive. For example, these estimates may not capture the changes in avoidance behaviour, such as when people do not go to the city in the weekends because of the risk of violence, or the costs of travel delays due to alcohol-related road traffic crashes. Assessments of externalities also do not count as social costs the impact of drinking within a family; for example, the poorer educational outcomes, and subsequent poor labour market outcomes, that might arise for children whose parents have alcohol problems.

18.48 Given the methodological and ideological differences reflected in these various approaches it is not surprising that studies attempting to quantify social costs have differed widely in their conclusions.

18.49 In New Zealand the most recent assessment of the costs to government associated with alcohol-related harm were estimated at $1.2 billion in 2005/06,[816] with estimated tangible costs of $3.7 billion (amounts adjusted to reflect 2008

813 See R E Wagner "The taxation of alcohol and control of social costs" in William F Shughart II (ed) *Taxing Choice* (Independent Institute, Oakland CA, 1997) at 227, 234, 236. See also the submission from M Burgess and E Crampton (submission dated October 2009).

814 Business and Economic Research Limited *Costs of Harmful Alcohol and Other Drug Use: Report to the Ministry of Health and ACC* (Wellington, 2009).

815 For example, the 2005 United Kingdom Home Office costs of crime estimates calculate that a sexual assault cost the criminal justice sector £3,298 and health services £916, and the emotional and physical on victims of sexual assault was £22,754. Available from European Commission's Mainstreaming Methodology for Estimating Costs of Crime website < www.costsofcrime.org >.

816 Business and Economic Research Limited *Costs of Harmful Alcohol and Other Drug Use: Report to the Ministry of Health and ACC* (Wellington, 2009).

dollars).[817] Other New Zealand estimates of the tangible costs (2005/06 dollars) are $4.4 billion (Easton 1997), $3.8 billion (Devlin 1997)[818] and Treasury's net external costs of $721 million (Barker 2002).[819]

18.50 The BERL estimate of tangible costs is around 2.5% of New Zealand's gross domestic product (GDP) and compares with an average tangible cost of alcohol to the European Union of 1.3% of GDP (based on analysis of 21 social cost studies with a range of 0.9– 2.4% of GDP).[820]

18.51 The intangible costs associated with alcohol-related harm produce a much greater variation in estimated values across New Zealand and international studies. For example, the European estimates of intangible costs range from 1.7% to 8.2% of GDP.[821] Similarly, two New Zealand studies of the cost of alcohol-related harm estimate intangible costs of 2.6% and 13.5% percent of GDP,[822] with the most recent BERL study estimating the costs at 1.0% of GDP.

18.52 As well as the debates over the variability of these costs assessments there has also been some criticism of the fact that most studies do not weigh these social costs against the benefits associated with alcohol consumption and so can not provide an adequate framework for policy decisions (it should be noted, however, that the BERL study was commissioned by ACC and the Ministry of Health and was never intended as a cost benefit study).

18.53 The Treasury, in advising us in the development of our Issues Paper, *Alcohol in Our Lives*, concluded the current excise rates could remain justifiable on externality grounds.[823] The recent report by the Victoria University of Wellington Tax Working Group (2009) notes there may be justification to increase the excise tax on externality

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817 A recent critique of this study by Crampton and Burgess (2009) estimated the costs at $571 million, and a net figure of –$37.8 million. See 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* (Department of Economics and Finance, College of Business and Economics, University of Canterbury, 2009 Working Paper no 10/2009) < www.econ.canterbury.ac.nz > .

818 Business and Economic Research Limited *Costs of Harmful Alcohol and Other Drug Use: Report to the Ministry of Health and ACC* (Wellington, 2009). New Zealand estimates of the social costs associated with alcohol-related harm, updated by BERL to 2005/06 dollars, covered in: N J Devlin, P A Scuffhman and L J Bunt *The social cost of alcohol abuse in New Zealand* (1997) 92 Addiction 1491; and B Easton *The Social Costs of Tobacco Use and Alcohol Misuse* (Department of Public Health, Wellington School of Medicine, Wellington, 1997).

819 F Barker *Consumption externalities and the role of government: The case of alcohol* (New Zealand Treasury Working Paper 02/25, 2002) at 15. Note the estimated cost is $385–$831 million (midpoint $608 million or $721 million updated to 2006 dollars). The Treasury estimate was based on updating the 1991 costs calculated by Devlin and others (above n 87), and may consequently underestimate costs given the improvements in data and methods (for example, greater attribution of alcohol to diseases and injuries and better hospital data).

820 P Anderson and B Baumberg *Alcohol in Europe: A Report for the European Commission* (Institute of Alcohol Studies, London, 2006).

821 Ibid. Representing the various estimates of intangible harm as a proportion of national expenditure (GDP) is only to illustrate the size of the harm from alcohol, as the non-monetary nature of harm (pain and suffering and so on) means the cost estimates are not strictly comparable with fiscal costs associated with alcohol-related harm (extra health and police resources and so on).

822 N J Devlin, P A Scuffhman and L J Bunt "The social cost of alcohol abuse in New Zealand" (1997) 92 Addiction 1491–1505; B Easton *The Social Costs of Tobacco Use and Alcohol Misuse* (Department of Public Health, Wellington School of Medicine, 1997).

823 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 170.

grounds depending on the assumptions made about what has happened to growth in marginal costs in recent years.[824] Further research into the role that alcohol plays in many illnesses as well as our improved understanding of the negative impact that alcohol has within society, mean the negative social costs associated with alcohol use continue to be updated.

TOWARDS A NEW FRAMEWORK FOR MEASURING ALCOHOL-RELATED HARM

18.54 It is clear from the preceding discussion that, both internationally and in New Zealand, estimating the costs to society associated with alcohol use is the subject of vigorous debate among economists. Given the importance that identifying these costs and benefits has in informing the debate about excise taxes and other pricing policies, the Law Commission sought external economic advice.

18.55 Marsden Jacob Associates, an independent Australian economics consultancy group, was asked to provide advice to the Commission on the pricing and taxation of alcohol products. Marsden Jacob's report, *The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework,*[825] is attached in full as Appendix 1. The report reviews the existing studies of the benefits and costs of alcohol consumption, and discusses the economic theory and criticisms associated with them.[826]

18.56 As a matter of principle, Marsden Jacob agrees that studies that fail to take into account the benefits associated with alcohol can not provide an adequate, or complete, framework for policy decisions on alcohol taxation:[827]

> Since the point of all public policy is to improve the balance of benefits and costs in the community, it follows that policy advisors and decision makers need to have some reasonable appreciation of the relative magnitudes of benefits and costs… .
>
> …Consumers do enjoy alcohol: their satisfaction has value and the social lubrication provided by moderate consumption in company is a positive social consumption externality. The policy challenge is to improve the balance of costs and benefits.

18.57 In simple terms, this involves assessing how to calibrate pricing and other alcohol policies at a point where the reduction in private benefits (as a result of drinkers consuming less alcohol in response to these policies) is roughly equal to, or less than, the reduction in social costs (as a result of lowered total consumption and a consequent reduction in harms).

18.58 In other words, the consumer losses are balanced, or outweighed, by the gains to society from the reduced social costs of harmful alcohol consumption.

18.59 In practice, as indicated in the previous discussion, this is a complex task, fraught with methodological challenges and competing value judgements about what to count and what value to place on the things we count.

824 Victoria University of Wellington Tax Working Group *Other base broadening and revenue raising ideas* (Background paper for session 3 of the Victoria University of Wellington Tax Working Group. Prepared by the Inland Revenue Department and New Zealand Treasury, 2009) 27 at 28 < www.victoria.ac.nz > .

825 Marsden Jacob Associates *The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework* (A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009).

826 Ibid, at 23–31, [44–62].

827 Ibid, at 27, [51] and 34, [74].

18.60 For example at paragraph 29 of its report Marsden Jacob illustrates how the value judgements of those at different points along the ideological spectrum, from "strongly paternalistic" to "strongly libertarian", determine whether harmful or compulsive drinking is regarded as "rational" behaviour conferring full consumer benefits or whether the consumer benefits should be discounted once consumption reaches a risky or compulsive level.

18.61 Marsden Jacob argues that there are grounds (discussed above at 18.28–18-38) for treating some alcohol consumption as "irrational" and adjusting estimations of consumer benefits as a result. As noted by the Australian Productivity Commission, such adjustments can not only reduce the estimated magnitude of consumer benefits but can switch these benefits to material negatives with major impacts on the entire cost benefit equation.[828] A further key point Marsden Jacob makes with respect to benefit-cost analysis is the need for analysts to "state value judgements explicitly in the assumptions" so that "[d]ecision makers can then consider the analytical results that correspond to their view of the appropriate value judgement, taking into account the community's preferences."[829]

18.62 Fundamental to assessing the impact of any alcohol pricing policy is an understanding of the alcohol consumption patterns in any given population. Therefore in order to estimate the knock-on effects that alcohol price increases (and consequent reductions in consumption) have on social costs, it is necessary to estimate both the amount of alcohol consumed at harmful or hazardous levels in New Zealand and the likely changes in consumption that could be expected to result from price increases.

18.63 At paragraph 35 of its report Marsden Jacob considers the various data relating to New Zealand drinking patterns, pointing out the relatively limited sources available to assist in determining the level of consumption that can be considered high risk. It cites the *National Alcohol Survey 2000* which found 50% of alcohol consumed in New Zealand was consumed in heavier drinking sessions.[830] Marsden Jacob also reviewed New Zealand drinking patterns against the Australian government's National Health and Medical Research Council's *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* discussed in chapter 3 of this report.[831]

18.64 They concluded that based on the available evidence,"in excess of 67%" of all alcohol in New Zealand is consumed at harmful or hazardous levels.[832] (This is distinct from the much lower proportion of *drinkers* who consume alcohol in a harmful or hazardous manner.)

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828 For a fuller discussion on these issues, refer to Productivity Commission 1999, *Australia's Gambling Industries: Inquiry Report Vol. 3 Appendices,* 'Appendix C:Estimating Consumer Surplus'. This report contains a rigorous exposition of how to interpret consumer surplus in the context of compulsive or addictive behaviour < www.pc.gov.au > .

829 Ibid, at 19, [34].

830 R Habgood and others *Drinking in New Zealand: National Surveys comparison 1995 and 2000,* (Alcohol and Public Health Research Unit, Auckland, 2001) Figure 6.

831 National Health and Medical Research Council *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Canberra, 2009) < www.nhmrc.gov.au > [*Australian Guidelines*].

832 Marsden Jacob Associates *The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework* (A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009) at 22, [42].

18.65 While this figure is an estimate that Marsden Jacob suggests requires further investigation, Marsden Jacob argues it does indicate the potentially significant reductions in alcohol-related harm that could be achieved by even modest reductions in demand, given the amount of alcohol consumed at harmful levels.

18.66 A second part of the equation involves estimating how consumers will respond to price increases – as discussed in detail in the preceding chapter. Consumers are not homogenous and different pricing policies will evoke different responses in different drinkers according to their age, gender, income, beverage and drinking location preferences and sensitivity to price. Faced with general price increases heavy drinkers have been shown to switch beverages or drinking locations for example. Some economists argue that this suggests pricing policies are an inefficient way of tackling harmful drinking.

18.67 However Marsden Jacob points out that this argument fails to take into account the fact that heavy and young drinkers have been shown to favour cheap alcohol. Increases in excise rates "preferentially target low cost alcohol, which is the preferred purchase of heavy drinkers and the young. Thus, a uniform percentage increase in excise rates will result in non-uniform price increases with the biggest increase in prices occurring with the key problem groups, i.e., heavy drinkers and the young."[833]

18.68 (The differential impact of excise tax increases on lower priced beverages is explained by the fact that the costs of alcohol products are made up of various components, including retail and wholesale margins, and these 'non alcohol' component costs tend to be lowest on cheap alcohol products, meaning the excise component of the total cost of the beverage is higher.)

18.69 Using these assumptions Marsden Jacob then analysed the threshold at which the reduction in consumer benefits (surplus) would be outweighed by the reduction in social costs resulting from higher taxes and lowered consumption.

18.70 In doing so Marsden Jacob makes the conservative assumption that *all* alcohol confers benefits to the consumer, regardless of the level of consumption. It also assumed a uniform price elasticity of -0.44 across all drinkers.

18.71 Based on these assumptions Marsden Jacob concluded that substantial increases in excise tax would be desirable and welfare improving. Furthermore, it estimated there are, potentially, large reductions in the social costs of alcohol consumption but only small net costs in forgone private benefits.[834]

18.72 For example, Marsden Jacob estimated that a 50 % increase in excise tax could be justified so long as the resulting reductions in consumption lead to a $10 million reduction in external social costs – a small amount even when compared with the direct costs to government of alcohol-related harm of $1,200 million in 2008/09.

833 Ibid at 31, [61].

834 Ibid, at 1, [2].

18.73 They also estimated that a 100% increase in excise tax could be justified if consumption changes resulted in a reduction of externalities of $42 million.[835]

18.74 Marsden Jacob Associates found that an increase of 50% or 100% in excise tax would provide a benefit to New Zealand of $72 million or $122 million per year, respectively, due to the decrease in alcohol consumption. This figure is a conservative estimate as it is only based on a reduction of health harms and costs, and ignores any savings and reductions in alcohol-related crime, improvements in family wellbeing and many other benefits associated with decreased alcohol consumption.[836]

18.75 At paragraph 97 of its report Marsden Jacob sets out the reasons a substantial excise tax increase would effectively target harm reduction while minimising the loss of consumer benefits. In doing so it points out that while all drinkers will pay more as a result of excise tax increases, heavy drinkers will incur the largest increases in outlay because they drink the greatest proportion of alcohol.

18.76 In summary, Marsden Jacob's conclusion is that while it is necessary to address consumer benefits when designing pricing policies for alcohol, the fact that such a large proportion of alcohol in countries like New Zealand, Australia and the United Kingdom is consumed in a harmful or hazardous manner, the reductions in social costs to be gained from excise tax increases are of such an order as to quickly outweigh losses in consumer benefits.

18.77 In addressing the question "is the policy proposal (an excise tax increase) likely to pass the public interest test as indicated by a benefit-cost analysis ?" Marsden Jacob concluded:[837]

> A significant increase in New Zealand's alcohol excise tax, of 50 or even 100 per cent, would yield net economic benefits, reducing the call on the public budget thus allowing either tax reform and/or a reduction in taxation levels and would be worthwhile from the community's point of view in terms of both efficiency and equity.

Discussion

18.78 Marsden Jacob's analysis suggests an increase in excise tax would meet the public interest test. A second question is how the policy compares with alternatives and how it fits with the portfolio of policies promoted in this report.

18.79 In part B of this chapter we assess the relative merits of a minimum pricing regime as a potentially complementary or alternative to excise tax and in the following chapter we address measures to restrict alcohol advertising and promotions.

18.80 Here we address some of the issues raised by submitters regarding the merits of excise tax over other policy options.

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835 Ibid, at 36, [paras 86–87]. Total external direct costs to government were estimated to be around $1.2 billion by BERL (Business and Economic Research Limited *Costs of Harmful Alcohol and Other Drug Use: Report to the Ministry of Health and ACC* (Wellington, 2009) at 76, Table 6.7).

836 Ibid, at 38, Table 6 and at 51, Appendix B.

837 Marsden Jacob Associates *The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework* (A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009) at 45.

Excise versus general or income taxes

18.81 As discussed at 18.19 of this chapter, one of the three rationales for excise taxes is the efficiency of excise as a revenue gathering mechanism for the state. On its own, this ground is not universally accepted as providing sufficient justification for the continued use of targeted taxes.

18.82 For example, the New Zealand Business Roundtable and Distilled Spirits Association submissions[838] noted the findings from an earlier comprehensive review of taxation in 2001 that the levels of excise (on all excise products including tobacco, fuel and alcohol) could not be justified either on tax efficiency or tax equity grounds. This review, known as the McLeod Review, noted:[839]

> …the current excise and duty regime cannot be justified on conventional policy grounds. As a matter of tax principle the general revenue component of these taxes should be replaced by an increase in GST.

18.83 This view ignores the well established Pigouvian rationale, which uses a targeted tax to better align private costs with public costs.

18.84 Moreover, in our view, asking all taxpayers to pay for the social costs associated with smoking and drinking via increased GST rates raises greater inequities than those that may be associated with the excise regime.

18.85 For example, if all excise taxes were removed and applied instead to GST, to be revenue neutral, analysts Creedy and Sleeman (2005) calculated this change would increase GST to 15.9%, and to 14.4% if just tobacco and alcohol excises were transferred to GST.[840]

18.86 Such a change would result in significant redistributive and welfare effects across different households, with non-smoking households facing increased taxes and smoking households experiencing large reductions in tax. Overall, the marginal welfare gains for such a reform were not found to be large by Creedy and Sleeman (2005).

18.87 In its report Marsden Jacob argued that alongside the market failure rationales for excise increases, there may also be an argument for increasing excise tax on revenue raising or Ramsey grounds. Marsden Jacob noted that the New Zealand economy would be better off if excise taxes were increased and the resulting increased tax take was then rebated via lower income tax. Based on available studies, it estimated

838 Submission of the New Zealand Business Roundtable (submission dated October 2009) at 14, and submission of the Distilled Spirits Association of New Zealand (submission dated 28 October 2009) at 18.

839 Tax Review 2001 *Tax Review 2001 – Final Report* (The Treasury, Wellington, 2001) at 41, [3.106] < www.treasury.govt.nz/publications/reviews-consultation/taxreview2001/taxreview2001-report.pdf > [*McLeod Review*].

840 J Creedy and C Sleeman *"Excise Taxation in New Zealand"* (University of Melbourne, Department of Economics, Working Papers Series 929, 2005) at 22 < www.economics.unimelb.edu.au > at 33. Also J Creedy and C Sleeman "Excise Taxation in New Zealand" (2005) 39 (1) New Zealand Economic Papers 1–35.

a revenue neutral rebalancing would make the economy "better off by around 15 cents for every additional dollar reduction in labour taxes matched by a dollar increase in excise tax".[841]

Should all drinkers pay?

18.88 The main objection of those submitters opposing an increase in excise tax is that it would unfairly penalise the majority of responsible drinkers. For example, the New Zealand Business Roundtable notes in its submission that it is inequitable to ask responsible drinkers to meet the social costs associated with problem drinkers – "they should be met by the community (taxpayers) at large".[842]

18.89 Excise tax is levied on *all* consumers of alcohol to both correct for alcohol-related "externalities" and help reduce the level of alcohol-related harm. Unfortunately, the government does not have the information available to be able to levy a tax on just those drinkers who cause, or are likely to cause, social harm as a result of their drinking or to identify those drinkers who have self-control problems.

18.90 Despite the tax being paid by all drinkers, the current alcohol excise tax is still relatively "fair". Because excise tax is levied on the amount of pure alcohol in a product, those who drink the most alcohol pay the most tax, both proportionately and absolutely. For example, low and moderate drinkers (50% of New Zealand drinkers) only pay on average $38 per year because they consume a small amount of alcohol, whereas those who consume nearly half of all alcohol (top 10% of drinkers), and may incur the greatest health and productivity costs, pay high excise taxes of over $1,300 a year.

TABLE 18.2: EXCISE TAX BURDEN BY DRINKERS

	Percentage of volume of absolute alcohol consumed by each group	Average excise tax paid by each person* per year
Top 5% of drinkers	34%	$1826
Top 10% of drinkers	49%	$1316
Top 25% of drinkers	74%	$795
Top 50% of drinkers	93%	$500
Bottom 50% of drinkers	7%	$38
Total adult New Zealand drinkers	87%	$269

*Each person 15 years and older, and based on excise tax in 2007/08 year.

Data on consumption from A Wyllie, M Millard and J F Zhang *Drinking in New Zealand: A national survey 1995* (Alcohol and Public Health Research Unit, University of Auckland, 1996) at 14, Table 2.

841 Marsden Jacob Associates *The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework* (A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009) at 69, [33]. Calculations based on the efficiency loss due to labour tax at the margin of 18% compared with an efficiency loss of 3% for excise tax (for a 50% increase in excise).

842 Submission of the New Zealand Business Roundtable (submission dated October 2009) at 14.

18.91 Also, because excise increases have the greatest impact on the price of cheap alcohol, and cheap alcohol is favoured by heavy and young drinkers, excise increases provide a mechanism by which harmful consumption can be preferentially targeted.

18.92 Paradoxically too, people who drink infrequently but heavily (that is, binge drinkers) do not necessarily pay their fair share of excise, because they can generate significant costs in terms of injuries and criminal harm. For example, a Norwegian study found the majority of acute alcohol problems examined (specifically, fights and hospital admissions for attempted suicide and violent injuries) were found among the majority of drinkers with low or moderate risk by drinking volume, not the top 10% of heavy drinkers.[843]

18.93 This finding is explained by the fact that most of the episodes of intoxication occur among the large number of people whose total consumption is not particularly high and who get intoxicated relatively infrequently rather than the small number of people who become intoxicated most frequently and drink most heavily. The result is that most of the acute harm is actually associated with the majority of the drinking population. This phenomenon is known as the "prevention paradox".

18.94 The prevention paradox is particularly relevant in populations where the prevalence of drinking to intoxication is high.[844] As mentioned elsewhere in this report, drinking to intoxication is common among young people, Māori and New Zealanders in general. This pattern of heavy episodic drinking is associated with high levels of acute harm and can generate significant costs in terms of injuries and criminal harm.

18.95 The burden of harm and externalities caused by drinking cannot be evenly brought home across all drinkers, but must be "pooled" or averaged so all consumers of alcohol face some of the harmful costs of drinking. In addition, today's moderate and young drinkers are the pool from which future heavy and harmful drinkers emerge. Therefore, an increase in excise tax not only reduces the consumption of alcohol amongst heavy drinkers (stock impact), it can also help reduce the emergence of future heavy drinkers (flow impact) by reducing consumption, for example, amongst young people.

CONCLUSION: EXCISE

18.96 There is good evidence from many countries to support the use of excise tax to address alcohol-related problems. For example, the World Health Organization Expert Committee on Problems Related to Alcohol Consumption notes that "particularly in countries with high levels of hazardous drinking, taxation is likely to be a more cost-effective means of reducing alcohol-related problems than other alcohol policies".[845]

843 I Rossow and AR Romelsjö "The extent of the 'prevention paradox' in alcohol problems as a function of population drinking patterns" (2006) 101(1) Addiction 84.

844 Ibid, at 89.

845 World Health Organization WHO Expert Committee on Problems Related to Alcohol Consumption (WHO Technical Report Series 944, 2007) at 28.

18.97 There is also support within New Zealand for the continued use of excise tax to help reduce and compensate for the social costs of alcohol-related harm. Amongst the submissions received on *Alcohol in Our Lives,*[846] 77% of the 2,015 submissions that responded to the questions about price and excise tax supported increasing the current levels of excise.

18.98 Marsden Jacob's analysis suggests an increase in the excise rate of between 50 to 100% is likely to give major net benefits to the New Zealand economy. Based on the reduction in health harms and health costs alone, it estimates an annual benefit of $60 to $70 million. It concludes that significant excise rate increases meet the public interest test as indicated by its benefit-cost analysis.

18.99 From an economic efficiency and budget perspective using excise to correct for consumption externalities associated with alcohol is preferable in our view to meeting these costs through other forms of taxation sources. Excise targets drinkers over non-drinkers and heavy alcohol consumers over moderate to light consumers. In this respect it can be seen as a type of "user pays" tax.

18.100 Alcohol excise tax forms only a small proportion of the overall cost of the retail price of many products, particularly premium and on-premises products. However, excise tax forms a substantially larger proportion of the price of cheap alcohol products. Consequently, any increase in excise tax will make relatively little difference to prices paid by consumers in pubs and bars, but will significantly affect prices of cheap beer, wine and spirits.

18.101 An increase in excise tax can therefore be used to raise the price of these cheap alcohol products. For example, an increase in price of 10% would help achieve an implicit minimum retail price for a standard drink of around $1.10 to $1.30 for the products at the cheap end of the market.

18.102 The impact of a 50% tax increase on the retail prices of various alcohol products is set out in table 18.3. The retail prices of cheap products are more significantly affected than standard priced products.

846 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009).

TABLE 18.3: RETAIL PRICES AFTER AN EXCISE INCREASE OF 50%					
Standard priced products					
Components	Beer (4%) (330 ml)	Beer (4%) (400 ml glass)	Wine (12.5%) (750 ml bottle)	RTD (5%) (330 ml bottle)	Spirits (40%) (750 ml bottle)
Current retail price	$1.33	$4.70	$11.00	$2.00	$40.00
Total excise for product	$0.50	$0.61	$2.87	$0.63	$20.88
Increase in retail price	$0.17	$0.20	$0.96	$0.21	$6.96
New retail price	$1.50	$4.90	$11.96	$2.21	$46.96
Price per standard drink	$1.44	$3.88	$1.62	$1.70	$1.98

Cheaper priced products				
Components	Beer (4%) (330 ml stubbie)	Wine (12.5%) (750 ml bottle)	RTD (5%) (330 ml bottle)	Spirits (37.5%) (1,000 ml bottle)
Current retail price	$1.15	$7.99	$1.50	$24.00
Total excise for product	$0.50	$2.87	$0.63	$21.75
Increase in retail price	$0.17	$0.96	$0.21	$7.83
New retail price	$1.32	$8.95	$1.71	$31.83
Price per standard drink	$1.27	$1.21	$1.31	$1.08
Note: A standard drink is 10 grams of alcohol, roughly equivalent to a small glass of wine or bottle of beer.				

18.103 Based on the analysis by Marsden Jacob, we believe an approximate 5% reduction in overall alcohol consumption, resulting from a 50% increase in excise tax and an overall 10% price rise, would produce a significant reduction in a range of alcohol-related harms. Marsden Jacob's analysis has conservatively calculated there would be a $72 million net benefit to the New Zealand economy as a result of the decrease in demand resulting from an increase in excise tax of 50%.[847]

18.104 The majority of alcohol consumption is in products under 14% ABV (that is, beer, wine and RTDs), so any increase in excise in these products would have the largest flow-through effects on consumption and largest reduction in harm. We do not however, support a smaller excise increase on spirits (say a tax rise of 25%) because this would result in cheap-end spirits becoming the cheapest alcohol available (in terms of price for a standard drink at much less than $1.10 per drink). Because of the risk of substitution, with high-risk drinkers switching from beer and wine to spirits, we consider there is no case for proposing a smaller level of increase in excise in the top tier (that is, above the 14% rate).

847 Marsden Jacob Associates *The Benefits, Costs and Taxation of Alcohol: Towards an analytical framework* (A report prepared for the New Zealand Law Commission, Marsden Jacob Associates, 2009) at 38. This estimate of $72 million is based only on the reduction in health harms and associated costs, and higher dollar benefits would be expected as a result of reductions in other alcohol-related harms.

18.105 While we note the majority of moderate drinkers would face price increases as a result of any pricing policy, the dollar impact for moderate drinkers is small given their typical level of alcohol spending.[848] As discussed earlier (see section "Should all drinkers pay?"), different types of alcohol-related harm arise from different patterns of drinking and different groups of drinkers. We note that even drinkers who are classified as having "moderate" *average* consumption can, on occasions, consume harmful amounts of alcohol and experience some form of harm. Moderate drinkers, and others with low or no alcohol consumption, will also benefit from a reduction in alcohol-related costs and harms across society, potentially reducing costs for health and justice services.

Other changes to the excise tax regime

Uniform tax rate

18.106 Traditionally, spirits have attracted a higher excise rate than beer and wine because spirits generally have a higher alcohol level. The Sullivan Committee report noted that taxing spirits at a higher rate was an approach also followed in other countries.[849] Taxing spirits at a higher rate in the past also partly reflected the view that richer people drank spirits, and this "luxury" tax resulted in a more progressive tax system.

18.107 Other reports have argued this differential rate appears to be historic and a higher excise rate is no longer justified.[850] One recommendation is that there be a uniform rate, with the excise on beer and wine being increased incrementally to the same level as spirits. However, increasing excise taxes through CPI-indexation has been applied equally over the years, and the differential rates remain.

18.108 The Sullivan Committee did not recommend a single rate of excise for all alcoholic beverages as it considered each beverage type reflected different industries with different costs structures. The Sullivan Committee was also concerned a uniform rate would result in spirits becoming cheaper, particularly given the low manufacturing costs for some spirits. Easton (2002) notes that, from a harm-minimisation perspective, with the goal of targeting a minimum price for alcohol via excise taxes, "a crucial issue is that the minimum production and distribution costs of spirits is lower than that of other alcohol forms", with there being a substantial difference between the minimum production cost of light spirits, compared with the lowest identified cost of cask wine and beer.[851]

18.109 The recent background paper produced as part of the independent review of medium-term tax issues, notes consumers of beer and wine can drink almost twice as much alcohol as a consumer of spirits for the same tax burden,

848 As noted in table 18.2, the bottom 50% of drinkers spend only $38 per year on excise tax. New Zealand householders were estimated to spend on average $19 per week on alcoholic beverages in 2007 (with around $6.50 on beer and $8 on wine), Statistics New Zealand Household Economic Survey Year Ended 30 June 2007.

849 D Sullivan and others *Report on the Review of Excise Duties on Alcoholic Beverages and Tobacco Products* (Customs Department, Wellington, 1988).

850 B Easton *Taxing Harm: Modernising alcohol excise duties* (Report commissioned by the Alcohol Advisory Committee, Wellington, 2002) commenting on the New Zealand Treasury's view on the differential in 1991.

851 Ibid, at 57.

and "from a social costs basis, there is no justification for differential rates per unit of alcohol".[852] This echoes comments by the 2001 McLeod Tax Review that said it had "been unable to discover why spirits are taxed at rates, per volume of alcohol, almost twice that of other alcoholic beverages".[853]

18.110 The Distilled Spirits Association, in its submission, views "alcohol is alcohol" regardless of whether the product is made from grapes or brewed or distilled, and considers the current system unfair and discriminatory against spirits.[854] It recommends the removal of the two-rate excise regime and a move to a pure volumetric regime (that is, based on the levels of alcohol in the product).

18.111 We take a contrary view. While it appears inequitable to have a differential rate in excise, if the aim of the excise tax regime is to reduce alcohol-related harm by raising the prices on cheap alcohol products, then this differential rate continues to be justified.

18.112 Even with the substantially higher excise rate currently paid on spirits, many own-store brand spirits can be purchased for a lower price per standard drink (10 grams of alcohol) than other products on the market (for example, beer, wine and RTDs). As noted in chapter 8, spirits drinking can give rise to special problems.[855] Intoxication can be achieved much more rapidly when drinking beverages with high alcoholic content such as spirits. International evidence shows overdoses from strong spirits are much more common than overdoses from fermented beverages. For instance, Mäkelä and others (2007) found that fatal alcohol poisoning and aggressive behaviour seem to be more strongly associated with spirits than with other types of alcoholic beverages.[856]

18.113 If the government moved to a pure volumetric excise regime, the current low production costs for many spirits products would mean consumers would be able to purchase spirits at much lower prices than all other alcohol products. In the absence of a minimum price regime or any other policy mechanism to control retail prices for alcohol, we consider a differential in excise taxes should remain, and the level of this differential should enable a relatively equivalent retail price per standard drink across all cheap alcohol products.

Reducing the tax on low-alcohol products

18.114 Low-alcohol products are a minute segment of the New Zealand alcohol market. For example, in the year to September 2009 there was just 3 million litres of low-alcohol beer (less than 2.5% in alcohol) available for consumption, compared with a total beer market of nearly 310 million litres.

852 Victoria University of Wellington Tax Working Group *Other base broadening and revenue raising ideas* (Background paper for session 3 of the Victoria University of Wellington Tax Working Group, Prepared by the Inland Revenue Department and New Zealand Treasury, 2009) at 28 < www.victoria.ac > .

853 Tax Review 2001 *Tax Review 2001 – Final Report* (The Treasury, Wellington, 2001) at 39, [3.85] < www.treasury.govt.nz > .

854 Submission of the Distilled Spirits Association of New Zealand (submission dated 28 October 2009) at 16.

855 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010), at 31 [*Alcohol: No Ordinary Commodity*].

856 P Mäkelä, H Mustonen and E Österberg "Does beverage type matter?" (2007) 24 Nordic Studies on Alcohol and Drugs 617.

18.115 In *Alcohol in Our Lives*, we proposed that excise tax on alcohol products with less than 2.5% ABV be nil, rather than the current threshold of 1.15%, thereby encouraging the production and availability of more low-alcohol products for New Zealand drinkers. This applies on products with excise up to 2.5% ABV and does not mean all alcohol products should qualify for an excise-free threshold of 2.5% ABV (that is, where a 6% beer would pay excise for 3.5% ABV).

18.116 Technological developments in wine and beer production around filtration of alcohol content are also likely to enable producers to have greater control of the alcohol content of products without sacrificing the taste and quality aspects that come with longer brewing and fermentation. Industry submissions also noted there is a growing trend amongst consumers for healthy living/wellness, and this is reflected in greater product development of low-carbohydrate and low-alcohol products. However, data show a trend towards increasing alcoholic strength in many beverages, particularly RTDs and beer.[857]

18.117 The removal of the excise on low-alcohol products (up to 2.5% ABV) is supported by the industry and is seen as facilitating emerging trends in the marketplace around "wellness". Reducing the excise tax to cover more low-alcohol products was generally supported by most submissions, including those from the industry.

Introducing greater beverage differentiation within excise tax rates

New RTD tax

18.118 From our consultation and the submissions received, real concerns have been revealed from the public about the promotion and consumption of RTDs. Many submissions proposed that RTDs be taxed at a higher rate because of the way the products are marketed to youth (both in terms of packaging, advertising, price point and taste) and the harm associated with early initiation into drinking and excessive drinking by younger people.

18.119 Spirit-based drinks continue to grow in popularity, with 59 million litres of spirit-based beverages available for consumption in the year ended December 2009 (see figure 18.3).[858] Despite this growth, spirit-based drinks currently represent only 12% of all alcohol consumed in New Zealand.[859] However, surveys indicate RTDs are becoming increasingly popular among young people aged 12 to 24 years, but particularly with young women.[860]

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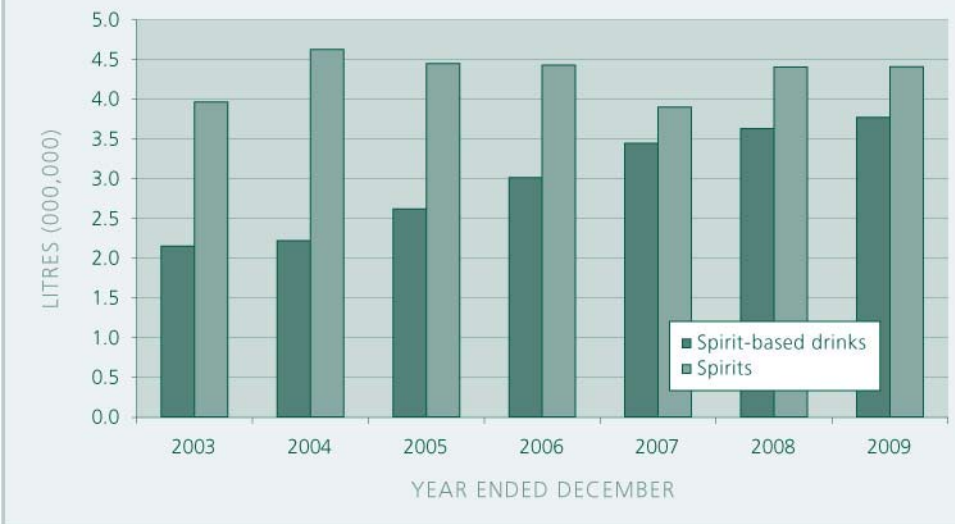
857 Personal communication from SHORE, Centre for Social and Health Outcomes, Massey University, 20 January 2010. For example, since the 1990s beer has increased from 4% alcohol by volume (ABV) to 4.25%, and since 2001 there has been a move to stronger RTDs with an alcohol content of 6–9% ABV, with about half the alcohol drunk in the form of RTDs now in this stronger category.

858 Statistics New Zealand *Alcohol and Tobacco Available for Consumption – December Quarter 2009* (Wellington, 2009). Spirit-based beverages 59.135 million litres compared to 10.498 million litres of spirits beverages.

859 Ibid. In the year ended December 2009, in terms of pure alcohol, 3.77 million litres of spirit-based drinks and 4.41 million litres of spirits were available for consumption, with a total alcohol content available of 31.68 million litres.

860 S Palmer, K Fryer and E Kalafatelis *ALAC Alcohol Monitor: Adults & youth 2006–07 drinking behaviours report* (Alcohol Advisory Council of New Zealand, Wellington, 2007). 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).

FIGURE 18.3: ALCOHOL AVAILABLE FOR CONSUMPTION IN NEW ZEALAND 2009



Source: Statistics New Zealand *Alcohol and Tobacco Available for Consumption – December Quarter 2009* Statistics New Zealand, Wellington.

18.120 In 2008, the Australian government raised the excise on RTDs so that the alcohol content was taxed at the same rate as full-strength spirits (the tax increased from AU$39.36 to AU$66.67 per litre of pure alcohol). The 2009–10 Australian budget update in May 2009 noted that:[861]

> Between May 2008 and March 2009, consumption of RTDs fell by 35 per cent over the previous year…In the same period, the consumption of full strength spirits rose by 18 per cent and that of beer by 5 per cent, suggesting some substitution from RTDs to other alcoholic beverages. Overall excisable alcoholic beverages consumption declined by 0.5 per cent in contrast to small positive growth rates of recent years.

18.121 Early indications suggest that, while RTD consumption has decreased, it appears there has been considerable substitution to full-strength spirits and self-mixing of spirit-based drinks. There is no information on the extent of any substitution into wine during this period. Industry also advised that sales of Coca-Cola increased substantially over the period. However, public health researchers advise that further investigation is required to determine the effectiveness, or otherwise, of the increased RTD tax, particularly to determine whether the target population group of young drinkers have reduced their consumption and whether the tax changes have resulted in a reduction in harm indicators.[862]

861 Australian Government *Budget Strategy and Outlook – Budget Paper No. 1 2009–10* (Canberra, 19 May 2009) at 5-32, Box 4 < www.ato.gov.au > .

862 T N Chikritzhs and others "The "alcopops" tax: heading in the right direction" (2009) 190(6) Medical Journal of Australia 294–295.

18.122 Overall, while we share the public concerns about excessive or harmful consumption of particular products, such as RTDs, there is insufficient evidence to warrant establishing a separate and higher beverage tax on RTDs. We are concerned that any such tax would result in the development of other alcoholic beverages targeted at younger drinkers, based on malt or wine beverages, as well as a substitution towards self-mixing of spirits drinks. Currently, full-strength spirits products, beer and wine are all considerably cheaper in price (in terms of price per standard drink) than RTDs.

18.123 In chapter 22, we also consider RTDs in the context of a provision we are recommending that would allow new alcohol products to be banned if they are considered to create a considerable risk of harm.

Reducing excise on tap beer

18.124 During our public consultations we also heard concerns about the increasing differential between the prices paid for alcohol in bars and clubs and prices paid in retail outlets. Some submitters suggested a lower excise rate for tap beer in on-licences as a way of encouraging drinking in responsible and supervised environments. Excise costs make up such a low proportion of the price of beer in a pub or club (that is, about 6–7%) that even halving the excise on tap beer would result in only a 15 cent reduction in the price of a pint, and eliminating it all together would reduce the price by only 34 cents. The cost differential between on- and off-licences is driven by many factors other than excise tax, for example, property costs, labour market costs, food and security costs. Overall, we do not support a differentiation in excise tax between on- and off-licences on the same products.

Earmarking excise tax

18.125 In the course of our public consultation we found strong support for using excise tax revenues to fund programmes and agencies dealing with the problems arising from alcohol use. This is known as an "earmarked" or "hypothecated" tax, and applies when all, or a portion, of tax revenue is dedicated to government funding for a specific purpose rather than being deposited into the government's general accounts. Generally, all tax revenue collected from different sources (income tax, GST, excise tax) is pooled in a general fund, allowing spending decisions to be determined on the basis of the merits of various programmes, according to government policy priorities. This approach ensures funding is allocated to its best use, independent of the source of the funds.

18.126 The World Health Organization has recommended the earmarking of taxes to promote tobacco control, and the United Kingdom government has previously earmarked a small proportion of an increase in tobacco excise to health services to use in preventing and treating smoking-related diseases.[863]

863 Ministry of Health *Future Funding of Health and Disability Services in New Zealand: Report to the Director-General of Health* (Wellington, 2002).

18.127 In New Zealand, there currently are three examples of earmarked excise-type taxes:

- the ALAC levy, which funds the Alcohol Advisory Council of New Zealand;
- the problem gambling levy, which funds the provision of health services to address problem gambling; and
- fuel excise tax revenues, which go into the New Zealand Transport Agency's National Land Transport Fund and to activities such as state highway and local road building and maintenance, road policing, safety campaigns and public transport services.

18.128 Earmarking all, or a portion, of excise tax revenue to fund specific alcohol-related programmes or services has some attraction in terms of guaranteeing funding for specific programmes. However, earmarking taxes reduces the government's flexibility to determine spending across competing programmes as priorities and needs change. Earmarking could also create perverse incentives for agencies tasked with reducing alcohol harm that face falling funding for programmes as alcohol consumption drops (but that still face high needs amongst riskier drinkers). Unless the "excise" proportion is set with spending priorities in mind, alcohol programmes dependent on excise tax could be undermined by fluctuations in consumption.

18.129 "Weak" earmarking of excise tax is one option that might avoid the vagaries of funding fluctuations arising from excise-tied funding. With weak earmarking, only some of the additional revenue from alcohol excise increases could be used to fund particular short- to medium-term initiatives. Given the difficulties in obtaining funding for establishing and maintaining alcohol-related treatment services in both health and justice settings, we are supportive of some use of an increase in excise tax to be used to provide such services.

PART A: KEY CONCLUSIONS

The primary rationale for an excise tax should remain minimising the harm caused by the use of alcohol, with a secondary purpose of recovering the fiscal costs associated with that harm.

The price of alcohol should be increased by an average of 10%, which would reduce overall consumption by about 5%, and possibly more in the longer term. This price increase would necessitate a 50% increase in the excise tax rate. It is conservatively estimated such an increase would provide a net benefit to New Zealand of a minimum of $72 million annually, by reducing the costs of alcohol-related harm and health care costs.

The excise tax on low-alcohol products up to 2.5% alcohol by volume should be removed to encourage the development of such products.

The Law Commission favours "weak" earmarking, that is, the government setting aside or pledging some portion of any increase in alcohol excise tax to ensure specific funding for alcohol-related treatment programmes in the health and justice sectors.

Part B: Minimum price

INCREASING THE PRICE OF ALCOHOL VIA MINIMUM PRICING

18.130 While excise tax has been the most commonly used mechanism to increase alcohol prices and reduce consumption, an alternative policy approach is to legislate for a minimum price for alcohol. This has the effect of creating an artificial floor price below which alcohol cannot be sold. This directly targets cheap alcohol, which is preferred by heavy and young drinkers, while having little effect on moderate drinkers. Many submissions supported regulating the price of alcohol via minimum pricing, arguing it would be an effective method for reducing the sale of cheap alcohol.

18.131 The cheapest products are associated with relatively more harmful drinking because heavier and young drinkers tend to favour cheap alcohol, so pricing policies directly targeting the availability of cheap alcohol will reduce consumption, and therefore alcohol-related harm.

18.132 Of the 2,013 submissions that responded to questions about price and tax, 76% supported a minimum price scheme. Supporters of the scheme also included industry submitters who thought minimum pricing would better target some of the most harmful drinking and was worthy of serious consideration. Most of those submitters who explicitly opposed minimum pricing raised questions about the evidence for its effectiveness, and potential enforcement and implementation issues. Some also viewed such a scheme as anti-competitive and market distorting. The major concerns are addressed below.

Availability of cheap alcohol

18.133 As we noted in chapter 17, consumers have access to cheap alcohol products. For example, cask white wine, budget beer and own-brand spirits can retail for as little as 60 cents, 85 cents and 81 cents per standard drink (10 grams of alcohol) respectively. At these prices an adult male's 'safe limit' for drinking on a single occasion can be reached for about $5.[864] This contrasts with the price of more standard products that retail for $1.50 to $2 per standard drink and bar and club prices that can be $3 to $4 or more per standard drink.

18.134 Many submissions, including some industry submitters, supported a prohibition on "loss leading" as a retail practice. For example, Super Liquor notes that industry participants "must not be able to sell below cost".[865]

18.135 "Loss leading" by retailers would be difficult to ban directly because it would require complex investigation and enforcement on a case-by-case basis, and is likely to be exceedingly difficult to prove. Individual companies can make public commitments not to loss lead, for example, supermarket chain Progressive Enterprises stated publicly that it is not its policy to loss lead (that is, sell below cost).[866] However, the alcohol industry as a whole cannot agree to voluntarily self-regulate such a commitment, as "setting" prices in this fashion would be seen as price

864 ALAC recommends that, on any one drinking occasion, men should drink no more than six standard drinks and women four standard drinks < www.alac.govt.nz > .

865 Submission of Super Liquor Holdings Limited (submission dated 29 October 2009) at 6.

866 Submission of Progressive Enterprises Ltd (submission dated October 2009) at 12.

fixing and be in breach of the Commerce Act 1986. The government however could choose to regulate alcohol prices under the same rationales discussed in relation to the imposition of excise taxes.

Evidence of effectiveness of minimum price schemes

18.136 Internationally, there are only limited examples of governmental controls that ensure cheap alcohol is not readily available, including:

- discrete local controls in places such as rural Australian communities with high Aboriginal populations (for example, Tennant Creek, Northern Territories); or
- in countries where state or federal governments operate retail monopolies for alcohol, allowing them to maintain higher retail prices (for example, some American states and Canada).

18.137 Currently, Scotland is the only country with a competitive alcohol market that has committed to a minimum price regime, with legislation introduced in November 2009.[867] Under the proposed Scottish scheme, the minimum price will be set by the recommendation of the minister, rather than being specified in legislation, enabling quick adjustments to the minimum price in response to changes in alcohol affordability. The proposed scheme applies equally to on- and off-licences, although given the premium prices in bars and clubs, they are unlikely to be greatly affected.

18.138 A minimum price scheme would establish a minimum retail price per standard drink (10 grams of alcohol) or per unit of pure alcohol. If, for example, the minimum price were set at $1.20 per standard drink, then a bottle of beer containing one standard drink could not retail for less than $1.20 and a bottle of white wine at 12.5% ABV (with 7.5 standard drinks) would not sell for less than $8.88.

18.139 The Scottish proposals, while controversial, have strong support from the health sector and are also backed by Scotland's largest brewer, Tennent's, the Association of Chief Police Officers in Scotland (ACPOS) and the Scottish Licensed Trade Association.[868]

18.140 In the absence of any minimum price scheme operating in a competitive retail environment, the effectiveness of the scheme in reducing consumption and harm has been evaluated in the United Kingdom and Scotland by the University of Sheffield using an economic-epidemiologic model.[869]

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867 Alcohol Etc (Scotland) Bill (SP Bill 34), Part 1, ss 1–2 < www.scottish.parliament.uk > .

868 The Scottish Government "Tennent's backs minimum pricing" (press release, 25 January 2010).

869 The Sheffield Alcohol Policy Model has been used to evaluate minimum price scenarios. R Purshouse and others *Modelling to assess the effectiveness and cost-effectiveness of public health related strategies and interventions to reduce alcohol attributable harm in England using the Sheffield Alcohol Policy Model version 2.0* (Report to the National Institute for Health and Clinical Excellence, School of Health and Related Research (ScHARR), University of Sheffield, 2009a) < www.nice.org.uk > ; R Purshouse and others *Model-based appraisal of alcohol minimum pricing and off-licensed trade discount bans in Scotland: A Scottish adaptation of the Sheffield Alcohol Policy Model version 2* (ScHARR, University of Sheffield, 2009b) < www.scotland.gov.uk > ; A Brennan and others *Independent review of the effects of pricing and promotion: Part B Modelling the potential impact of pricing and promotion policies for alcohol in England. Results from the Sheffield Alcohol Policy Model version 2008* (1-1) (Report to the United Kingdom Department of Health, ScHARR, University of Sheffield, 2008) < www.dh.gov.uk > .

18.141 The results from the various modelling exercises all show strong support for the introduction of a minimum price regime. When "minimum prices" were set below or at the low end of the purchasing price points they had little impact on reducing harmful outcomes. But as the level set for a minimum price increases, alcohol-related hospital deaths and admissions fall, as do alcohol-related crimes.[870]

18.142 Sheffield's analysis relies on sophisticated economic-epidemiological modelling allowing its researchers to estimate the relative impacts of various pricing policies across multiple beverage types and types of drinkers. The modelling is designed to capture the heterogeneity of drinking populations and to therefore assist policy makers to better assess the proportionality of various pricing policy options.

18.143 For example, while the aggregate results of most meta-analyses indicate that moderate drinkers are somewhat more price sensitive than heavy drinkers, Sheffield's analysis suggests heavy drinkers actually have higher own-price elasticities but they are also more likely to switch beverages, locations and price-band in response to price increases. Young and heavy drinkers prefer lower cost products, so policies such as minimum pricing (and, less directly, excise tax increases) which preferentially target low cost alcohol and in particular cheap or discounted takeaway liquor will affect harmful drinkers proportionately more than moderate drinkers.

18.144 The recently released draft guidance from the United Kingdom government's expert advisory body on medical treatment, the National Institute for Health and Clinical Excellence, notes:[871]

> Making alcohol less affordable appears to be the most effective way of reducing alcohol-related harm. There is sufficient evidence (within the published literature and from the economic analysis) to justify the introduction of a minimum price per unit. The evidence suggests that young people who drink and people who drink harmful amounts of alcohol tend to choose cheaper drinks. Establishing a minimum price per unit would limit the ability of these groups to 'trade down' to cheaper products.

18.145 As well as the costs of establishing a minimum price scheme, there will also be ongoing costs for government and alcohol retailers in implementing, monitoring and enforcing the scheme. In Scotland, the inspection and enforcement of the scheme will be undertaken as part of the normal licensing enforcement scheme, with local licensing inspectors checking on prices at various outlets, with powers to suspend or fine licensees for breaches of the minimum price. A similar approach to enforcement could occur in New Zealand, as part of the regular monitoring by licensing inspectors.

870 Although alcohol-related harm from crime reduces proportionally less than health alcohol-related harm because alcohol-related crime tends to be associated more with on-premises, which are less affected by minimum pricing (because prices in bars and pubs are often already well above proposed minimum prices).

871 National Institute for Health and Clinical Excellence *Alcohol-use Disorders: Preventing the development of hazardous and harmful drinking* (Public Health Draft Guidance, NICE, United Kingdom, 2009) < www.nice.org.uk > .

18.146 In order to analyse the potential effect of a minimum price scheme in the New Zealand context, it is necessary to have access to alcohol retail sales data showing the distribution of alcohol product sales by price. Such information is necessary to establish the most effective minimum price point.

18.147 While we are aware the average retail price per standard drink (10 grams of alcohol) in 2009 was around $1.25 for wine and $1.30 for beer, there are large variations in prices between cheap and premium products. For example, cask wine sells for around $0.60 per standard drink and budget beer can retail for $0.80 to $0.85 per standard drink. To assess the impact of a minimum price scheme, average prices are insufficient, and volume/price data are needed across the broad categories of beer, wine and spirits sales.

18.148 Liquor retailers and supermarkets currently collect reasonably complete data on price and volume of alcohol sales via marketing companies such as AC Nielsen. Unfortunately, our request to access this generalised pricing information was rejected by the New Zealand Retailers' Association unless we were prepared to meet detailed prior approvals sought by the Association around how the data could be used. In the absence of this pricing sales data, it is not possible for us to accurately assess, and therefore advise on, the impact that a minimum price regime might have on alcohol sales and consumption.

18.149 We are recommending retailers and producers be required to provide sales and price data so such an evaluation can be undertaken in the future.

Minimum price versus excise tax

18.150 Under a minimum price scheme, the increased profits on all cheap products go to either the retailer and/or producer. Some regard this as a perverse outcome as it may lead to increased industry spending on advertising and product development, thereby potentially undermining measures to reduce alcohol consumption. Conversely, revenue from increases in the excise rate goes directly to government and can be used either for increased spending or to offset other taxes.

18.151 While it is difficult to precisely establish a bright line minimum price via excise tax, our recommended excise tax increase of 50% would result in an approximate or implicit minimum price of around $1.10 to $1.20 per standard drink. An increase in excise tax results in a higher percentage increase on the cheaply priced alcohol products because excise comprises a larger proportion of the final retail price (refer to paragraph 18.100 above).

18.152 However, the difficulty with using excise tax to establish an implicit minimum price is that all alcohol products go up in price, including premium products. There is also the risk that, given the purchasing power of the supermarkets and the highly competitive market, retailers will not pass on the excise tax in full, or will pass it on for some beverages but not others, depending on the profit margins associated with different products.

18.153 The New Zealand Winegrowers' survey of wineries in 2006 found that 83 % of the responding wineries indicated they would be absorbing that year's annual indexation rise in excise tax "because of competitive market pressures".[872] Many producers are concerned not just about a potential decrease in demand for their product should excise taxes increase, but also about the possibility of being forced to reduce profit margins if they are unable to pass on excise tax increases to retailers.

18.154 The annual Consumers Price Index (CPI) adjustment to excise taxes is generally small, and despite being more easily absorbed by producers, the CPI-indexation tends to be used by many producers to announce increases in retail prices.[873] It is also arguable that a large increase in excise tax, as we propose, is less able to be absorbed by either producers or retailers, and likely to be fully passed on in retail prices.

18.155 An excise tax to reduce the availability of cheaply priced products may also be preferable on the basis that it may not distort the market in the same way a minimum price could. A minimum price could distort the role price plays in signalling quality, as all cheap products will be pushed up the price ladder, resulting in a clustering of goods at the price point that previously signalled medium quality. It is difficult to predict whether cheap products would disappear from the market, or whether moderate-quality products would increase in price to distinguish themselves from their cheaper competitors. For producers who manufacture products along various price points, this is not so much of an issue, but producers whose only products are at this "moderate" price level could face a loss of business or have to reconfigure product lines.

18.156 Overall, an excise tax regime to establish an implicit minimum price is less distorting because it maintains the "price" signal differentials for low-to-moderately priced products. The allocation of any increased revenue arising from a minimum price scheme compared with an implicit minimum price, tends to favour the government's use of excise tax to reduce the availability of cheap alcohol.

PART B CONCLUSIONS

18.157 The findings from recent modelling exercises in England and Scotland point to the potential effectiveness of minimum price schemes to address the proliferation of cheap alcohol. However, individual theoretical models from other jurisdictions cannot be used to determine the likely effects of a scheme in New Zealand. Economic modelling based on New Zealand's own alcohol drinking patterns, alcohol-related harm and sales and price data is required. The lack of detailed pricing and sales distribution data prevents us from accurately assessing the likely effects of a minimum price scheme.

18.158 Given that a minimum price scheme in a competitive retail environment is untried, it would be prudent to investigate the merits of a minimum price regime more thoroughly.

872 Submission of New Zealand Winegrowers (submission dated October 2009) at section D.

873 Hospitality Association of New Zealand "Alcohol price increase will hurt" (press release, 5 March 2009) < www.hanz.org.nz > . As well as media commentary on Consumers Price Index excise tax adjustments mid-2009, for example, TV3 News "Alcohol price rises in store as excise tax rises" (press release, 30 June 2009) < www.3news.co.nz > and New Zealand Herald "Alcohol prices to rise with tax hikes tomorrow" (press release, 30 June 2009) < www.nzherald.co.nz > .

18.159 We therefore recommend the government further investigate the value of establishing a minimum price regime and put in place a formal report-back by 2012. This will enable sufficient time for consultation with stakeholders, development of modelling based on New Zealand market patterns and prices, and also the possibility of evaluating the initial data if Scotland introduces a minimum price scheme.

18.160 For such an investigation to successfully evaluate the benefits and costs of a minimum price regime, distribution and sales data from retailers will be required. Accordingly, we recommend the new alcohol legislation require all those holding off-licences to make and maintain a record of all transactions by product and price groupings in a form specified by the Alcohol Regulatory Authority (the statutory tribunal that we recommend to replace the Liquor Licensing Authority).

18.161 These records would be filed annually with the Secretary for Justice. The return would be required to show the type of product beverage (beer, wine, RTDs, spirits), the alcohol content and the quantity and price sold for each beverage and alcohol combination. A summarised form of the information would be publicly available for use by researchers, government officials and other interested parties. Should the government decide not to proceed with a minimum price regime, this pricing data would be useful in helping to determine any future changes in excise tax rates.

18.162 In the interim, we consider that reducing the availability of cheap alcohol products can best be achieved via the proposed increase in excise taxes of 50 percent.

PART B: KEY CONCLUSIONS

Given the potential for a minimum price regime, in association with excise tax, to reduce the availability of cheap alcohol, a minimum price regime should be fully investigated.

Retailers and producers should be required to provide sales and price data to enable the government to investigate a minimum price regime and to be able to effectively model the impacts of changes in excise tax levels.

Summary and recommendations: Parts A and B

18.163 The price of alcohol is a critical factor in moderating demand for alcohol, thereby reducing alcohol-related harm, and the costs to society of those harms. Our key concern has been the widespread availability of cheap alcohol products.

18.164 Increased affordability of alcohol facilitates its excessive and harmful consumption, which is reflected in a rise in health and other social harms in recent years. Cheap products are favoured by heavy, harmful and young drinkers – the population sub-groups that our recommended policies are seeking to target.

18.165 Pricing policies vary in their effectiveness in reducing overall consumption of alcohol, as well as in targeting these key population groups.

18.166 In this chapter, we have considered two pricing policies:

- increasing retail prices of all alcohol, but with a focus on cheap products, via an increase in excise tax rates;
- increasing the retail price of cheap alcohol products directly via the introduction of a minimum price scheme.

18.167 There is good evidence from many countries to support the use of excise tax to address alcohol-related problems. For example, the World Health Organization Expert Committee on Problems Related to Alcohol Consumption notes that "particularly in countries with high levels of hazardous drinking, taxation is likely to be a more cost-effective means of reducing alcohol-related problems than other alcohol policies".[874]

18.168 There is also support within New Zealand for the continued use of excise tax to help reduce and compensate for the social costs of alcohol-related harm. Amongst the submissions received on *Alcohol in Our Lives,*[875] 77% of the 2,015 submissions that responded to the questions about price and excise tax supported increasing the current levels of excise.

18.169 An increase in excise tax operates indirectly, and there are concerns the full effects of an increase in excise will not be completely reflected in the retail prices of alcohol. It is for this reason that a minimum price regime was proposed. There appear to be advantages to introducing a minimum price, but we do not have the retail sales data nor any empirical evidence to be able to provide a definitive recommendation in respect of a minimum price.

874 World Health Organization WHO Expert Committee on Problems Related to Alcohol Consumption (WHO Technical Report Series 944, 2007) at 28.

875 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009).

18.170 There are also disadvantages to a minimum price regime compared with price increases via excise tax, such as increasing the profits to industry, which can in turn be used to increase advertising and marketing, and for greater administrative and operational costs around enforcement.

18.171 In the current competitive market environment, the pricing policy that can most effectively reduce alcohol-related harm is an increase in the price of alcohol, particularly cheap alcohol products, via an increase in excise tax.

18.172 The advice we have received from independent economic consultants Marsden Jacob supports a 50 % increase in excise rates. Such an increase is justified from a public interest perspective and would yield net economic benefits to New Zealand.

RECOMMENDATIONS

R100 The excise tax rate should be increased by 50%, which will increase the price of alcohol by around an average of 10%. The excise increase will have the greatest price impact on cheap alcohol products, which are preferred by heavy and young drinkers. Other things being equal, the price increase would be expected to reduce overall consumption by approximately 5%, and possibly more in the longer term. It is conservatively estimated that such an excise increase would provide a net benefit to New Zealand of a minimum of $72 million annually, by reducing the costs of alcohol-related health harms and health care costs.

R101 The excise tax on low-alcohol products up to 2.5% alcohol by volume should be removed to encourage the development of such products.

R102 Given the potential for a minimum price regime, in association with excise tax, to reduce the availability of cheap alcohol, the government should fully investigate a minimum price regime.

R103 Retailers and producers should be required to provide sales and price data to enable the government to investigate a minimum price regime and to be able to effectively model the impacts of changes in excise tax levels.

Chapter 19

Advertising, sponsorship and promotion of alcohol

IN THIS CHAPTER, WE:

- Consider submitters' views and recent research into advertising, sponsorship and alcohol.
- Discuss the current regulatory framework for regulating alcohol advertising in New Zealand.
- Outline the history of reviews of alcohol advertising.
- Discuss the need for change to the way alcohol is promoted.
- Outline our recommendations for the future regulation of alcohol advertising.

INTRODUCTION

19.1 The alcohol industry in New Zealand spends millions of dollars every year on alcohol advertising. Advertisers use a wide variety of old and new media, including print, broadcast, the internet and sponsorship.

19.2 The regulation of alcohol advertising has become progressively more liberal over the past 30 years. Until 1980, the advertising of alcohol on television and radio was a matter for statutory regulation. Legislation permitted the advertising of outlets and services, but not corporate or brand advertising for alcohol products.[876]

19.3 In 1980, these restrictions became voluntary in-house rules for the New Zealand Broadcasting Corporation. The late 1980s and 1990s saw the deregulation of the broadcasting industry in New Zealand, declining per capita consumption of alcohol, and an apparent liberalisation of social attitudes towards alcohol.[877]

876 Alcohol Advisory Council of New Zealand T*he History of Alcohol Advertising on Radio and Television* (Wellington, 2004) at 1 < www.alcohol.org.nz >.

877 Ibid.

In 1992, Cabinet decided to allow brand advertising and charged the Advertising Standards Authority, an industry-based body, with the responsibility for regulating brand advertising.[878] Alcohol advertising remains self-regulated today.

19.4 In our Issues Paper, *Alcohol in Our Lives*, we took the view that the existing system of self-regulation was generally sufficient. We proposed leaving the bulk of alcohol advertising regulation to the Advertising Standards Authority.[879]

19.5 Many of the submissions we received called strongly for greater controls on alcohol advertising. In addition, a substantial body of recent research, particularly concerning young people and advertising, suggests advertising should be more controlled. These factors have led us to analyse the need for tighter controls on the promotion of alcohol and examine other options.

The submissions

19.6 Almost every submitter had something to say about advertising and sponsorship: 2,281 out of 2,939 submissions commented on the policy options about advertising and marketing. Of the 2,281 submissions, 86% supported banning or restricting all advertising of all alcohol in all media.

19.7 The rationales for supporting such restrictions varied, but the following extracts from three submissions provide a flavour of the submissions overall:

> The alcohol industry spends millions of dollars annually on alcohol advertising. The ads promote alcohol consumption and associate drinking with having fun, partying, confidence, success, sophistication, and desirability. The ads normalise drinking and sustain our current drinking culture.[880]

> [The aggressive marketing] of alcohol is a huge driver of the heavy drinking culture with its clever and sometimes witty advertising creating a false impression and seek[ing] to promote the sale of alcohol whilst totally ignoring the dangers of this drug… the advertising of alcohol should be severely reduced in NZ and it should not be allowed without a warning regarding the dangers.[881]

> I am particularly concerned about the suggestion that "self-regulation" for the alcohol advertising could [be] or is in any way affective [sic]…campaigns promote the consumption of alcohol and play on the idea that alcohol and fun are directly related and if you [are] engaging [in] its consumption you will be surrounded with friends (usually attractive) and generally be very happy. It seems ridiculous to have such advertisements sometimes followed by advertisements showing the horrific results of drinking on families with domestic violence and motor vehicle accidents. These counter advisements are insignificant compared [with] the constant exposure to clever,

878 Ibid, at 27.

879 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC, IP15, 2009) at 225.

880 Submission of Nathan Clark (submission dated 2 September 2009) at 8.

881 Submission of Peter Day (submission dated 4 September 2009).

> socially manipulative marketing strategies and huge amounts of money used to promote the alcohol industry. As with cigarette advertising I would like to see a complete ban on all media advertising including sponsorship.[882]

19.8 However, producers and retailers, broadcasters, and people involved in regulation had a different point of view:

> The purpose of liquor advertising is to influence brand choice, not to increase per occasion or total consumption. Liquor advertising is designed to influence consumers to choose particular brands when they're buying alcohol. This is no different to the advertising of, say, shampoo, where the objective of the advertising is not to encourage people to wash their hair more often, but rather to choose one brand over another… We have no commercial interest in marketing our products to people who are not legally able to buy them – ie people under 18 years old. We never encourage rapid, excessive or irresponsible consumption in any of our marketing or promotions… While we understand that placing restrictions on or banning liquor advertising is populist and relatively easy to implement, there is no evidence that such measures will make any contribution to addressing the problems of youth drinking or risky drinking behaviours amongst adult New Zealanders.[883]

19.9 We also received many submissions specifically concerning alcohol sponsorship. Some submitters urged the Law Commission to consider reducing or removing sponsorship:

> There is presently an intimate association of alcohol with sporting activity just as there once was between tobacco and say, motor sport. It is just not direct advertising and brand promotion. It is a thread that runs through the media. Casual references, for example, to tying-one-on are commonplace on radio sporting talkback; that getting plastered in connection with a sporting event holds fond memories.[884]

> Reduce marketing and advertising and sponsorship of sports events by the alcohol industry. Netball does fine when sponsored by a grocery chain.[885]

> Recently I took my grandson to the clubrooms of his rugby club for his team photograph. I was appalled at the level of promotion by a large brewery in those clubrooms. Obviously the club depended on major sponsorship from this company. I feel this was an exploitation of an environment and a sport which has such wide popularity with boys and young men.[886]

> Alcohol brands sold in New Zealand are increasingly being marketed via sponsorship of music and sporting events. Alcohol sponsorship of clubs, sports events, rock concerts and other events helps embed alcohol brands and products into the everyday lives of young people. This type of alcohol sponsorship is not covered by the existing Code for Advertising Liquor and there is no complaints system, yet alcohol sponsorship may be almost as important a means of promoting alcohol brands and drinking as advertising through the media.[887]

882 Submission of Douglas Hesp (submission dated 18 September 2009).

883 Submission of Lion Nathan (submission dated 29 October 2009) at [138], [142] and [147].

884 Submission of Dr K A Rodgers (submission dated 6 August 2009).

885 Submission of Robyn Northey (submission dated 1 October 2009).

886 Submission of Graham Brogden (submission dated 19 October 2009).

887 Submission of New Zealand Drug Foundation (submission dated 27 October 2009) at 7.

19.10 However, not everyone agreed:

> There is no reason why responsible producers of alcohol should be restricted from sponsorship. In fact many sports clubs in New Zealand rely heavily on the support of these sponsors.[888]
>
> Like other major arts companies, the New Zealand Symphony Orchestra relies heavily on corporate sponsorship. Although we do not currently have a sponsorship with any winemaker, we would be sorry to see this cut off as a possible source of corporate support. For over a decade, the New Zealand Symphony Orchestra had Montana Wines as a principal sponsor. It is hard to imagine that any social harm can have been done through this.[889]

Quantifying advertising and sponsorship

19.11 In 2008, the alcohol advertising spend in New Zealand was about $33 million (inflation adjusted to 2005 dollars).[890] This figure is likely to be an underestimation. Research suggests that up to four times that amount is spent on unmeasured media and promotions, including sponsorship.[891]

19.12 Traditional advertising expenditure has dropped considerably since the late 1990s, but the reported figures do not include other important promotional activity such as sponsorship and branded merchandise.

19.13 Although it seems clear that alcohol-related sponsorship is becoming increasingly important in New Zealand, the amounts involved are difficult to quantify from readily available public information.

19.14 Alcohol Action New Zealand estimates about $200,000 is spent each day promoting alcohol.[892] That figure equates to $73 million per year, a portion of which would be in sponsorship. However, the New Zealand Events Update newsletter, commenting on the review of advertising announced in 2006, noted $150 million a year is spent on advertising around sport and music events.[893] Dominion Breweries advised us it has committed $100 million in sponsorship over 10 years.[894]

19.15 The leverage investment is also significant. To make the most of sponsorship activities, promotional material such as banners and signage, product and displays will also represent considerable expenditure.

888 Submission of Tony Woodcock (submission dated 30 October 2009) at 3.

889 Submission of New Zealand Symphony Orchestra (submission dated 30 October 2009).

890 Communication Agencies Association of New Zealand "New Zealand Annual Liquor Advertising Spend 1987–2008" (2009) < www.caanz.co.nz >.

891 Peter Anderson and others "Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A Systematic Review of Longitudinal Studies" (2009) 44 Alcohol & Alcoholism 229 at 230.

892 Submission of Doug Sellman Alcohol Action New Zealand (submission dated 28 October 2009).

893 *New Zealand Events Update* (February 2006) Issue 154 at 1.

894 Submission of Dominion Breweries (submission dated 29 October 2009) at 5.

ADVERTISING, SPONSORSHIP AND ALCOHOL

Recent research

Advertising and young people

19.16 Links between alcohol advertising and alcohol consumption are not easy to draw in a conclusive manner. As discussed in other parts of this report, alcohol consumption is influenced by a myriad of individual and environmental factors, including alcohol's affordability and availability. However, drinking has been shown to be associated with exposure to advertising and other promotional activity.

19.17 Econometric studies have produced mixed results, largely due to methodological difficulties. Some studies found advertising had no impact, but others found small effects on total consumption and, commonly, positive effects in relation to specific beverages.[895] Recent research outlined below clearly establishes that advertising leads to the early onset of drinking and heavier drinking by young people who already drink.

19.18 Babor and others (2010) concluded that the promotion of alcohol is an enormously well-funded, ingenious and pervasive aspect of modern life. Alcohol advertising predisposes minors to drinking well before the legal age of purchase. Marketing strategies, such as alcohol sports sponsorships, embed images and messages about alcohol into young people's everyday lives. The climate created by sophisticated alcohol marketing has facilitated the recruitment of new cohorts of young people to the ranks of heavier drinkers and has worked against health promotion messages.[896]

19.19 The European Alcohol and Health Forum Science Group study found consistent evidence to demonstrate an impact of alcohol advertising on the uptake of drinking among non-drinking young people and increased consumption among their drinking peers.[897]

19.20 Smith and Foxcroft (2009) reviewed seven cohort studies totalling 13,000 people aged 10 to 26, and found an association between exposure to alcohol advertising or promotional activity and subsequent alcohol consumption by young people.[898]

19.21 After reviewing 13 longitudinal studies that reported on 38,000 young people, Anderson and others (2009) found consistent evidence to link alcohol advertising with the uptake of drinking among non-drinking youth and increased consumption among their drinking peers. Because the evidence focuses on mass media advertising, it almost certainly underestimates the impact of wider alcohol promotion and marketing. Anderson notes these results are not surprising: exactly the same conclusions have emerged from reviews of the impact of tobacco and food marketing on young people.[899]

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895 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 187.

896 Ibid, at 183.

897 European Alcohol and Health Forum Science Group "Does Marketing Communication Impact on the Volume and Patterns of Consumption of Alcoholic Beverages, Especially by Young People? A Review of Longitudinal Studies" (2009) < www.eurocare.org > at 17.

898 L A Smith and D R Foxcroft "The Effect of Alcohol Advertising Marketing and Portrayal on Drinking Behaviour in Young People: Systematic Review of Prospective Cohort Studies" (2009) BMC Public Health at 15 < www.biomedcentral.com >.

899 Peter Anderson and others "Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A Systematic Review of Longitudinal Studies" (2009) 44 Alcohol & Alcoholism 229 at 242.

19.22 The University of Sheffield School of Health and Related Research considered the evidence of five major studies. This review found exposure to alcohol advertising and promotion was associated with the onset of adolescent alcohol consumption and with increased consumption among adolescents who were already drinking. There was a moderate but consistent association between point-of-purchase promotions and effects on alcohol consumption among underage drinkers, binge drinkers and regular drinkers and a high prevalence of ownership of alcohol-related merchandise among young people. Exposure to television and other broadcast media was linked with onset and levels of alcohol consumption.[900]

19.23 Babor and others (2010) conclude:[901]

> …there has been a marked increase in alcohol marketing using an expanding repertoire of media and communication technologies with considerable appeal and utility for young people. There are unprecedented levels of exposure to sophisticated marketing. Attempts to control the content of the marketing messages using voluntary codes of content have not decreased their appeal to young people sufficiently to reduce their impact.

Sponsorship research

19.24 Although there is a considerable body of research about the regulation of advertising and its impact, there is considerably less research on sponsorship and the use of new media to market alcohol.[902]

19.25 Hill and Casswell (2004) explain how sponsorship has become more and more important:[903]

> Much research focuses on broadcast advertising, but by the early 1990s more than half of all advertising expenditure was other forms of promotion. Most effective among these is marketing through sporting activities that attract young males, the group most likely to be – or learn to be – heavier drinkers…In New Zealand and Australia, there is a long standing association between beer and those "old signifiers of masculine potency" and national pride, rugby players. Sports clubs are the social centre of many small communities in which youngsters learn about sports but also about drinking.

900 Rachel Jackson and others Interventions on Control of Alcohol Price, Promotion and Availability for Prevention of Alcohol Use Disorders in Adults and Young People (University of Sheffield, United Kingdom, 2009) < www.nice.org.uk > at 194.

901 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 196.

902 Ibid, at 185.

903 Linda Hill and Sally Casswell "Alcohol Advertising and Sponsorship: Commercial Freedom or Control in the Public Interest?" in N Heather and T Stockwell (eds) *The Essential Handbook of Treatment and Prevention of Alcohol Problems.* (John Wiley & Sons, Chichester, 2004) at 343.

19.26 Hill and Casswell explain what sponsorship entails:[904]

> Alcohol sponsorship deals for sports events, teams and clubs now routinely involve naming rights, and mentions in sports commentaries; signage on clothing, sports grounds and products retailed to fans; and opportunities for direct marketing through product donations and exclusive pourage rights. Packages worth millions of dollars are concluded between sports federations and alcohol corporates to be the official beer of the World Cup or the Olympics. Sponsorship money is the price of entry to an event and its marketing opportunities, but high 'leverage' spending on related media and retail promotions ensures maximum exposure and maximum sales.

19.27 Recent research has highlighted links between alcohol-industry sponsorship of sportspeople, in particular, the provision of free or discounted alcoholic beverages, and hazardous drinking. O'Brien and Kypri (2008) found that respondents receiving free or discounted alcohol and respondents who felt they should drink their sponsor's product and/or go to the sponsor's premises after practice, games or events reported higher levels of drinking.[905]

19.28 One commentary on O'Brien and Kypri's research notes:[906]

> Sport is universal. It has existed throughout civilization and is prominent throughout our lives, whether in our youth as a rite of passage, a regular pastime or an obsession. Similar things can be said of alcohol. Along with countless 'universals', both are also multi billion dollar industries. However, a major difference between the two is that the alcohol industry has something of an 'image' problem…on the contrary sport still has a more positive image…Thus associating with sports is enticing for the alcohol industry, trying to achieve credibility and cultural capital.

19.29 Gilmore (2009) discusses the growing importance of sponsorship:[907]

> It is the newer and more insidious forms of marketing that have not yet been properly assessed but are likely to be most influential on adolescents – the internet, mobile phone messages, sports and festival sponsorship, merchandising and social networking sites – the list is growing.

19.30 In New Zealand, alcohol-related sponsorship is ubiquitous in sport, music and the arts. A snapshot of the summer of 2010 shows the alcohol industry was well represented wherever people gathered. (Note that the sponsors are usually specific products, rather than producers generally.)

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904 Ibid, at 344.

905 Kerry S O'Brien and Kypros Kypri "Alcohol Industry Sponsorship and Hazardous Drinking among Sportspeople" (2008) 103 Addiction 1961.

906 J Rehm and F Kanteres "Alcohol and Sponsorship in Sport: Some Much Needed Evidence in an Ideological Discussion" (2008) 103 Addiction 1967 at 1967.

907 Ian Gilmore "Alcohol and Social Marketing" (2009) 339 BMJ 585 at 585.

TABLE 19.1: EXAMPLES OF EVENTS WITH ALCOHOL-RELATED SPONSORSHIP, SUMMER OF 2010	
Event	Sponsors include
Big Day Out (Auckland)	Smirnoff, Jim Beam, Speights Summit, Lindauer
Laneways Festival (Auckland)	Becks, Smirnoff
Jim Beam Home Grown (Wellington)	Jim Beam
NZI Wellington Sevens	Speights Summit
Rhythm and Vines (Gisborne)	Speights Summit, Yellowglen, Harvest cider
Heineken Tennis Open	Heineken, Deutz Marlborough Cuvee
Bay of Island Sailing Week	Heineken, Mt Gay Rum
Wellington Cup Racing Carnival	Stella Artois Pavilion
Phat10 New Years Festival (Inangahua)	Jagermeister, Speights Summit
Small Town Big Sounds (Mangitinoka)	Tui, Montana
Super 14 Pre-Season game (Blues and Hurricanes, at Mangitinoka)	Tui
Auckland Seafood Festival	Macs Brewery, Glengarry, 42 Below
2010 Michael Hill New Zealand Open (golf)	Allan Scott, Amisfield Wine Company, Heineken
Export Gold Series (surfing)	Export Gold
Splore Festival (Tapapakanga Regional Park)	Tiger, Cointreau, Jagermeister

United Kingdom law reform

19.31 The connections between alcohol advertising and youth drinking have recently been considered in the United Kingdom. In January 2010, the Health Committee of the House of Commons reported the results of its inquiry into alcohol. In relation to advertising, the committee concluded the United Kingdom's current system of industry self-regulation was failing the young people it was intended to protect and both the procedures and the scope of the system needed to be strengthened. The committee recommended that the regulation of alcohol promotion be independent of the alcohol and advertising industries; this would match best practice in other fields such as financial services and professional conduct.[908]

19.32 The House of Commons Health Committee also concluded that current controls do not adequately cover sponsorship or new media, which are becoming increasingly important in alcohol promotion. The codes must be extended to address better sponsorship. Expert guidance should be sought on how to improve the protection offered to young people in relation to new media.

908 House of Commons Health Committee *Alcohol: First Report of Session 2009–10* (London, 2010) < www.parliament.uk > at 6.

19.33 As well as an independent regulatory structure, the House of Commons Health Committee made several specific recommendations designed to restrict alcohol advertising and promotion in places where children are likely to be affected by such advertising.[909]

- Billboards and posters should not be located within 100 metres of any school.
- A 9pm watershed should be introduced for television advertising.
- Cinema advertising for alcohol should be restricted to films classified as R18.
- No medium should be used to advertise alcoholic drinks, if more than 10% of its audience or readership is under 18 (the current figure is 25%).
- No event should be sponsored if more than 10% of those attending are under 18 years of age.
- There must be more effective ways of restricting young people's access to new media which promote alcohol.
- Alcohol promotion should not be permitted on social networking sites.
- Notwithstanding the inadequacies of age restrictions on websites, they should be required on any site which includes alcohol promotion – this would cover the sites of those receiving alcohol sponsorship. This rule should also be extended to corporate alcohol websites.
- Alcohol advertising should be balanced by public health messaging (for example, for every five advertisements the advertiser should have to fund one public health advertisement).

19.34 In January 2010, the Home Secretary announced changes to licensing conditions that included restrictions on promotional activities. These changes will come into force in April 2010. Irresponsible promotions such as drinking games, speed drinking, women drink for free, or all you can drink for £10 will be banned, and the dispensing of alcohol directly into a person's mouth will be banned.[910]

NEW ZEALAND SITUATION

19.35 We are particularly concerned about the clearly established link demonstrated by recent research between the advertising of alcohol and the earlier onset of drinking, and heavier drinking by young people who already drink. This evidence and the widespread concern expressed in submissions and consultation following the publication of *Alcohol in Our Lives*, have led us to reconsider the issues around alcohol advertising.

19.36 We heard from many members of the public who expressed concern about the effectiveness of the current system of self-regulation. We have concluded the current self-regulatory system has specific problems, including the inability of current codes to affect content and exposure to advertising and the lack of rigour in pre-vetting and complaints processes. Next, we briefly discuss regulatory theory, before considering how alcohol advertising and promotion are regulated in New Zealand and the issues that arise from that regulation.

909 Ibid, at 80.

910 Home Office *Safe Sensible Social Selling Alcohol Responsibly: Government response to the consultation on the code of practice for alcohol retailers* (London, 2010) < www.homeoffice.gov.uk >.

Regulatory frameworks

19.37 Regulatory strategies are often described in terms of a pyramid,[911] or on a continuum, with government intervention and sanctions increasing along the continuum, or with each layer of the pyramid. At the two extremes are self-regulation (or industry-led regulation), and government regulation (or "command and control" regulation). In between are a variety of options that involve elements of both forms of regulation such as co-regulation and enforced self-regulation.

19.38 A self-regulatory scheme is one in which the rules that govern market behaviour are developed, administered and enforced by the people whose behaviour is to be governed, rather than being imposed by the state.[912] Self-regulation usually has no or little government involvement, other than the general underlying legal framework of consumer protection and laws relating to business, contracts and competition. Industry takes the lead in setting regulatory standards and enforcing compliance. A code of practice is the most common form of self-regulation.[913] Self-regulation is well established worldwide as one way to regulate alcohol advertising and promotion.

19.39 At the top of the regulatory pyramid is government regulation, or "command and control" regulation, which occurs when the government makes the rules.

19.40 Other regulatory models lie between these two extremes. One such model is enforced self-regulation, a concept Ayres and Braithwaite developed in 1992.[914] In Ayres and Braithwaite's analysis, enforced self-regulation describes a system where the state and individual firms negotiate to establish regulations that are particularised to each firm. Each firm in an industry is required to propose its own regulatory standards, if it is to avoid harsher, and less tailored, standards imposed by the state. This form of self-regulation is "enforced" in two senses: first, the state requires the firm to do the self-regulation, and, secondly, the privately written rules can be publicly enforced.

19.41 Co-regulation usually involves industry association self-regulation with some oversight or ratification by government.[915] Co-regulation has been described as having the advantage of allowing a higher level of control by government than self regulation, while still allowing industry-led regulation.[916]

19.42 Each regulatory model has its own strengths and weaknesses. Government regulation has the advantages of universal coverage, compulsion, legal enforceability and democratic accountability. It may provide effective overarching controls on market behaviour and minimum standards of quality, fitness and service performance.[917] However, government regulation is also criticised as being expensive, inefficient, stifling innovation and inviting enforcement

911 I Ayres and J Braithwaite *Responsive Regulation* (Oxford University Press, New York, 1992) at 39.

912 Ministry of Consumer Affairs *Market Self-Regulation and Codes of Practice* (Wellington, April 1997) at 2.

913 Ministry of Consumer Affairs *Industry-Led Regulation: Discussion Paper* (Wellington, July 2005) at 11.

914 I Ayres and J Braithwaite *Responsive Regulation* (Oxford University Press, New York, 1992) at 101.

915 Ibid, at 102.

916 *Report of the Steering Group for the Review of the Regulation of Alcohol Advertising* (Wellington, March 2007) at 56.

917 Ministry of Consumer Affairs *Market Self-Regulation and Codes of Practice* (Wellington, April 1997) at 5–6.

difficulties.[918] Punitive enforcement may lead to "regulatory cat and mouse", where firms defy the spirit of the law by exploiting loop-holes, and the state writes more and more specific rules to cover the loopholes.[919]

19.43 Self-regulation may be cheaper and more flexible than government regulation. Self-regulatory mechanisms do not require the close scrutiny of Cabinet, Parliament and government control agencies.[920] Self-regulation can encourage a culture of engagement, goodwill and responsibility on the part of the industry. The desire to avoid greater regulation can be a strong incentive for the industry to maintain standards.

19.44 On the other hand, self-regulation may be open to abuse and is marked by a lack of democratic accountability. When standards are set by industry groups with an economic interest in the regulated industry, there may be a risk of bias towards weak standards that favour business.[921] When broader public interests are involved, there may be a risk that industry-based groups do not take a sufficiently broad view of the world.[922]

Self-regulation in New Zealand

Advertising Standards Authority

19.45 The current system for regulating alcohol advertising in New Zealand is voluntary self-regulation, using codes of practice and a complaints process. The Advertising Standards Authority (ASA) is the body responsible for self-regulation of all advertising in all media. The ASA comprises 14 representatives from media groups, advertisers and advertising agencies and is monitored by the Ministry for Culture and Heritage.[923] The ASA receives no government funding – members pay an annual subscription.[924]

19.46 The ASA has developed Advertising Codes of Practice, including a Code for Advertising Liquor. Membership of the ASA ensures the codes apply to advertising agencies, magazine and newspaper publishers, television, cinema, outdoor advertising and radio.[925]

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918 R Fairman and C Yapp "Enforced Self-Regulation, Prescription, and Conceptions of Compliance within Small Businesses: The Impact of Enforcement" (2005) 27 Law and Policy 491.

919 I Ayres and J Braithwaite *Responsive Regulation* (Oxford University Press, New York, 1992) at 20.

920 Ministry of Consumer Affairs *Market Self-Regulation and Codes of Practice* (Wellington, 1997) at 7.

921 Bridget M Hutter *The Role of Non-state Actors in Regulation* (Discussion Paper 37, Economic and Social Research Council, London School of Economics, 2006) at 13.

922 Ibid, at 14.

923 Advertising Standards Authority *Annual Report 2008* (Wellington, 2008) at 2.

924 Advertising Standards Association *Advertising Standards Authority Incorporated Constitution* (Wellington, 2009) at 5. A special levy may be payable in addition to the subscription.

925 Advertising Standards Authority *Advertising Codes of Practice February 2009* at 13.

19.47 The Code for Advertising Liquor has six principles.[926]

- 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. Liquor advertisements shall not be directed at minors nor have strong or evident appeal to minors in particular. (2) Liquor advertisements shall not be shown on television between 6.00 am and 8.30 pm. (3) 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.

19.48 Most of the principles in the Code for Advertising Liquor are illustrated by guidelines that provide examples of how the principles are to be interpreted and applied.

19.49 In 2009 the Advertising Standards Authority published a new Code for the Naming, Labelling, Packaging and Promotion of Liquor. The purpose of this Code is "to ensure that liquor naming, labelling, packaging and promotions will be conducted in a manner that is not inconsistent with the need for responsibility, moderation, minimisation of harm, and minimisation of appeal and exposure to minors".[927]

Advertising Standards Complaints Board

19.50 The ASA funds a separate body called the Advertising Standards Complaints Board (referred to from here as the "Complaints Board") that adjudicates on complaints received about advertisements that may be in breach of the codes. The Complaints Board has eight members: four from the advertising and media industries and four public representatives with no connection to the media or advertising industries. A Liquor Promotions Complaints Board was established in February 2010 to consider any complaints received under the new code for the Naming, Labelling, Packaging and Promotion of Liquor.

926 Advertising Standards Authority *Advertising Codes of Practice February 2009* at 36.

927 Advertising Standards Authority *Code for the Naming, Labelling, Packaging and Promotion of Liquor* (Wellington, 2009) < www.asa.co.nz >.

Pre-vetting

19.51 The Association of New Zealand Advertisers administers a voluntary system of pre-vetting all liquor advertisements. This system is known as LAPS (Liquor Advertising Pre-Vetting System). The objective of LAPS is to ensure liquor advertising and liquor-sponsorship promotion meet all the standards prescribed by the self-regulatory codes that the ASA administers. Advertisers participating in LAPS have agreed not to run consumer or trade advertisements unless the LAPS adjudicator first approves them.

19.52 The Association of New Zealand Advertisers introduced the pre-vetting of liquor promotions, including naming (branding), packaging and labelling in February 2010 to help liquor suppliers to comply with the new Code for the Naming, Labelling, Packaging and Promotion of Liquor. The Liquor Promotions Pre-vetting System will provide advice to all companies and organisations on adhering to the new code.[928]

19.53 A LAPS code consultative committee meets twice a year, with representatives from relevant government agencies, including the Ministry of Health and Alcohol Advisory Council of New Zealand.

19.54 The Commercial Approvals Bureau was set-up in 1989 to approve the content of all television commercials before they are broadcast on any television or digital media outlet in New Zealand. Without Commercial Approvals Bureau approval, advertisements cannot be broadcast in New Zealand. Many television commercials advertising alcohol will receive both LAPS and Commercial Approvals Bureau approval before they are screened.

ISSUES OF CONCERN

Self-regulation

19.55 Earlier we described arguments raised by critics of self-regulation that there is a risk industry groups with economic interests in the regulated industry may lean towards weak standards that favour business or may not take a sufficiently broad view of the world. In our view, those arguments have a particular bearing on the self-regulation of alcohol advertising, where major public health issues are at stake. As discussed earlier in this chapter, doubts have been recently expressed about the self-regulation of alcohol advertising in the United Kingdom; and Babor and others (2010) report a 2008 paper concluded it was an ineffective driver of change towards good practice.[929]

19.56 One concern about self-regulation in the context of alcohol advertising is that the goals of the advertising industry and the government are not the same. The objectives of the National Drug Policy include "to prevent or delay the uptake of tobacco, alcohol, illegal and other drug use, particularly in Maori, Pacific peoples and young people" and "to reduce harm to individuals, families and communities from the risky consumption of alcohol".[930] The Code for Advertising Liquor that the ASA administers aims to ensure that liquor advertising is conducted

928 Association of New Zealand Advertisers *Liquor Promotion Pre-vetting System* (Wellington, 2009) < www.anza.co.nz >.

929 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 191.

930 National Drugs Policy "Objectives" available at < www.ndp.govt.nz >.

"in a manner that *neither conflicts with nor detracts from* the need for responsibility and moderation in liquor merchandising and consumption, and which does not *encourage consumption by* minors" (emphasis added).[931] The goals are clearly not aligned. As a result, in our view, it is inherently unlikely that a self-regulatory regime will result in sufficient restrictions of either advertising content or placement to achieve the government's stated goals.

19.57 The ASA argues that self-regulation is independent, flexible and timely. Independence is maintained by the requirement that the Complaints Board has a majority of public members, one of whom must chair the Complaints Board.[932] We note, however, that, although public health and community policy interests are currently well represented on the Complaints Board, there is no requirement for such interests to be represented.

Complaints

19.58 The complaints process is central to self-regulation. By its nature, this process is reactive, rather than proactive, and may limit the ability of the Complaints Board to take a systemic overview. In the case of the regulation of alcohol advertising, we do not believe that a reactive regulatory system is appropriate or sufficient.

19.59 In 2008, the Complaints Board received 28 complaints under the Code for Advertising Liquor. Seven complaints were upheld or settled, 11 complaints were not upheld, and there were no grounds to proceed with 10 complaints.[933] If a complaint is upheld, the advertiser, agency and media are requested to withdraw or amend the advertisement.[934]

19.60 Industry bodies often cite the low number of complaints to the Complaints Board as an indicator of the effectiveness of the codes. However, a variety of factors may cause low numbers of complaints: a lack of knowledge of the complaints process; a lack of energy among the public; or even a lack of faith in the complaints system. In addition, in a society saturated with advertising, offensive or inappropriate content becomes normalised and awareness of its impact is low.[935] In discussing the current self-regulatory regime, a 2007 review report suggests a "system that relies on complaints may not prevent irresponsible advertising, and may not address wider public concerns".[936]

931 Advertising Standards Authority *Advertising Codes of Practice February 2009* at 35.

932 Advertising Standards Authority *Bugger…It's Ok! The Case for Advertising Self-Regulation* (Wellington, 2008) at 3.

933 Advertising Standards Authority *Annual Report 2008* (Wellington, 2008) at 6.

934 Advertising Standards Authority *Bugger…It's Ok! The Case for Advertising Self-Regulation* (Wellington, 2008) at 6.

935 Sally Casswell and Anna Maxwell "Regulation of Alcohol Marketing: A Global View" (2005) 26 Journal of Public Health Policy 343 at 353.

936 *Report of the Steering Group for the Review of the Regulation of Alcohol Advertising* (2007) < www.ndp.govt.nz > at 48.

19.61 Casswell and Maxwell (2005) argue that because most modern advertising uses a "pulsing" technique (short bursts of advertising in a specific market followed by no advertising), campaigns are likely to be over by the time a complaint has been upheld and an advertisement removed.[937]

19.62 In 2008, it took an average 22 working days to process a complaint from receipt until notification of result.[938] One criticism of the complaints process is that a campaign may be over before the Complaints Board has made a decision. The ASA argues that, although this is true in some cases, it is not true with many advertisements, and a decision is still important because it creates a precedent to guide future campaigns. When deemed necessary, the Complaints Board meets outside its monthly schedule to deal with complaints it considers must be addressed without delay.[939]

19.63 The ASA notes that the release of Complaints Board decisions to the media and the public is an effective part of the penalty for an advertisement that is in breach of the codes. It also assists with educating the public and the industry about advertising standards.[940] But the release of a Complaints Board decision often leads to news stories in the mainstream media. These stories may result in more widespread publicity for the "banned" advertisement or campaign. Moreover, even if a complaint is withdrawn, many alcohol advertisements are available on the internet, where they may continue to be viewed indefinitely.

19.64 Panels appointed by the ASA have regularly reviewed the codes, but there is little oversight or independent audit of Complaints Board decisions.

Codes – content of advertisements

19.65 Self-regulatory codes are common worldwide. These codes usually contain measures such as requiring that advertising must not be aimed at young people or depict young people, must not link the consumption of alcohol to sexual or social success, and must not encourage immoderate consumption or portray intoxication and risky behaviour in conjunction with alcohol.[941] New Zealand's codes include all these elements.[942]

19.66 Babor and others (2010) note that codes on alcohol advertising usually develop as part of advertising industry efforts to maintain advertising standards through self-regulation. Research has shown that the codes, as commonly framed and implemented, do not have marked effects on the appeal and nature of the content.[943]

937 Sally Casswell and Anna Maxwell "Regulation of Alcohol Marketing: A Global View" (2005) 26 Journal of Public Health Policy 343 at 353.

938 Advertising Standards Authority *Annual Report 2008* (Wellington, 2008) at 22.

939 Ibid at 22.

940 Ibid, at 22.

941 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 191.

942 Advertising Standards Authority *Advertising Codes of Practice February 2009* at 36.

943 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 190.

19.67 The current New Zealand codes can be seen as vague, making broad general statements that are difficult to contravene. For example Principle 2 of the Code for Advertising Liquor requires, "Liquor advertisements shall observe a high standard of social responsibility".[944] Although guidelines elaborate on the meaning of "social responsibility", the phrase is so broad that its usefulness is questionable. The elasticity of the standards applied mean questionable advertising can occur without the standard being breached.

19.68 Babor and others' (2010) report on research that suggests voluntary codes are subject to under-interpretation and under-enforcement and that industry codes of self-regulation do not adequately address the range and sophistication of marketing influences.

> Codes are largely irrelevant to the way most alcohol advertising actually works. Much alcohol advertising and sports marketing does not show the product or drinking at all, but rather a simple logo. A successful mix of marketing promotions means that the media advertising to which the codes are applied can be restricted to association of the brand with images, lifestyles, and events that are attractive and relevant to target audiences, particularly the young.[945]
>
> Research in other cultures with codes of content operating has also shown the presence of 'artful circumvention' of the codes…Computer imagery, the use of humour and irony, and the use of colours and music that signify the brand without specifically showing the brand are ways in which the advertisements breach the intention of the codes while remaining technically within their guidelines. Children and adolescents are responsive to advertising elements such as humour, attractive and animated characters, youth-oriented music, and lifestyle/image advertising…Humour appears to be an important aspect of many highly appreciated advertisements and is not generally covered by codes…[946]

19.69 There are many examples of such marketing in New Zealand. Recent television advertisements do not particularly focus on the product or on drinking. For example, a Heineken television advertisement that recently screened in New Zealand featured a young woman showing her friends through her new home. The young women squeal at the thrill of an enormous walk-in wardrobe. Her friends' cries of delight are soon drowned out, however, by the young men in another part of the house discovering the walk-in fridge filled with bottles of Heineken.[947]

19.70 We are concerned that, despite the Code for Advertising Liquor stating that the paramount consideration is the spirit and intention of the code,[948] existing content controls in New Zealand do not have sufficient influence on alcohol advertising, particularly when advertisements push the boundaries of the codes. As noted in chapter 1, during our consultation, public concern focused on the glamourisation of alcohol through advertising and the extent to which advertising helps to shape a culture where drinking is seen to be the key

944 Ibid.

945 Ibid, at 180.

946 Ibid, at 192.

947 Available on YouTube < www.youtube.com >.

948 Advertising Standards Authority *Advertising Codes of Practice February 2009* at 36.

to social and sexual success. Young adults taking part in the consultation were particularly incredulous when informed the current voluntary codes supposedly ban advertisements that have these effects.

19.71 A recent decision relating to an advertisement for Woodstock pre-mixed bourbon and cola illustrates the point, and in our view also suggests a focus on the letter of the Code for Advertising Liquor, rather than its spirit. In the advertisement, a young man is talking to an older woman at a party. The narrator enters the shot, and says to camera, "There are many times you'll find yourself enjoying New Zealand's number one Kentucky Bourbon and Cola, but is it okay if your mate's Mum gives you a Woody?". The room full of partygoers goes silent and looks at him. The narrator says, "Yes, it is okay", and the party resumes as the woman hands the young man a Woodstock pre-mixed bourbon and cola. A second advertisement uses a similar scenario with a "mate's girlfriend".[949]

19.72 At its meeting in December 2009, the Complaints Board considered a complaint from the Alcohol Advisory Council of New Zealand concerning the Woodstock advertisement. The complaint alleged that the double entendre in the lines ending "gives you a Woody" breaches Guideline 2(d) (sexually provocative).[950] The advertiser responded that previous decisions from the Complaints Board have found the abbreviated Woody name only becomes offensive if used in juxtaposition with images that suggest sex.[951] LAPS approval for the advertisements was sought and granted in September 2009.

19.73 The complainant also claimed that the advertisement breached Principle 4 by having strong and evident appeal to minors.

19.74 In its decision, the Complaints Board said that although there were sexual connotations in relation to the abbreviated name of the product and the question posed by the narrator, the majority of the Complaints Board was of the view that the advertisement contained an element of adult humour and did not cross the threshold to be in breach of the Code for Advertising Liquor with regard to being sexually provocative or suggestive.[952] The majority concluded that the content of the advertisement did not have strong or evident appeal to minors in particular, and was not in breach of Principle 4.1, because of the low-key social gathering portrayed, with main characters aged 25 or older whose behaviour and demeanour was unexceptional.[953]

949 Available on YouTube <www.youtube.com>.

950 Advertising Standards Authority *Advertising Codes of Practice* (Wellington, 2009) at 36.

951 Three previous complaints about Woodstock advertisements had been upheld: Decision 02/04, Decision 02/53 and Decision 06/172 available from the Advertising Standards Authority <www.asa.co.nz>.

952 Advertising Standards Complaints Board Decision 09/687, at 9. A minority disagreed, saying the combination of the double entendre and the interaction between the man and the mother pushed the advertisement over the threshold.

953 The minority considered the appearance and behaviour of the lead actor and the role he played could lead people to believe he was younger than 25. The lead actor was prominent in the advertisement and minors might identify with him. The minority found the product was one with appeal to younger liquor consumers. Taking all these factors into account, the minority concluded that the advertisement did have strong or evident appeal to minors, so was in breach of Principle 4.1 and Guideline 4(a).

19.75 In making its decision, the Complaints Board was unanimous in its view that the advertisement met the high standard required and did not cross the threshold with regard to being sexually suggestive or provocative.[954]

19.76 The Complaints Board also rejected a viewer's complaint regarding a DB Export Gold "Over the Fence" television commercial. Based on the theme of a backyard barbeque, the advertisement opens with three young men drinking beer in their backyard:[955]

> They have just opened a bottle of Export Gold each and are poised to take their first sip (after clinking their bottles at the prospect of a companionable and laid back afternoon) when their attractive female neighbour and her girlfriends, who have been sunbathing next door, beckon the lads over the fence to join them. This they do, with scarcely a moment's hesitation, taking a chilly bin full of ice and some bottles of Export Gold with them to share with the girls. The action that ensues (much of it highly implausible) depicts a neighbourhood gathering that steadily grows in numbers and momentum as the day progresses – the crowd increasing with every new invitation issued from yet another welcoming neighbour to cross the next adjoining fence and join them – until they go full circle and end up back at the lads' villa where they happily remain, mixing and mingling, until after darkness falls. The final hurdle between the party and a beer fridge is a high concrete wall which a young man hits with a thud after attempting to vault it with an umbrella. The advertisement ends with an image of three bottles clinking and the words "EXPORT YOURSELF", and a chorus of voices is also heard saying "Export yourself".

19.77 The complainant said the advertisement did not observe the high standard of social responsibility required by Principal 2 of the Code for Advertising Liquor, and that the behaviour of many of the people in the advertisement was not "clearly appropriate for people of that age or older".

19.78 What becomes apparent from the arguments set out in the Advertising Standards Complaints Board's decision is that the codes are to some extent neutralised by the inventiveness of the creative agencies. Like the high-profile series of Tui advertisements featuring improbably beautiful women and a group of young men performing various antics to steal beer, the DB advertisements rely on humour, irony and hyperbole.

19.79 In defending the advertising campaign, DB told the Complaints Board that:[956]

> While the television commercial has an exuberant tone and contains humour DB submits that the humour is neither juvenile nor likely to have strong or evident appeal to minors in particular. Moreover, the key comedic antics portrayed range from highly unlikely to far-fetched to impossible and, as such, DB believes that the average viewer within the targeted adult audience would readily identify the humorous hyperbole for what it is and not take the portrayal seriously.

954 Advertising Standards Complaints Board Decision 09/749, at 8.

955 Advertising Standards Complaints Board Decision 09/051, at 7.

956 Ibid, at 5.

19.80 The problem, of course, is that although the advertisement is patently light-hearted (and indeed the complainant may well be dismissed as lacking a sense of humour), in real life there are all too many examples of a day's drinking, involving antics such as those portrayed in the advertisement, resulting in people having a long wait at an accident and emergency clinic or in a police cell.

19.81 But perhaps the more critical point is that regardless of whether the advertisement has "special appeal" to minors, the key messages and associations that underpin the whole advertisement are strongly aspirational for young people. DB refers to Export Gold's "brand associations" in its response to the Complaints Board, explaining how market research helped shape the script:[957]

> The insights derived from the respondents informed DB that the original "Over the Fence" television commercial script largely encapsulated the Export Gold persona including "relaxed confidence", energy and optimism – positive qualities which adults of all ages aspire to. The final TVC reflected many of the elements contained in the original "Over the Fence" script tested but contained a greater level of hyperbole and the gags/antics were also changed out and toned down, as necessary, both to more accurately encapsulate the brand persona and to achieve full compliance with the Advertising Codes of Practice.

19.82 What is clear from this and other decisions of the Complaints Board[958] is that the subtle associations embedded in the sophisticated and highly creative alcohol brand advertising campaigns common today are unlikely to be caught by literal interpretations of the codes. The use of irony, hyperbole and heavy doses of "Kiwi humour" serve as a very effective foil to the industry codes.

19.83 In our view, it is regrettable that in its decisions the Complaints Board does not discuss the spirit and intention of the code or of other aspects of the code, such as the appeal to minors generally. Principle 4(1) requires that advertisements should not be directed at minors or have strong or evident appeal to minors *in particular*. Thus, even if an advertisement appeals to minors, it seems it may comply with the letter of the code if it also appeals strongly to the wider population.

Codes – limiting exposure to advertising

19.84 The concerns around alcohol advertising and young people relate not only to content, but also to levels of exposure. Winter and others (2008) found that Australian children and teenagers aged under the legal drinking age are exposed to high levels of alcohol advertising on television, and suggest the current self-regulatory system for minimising such exposure appears to be ineffective in Australia.[959] A New Zealand study found that 90% of the population aged 5 to 17 saw at least one televised alcohol advertisement each week.[960] Fielder and others (2009) found that adolescents (aged 13 to 17 years) in one Australian

957 Ibid, at 4.

958 See, for example, the Board's consideration of various complaints relating to Tui advertisements on the Advertising Standards Authority website < www.asa.co.nz >.

959 Matthew Winter, Robert Donovan and Lynda Fielder "Exposure of Children and Adolescents to Alcohol Advertising on Television in Australia" (2008) 69 Journal of Studies on Alcohol and Drugs 676 at 682.

960 Tim McCreanor and others "Creating Intoxigenic Environments: Marketing Alcohol to Young People in Aotearoa New Zealand" (2008) 67 Social Science and Medicine 938 at 940.

metropolitan area saw nearly as much television alcohol advertising as the legal-aged 18 to 24 year olds and, in the case of full-strength beer and wine advertising, saw more advertising than young adults.[961]

19.85 In his commentary on the research by Fielder and others, Jernigan suggests the Loi Evin ban on most forms of alcohol advertising in France is the most effective approach to reducing youth exposure. However, Jernigan notes the political infeasibility of such restrictions has led many countries to rely on some form of industry self-regulation or co-regulation.[962]

19.86 Restrictions that limit exposure are the most common forms of legislated restrictions on alcohol advertising worldwide. However, research on their effectiveness is limited.[963] Studies find that advertising bans have no substantial effect on total consumption.[964] Some researchers argue that the more comprehensive restrictions are, the greater their effect,[965] but others argue that restrictions aimed at exposure have an additive effect when accompanied by other measures within a general environment of restrictive measures.[966]

19.87 Principle 4 of the Code for Advertising Liquor includes minimal provisions for limiting exposure to advertising.[967] These minimal provisions work well in that they are adhered to, but the intention to reduce exposure, particularly for people aged under the legal purchase age, is compromised by the multi-pronged approach of alcohol promotion. Promoting alcohol is much more than television advertising.

19.88 Federal Trade Commission figures for 1999 show that alcohol producers in the United States spend two-to-three times their measured media expenditure on unmeasured promotions such as sponsorships, internet advertising, point-of-sale materials, product placement and other means.[968] The mass media advertising expenditure is thought to be as much as four times less than the total marketing effort, which also includes sales promotions and electronic communications.[969]

19.89 The growing importance of the brand as the dominant feature, where the brand itself is the product, is particularly evident in youth culture, so marketers use multifaceted campaigns. Alcohol companies use email, cell phones, sports and music to embed the use of their products in the youth culture.[970]

961 Lynda Fielder, Robert Donovan and Robyn Ouschan "Exposure of Children and Adolescents to Alcohol Advertising on Australian Metropolitan Free to Air Television" (2009) 104 Addiction 1157 at 1163.

962 D H Jernigan "Alcohol Advertising Regulation: Where to from here?" (2009) 104 Addiction 1166 at 1166.

963 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 194.

964 Ibid, at 195.

965 Ibid.

966 Ibid, at 196.

967 See [1.47].

968 Sally Casswell and Anna Maxwell "Regulation of Alcohol Marketing: A Global View" (2005) 26 Journal of Public Health Policy 343 at 343.

969 Peter Anderson and others "Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A Systematic Review of Longitudinal Studies" (2009) 44 Alcohol & Alcoholism 229 at 230.

970 Sally Casswell and Anna Maxwell "Regulation of Alcohol Marketing: A Global View" (2005) 26 Journal of Public Health Policy 343 at 344.

19.90 We believe the measures in New Zealand for limiting the exposure of young people to alcohol promotion are inadequate. However, exposure to alcohol promotion is an extremely sophisticated and complex issue, so it must be addressed in a number of ways.

Sponsorship and content and exposure codes

19.91 Concerns raised about advertising codes in relation to content controls and attempts to limit the exposure of youth are compounded for sponsorship, because of an even more liberal regulatory situation.

19.92 The Code for Liquor Advertising specifically excludes sponsorship from the definition of liquor advertisement.[971] The code contains a separate definition for a sponsorship credit, being an acknowledgment of a liquor advertiser's sponsorship, and a sponsorship advertisement, being an advertisement that clearly indicates the advertiser is sponsoring a person, a competition, an activity or an event. Sponsorship advertisements and sponsorship credits may be broadcast at any time except during programmes intended particularly for minors.[972]

19.93 Principle 4(4) of the Code for Advertising Liquor requires broadcasters to 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.[973]

19.94 Principle 5 of the Code for Advertising Liquor requires that "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".[974] The guidelines to Principle 5 state that sponsorship advertisements and sponsorship credits shall:

- not contain a sales message;
- not show a product or product packaging;
- not imitate or use any parts of product advertisements from any media;
- not portray consumption of liquor;
- only briefly and in a subordinate way mention or portray the sponsor's name and/or brand name and/or logo orally and/or visually.[975]

971 Advertising Standards Authority *Advertising Codes of Practice February 2009* at 35.

972 Ibid, at 38.

973 Ibid, at 37.

974 Ibid, at 38.

975 Ibid, at 38.

Code for the Naming, Labelling, Packaging, and Promotion of Liquor

19.95 The recent Code for the Naming, Labelling, Packaging and Promotion of Liquor applies to all promotional materials and activities generated by producers, distributors or retailers, and specifically includes sponsorship, which is carefully defined.[976]

- Guideline 3 of the code says producers, distributors or retailers should not engage in sponsorship where people aged under 18 are likely to comprise more than 25 % of the participants, audiences or spectators.[977]
- Guideline 7 of the code requires that point-of-sale materials and promotions for liquor must not be targeted at an audience aged under 18 or be available in unrestricted areas at events or activities where more than 25 % of the expected audience is aged under 18.[978]

19.96 The usefulness of this code in restricting the content or exposure impact of sponsorship is questionable. For example, although there are restrictions on advertisements that use heroes of the young or show links between alcohol and sporting success, the 2009 Steinlager Rugby Awards were widely reported in all media at all times of the day without breaching any codes.

19.97 The Jim Beam Homegrown event, extensively advertised on the youth-oriented television channel C4, promised to "Get 15,000 people together on the Wellington Waterfront on a premium summer day, put Kiwi music centre stage and cut loose!".[979] The Jim Beam Homegrown event is restricted to people aged 15 and over. Those aged under 15 years must have a parent or guardian with them. The event's website carries significant warnings that participants should bring identification to ensure entry to the bar area and that it is not a bring-your-own event. The appeal of a New Zealand music event to people under the legal purchase age is clear and is recognised by the event promoters. It is impossible to determine whether 25 % of attendees are under 18. In our view, it is inappropriate for alcohol companies or brands to have the naming rights for this type of event.

REVIEWS OF ALCOHOL ADVERTISING

19.98 The concerns submitters raised in relation to alcohol advertising are not new. There has been considerable interest in the regulation of alcohol advertising in New Zealand for many years, and several reports have been written and reviews taken place. In 1986, responsibility for advertising standards was shared between the Broadcasting Standards Authority and the ASA.[980] A 1986 report on the sale of liquor in New Zealand concluded the advertising of alcohol should be subject to more control, but legislation was not the appropriate way to do this. Instead, the report recommended that the Committee of Advertising Practice, which administered the code, should include a representative of the public interest.[981]

976 Advertising Standards Authority *Code for the Naming, Labelling, Packaging and Promotion of Liquor* < www.asa.co.nz >.

977 Ibid.

978 Ibid.

979 Jim Beam Homegrown promotion < www.homegrown.net >.

980 Alcohol Advisory Council of New Zealand *The History of Alcohol Advertising on Radio and Television* (2004) < www.alcohol.org.nz > at 2.

981 *Report of the Working Party on Liquor: The Sale of Liquor in New Zealand* (Wellington, Department of Justice, 1986) at 44.

19.99 In 1991, the Broadcasting Standards Authority Review of the alcohol advertising code recommended liquor advertisements that featured brand and price be allowed on radio and television under strict conditions.[982]

19.100 In 1992, Cabinet approved recommendations for the industry to become self-regulating, shifting responsibility from the Broadcasting Standards Authority to the ASA and the Advertising Standards Complaints Board.[983] Since 1994, the ASA has initiated regular reviews of the Code for Advertising Liquor. The Potter Review (1994),[984] the Barker Review (1998)[985] and the Hardie Boys Review (2003)[986] all recommended small changes to strengthen the codes.[987] After receiving the Potter Review, the ASA decided the code should apply to all media (not just broadcast media).[988] The Hardie Boys Review recommended a change to the watershed for television advertising from 9pm to 8.30pm.[989] Each review called for further research into the relationship between liquor advertising and liquor abuse.

Proposed legislative changes

19.101 The Liquor Advertising (Television and Radio) Bill, a Member's Bill sponsored by Jeanette Fitzsimons, was introduced in September 2006. The Bill proposed that no person could broadcast or arrange for the broadcast of any liquor advertisement in New Zealand. Exceptions were allowed for broadcasts originating outside New Zealand or films made outside New Zealand. The Bill proposed a maximum fine of $50,000. The Bill was debated in July 2009, but did not progress to its first reading.

19.102 The Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill, another Member's Bill sponsored by Brendon Burns, was introduced to Parliament in 2005 and covered two main subjects: the minimum legal purchase age and broadcasting liquor advertising. The Bill proposed raising the minimum legal purchase age for alcohol from 18 to 20 years, changing the watershed for television from 8:30pm to 10pm, and moving the jurisdiction for the regulation of broadcast advertising from the ASA to the Broadcasting Standards Authority. In November 2006, Parliament voted against raising the minimum legal purchase age for alcohol. The broadcast advertising component of the Bill had its first reading in June 2005, but did not progress to a second reading, following debate in June 2009.

982 The code was changed to meet the requirements of the report and was adopted in February 1992: *Report of the Review Team on Liquor Advertising on Radio and Television* (Wellington, 1994) at 7.

983 Cabinet Minute "Self-Regulation of the Advertising Industry" CAB(92) M 10/14.

984 *Report of the Review Team on Liquor Advertising on Radio and Television* (1994)

985 *Report of the Review Team on Liquor Advertising on Radio and Television* (1998).

986 *Report of the Review Team on Liquor Advertising on Radio and Television* (2003).

987 In 1997, the Robertson Review noted the Potter Review had led to the ASA making beneficial changes.

988 *Report of the Review Team on Liquor Advertising on Radio and Television* (1998) at 7.

989 *Report of the Review Team on Liquor Advertising on Radio and Television* (2003) at 5.

Review of the regulation of alcohol advertising

19.103 A government-initiated review of the regulation of alcohol advertising started in 2006. The steering group for the review comprised government officials, members of relevant organisations and individuals with relevant experience.

19.104 The steering group recommended a legislative framework that included public policy goals. The steering group said the goals should ensure advertising does not conflict or detract from the need for responsibility and moderation in liquor consumption, and should minimise the exposure to alcohol advertising of those under the legal purchase age.[990]

19.105 The steering group also recommended the regulatory system should include all forms of liquor promotion and marketing communications, there should be formal powers to investigate breaches of the rules, and there should be increased monitoring and research. The steering group found insufficient evidence to determine whether restrictions on sponsorship were warranted.[991]

19.106 The review findings contributed to the Sale and Supply of Liquor and Liquor Enforcement Bill currently being considered by Select Committee.

Sale and Supply of Liquor and Liquor Enforcement Bill

19.107 The Sale and Supply of Liquor and Liquor Enforcement Bill proposes a new legislative system of "enforced self-regulation" of alcohol advertising. Clause 39 of the Bill inserts into the Sale of Liquor Act 1989 a new Part 6A, which concerns advertising and promotions. A new section 136A outlines the principles of Part 6A.

19.108 The proposed principles are that:

- liquor advertising and liquor promotion should not be inconsistent with the promotion of responsibility and moderation in the consumption of liquor (section 136A(a));
- the overall exposure of children and young people under the age of 18 to liquor advertising and liquor promotion should be minimised (section 136A(b)); and
- liquor advertising and liquor promotion should not hold strong appeal to children or young people (section 136A(c))

19.109 A new section 136B provides for the Ministers of Justice and Health to authorise a body corporate (the Liquor Advertising Advisory Body (LAAB)) to undertake several functions, including developing and reviewing codes for liquor advertising and promotion consistent with the principles of Part 6A, administering a complaints system, and referring serious or persistent breaches of the system's codes to the Director-General of Health.

990 *Report of the Steering Group for the Review of the Regulation of Alcohol Advertising* (Wellington, 2007) <www.ndp.govt.nz> at 71.

991 Ibid, at 72.

19.110 The explanatory note to the Bill indicates that the Advertising Standards Authority will be appointed as the LAAB.[992] The LAAB must act in accordance with a memorandum of understanding agreed with the Director-General of Health.[993]

19.111 The new framework set out in the Bill provides for a cease and desist procedure. The LAAB may act on a complaint or following a reference from the Director-General of Health or of its own motion. If the LAAB decides a liquor advertisement or promotion is contrary to the principles of Part 6A or has or is likely to have an effect contrary to those principles, the LAAB may advise the Director-General to issue a cease and desist order. If the Director-General agrees the advertisement is in breach, they may then order the person not to publish the same or a similar advertisement or organise a similar promotion in future, or to withdraw or discontinue the advertisement or promotion, or to publish corrective advertising. However, the Director-General may issue a cease and desist order only on the written advice of the LAAB.[994]

19.112 An offence is proposed for failing or refusing to comply with a cease and desist order, with a maximum fine of $200,000 for a body corporate, or $60,000 for others.

Analysis of proposed new system of enforced self-regulation of alcohol advertising

19.113 In our view, the structure proposed under the Sale and Supply of Liquor and Liquor Enforcement Bill does not go far enough to deal with the issues raised by the advertising and promotion of alcohol in New Zealand. In real terms, the new mechanisms the Bill introduces will result in only minor amendments to the status quo. The new system is not sufficiently robust and does not introduce greater accountability.

19.114 In our view, the enhancements proposed to the self-regulatory system will not address the concerns discussed about the failure of content controls to sufficiently influence alcohol advertising. Although the principles will be set out in legislation, the public will remain reliant on the ASA (albeit in the shape of the LAAB) to incorporate and reflect those principles in its code. The Bill does not provide any mechanisms for achieving the principles. It is unclear from the Bill what input the government will have in the development and review of codes.

19.115 Although the LAAB will have the power to act of its own motion, the regulatory system established under the Bill will remain largely complaints driven. The Bill does not address the concerns expressed earlier about this aspect of the current regulatory environment: that is, that it is reactive and there is little oversight or independent audit of the decisions of the Advertising Standards Complaints Board.

992 Sale and Supply of Liquor Enforcement Bill 254-1, Explanatory Note 32.

993 Sale and Supply of Liquor Enforcement Bill 2008, cl 39, new s 136B(2).

994 Sale and Supply of Liquor and Liquor Enforcement Bill, cl 39, new s 136D.

19.116 We are concerned about the proposed role of the Director-General of Health. The inclusion of the Director-General in the framework suggests some accountability to the government is built into the system, but under the Bill, the Director-General has no right to act independently – they are unable to act without written instructions from the LAAB. This has the potential to adversely affect the integrity of the role of the Director-General, who may be seen as ultimately responsible for advertising that, in fact, they are powerless to deal with.

19.117 The ability of the Director-General of Health to issue cease and desist orders has been described as providing a legislative backstop to the self-regulatory scheme, but the ASA maintains that decisions of the Advertising Standards Complaints Board are already invariably complied with.[995] This power, therefore, adds nothing by way of enforcement in real terms, and yet places the Director-General in the unsatisfactory position of appearing to be a final layer of enforcement, but without any independent means of pursuing a complaint. It simply adds another layer of bureaucracy before a cease and desist order may be issued. In our view, the resulting system will not be able to respond quickly enough to stop "bad" advertising or promotions from running their course.

19.118 The new elements added to create an enforced self-regulatory system also have the potential to result in confusion about where legal and political accountabilities lie. In our view, decisions made and powers exercised by the LAAB will be judicially reviewable. The exercise of power is reviewable if it is "in substance public" or has "important public consequences".[996] Judicial review applications may lie against non-statutory industry bodies exercising public regulatory functions.[997]

19.119 Applications for judicial review of the new LAAB may come from a variety of sources, including members of the community who do not consider there has been appropriate engagement with the community in reviewing or developing the codes. It is unclear whether the Ministers of Health and Justice (who appoint the LAAB) would have any legal accountability in any action for judicial review.

19.120 A separate issue is where the political accountabilities lie. The Ministers of Health and Justice, although ultimately politically accountable, have little control over the performance of the LAAB. These ministers have the power to withdraw recognition from the LAAB,[998] but no criteria or timeframes are specified for the exercise of this power. The Bill does not set out any less drastic process for resolving disputes or dealing with concerns that arise.

995 Advertising Standards Authority *Bugger…It's Ok! The Case for Advertising Self-Regulation* (Wellington, 2008) at 5.

996 Philip A Joseph *Constitutional and Administrative Law in New Zealand* (3rd ed, Brookers, Wellington, 2007) 838, citing *Royal Australasian College of Surgeons v Phipps* [1999] 3 NZLR 1 at 11 (CA); *O'Leary v Health Funding Authority* [2001] NZAR 717; *Wilson v White* [2005] 1 NZLR 189 at 196 (CA).

997 *R v Panel on Take-overs and Mergers; Ex p Datafin plc* [1987] 1 QB 815 (CA); *Electoral Commission v Cameron* [1997] 2 NZLR 421. In *Electoral Commission v Cameron*, the Court of Appeal held that the Advertising Standards Complaints Board was exercising public power in carrying out its public regulatory role in accordance with powers conferred by a private organisation (the Advertising Standards Authority), and that public power was reviewable on public law principles.

998 Sale and Supply of Liquor and Liquor Enforcement Bill, cl 39, new s 136B(3).

19.121 As an industry-funded body, the LAAB will also have accountabilities to its members that are not necessarily consistent with the policy goals underlying the Bill.

Conclusion

19.122 In our view, the provisions of the Sale and Supply of Liquor and Liquor Enforcement Bill relating to advertising will not promote a regulatory regime that will make a significant contribution to addressing alcohol-related harm. Instead, the framework proposed creates an unacceptable mixture of public and private mechanisms, which is unsatisfactory in principle and will cause confusion in practice.

NEW APPROACH

Need for change

19.123 Having considered the recent research linking the advertising of alcohol and increased alcohol consumption by young people, and having heard the views of submitters and consultees, we have come to the view that greater controls are needed on advertising, sponsorship and other promotion of alcohol. These controls are in terms of the content of advertising, the levels of exposure to advertising and sponsorship messages, and inappropriate sales promotions. We now believe there is a strong argument that a self-regulatory body for alcohol advertising is inappropriate.

19.124 We have considered and rejected the idea of replacing the current self-regulatory body with a government regulator. Although government regulation would have advantages in terms of independence and democratic accountability, it would be expensive to establish and maintain, may lack flexibility and take longer to resolve complaints, and would not encourage industry cooperation. Government regulation would also not resolve the problems identified with the use of content codes.

19.125 Many submitters urged us to consider the French law, which places comprehensive restrictions on the promotion of alcohol. Others suggested advertising and alcohol-related sponsorship should be banned, following the "smoke-free" approach. We have considered both regimes. Our preferred option is a new model for regulating alcohol advertising and sponsorship that draws from both the Loi Evin and tobacco model, enabling both content and exposure controls and specific measures to address alcohol-related sponsorship. We favour a staged introduction of progressively restrictive measures to limit the exposure to and the content of alcohol promotion of all kinds.

French law, Loi Evin

19.126 Many submitters and people attending consultation meetings called for the implementation of strict alcohol advertising controls. The French law, Loi Evin, was cited as an example New Zealand should follow.[999] The French law, passed in 1991, attempts to both limit exposure to alcohol advertising and restrict content, lessening any appeal to at-risk populations.

999 The Loi Evin takes its name from the French minister who introduced the original law, Claude Evin.

19.127 The effect of the Loi Evin is as follows:[1000]

- All drinks over 1.2% alcohol by volume are considered alcoholic beverages.
- No advertising should be targeted at young people.
- No advertising is allowed on television or in cinemas.
- No sponsorship of cultural or sport events is permitted.
- Advertising is permitted only in the press for adults, on billboards, on radio channels (under precise conditions), and at special events or places such as wine fairs or wine museums.
- When advertising is permitted, its content is controlled. Messages and images may refer only to the qualities of products such as degree, origin, composition, means of production, and patterns of consumption. Court decisions have led to no use of images of drinkers or depiction of a drinking atmosphere.
- A health message must be included on each advertisement to the effect that "alcohol abuse is dangerous for health".

19.128 The Loi Evin has been highly controversial throughout its existence, and its implementation has been challenged.[1001] However, the Loi Evin has withstood important challenges in European Courts. A major point of contention is the provision that forbids French broadcasters from showing alcohol brands on athletes' clothing and sports stadium hoardings, effectively banning the broadcast of many foreign sporting events where these marketing techniques are common. In 2001, France agreed to relax the law to exempt multinational sporting competitions, but the law still applies to sports events in which France competes against another country. In July 2004, the European Court ruled that "such a ban constitutes a restriction on the freedom to provide services, but is justified by the aim of protecting the public".[1002]

19.129 The Loi Evin includes stiff penalties for breaches. These penalties create a significant deterrent to help ensure the law is adhered to.

19.130 In our view, the Loi Evin does not provide a model that can readily be imported as a whole in the New Zealand context. However, elements of the French law should be considered.

Tobacco model

19.131 Another suggestion that emerged from submissions and consultation was the adoption of an approach to alcohol advertising similar to that taken in New Zealand to tobacco. There are major restrictions on the marketing of tobacco products in New Zealand. Restrictions began on a voluntary basis with legislative controls gradually introduced.

1000 A Rigaud and M Craplet "The Loi Evin: A French Exception" (2004) The Globe 1&2 at 34.

1001 P J Sulkunen "The Public Health Cycle: The Evin Law and the Total Consumption Model in French Alcohol Policy" (Paper presented at the annual meeting of the American Sociological Association, Marriott Hotel, Loews Philadelphia Hotel, Philadelphia, 2008) < www.allacademic.com >.

1002 A Rigaud and M Craplet "The Loi Evin: A French Exception" (2004) The Globe 1&2 at 35.

19.132 Tobacco advertising was voluntarily stopped (by state-controlled broadcasters) on television and radio in 1963. In 1973, government and industry agreed to end tobacco advertising on cinema screens and outdoor billboards. By 1981, tobacco advertising was restricted to print media, shop signs and sponsorship of sporting and other events. From the 1970s to 1988, the tobacco industry placed voluntary health warnings on cigarette packets. In 1988, regulations were introduced making health warnings compulsory.

19.133 In 1990, the Smoke-free Environments Act introduced comprehensive prohibitions on tobacco advertising, although these prohibitions did not apply to films or magazines originating outside New Zealand. Existing sponsorship was to be phased out by 1993, and there were to be no new tobacco sponsorship deals. A ban on print advertising and shop signs was introduced in December 1990.[1003]

19.134 Advertising of tobacco brand names on other goods was also banned by the Smoke-free Environments Act 1990 with qualified exceptions for goods that had been on sale before the Act came into force. It became illegal to sell tobacco brand named items such as clothing or coffee.[1004]

19.135 The Smoke-free Environments Act 1990 set up the Health Sponsorship Council. One of the council's principal early functions was to replace tobacco sponsorships prohibited by the new legislation. The council became responsible for events such as the Rothmans Rally, Benson and Hedges Fashion Awards, and Benson and Hedges Tennis Open. Since that time of mandatory sponsorship replacement, the council has moved on to a variety of sponsorship to promote health brands and messages as part of its marketing mix.[1005] In 2008, the council's cost of services included programme expenditure of $3,759,153 on Smoke-free, $3,153,340 on Smoke-free Youth, and $1,293,026 on Auahi Kore.[1006]

Recommended model

19.136 It is our view that the evidence linking drinking and advertising and sponsorship is compelling, particularly with regard to young people.

19.137 However, we believe the available evidence does not justify a recommendation for a total ban on alcohol advertising and sponsorship at this point. Unlike tobacco, it is possible to consume alcohol at low-risk levels. It is possible that, at some future date, as the health risks of alcohol continue to be assessed, alcohol will move closer to tobacco in terms of widely accepted toxicity, but current evidence does not support a policy goal of total prohibition of advertising and sponsorship. However, the contribution of alcohol to adverse health outcomes and to crime and the links between advertising, sponsorship and consumption of alcohol must continue to be monitored.

1003 In practice, shop advertising still occurred through price notices, which were allowed. In 1995, tobacco manufacturers voluntarily agreed to limit price notices to 1 square metre per shop. In 1997, the legislation was amended to eliminate all shop advertising with price advertisements restricted to the size of a business card from December 1998. Product displays were permitted, albeit with restrictions.

1004 Murray Laugesen and Boyd Swinburn "New Zealand's Tobacco Control Programme 1985 to 1988" (2000) 9 Tobacco Control 155 at 158.

1005 Submission of the Health Sponsorship Council (submission dated October 2009).

1006 Health Sponsorship Council *Annual Report for the Year Ended 30 June 2008* (Wellington, 2008) < www.hsc.org.nz > at 40.

19.138 The smoke-free legislative model provides a useful template for a process of introducing greater restrictions on alcohol advertising and sponsorship. In terms of what those greater restrictions should be, we are attracted to the concept underlying the Loi Evin. This concept is one of limiting exposure to all kinds of alcohol promotion, and limiting content by stripping away the inevitable associations advertising draws between alcohol and personal, sexual, social or sporting success.

19.139 We, therefore, recommend that there should be a programme of progressively more restrictive measures, with the final goal being a set of legislative restrictions on advertising and sponsorship that allow only objective product information. Because of the obvious concerns that restricting advertising and sponsorship will have for the industry and for many organisations and events, such a project would have to be introduced over time. We believe it will take some years to go through a series of managed phases, so a period of five years should be allowed for implementation.

19.140 We recommend that an interdepartmental committee be established to plan and implement the introduction of greater restrictions on all forms of alcohol promotion. This committee should be overseen jointly by the Ministers of Health and Justice and led by the Ministry of Health.

19.141 We envisage the interdepartmental committee would include representatives of the Ministries of Health, Justice, and Culture and Heritage, and the Alcohol Advisory Council of New Zealand. The committee would consult widely, including with the New Zealand Police, advertisers and their agencies, broadcasters, the ASA, the Broadcasting Standards Authority, the Alcohol Regulatory Authority (the statutory tribunal that we recommend to replace the Liquor Licensing Authority), and the Health Sponsorship Council.

19.142 We believe there should be a staged programme to limit exposure to alcohol promotion and restrict the content of alcohol promotion messages. Stage 1 should introduce immediate interventions targeted at sales promotions and advertising that encourage excessive consumption of alcohol or inappropriately stimulate demand for its purchase. At stage 2 the interdepartmental committee should plan and implement a programme that aims to further reduce exposure to advertising, particularly of young people, and increase control of advertising content, and stage 3 should further strengthen content and sponsorship restrictions. These stages are explained below.

19.143 While we do not consider that self-regulation is satisfactory for alcohol-related advertising and sponsorship, we do not recommend any immediate change to the role of the ASA. Within the limitations of a self-regulatory model, the New Zealand regime of regularly reviewed codes and the administration of the complaints process is well managed. This should largely continue as the legislative restrictions we envisage are introduced. The proposed new restrictions will make clearer distinctions between legal and illegal alcohol advertising, and between acceptable and unacceptable promotions. As the interdepartmental committee works through the recommended process, there will increasingly be less reliance on industry self-regulation because a breach of the law would be an offence enforced by police.

Stage 1

19.144 In stage 1 we propose strengthening section 154A of the Sale of Liquor Act 1989, which makes it an offence to promote the excessive consumption of alcohol, and extending it to other forms of unacceptable promotion. Some measures should be introduced immediately to deal with promotions that encourage the excessive consumption of alcohol or inappropriately stimulate the demand for its purchase.

Strengthening section 154A of the Sale of Liquor Act 1989

19.145 Section 154A of the Sale of Liquor Act 1989 makes it an offence for licensees and managers to do anything in the promotion of the business conducted on the premises or any event or activity held or conducted on the premises that is intended or likely to encourage people on the premises to consume alcohol to an excessive extent.

19.146 Promotions held by the Liquor Licensing Authority to have breached section 154A have included the offer of six double spirits for $10 between 8pm and 10pm (later reduced to three, which was also held to be unacceptable[1007]), the offer of a cocktail of spirits in a teapot[1008] and the offer of all you can drink between 9pm and 3am for a $39 cover charge.[1009] A sign outside on-licence premises that said, "why study for exams when you can get drunk with your mates" was also held to breach section 154A.[1010]

19.147 Section 154A applies only to promotions that encourage excessive consumption on licensed premises: the section does not apply to promotions that encourage excessive consumption of alcohol elsewhere. This seems wrong in principle. A sign outside an off-licence inviting students to take a cheap 12-pack home to get drunk is just as irresponsible as a sign inviting students to get drunk on the premises.

19.148 Another limitation is that section 154A applies only to licensees and managers. The section does not apply to other people, such as alcohol producers, who might also promote or encourage excessive consumption of alcohol in the course of business.

19.149 We recommend a new offence that extends the application of section 154A to include encouraging excessive consumption at any place. It should be an offence, if, in the course of carrying on a business, the consumption of an excessive amount of alcohol is encouraged, whether on licensed premises or at any other place.

1007 *Bowling Green* (LLA, PH 776-778/2005).

1008 *One Blue Dog* (LLA, PH 1059-1062/2006).

1009 *Mitchell Rentals Ltd (Bahama Hut)* (LLA, PH 1488/2009).

1010 *Nicholas Charles Ball* (LLA, PH 98/2006).

Promotions targeted at young people

19.150 Promotions and advertising targeted at young people are a particular problem. As we have already outlined, research shows that people up to the age of 25 suffer a disproportionate level of alcohol-related harm. Research also confirms that alcohol promotions and advertising have a significant effect on young people and contribute to their drinking.[1011]

19.151 Although the Code for Advertising Liquor contains principles designed to prevent promotions and advertising targeted at young people, the existing system of self-regulation has failed to curb alcohol marketing that is clearly aimed at this group.

19.152 In our view, there is an urgent and immediate need to address this issue. Accordingly, we propose it be an offence to promote or advertise alcohol in a manner that has special appeal to people under the age of 20. The offence would apply even if the promotion or advertisement would also appeal to other age groups provided it is likely to have particular appeal to minors. This may, for example, prevent some promotions and advertising targeted specifically at university orientation events.

19.153 We have described the difficulties that arise with attempts to control advertising content. We accept that the proposed offence is unlikely to eliminate inappropriate advertising. However, in our view such an offence would stop some of the blatant advertising that is clearly targeted at young people. It is, therefore, a useful first step.

Promoting substantial discounts

19.154 There is considerable evidence of the impact of price on alcohol consumption and a positive relationship between alcohol affordability and alcohol consumption.[1012] Many submitters raised concerns about the impact the heavy discounting and promotion of alcohol is having on vulnerable groups, particularly young and hazardous drinkers. As outlined in chapter 1, these concerns were also shared by sectors of the industry, some of whom are opposed to the emergence of a low value/high volume alcohol market in New Zealand. In its submission, the Hospitality Association of New Zealand stated "the Association accepts that some of the most harmful levels of consumption come from low cost alcohol".[1013]

1011 Rachel Jackson and others *Interventions on Control of Alcohol Price, Promotion and Availability for Prevention of Alcohol Use Disorders in Adults and Young People* (University of Sheffield, United Kingdom, 2009) < www.nice.org.uk > at 8.

1012 Ibid, at 6 and 9.

1013 Submission of the Hospitality Association of New Zealand (submission dated October 2009) at 15.

19.155 Retailers have consistently argued that price promotions do not result in excessive consumption. Retailers suggest consumers use in-store specials to stockpile or cellar discounted products, consuming the alcohol over a longer period. However, despite the assertions of one supermarket retailer to the contrary,[1014] we have seen no evidence that this type of "cellaring" is taking place. We do, however, have evidence that the most common place to consume large amounts of alcohol is in people's own home (42%) or in someone else's home (36%).[1015]

19.156 Relatively little research has been done on the impact of promotions involving substantial discounts. This kind of research is difficult, because the many different types of promotions are conducted through a variety of media, which makes it difficult to isolate the individual effects of particular promotions.[1016]

19.157 However, research conducted in the context of American college campuses tends to suggest that alcohol promotions, price specials and large volume discounts are associated with higher binge drinking rates. Kuo and others (2003) found that price discounting is associated with increased binge drinking and half-price drinks during happy hours have been shown to increase the overall consumption of both occasional and regular drinkers.[1017]

19.158 Data modelling by the University of Sheffield was used to consider the effects of restrictions on price discounting. The study found that the tighter the restrictions on the level of discounting the higher the consumption change. For example, restrictions of discounts to a maximum of 30% from the list price gave an estimated change in consumption of –0.3% while restricting discounts to items only 10% less than the list price resulted in a consumption change of –1.5%. Banning "buy one, get one free" offers had very small effects, and banning only discounts on low-priced alcohol was not effective at all, because so few of these products are discounted.[1018]

19.159 The Sheffied research examines the effect of restrictions on discounting, rather than the *advertising* of discounted alcohol. While we do not regard bans on the sale of discounted alcohol as practical or enforceable, we do believe there is merit in HANZ's proposal to restrict the *advertising* and *promotion* of heavily discounted alcohol.[1019]

1014 Submission of Progressive Enterprises Ltd (submission dated October 2009) at [42], notes it has "customer purchase behaviour data" showing that consumers taking advantage of price promotions will store, rather than consume, additional volumes.

1015 Ministry of Health *Alcohol Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey* (Wellington, 2009) at 42.

1016 University of Sheffield *Independent Review of the Effects of Alcohol Pricing and Promotion, Part A: Systematic Reviews* (United Kingdom, 2008) at 83.

1017 M Kuo and others "The Marketing of Alcohol to College Students: The Role of Low Prices and Special Promotions" (2003) 25 American Journal of Preventive Medicine 204.

1018 R Purshouse and others *Modelling to Assess the Effectiveness and Cost-Effectiveness of PUBLIC Health Related Strategies and Interventions to Reduce Alcohol Attributable Harm in England Using the Sheffield Alcohol Policy Model Version 2.0* (Report to the National Institute for Health and Clinical Excellence, School of Health and Related Research (ScHARR), University of Sheffield, United Kingdom, 2009) < www.nice.org.uk > at 115.

1019 Submission of HANZ (submission dated 30 October 2009).

19.160 Given the fact that the advertising of discounted alcohol is a competitive strategy designed to gain market share, it is plausible that restricting such advertising across the board will have the effect of reducing businesses' incentive to sell at heavily discounted prices.

19.161 The Commission therefore recommends it should be an offence to promote or advertise alcohol in a manner that leads the public to believe the price is 25% or more below the price at which the alcohol is ordinarily sold. We note this does not mean the alcohol cannot be sold at a 25% or more discount, rather that it cannot be advertised as such.

19.162 We acknowledge that there is an element of arbitrariness in fixing the level of the advertised discounts at which the offence applies at 25%. However 25% is a substantial discount, the promotion of which is likely to stimulate a demand for alcohol that might not otherwise exist.

19.163 These restrictions would apply to all external advertising and promotions in all media, including shop billboards and window displays. They would not apply to in-store or on-premises advertising or to the official websites of licensed premises (which are the virtual equivalent of "in store".) Arguably in-store promotions are different from external advertising because they are not designed to drive business to the store but rather to inform customers about the price at which alcohol is being sold. In this respect, we note that our recommendation in chapter 8 for single area restrictions in supermarkets will mean that only those already interested in buying alcohol will receive this information.

Promotions offering inducements to buy alcohol

19.164 Another form of promotion that, like discounting, inappropriately stimulates the demand for alcohol, is the offering of inducements to persuade people to buy alcohol. Inducements can take the form of the offer of much cheaper alcohol in return for the purchase of a quantity of alcohol at its ordinary price (for example, a "buy one, get one free" offer).

19.165 Many of these practices will be caught by our recommendation banning the advertising or promotion of alcohol at a price that is 25% or more below the price at which the alcohol is ordinarily sold. We also recommend that it be an offence to promote alcohol that is free, a common practice in bars promoting events such as "ladies drink free on a Wednesday" or between certain hours.

19.166 Another form of inducement is the offer of goods and services in relation to the purchase of alcohol. Point-of-sale promotions, which include offers of branded merchandise or other rewards for purchase, have been shown to have particular appeal to the young.[1020]

19.167 We recommend it be an offence to offer any goods or services on the condition that alcohol is purchased. This would not preclude the supply of free food on licensed premises provided this was not offered as an inducement to buy alcohol.

1020 Rachel Jackson and others *Interventions on Control of Alcohol Price, Promotion and Availability for Prevention of Alcohol Use Disorders in Adults and Young People* (University of Sheffield, United Kingdom, 2009) < www.nice.org.uk > at 8.

Need for guidelines

19.168 There is no statutory guidance on what is an unacceptable promotion. However, the National Protocol on Alcohol Promotions, developed in 2008 by the Hospitality Association of New Zealand, Alcohol Advisory Council of New Zealand, New Zealand Police and Local Government New Zealand, provides guidance on what is and is not an acceptable promotion.[1021]

19.169 The National Protocol on Alcohol Promotions has no legal status. In our view, it is desirable that there be a single authoritative set of guidelines on irresponsible promotions that is regularly updated to take account of changes in marketing practices. This will be of particular importance if the new offences we propose are enacted. New South Wales offers a useful model. In New South Wales, the liquor licensing agency has the power to issue guidelines on the types of promotions that breach the Act.

19.170 We recommend the Alcohol Regulatory Authority be given the power to make guidelines to assist in identifying irresponsible promotions. The Alcohol Regulatory Authority would have both the independence and expertise necessary to perform this function. We see no problem, in principle, with this approach. We are not proposing a rule-making function, merely one of issuing guidelines. Currently, the Liquor Licensing Authority provides guidance through its individual decisions. This necessarily occurs on a case-by-case basis. There is no reason, in principle, that the Alcohol Regulatory Authority should not take a more proactive approach and issue guidance in advance of individual decisions. We have considered whether this guidance function would be inconsistent with the performance of the Alcohol Regulatory Authority's other proposed functions; in our view it is not. Numerous examples exist of specialist bodies that have functions that involve issuing guidance and making decisions, for example, the Commerce Commission, Privacy Commissioner, Ombudsmen and New Zealand Parole Board. A possible issue is what would happen if the Authority encountered a case where it needed to take a different approach than that which had been signalled in a guideline. In that event, the Alcohol Regulatory Authority would apply the guideline but signal a change in the future. This is the approach the Court of Appeal takes when it changes guideline judgments. It should be made clear in any guidelines issued that they are intended only to provide guidance rather than to establish firm rules.

Incentives to seek guidance

19.171 We suggested in chapter 10 that the Alcohol Regulatory Authority should be able to give rulings in advance about whether a particular promotion would breach the new offence provision. This would provide a means by which people promoting alcohol could be certain they were complying with the Sale of Liquor Act 1989.

19.172 The National Protocol on Alcohol Promotions recommends that licensees and managers seek advice from their District Licensing Agency before running any promotion that might be at risk of breaching the Sale of Liquor Act 1989.

1021 Alcohol Advisory Council of New Zealand *National Protocol on Alcohol Promotions* < www.alac.org.nz > .

A report from the Auditor-General[1022] and the approach of the Liquor Licensing Authority support this practice.[1023] Where pre-approval for a promotion was not sought through the Alcohol Regulatory Authority, it would remain desirable that alcohol promoters seek advice from the Police or District Licensing Committee. The law should provide incentives for promoters to seek such advice.

19.173 Accordingly, we propose that where a person is convicted of breaching the Sale of Liquor Act 1989, the court, when fixing penalties, should be required to take into account whether the person convicted:

- sought advice on the promotion from a District Licensing Committee or a New Zealand Police employee authorised or designated by the Commissioner of Police to enforce the Act; and
- acted in accordance with any advice given.

Penalties for irresponsible promotions

19.174 Currently, section 154A has a maximum penalty of $5,000 and, in the case of a licensee, licence suspension for up to seven days. We recommend the maximum penalty for the new offences should be increased from $5,000 to $10,000, because the offence goes to the heart of responsible management of licensed premises. The higher maximum fine would align the penalty with those that apply to the sale or supply of alcohol to a minor[1024] or an intoxicated person.[1025] A licensee should also be liable for a suspension of licence for up to seven days.

New legislation

19.175 We envisage the proposed new offence be drafted as follows:

> **Irresponsible promotion of consumption and supply of alcohol**
>
> (1) A person commits an offence—
>
> (a) if in the course of carrying on a business the person engages in conduct that is intended or likely to encourage persons to consume an excessive amount of alcohol whether on licensed premises or at any other place:
>
> (b) if the person promotes or advertises the sale or supply or consumption of alcohol in a manner aimed at or that will or is likely to have special appeal to persons under the age of 20:
>
> (c) if the person (person A) promotes or advertises the sale or supply of alcohol, except on premises or in store, in a manner that is intended or likely to cause another person to believe that the alcohol is offered for sale or supply at a price that is 25% or more below the price at which the alcohol is ordinarily sold or supplied by person A:
>
> (d) if the person (person A) offers or advertises to supply another person (person B) with a quantity of alcohol free of charge:

1022 Controller and Auditor-General *Liquor Licensing by Territorial Authorities: Performance Audit Report* (Wellington, November 2007) at 43.

1023 "[A] common sense approach before any promotion is launched, where there are risks involved, the details of the promotion should be approved by the monitoring agencies": *James Robin Dalziell-Kernohan and Mitchell Rentals Ltd (Bahama Hut)* (LLA, PH 1488/2009) at 9.

1024 Sale of Liquor Act 1989, s 155.

1025 Sale of Liquor Act 1989, s 166.

(e) if the person (person A) offers or advertises to supply goods or services free of charge to another person (person B) on condition that person B purchases or acquires an amount of alcohol.

(2) A person who commits an offence against this section is liable on summary conviction—

(a) if the person is a licensee,—

(i) to a fine not exceeding $10,000; or

(ii) to the suspension of the licensee's licence for a period not exceeding 7 days: or

(iii) both:

(b) in the case of any other person, to a fine not exceeding $10,000.

(3) In determining the penalty to be imposed on a person convicted of an offence against this section, the court must take into account—

(a) whether, before engaging in the conduct giving rise to the offence, the person sought advice from either a District Licensing Committee or from a Police employee authorised or designated by the Commissioner of Police to enforce this Act; and

(b) whether the person acted in accordance with that advice.

Stage 2

19.176 At stage 2, we recommend the interdepartmental committee consider adopting legislated measures designed to reduce exposure, particularly of young people. Measures could include the following.

- A television and radio watershed hour of 10pm, with a requirement that broadcast liquor advertising does not exceed six minutes per hour and no more than two advertisements for liquor in a single commercial break. This will help to ensure liquor promotion does not dominate the viewing or listening period after the watershed hour.
- Public transport and movie theatres should not be venues for alcohol advertising, given their high use by young people. There should be no cinema advertising of alcohol except around films with an R18 rating and no advertising on public transport and in railway stations and bus shelters.
- Sport and cultural events such as music festivals should not be venues for alcohol advertising, given their high use by young people. No producer or retailer should be able to provide alcohol-related branding, equipment or merchandise for any school or sporting, cultural or social club or activity or event where 10% or more of the participants are under the legal purchase age. This would include, for example, no advertising material in a sports club bar and no sponsorship messages displayed at sports grounds or other public venues hosting school-age participants.
- The provision of "moderation time" should be formalised in law. For every five alcohol advertisements broadcast, the broadcaster should provide for one broadcast of a moderation message of substantially similar value (in terms of placement) by the Alcohol Advisory Council of New Zealand or New Zealand Transport Agency. Moderation time is discussed in chapter 23.
- Restrictions on internet-based promotions should be considered, for example, restrictions on the interactive elements of producer websites such as uploading photographs and entering slogan competitions.

- Sponsorship messages should not depict products. The use of logos in sponsorship messages should be minor.
- Alcohol should not be allowed to be used as a prize or incentive (for example in competitions and raffles).

19.177 It is our view that legislative measures to implement exposure controls should be the aim of stage 2, but the potential effect of such measures must also be carefully considered. For example, wholly banning advertising at cinemas and on television is an attractive measure to limit exposure to advertising, but it is likely that advertisers would find other means of marketing their products, some of which may be of even greater concern. Such a ban could mean the advertising spend is transferred from television to the internet or cell-phone based marketing, which could have a much greater impact on young people. The interdepartmental committee should fully consider the means of successfully achieving less exposure to advertising.

19.178 The suggested restrictions above also include measures to limit the exposure to all alcohol promotion of a broader population to help reduce the association of alcohol with sport and cultural events and contribute to limiting the harmful consumption of alcohol.

19.179 As we have seen, content codes are ineffective: despite restrictions on advertisements that have strong appeal to the young or that depict social, sexual or sporting success, the reality is that children and young people aspire to participate in the activities and social settings depicted in alcohol advertising, and advertisers continue to push the boundaries of the codes. There is a risk that turning advertising content codes into legislated restrictions will invite further "artful circumvention" by the advertising industry. Because of the worldwide experience of interpretation and application of the codes, the introduction of legislated content controls needs to be carefully considered and implemented as part of a more comprehensive regime. We consider that, with the limited exception of the proposed new offence replacing the existing section 154A offence, content controls should be implemented at stage 3.

Stage 3

19.180 Stage 3 would implement restrictions, including:

- messages and images may refer only to the qualities of products, such as origin, composition, means of production and patterns of consumption;
- the banning of images of drinkers or the depiction of a drinking atmosphere;
- only allowing advertising in press with a majority readership over 20 years of age;
- no alcohol-related sponsorship of any cultural or sport events or activities.

19.181 In the longer term, we consider it is necessary to put in place a regime that makes more fundamental changes. No alcohol advertising should be allowed in any media other than advertising that communicates objective product information, including the characteristics of the beverage, the manner of its production and its price. A phased introduction would allow the effects of restrictions to be carefully considered.

19.182 As noted earlier in this chapter, sponsorship appears to be of increasing importance in the alcohol promotion mix. Sponsorship maximises the reach of alcohol brands. Although the content and exposure controls of the Code for Advertising Liquor attempt to set limits, it is much less effective when it comes to sponsorship. Our view is that alcohol-related sponsorship should be restricted and eventually banned. But if the funds that the alcohol industry pours into the community are to come to an end, it is critical that there is a way to replace the contribution of such sponsorship to sporting, cultural and community programmes.

19.183 Again, the Smoke-free Environments Act 1990 provides a useful model. In our view, the Alcohol Advisory Council of New Zealand could eventually take on a similar role to that of the Health Sponsorship Council in helping to replace sponsorship funding and promoting a message of moderate drinking. We note that substantial sums would be involved and it is likely an increase in the Alcohol Advisory Council of New Zealand levy or earmarking of excise revenue would be required.

Consistency with the New Zealand Bill of Rights Act 1990

19.184 The proposed restrictions on advertising raise an issue of consistency with section 14 of the New Zealand Bill of Rights Act 1990. Section 14 protects the right to freedom of expression (including the freedom to seek, receive and impart information and opinions of any kind in any form). This right extends to all forms of communication that attempt to express an idea or meaning, including commercial speech such as advertising.[1026]

19.185 However, courts overseas have generally been more willing to uphold restraints on commercial speech than on political speech[1027] or artistic or academic expression.[1028] In the United States, a more lenient test applies to commercial speech than to speech of public concern – the state does not have to show that restraints on commercial speech are the least restrictive means to achieve the desired end.[1029]

19.186 Some commentators argue that freedom of expression arguments should not apply or should apply only very weakly to "lifestyle" advertising – advertisements that promote a favourable image associated with a product but that provide no information about the product.[1030] On this view, the best argument in favour of free speech coverage of advertising derives from the interests of consumers in product information, and the disinclination to exclude from coverage communications that convey a meaning.[1031] Neither argument applies to lifestyle advertising.

1026 *Irwin Toy Ltd v Attorney-General (Quebec)* [1989] 1 SCR 927 (SCC).

1027 Eric Barendt *Freedom of Speech* (2nd ed, Oxford University Press, Oxford, 2005) at 394.

1028 See, for example, *Markt Intern and Beerman v Germany* (1989) 12 EHHR 161.

1029 *Board of Trustees of the State University of New York v Fox* 109 S Ct 3028 at 3035 (1989) per Scalia J.

1030 Eric Barendt *Freedom of Speech* (2nd ed, Oxford University Press, Oxford, 2005) at 395 and 416; R Moon "Lifestyle Advertising and Classical Freedom of Expression Doctrine" (1991) 36 McGill Law Journal 76.

1031 Eric Barendt *Freedom of Speech* (2nd ed, Oxford University Press, Oxford, 2005) at 416.

19.187 In New Zealand, where a bill is *prima facie* inconsistent with a right or freedom, it may still be found to be consistent with the New Zealand Bill of Rights Act 1990 if the inconsistency is considered to be a reasonable limit that is justified under section 5 of that Act. The test is two-fold.

- Does the provision serve an important and significant objective?
- Is there a rational and proportionate connection between that objective and the provision?[1032]

19.188 In our view, the proposed restrictions clearly satisfy the first limb of the test: the proposed restrictions serve an important and significant objective. This is consistent with the view the Attorney-General expressed in 2009 in relation to the Liquor Advertising (Television and Radio) Bill, which sought to limit the exposure of people of all ages to broadcast liquor advertising.[1033] The Attorney-General concluded that the reduction of harm caused by high levels of alcohol consumption was a significant objective.

19.189 As to the second limb of the test, the Attorney-General in relation to the Liquor Advertising (Television and Radio) Bill, concluded a sufficient connection existed between the level of exposure to alcohol advertising and the level and patterns of alcohol consumption to satisfy the "rationality" requirement.[1034] However, that Bill failed the proportionality part of the section 5 test because it was not possible to show that the broadly cast ban on the broadcast of liquor advertising was or was likely to be more effective than lesser restrictions that targeted particular advertising content.

19.190 It is clear that the restrictions we propose serve an important and significant objective. The evidence discussed in this chapter more than establishes a sufficient connection between exposure to alcohol advertising and levels and patterns of alcohol consumption, particularly among young people, to satisfy the requirement of rationality.

19.191 As to proportionality, the proposed restrictions are targeted at advertising that results in aspirational values being attached to alcohol. It is clear that lesser restrictions, such as content controls, have been unsuccessful in achieving this outcome. The restrictions proposed do not ban alcohol advertising, and would not prevent the industry from continuing to communicate product information to the public or the public from making informed product choices. In our view, the restrictions we propose constitute a reasonable limit justified under section 5 of the New Zealand Bill of Rights Act 1990.

1032 *Ministry of Transport v Noort* [1992] 3 NZLR 260; *R v Hansen* [2007] 3 NZLR 1.

1033 *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).

1034 Ibid, at [12].

RECOMMENDATIONS

R104 An interdepartmental committee, overseen by the Ministers of Health and Justice, should plan and implement the management of a phased programme to limit exposure to alcohol promotion and restrict the content of alcohol promotion messages, including alcohol-related sponsorship.

R105 A new regime should be in place within five years.

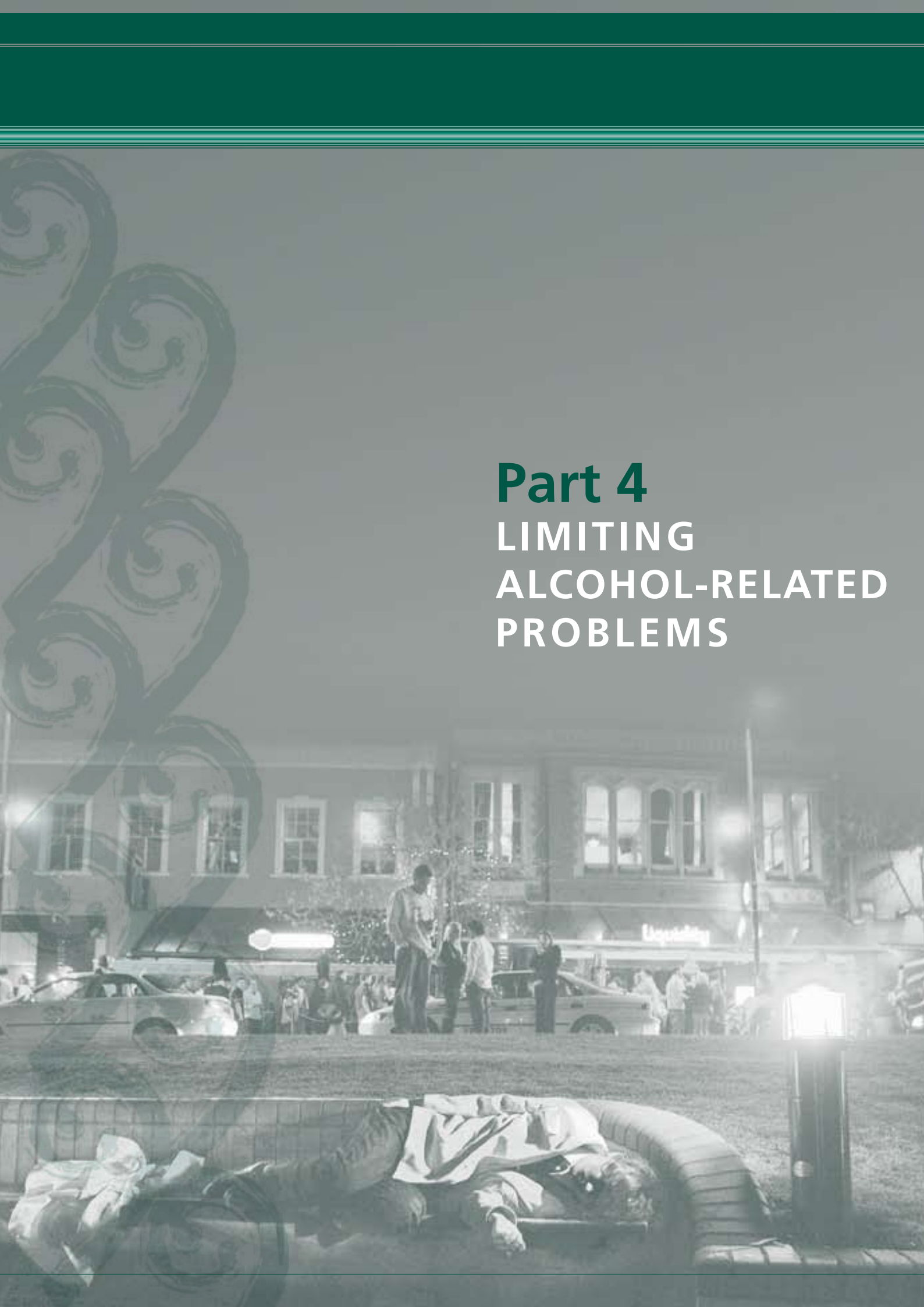
R106 Stage 1 of the programme, comprising a new offence relating to the irresponsible promotion of the consumption and supply of alcohol (replacing section 154A of the Sale of Liquor Act 1989), should be implemented immediately.

R107 The new provision should make it an offence to:

- in the course of carrying on a business, encourage the consumption of an excessive amount of alcohol, whether on licensed premises or at any other place;
- promote or advertise alcohol in a manner that has special appeal to people under the age of 20;
- promote or advertise alcohol, except in store or on premises, in a manner that leads the public to believe the price is 25% or more below the price at which the alcohol is ordinarily sold;
- promote alcohol that is free or
- offer any goods or services on the condition that alcohol is purchased.

R108 The interdepartmental committee should consider legislative measures to be introduced at stage 2 of the programme. These measures are aimed at reducing exposure to advertising, particularly for young people.

R109 The interdepartmental committee should consider stage 3 measures with the aim of restricting the promotion of alcohol, including sponsorship, in all media. No alcohol advertising should be allowed in any media other than advertising that communicates objective product information, including the characteristics of the beverage, the manner of its production and its price.



Part 4
LIMITING ALCOHOL-RELATED PROBLEMS

Part 4

An introduction

In this final part of the report we examine various policies designed to limit the incidence of alcohol misuse and the level of alcohol-related harm in New Zealand.

The interventions discussed range from the punitive – that is, offences designed to deter and punish irresponsible and harmful behaviour by drinkers, and those selling alcohol – to the preventative and curative (education and treatment).

Several submitters were of the view that many of the problems associated with the current regulatory regime may not have eventuated had the provisions in the existing law been adequately resourced and enforced.

At the other end of the spectrum, those involved in addiction treatment pointed out the need for services capable of responding to different needs across a range of government sectors, including transport, the courts, youth justice, social welfare and health.

In the following chapters we consider:

- the adequacy of alcohol-related offences and measures to ensure offences are better monitored and enforced (chapter 20);
- how alcohol can best be managed in public places (chapter 21);
- whether there is a need for a provision allowing particularly high-risk alcohol products to be banned (chapter 22);
- what role public and school-based alcohol education programmes can play in reducing alcohol-related harm (chapter 23); and
- how to improve access to, and the appropriateness of, alcohol treatment programmes in New Zealand (chapter 24).

Chapter 20

Offences, monitoring and enforcement

IN THIS CHAPTER, WE:

- Describe the offences under the Sale of Liquor Act 1989, the issues that arise in relation to these offences, and make recommendations for reform.
- Describe the existing provisions for suspending and cancelling licences and make recommendations to strengthen them.
- Outline the current powers for dealing with disorder on licensed premises and consider proposals to strengthen them.
- Discuss other mechanisms to improve the monitoring and enforcement of the Sale of Liquor Act 1989.

PART A: OFFENCES UNDER THE SALE OF LIQUOR ACT 1989

20.1 Part 8 of the Sale of Liquor Act 1989 prescribes several offences. These relate to:

- the sale and supply of liquor by unlicensed people or on unlicensed premises;[1035]
- the promotion of excessive consumption of alcohol on licensed premises;[1036]
- the sale or supply of liquor to minors[1037] or permitting them in restricted or supervised areas;[1038]
- being a minor purchasing liquor[1039] or being in a restricted or supervised area;[1040]
- unauthorised sale or supply;[1041]
- the sale or supply to intoxicated people;[1042]
- allowing people to become intoxicated,[1043] or allowing drunkenness or disorderly conduct on licensed premises;[1044]

1035 Sale of Liquor Act 1989, ss 151, 152, 153 and 154.
1036 Ibid, s 154A.
1037 Ibid, s 155.
1038 Ibid, s 164.
1039 Ibid, s 162.
1040 Ibid, s 163.
1041 Ibid, s 165.
1042 Ibid, s 166.
1043 Ibid, s 167.
1044 Ibid, s 168.

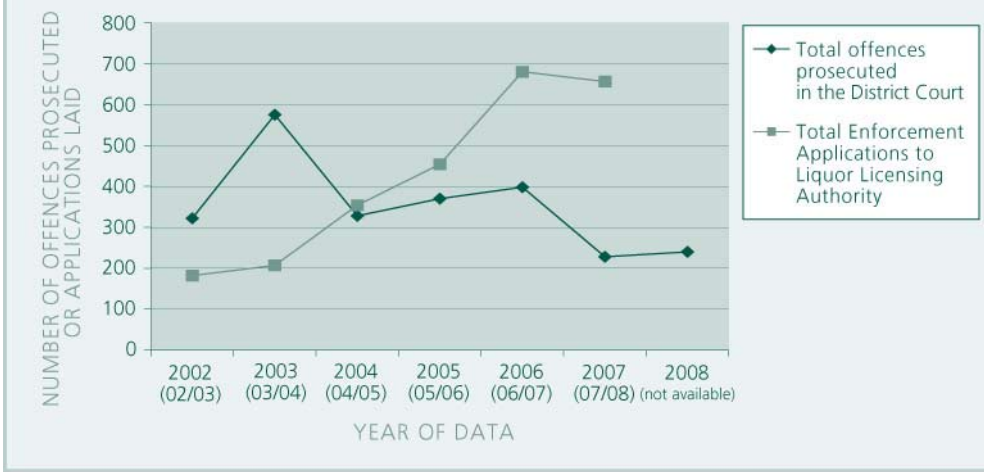
- the sale of spirits other than in a glass;[1045]
- being on, or permitting people to be on, licensed premises outside licensing hours;[1046] and
- making false representations to licensees.[1047]

There are also a small number of offences in other parts of the Act relating to the failure to provide information required by the Act.[1048]

20.2 All of the offences are summary offences, which are dealt with in the District Court, with the exception of those offences that can only be committed by minors.[1049] The latter offences relating to minors can be dealt with either by infringement notices[1050] or summary prosecution.[1051]

20.3 Prosecutions for offences under the Act are rare.[1052] In 2008, there were 91 prosecutions for supply to a minor (resulting in 27 convictions), only one prosecution for sale or supply to an intoxicated person and no prosecutions for unauthorised sale or supply. This is partly explained by the fact that enforcement agencies apply for suspension or cancellation of a licence or manager's certificate through the Liquor Licensing Authority (LLA), which is the specialist tribunal that deals with liquor licensing, as an alternative to criminal prosecution. The total number of offences prosecuted in the District Court peaked in 2003 but has been trending down since 2004.[1053] However, this decline coincides with increases in enforcement action taken to the LLA. This trend is illustrated in figure 20.1.

FIGURE 20.1: ENFORCEMENT ACTION THROUGH DISTRICT COURT AND LIQUOR LICENSING AUTHORITY



1045 Ibid, s 169.

1046 Ibid, ss 170 and 171.

1047 Ibid, s 172.

1048 Ibid, ss 94(2) and 131(4) and (5) if non-compliance with request for information; s 225(5) and s 226A(3) for non-notification of changes in shareholding.

1049 Ibid, ss 162 and 163.

1050 An infringement offence attracts an automatic fine and is not prosecuted unless the facts are challenged. Infringement offences do not attract a conviction.

1051 Sale of Liquor Act 1989, s 169A.

1052 Based on data provided by the Ministry of Justice in an email to the Law Commission (30 October 2009).

1053 Ibid.

20.4 We have reviewed the offence provisions in light of comparable legislation in Australia and the United Kingdom and in light of our consultation on our Issues Paper, *Alcohol in Our Lives*.[1054] We consider changes in the offences are needed to deal effectively with intoxication on licensed premises, and serving minors in licensed premises. In chapter 19 we discussed changes to strengthen the provisions relating to irresponsible promotions. We also recommend a greater use of infringement offences and increased penalties for certain offences.

20.5 In our view, the offences should be prosecuted more frequently than currently occurs. Many of our recommendations are intended to encourage enforcement action being taken more often than they are at present.

Intoxication on licensed premises

20.6 Section 166 of the Sale of Liquor Act 1989 makes it an offence to sell or supply liquor to anyone who is already intoxicated. The penalty is a fine not exceeding $10,000 and/or licence suspension for up to seven days in the case of licensees, a fine of up to $10,000 in the case of a manager, and a fine not exceeding $2,000 in the case of a person other than a licensee or manager. We note this offence appears to capture people other than staff in licensed premises who supply alcohol to an intoxicated person. In other words, it would apply to a friend of an intoxicated person who buys a drink for someone who has been, or is likely to be, declined service. This seems appropriate. However, as far as we are aware, there have been no prosecutions of patrons under this provision.

20.7 It is also an offence, attracting the same penalty, for a licensee or manager to allow a person to become intoxicated on licensed premises.[1055]

(1) Definition of "intoxication"

20.8 The Sale of Liquor Act 1989 does not define the term "intoxication" for the purposes of these offences. The absence of a definition was a deliberate decision at the time the Act was reviewed in 1997[1056] because of Police and other agencies' concerns about opportunities a definition might create for challenge in court.[1057] However, decisions of the LLA make it clear an offence will only be committed if a person served alcohol is demonstrably intoxicated.[1058] This is a subjective assessment, determined on a case-by-case basis, but there must be evidence of some obvious disturbance or impairment of the person's mental or bodily faculties or functions.[1059]

1054 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009).

1055 Sale of Liquor Act 1989, s 167.

1056 New Zealand Liquor Review Advisory Committee "Liquor Review: Report of the Advisory Committee" (Wellington, 1997) at 5 [Robertson Report].

1057 Ibid, at 53.

1058 *General Distributors (Woolworths Tawa)* (LLA, PH 385-386/2009); *The Mariner* (LLA, PH 772/2008); *Clary 2002 Ltd* (LLA, PH 825/2004) at [42-3].

1059 *General Distributors (Woolworths Tawa) (*LLA, PH 385-386/2009); *The Bullock Bar* (LLA, PH 938-940/2007).

20.9 In our Issues Paper we asked whether a statutory definition of intoxication would be helpful. Many submitters supported a statutory definition of intoxication on the basis it would provide greater guidance than is currently available to licensees, managers and staff about the scope of their obligations, and would assist with enforcement.

20.10 The New Zealand Police noted that licensees and managers had been seeking such a definition of intoxication for some time to "provide clear guidance of when a person gets to a level of intoxication which breaches the [Sale of Liquor Act] restrictions".[1060]

20.11 We support a statutory definition of intoxication. The definition of "intoxicated" in the Policing Act 2008, which applies for the purposes of empowering police to detain intoxicated people who are in need of care and protection, provides a useful model. It provides:[1061]

> …**intoxicated** means observably affected by alcohol, other drugs, or substances to such a degree that speech, balance, co-ordination, or behaviour is clearly impaired.

20.12 We consider this definition would make clear the level of intoxication that will attract the offence without giving rise to an unacceptable risk of legal challenge. We note the Policing Act 2008 definition includes intoxication by substances other than alcohol. This raises the question of whether the offence of selling or supplying alcohol to an intoxicated person should apply only to people affected by alcohol, or should also apply to those intoxicated by other substances. In our view, it would be unreasonable to expect people selling alcohol to make judgements about whether the person is intoxicated because of consumption of alcohol, drugs, or a combination of both. Moreover, the supply of alcohol to a person who is intoxicated is inherently undesirable whatever the substance involved because the consumption of alcohol will exacerbate the intoxication. Although the Australian definitions specifically relate to intoxication by alcohol,[1062] we consider that adoption of the definition in the Policing Act 2008 is appropriate.

20.13 The Alcohol Advisory Council of New Zealand (ALAC) has published guidelines on what amounts to intoxication.[1063] These guidelines suggest four behavioural indicators of intoxication: speech, coordination, appearance and behaviour (known as the "SCAB test").[1064] However, the guidelines have no legal status. There is also the potential for different guidelines to be issued by different agencies, which could be confusing.

1060 Submission of New Zealand Police (submission dated 31 October 2009) at 40, [15.23].

1061 Policing Act 2008, s 36.

1062 Liquor Act 2007 (NSW), s 5; Liquor Control Act 1988 (WA), s 3A; Liquor Control Reform Act 1998 (Vic), s 3AB; Liquor Act 1975 (ACT), s 138(3).

1063 New Zealand Police and Alcohol Advisory Council of New Zealand "Building a Safe Drinking Environment" (Wellington, 2006); Alcohol Advisory Council of New Zealand "Intoxication – What to watch for" (AL 433) <www.alac.org.nz>; Alcohol Advisory Council of New Zealand "Where's the Line? Understanding your role and responsibility in drinker intervention" (Wellington, 2009).

1064 Alcohol Advisory Council of New Zealand "Sale of Liquor Act 1989 Intoxication Monitoring and Enforcement Guidelines" (Wellington, 2006).

20.14 In New South Wales, the statutory definition of "intoxicated" is also supplemented with a power for the liquor licensing agency to issue guidelines to assist agencies to determine whether or not a person is intoxicated.[1065] The Director of Liquor and Gaming has published a guideline on intoxication on the agency's website.[1066] The guideline provides a non-exhaustive list of the "noticeable signs of intoxication".

20.15 We recommend the proposed new licensing tribunal, the Alcohol Regulatory Authority, be given the power to make guidelines to assist in delivering on what amounts to intoxication. This is consistent with our recommendations for guidelines relating to irresponsible promotions in chapter 19.

(2) No offence for being intoxicated in licensed premises

20.16 While section 166 of the Sale of Liquor Act 1989 makes it an offence to sell or supply liquor to a person who is already intoxicated, there is no offence for a person to be intoxicated on licensed premises. Many submissions, particularly from those who work in, or own, licensed premises, have called for greater personal responsibility by people who drink on licensed premises. In particular, these submitters suggest it should be an offence to be intoxicated on licensed premises. They argue that at present all the responsibility lies with licensees, managers or their employees in relation to intoxicated people.

20.17 One of the effects of drinking alcohol is interference with decision-making and judgement. This militates against making intoxication an offence. In addition, if there were such an offence, consistency would suggest that there should also be an offence of being intoxicated in public. The New Zealand Police does not support such an offence.[1067] We discuss this further in chapter 21. For present purposes we note that making it an offence to be intoxicated while in licensed premises would considerably increase the risk of criminalising people who would not otherwise come into contact with the criminal justice system. It also has the potential to tie up court resources in expensive and time-consuming prosecutions. In any event, experience with the offence of being drunk in a public place, which existed until 1981, suggests offences of this type are not an effective deterrent.

(3) Offence for manager and staff to be intoxicated on duty

20.18 Currently, it is not an offence for a manager to be intoxicated while on duty in licensed premises. Nor is it an offence for serving staff to be intoxicated while serving alcohol. However, during our consultation, we heard that there are situations where this has occurred.[1068] Prudent management of licensed premises requires sound judgement and decision-making. Serving staff also need the ability to make judgements about the age and degree of intoxication of people they serve.

1065 Liquor Act 2007 (NSW), s 5(3).

1066 New South Wales Office of Liquor, Gaming and Racing "Intoxication Guidelines" (Sydney, 2008) <www.olgr.nsw.gov.au>.

1067 Submission of New Zealand Police (submission dated 31 October 2009) at 46, [16.26].

1068 *Brakatin Holdings Limited and Raynor Charles Mudgway* (LLA, PH 1295-1296/2009); *Troy Glynn Preston* (LLA, PH 579/2005).

20.19 It is an offence in Western Australia for managers and serving staff to be drunk on duty.[1069] The maximum penalty is a fine of AU$10,000, which is a serious penalty in the Western Australian offence hierarchy. However, there is a discretion to issue an infringement notice to the value of 10% of the maximum penalty.[1070]

20.20 We recommend it be an offence punishable by a fine of up to $2,000 for managers and serving staff to be intoxicated on duty. This offence should also be able to proceed as an infringement.

Minors

20.21 The Sale of Liquor Act 1989 makes it an offence to purchase or acquire liquor for minors, with an exception where alcohol is supplied by a parent or guardian or at a "private social gathering"[1071] or on licensed premises.[1072] This issue is discussed in chapter 16. However, there are aspects of the offences involving minors that require clarification.

(1) Establishing age

20.22 As discussed in chapter 16, it is currently an offence to sell or supply liquor to a person under the age of 18. We have proposed this be increased to the age of 20. Section 155 of the Sale of Liquor Act 1989 creates a defence to a charge of sale or supply to a minor if the defendant proves that the person who sold the liquor "believed on reasonable grounds that the person to whom it was sold or supplied had attained the age of 18".[1073] An amendment in 1999[1074] clarified that reasonable grounds exist where the defendant proves that an evidence of age document of the person was sighted indicating they were over 18 years of age.[1075] This is a non-exhaustive provision.

20.23 The Sale and Supply of Liquor and Liquor Enforcement Bill 2008 proposes a "new and more restrictive defence".[1076] The *only* defence would be that the person selling had sighted an evidence of age document belonging to that person showing them to be 18 years or older.[1077] An "evidence of age" document can be a driver's licence, a New Zealand or overseas passport, or a prescribed document. Currently, the only prescribed document is a Hospitality Association of New Zealand 18+ card.[1078]

20.24 The proposed amendment removes the ability to establish the "reasonable grounds for belief" on grounds other than the sighting of an evidence of age document. We support this approach. In effect, this removal of reasonable

1069 Liquor Control Act 1988 (WA), s 110(7).

1070 Ibid, s 167(3).

1071 Sale of Liquor Act 1989, s 160.

1072 Ibid, ss 157 and 158.

1073 Ibid, s 155(4).

1074 Ibid, s 155(4A).

1075 Ibid, s 155(5).

1076 Sale and Supply of Liquor and Liquor Enforcement Bill 2008 (254-1), cl 40, commentary from Explanatory Note.

1077 Ibid, cl 40 (4).

1078 Sale of Liquor Act 1989, s 2A, inserted from 1 September 1999.

grounds will require verification of age whenever there is any doubt about a person's age. It is otherwise too easy for people supplying alcohol to minors to escape liability.

(2) False representations for controlled purchase operations

20.25 It is an offence under section 172 of the Sale of Liquor Act 1989 for a person to make a false representation to licensees, managers, or employees of licensed premises that the person is entitled to be sold or supplied alcohol or enter the licensed premises. A false representation can be made in writing[1079] or orally.[1080]

20.26 The New Zealand Police's submission cites a 2007 LLA decision which held that a volunteer who verbally misrepresents their age as part of a Controlled Purchase Operation (planned operation to monitor and enforce offences for sales to minors) is in breach of section 172(2) of the Act (false representation other than in writing).[1081] The Police submits that an amendment along the lines of section 162(5)[1082] and section 163(4),[1083] which allow people under the age of 18 to purchase alcohol as part of a Controlled Purchase Operation without committing an offence, would be appropriate.

20.27 We agree with the approach to amend section 172(2) of the Sale of Liquor Act 1989. Such an amendment would facilitate Controlled Purchase Operations, and assist enforcement of the Act.

(3) Verification and confiscation of identification

20.28 As outlined above, it is an offence to make a false representation to licensees, managers, or employees in licensed premises in writing.[1084] False representations in writing can either be through presentation of an "evidence of age" document that either belongs to someone else, is a forged document or is a real document that has been tampered with.[1085] Another form of false representation is a false declaration of age. Generally, these occur where people complete a form that licensees have developed declaring they are over 18 years of age.[1086]

20.29 The Police's data show that most identification documents handed in to licensees are superseded licences that belong to siblings or friends.[1087] However, there are an increasing number of forged documents being generated.

20.30 There is no provision in the Sale of Liquor Act 1989 to enable fake or fraudulently used identification to be seized or confiscated by licensees, duty managers or employees, although some premises do retain false identification documents with the consent of the person from whom they are taken.

1079 Sale of Liquor Act 1989, s 172(1).

1080 Ibid, s 172(2).

1081 *The Mean Fiddler Ltd, Nelson* (LLA, PH 820-822/2007).

1082 Purchasing of liquor by minors.

1083 Minors in restricted or supervised areas.

1084 Sale of Liquor Act 1989, s 172(1).

1085 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 35–36 <www.police.govt.nz>.

1086 Alan Dormer, Alastair Sherriff and John Crookston *Sale of Liquor* (Brookers, Wellington, 1990) at [172.06].

1087 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 35–36 <www.police.govt.nz>.

20.31 We sought submissions on whether licensees should be given the power to confiscate fake proof of age documents, including driver licences, and hand these to the Police. Most submitters supported the confiscation of false identification documents but some expressed concern about the confiscation of passports.

20.32 We consider that licensees and managers should have the power to confiscate false evidence of age documents, excluding passports. This will require judgements to be made about whether documents are fake or fraudulently used. Where a manager considers a document is false or belongs to someone else, they will have the option of simply declining entry or service or of confiscating the documents. That false documents can be confiscated is likely to deter others from loaning identity documents to young people, particularly if supported by an offence, as we propose. It will also alert the Police to forged documents so if there appears to be a black market in such documents, an investigation can be commenced.

20.33 We acknowledge that confiscation powers are generally only extended to state officials. However, licensees and managers have been found to be suitable to manage licensed premises, and undergo training to do so. This training could incorporate instruction on the exercise of confiscation powers. We have also recommended that door staff be licensed as security guards, which provides a check on their suitability. Where an evidence of age document is confiscated, a receipt should be issued to the person from whom it is taken and the document should be handed to the Police within 24 hours for collection by the owner.

20.34 We acknowledge the concerns about the confiscation of passports. An overseas passport is the only acceptable form of evidence of age document for non-New Zealand residents. The confiscation of a genuine travel document required for an imminent departure, could incur significant costs for a traveller. We think it highly unlikely that many people would lend their passport to a minor for use as an identity document, therefore exempting passports from a confiscation regime is unlikely to leave any significant gap in the regime. While confiscation may, in fact, pose less risk of loss than leaving a passport with a person already adversely affected by alcohol, we are persuaded that passports should be exempt from the confiscation regime.

20.35 It is not currently an offence for an adult to permit a minor to use their identification document to gain entry to licensed premises. Several other jurisdictions have an offence of permitting a minor to use an evidence of age document of a person over the purchase age to enable the minor to gain entry to or service at licensed premises.[1088] The Sale and Supply of Liquor and Liquor Enforcement Bill 2008 also proposes an offence of presenting a false evidence of age document or lending, selling, hiring or giving a false prescribed evidence of age document, such as an 18+ card.[1089] A false evidence of age document is one that either contains false information or is a document containing information relating to another person.[1090] We recommend a false evidence of age offence, such as that proposed in the Sale and Supply of Liquor and Liquor Enforcement Bill 2008, be created. Coupled with the

1088 Liquor Act 2007 (NSW), s 19; Liquor Control Reform Act 1998 (Vic), s 124; Liquor Act 1992 (Qld), s 159.

1089 Sale and Supply of Liquor and Liquor Enforcement Bill 2008 (254-1), cl 44.

1090 Ibid, cl 44(2) defines "false evidence of age document".

proposed confiscation power, these offences would provide a significant disincentive to people lending or supplying false identification documents to minors. The proposed new offence should be an infringement offence.

Greater use of infringement offences

20.36 Some of the offences in the Sale of Liquor Act 1989 are relatively minor, and the time and effort in prosecuting them is sometimes seen as disproportionate by enforcement agencies. One of the effects of this, as noted earlier, is that these offences are rarely prosecuted. A recurring theme in our consultation was criticism that the Act is seldom enforced. We consider an increased use of infringement notices would assist in addressing this problem.

20.37 Infringement notices have evolved largely in response to increasing demand being placed on court resources. Infringement notices relieve court pressure and ensure cases are resolved quickly, while retaining the power for a person to challenge a notice through a hearing in the District Court, if required.[1091] The existing infringement offences in the Act are for minors being in a restricted or supervised area[1092] and for minors purchasing liquor.[1093] These offences appear to have been singled out to avoid minors getting criminal convictions. However, making infringements available for a greater number of offences would make the law simpler to enforce, and could increase enforcement action and make managers, licensees and individuals immediately accountable.

(1) New infringements

20.38 The Police proposes the following existing offences in the Sale of Liquor Act 1989 could easily be dealt with by the infringement notice procedure:[1094]

- section 164 permitting minors in restricted or supervised areas;
- section 169 sales of spirits otherwise than in a glass;
- section 172 false representation of age (whether in writing or not); and
- section 172A licensee offences in respect of a manager (relates to section 115).

Many retailers have also suggested that an infringement offence for providing false identification is appropriate. We agree with this suggestion because these offences do not present any legal difficulty and therefore meet the Ministry of Justice's infringement guidelines.[1095]

20.39 The current penalties available for infringement notices for offences under sections 162 or 163 of the Sale of Liquor Act 1989 are set by section 162A of the Act. Section 162A provides for the infringement fee to be set by regulations, for an amount not exceeding $500. We consider the maximum infringement fee for sections 162 and 163 offences should be fixed by regulation, but that the amount

1091 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 188.

1092 Sale of Liquor Act 1989, s 163.

1093 Ibid, s 162.

1094 Submission of New Zealand Police (submission dated 31 October 2009) at 40, [15.20] and 41 [15.33–15.34].

1095 Ministry of Justice "Policy Framework for New Infringement Schemes" (Wellington, 2008) <www.justice.govt.nz>.

should be increased to $1,000, which is the maximum amount permitted under the Ministry of Justice's infringement guidelines.[1096] We also note the offences under sections 162 and 163 can proceed either summarily or by infringement notice.[1097] We consider this is appropriate as prosecution provides a means to handle serious or recidivist offending. We recommend that this approach applies to the proposed new infringement offences.

20.40 The Police's submission also sought a breach of licence conditions (either mandatory or discretionary conditions) to be able to be an infringement offence. We agree that this is an appropriate offence. Currently, the only option available for dealing with breaches of licence conditions is for an application to be made to the LLA. This approach involves unnecessary cost and delay in circumstances where an immediate sanction would be more effective. In the case of serious breaches of licence conditions, an application to the Alcohol Regulatory Authority for variation, cancellation or suspension will continue to be available.

(2) The power to issue infringements

20.41 The Police has suggested that Police, licensing inspectors and public health staff should all have the authority to issue infringement notices.[1098] However, we consider that infringement notices should only be able to be issued by Police and licensing inspectors.

20.42 We do not consider it is appropriate to extend enforcement powers to medical officers of health. Proliferation of enforcement powers is not warranted or desirable. The existence of too many enforcement agencies is likely to undermine enforcement action because there will be a lack of clarity about where the responsibility lies. Moreover, the expertise of medical officers of health lies in their knowledge of public health rather than in enforcement. The role of medical officers of health should continue to be to ensure that the impact of liquor licences on public health is properly taken into account in the development of local alcohol plans and in reports on licence applications.

Increased penalties

20.43 In our Issues Paper we suggested a review of the serious offences in the Sale of Liquor Act 1989 was required, including the maximum penalties for offences. We asked whether there needs to be penalty increases for the offences of selling or supplying to minors and intoxicated persons, and the other offences that require a mandatory report to the LLA upon conviction.[1099]

20.44 Many submissions did not support increased penalties but called for more rigorous enforcement of the existing offences. However, several submitters did support increased penalties for offences for sale and supply to intoxicated people

1096 Ibid.

1097 Sale of Liquor Act 1989, s 162B.

1098 Submission of New Zealand Police (submission dated 31 October 2009) at 40, [15.22].

1099 Offences listed under s 132A Sale of Liquor Act 1989.

and minors. The current maximum penalties for those offences are a fine not exceeding $10,000 or a seven day suspension for licensees[1100] and a fine not exceeding $10,000 for managers.[1101]

20.45 We note the concern of submitters about the serious nature of these offences. However, we consider the current penalties are already high and that more rigorous enforcement rather than higher penalties is what is required. However, where there are repeated offences of this type, manager's certificates and licences should be cancelled more readily. We discuss our recommendations to achieve this in the following section.

20.46 We have reviewed penalties in the Act, which we consider are generally appropriate. We have already discussed in chapter 19 our proposal to increase the penalty for conducting irresponsible promotions. However, we consider the following penalties should be increased:

(a) The penalty for an offence against section 168 (a licensee or manager who allows any intoxicated person to remain on licensed premises or allows violent, quarrelsome, insulting or disorderly conduct on the premises)[1102] should increase from a fine not exceeding $4,000 to a fine not exceeding $10,000. This conduct involves a flagrant disregard of responsible management duties and brings with it the potential for serious problems.

(b) The penalty for an offence against section 173(4) and (5) and section 174(6) and (7) (failure to close licensed premises following the order of either the court or police) should, in addition to a fine not exceeding $10,000 for licensees and managers, be suspension for up to seven days; and for employees should increase from a fine not exceeding $2,000 to a fine not exceeding $4,000.

(c) The penalty for an offence against section 176(4) (failing to provide information when requested by an enforcement officer in or about licensed premises) should increase from a fine not exceeding $1,000 to $2,000, because of the importance of this power in enabling enforcement officers to adequately monitor licensed premises' management practices.

20.47 The Police has advised that its preferred approach for enforcement action against managers and licensees is through the LLA because of its specialist knowledge of the law relating to the sale and supply of alcohol.[1103] We suggest there should be greater use of prosecutions in the District Court. It is therefore desirable that judges involved in the hearing of alcohol offences and sentencing of persons found guilty of such offences have specialist expertise in this area. This gaining of expertise could easily be accomplished by the Chief District Court Judge designating several District Court judges in each of the six judicial regions to hear alcohol cases. These judges should undertake additional training in matters relating to the sale of alcohol. The two judges on the Alcohol Regulatory Authority could also sit in the District Court when available, and should be engaged in the training of the other judges selected to hear alcohol cases.

1100 Sale of Liquor Act 1989, ss 155(1) and 166(1).

1101 Ibid, ss 155(1) and 166(1).

1102 Ibid, s 168.

1103 New Zealand Police "New Zealand Police's enforcement of liquor legislation" (Wellington, 2009).

PART B: SUSPENSION AND CANCELLATION OF LICENCES AND MANAGER'S CERTIFICATES

20.48 A conviction and penalty imposed by the District Court is one means of taking enforcement action against licensees and managers. The alternative (and more frequently used) mechanism for enforcement action is through an application to the LLA to vary licence conditions or to suspend or cancel licences and manager's certificates.

20.49 Part 6 of the Sale of Liquor Act 1989 defines when applications can be made to the LLA for a variation of licence conditions, or suspension or cancellation of licences[1104] or manager's certificates.[1105]

Variation and cancellation of licence or licence conditions

20.50 Section 132 of the Sale of Liquor Act 1989 enables police and licensing inspectors to apply for a variation or revocation of licence conditions, or suspension or cancellation of a licence where licensed premises have been conducted in breach of the Act or licence conditions, the conduct of the licensee is such as to show they are not suitable to hold a licence, or the premises are being used in a disorderly manner so as to be obnoxious to neighbouring residents or to the public.

20.51 Section 132A of the Act requires licence suspension or cancellation to be considered where certain offences are committed. The relevant offences are the unauthorised sale or supply of liquor,[1106] the sale or supply of liquor to minors[1107] and the sale or supply of liquor to intoxicated persons.[1108] Where a licensee, manager or other person is convicted of such an offence a member of the Police must send the LLA a certificate of conviction, a summary of the evidence upon which the conviction was based, a statement by Police as to whether the grounds for suspension or cancellation have been made out, and, if so, the circumstances and a Police recommendation (with reasons) as to whether the licence should be suspended or cancelled.

20.52 The grounds for suspension or cancellation under section 132A are:

(a) the licensed premises concerned have been conducted in breach of the Act, licence conditions or otherwise improperly;
(b) the licensee is not a suitable person to hold a licence; and
(c) in either case it is desirable to vary or cancel the licence.

20.53 In practice, licences are rarely cancelled.[1109] Generally, successful applications determined by the LLA result in a suspension of licence for a defined period.[1110] For example, only 13 licences were cancelled in 2008/09.[1111]

1104 Sale of Liquor Act 1989, s 132.

1105 Ibid, s 132A.

1106 Ibid, s 165(1).

1107 Ibid, s 155(1) and (2).

1108 Ibid, s 166(1) and (2).

1109 Cancellations of the substantive licence as a result of a section 132 application are rare, with between 0 and 13 licence cancellations per annum over the past seven fiscal years. (Data taken from annual reports of the Liquor Licensing Authority 2002/03 to 2008/09).

1110 Because of low numbers of cancellations across annual reports, cancellations and suspensions were joined together as one category.

1111 *Report of the Liquor Licensing Authority for the 12 months ended 30 June 2009* (presented to the House of Representatives under section 98(2) of the Sale of Liquor Act 1989) at 3.

Suspension or cancellation of a manager's certificate

20.54 Section 135 of the Sale of Liquor Act 1989 enables police and licensing inspectors to apply to suspend or cancel a manager's certificate if the manager has failed to conduct licensed premises in a proper manner or their conduct is such as to show they are not a suitable person to hold a certificate.

20.55 Police must notify the LLA if a manager is convicted of any offence against the Sale of Liquor Act 1989.[1112] This ensures the LLA is aware of any incident that might affect the manager's certificate.

20.56 As with licences, manager's certificates are generally suspended rather than cancelled. For example, only 25 manager's certificates were cancelled in 2008/09.[1113]

(1) Automatic cancellation of a manager's certificate

20.57 The Sale and Supply of Liquor and Liquor Enforcement Bill 2008 provides for an automatic cancellation of a manager's certificate where three adverse findings by the District Court or LLA for the sale or supply of liquor to a minor or permitting a minor to be in a restricted or supervised area[1114] are proved within a two-year period.[1115] Where a manager's certificate is cancelled under the regime, no further manager's certificate can be issued for five years after the third conviction.

20.58 During the select committee consideration of this provision, the Police submitted that the provision for three convictions in two years was problematic because of the time it takes to obtain a conviction or finding from the LLA. The Police suggested a five-year period was more appropriate. However, that submission seems misconceived. The time period in the clause as drafted relates to the date of the commission of the offence or incident rather than the date of the conviction in court or finding by the LLA.[1116]

20.59 We support the automatic cancellation of a manager's certificate in the Sale and Supply of Liquor and Liquor Enforcement Bill 2008 but consider that it needs to be strengthened. We suggest it is appropriate to extend the automatic cancellation regime to other offences. Automatic cancellation should follow where three findings (not necessarily of the same type) are made for any of the following offences, namely:

- sale or supply of alcohol to a minor;[1117]
- sale or supply of alcohol to an intoxicated person;[1118]

1112 Sale of Liquor Act 1989, s 184.

1113 *Report of the Liquor Licensing Authority for the 12 months ended 30 June 2009* (presented to the House of Representatives under section 98(2) of the Sale of Liquor Act 1989) at 3.

1114 Sale of Liquor Act 1989, s 164.

1115 Sale and Supply of Liquor and Liquor Enforcement Bill 2008 (254-1), cl 38.

1116 Ibid cl 38(1) refers to "conviction of a person for an offence against section 155(1) or 164 committed after the commencement of this section"; or cl 38(1)(b) "…a person who is a manager of any licensed premises has, after the commencement of this section,— (i) sold or supplied any liquor".

1117 Sale of Liquor Act 1989, s 155.

1118 Ibid, s 166.

- unauthorised sale or supply of alcohol;[1119] and
- irresponsible promotions of alcohol.[1120]

20.60 We also recommend a longer period than proposed in the Bill within which these offences or incidents can occur. However, a five-year period within which the adverse findings occur, as proposed by the Police,[1121] would create a significant noose around a manager's neck for a long period of time, and in our view cannot be justified. We support a three-year time period with the resulting cancellation of the manager's certificate being for five years. We also consider there should be no bar to the Alcohol Regulatory Authority or District Licensing Committees (which we have recommended replace District Licensing Agencies in chapter 10), considering those adverse findings when determining future suitability of the manager after the end of the five-year cancellation period.

(2) Automatic cancellation of substantive licence

20.61 We also recommend that the automatic licence cancellation provisions apply to licensees as well as managers. In other words, where a licensee commits three of the specified offences in three years their licence would be automatically cancelled. It is important to note that section 181 of the Sale of Liquor Act 1989 makes it clear that a licensee is not responsible for any offence committed by a manager unless they are party to the offence. The proposed automatic cancellation provision would apply only if the licensee *actually* committed the offence or is a party to an offence by a manager.

PART C: POWERS TO DEAL WITH DISORDER IN LICENSED PREMISES

Trespassing – problem patrons

20.62 The Trespass Act 1980 gives licensees and managers the power to require patrons to leave licensed premises. If a patron does not leave after being asked to do so, they commit an offence, subject to a maximum penalty of a fine not exceeding $1,000 or up to three months' imprisonment.[1122] The person may also be warned to stay off the premises for a period up to two years.[1123] A triplicate form has been developed by the Hospitality Association of New Zealand that can be issued to trespassers or people who the licensee or manager has reasonable cause to suspect may trespass. The original is given to the trespasser, while a copy is kept on the licensed premises, and another given to the Police. This form makes it easier to establish that the defendant was aware of the requirement to leave.[1124]

20.63 In our Issues Paper we asked whether there was a need to legislate for additional powers, including the possibility of banning orders such as exist in other jurisdictions.[1125] These powers would enable the LLA, Police or court to ban specific people from specific premises or within a particular area of licensed premises for various periods of time.

1119 Ibid, s 165.

1120 Ibid, s 154A.

1121 Submission of New Zealand Police (submission dated 31 October 2009) at 48, [16.36].

1122 Trespass Act 1980, s 11(1).

1123 Ibid, s 4.

1124 *Skold v Police* [1982] 1 NZLR 197 (CA) at 198.

1125 Licensing Act 2007 (NSW), s 77 (non-voluntary exclusion by licensee/employee/agent or Police); Liquor Control Reform Act 1998 (Vic), s 147 (designated alcohol order) and s 148A (banning notice).

20.64 The New Zealand Police considers the current powers under the Trespass Act 1980 are adequate to remove people who cause trouble from licensed premises and prevent their return, and that there is no need for additional powers, such as a banning order.[1126] We agree with this submission.

20.65 One submitter sought legislative backing for a combined trespass notice scheme that operates in the Nelson area.[1127] Under this scheme, the occupier of one licensed premises warns a patron to stay off the premises under section 4 of the Trespass Act 1980. A joint notice is then issued on behalf of the other licensed premises that are signatories to the scheme. Section 4(3) of the Trespass Act 1980 allows for warnings to stay off premises to be issued by an occupier where they have "reasonable cause to suspect that a person is likely to trespass on that place". This appears to require the occupier to make individual decisions on a case-by-case basis to warn a person off the premises. We doubt the practice of combined trespass notices would be upheld by the courts, which seems appropriate since decisions to ban people from premises that are generally open to the public involve restrictions on individual liberty.[1128] In any event, the issue of trespassing has implications beyond the Sale of Liquor Act 1989 context. A similar trespassing scheme could be applied in other contexts such as a group of retailers imposing joint bans on people accused of shoplifting. If change is to be considered, this should take place within the context of a review of the Trespass Act 1980.

Closure of licensed premises

20.66 The Sale of Liquor Act 1989 provides two situations where licensed premises can be ordered to close. The first situation relates to section 173 where there are concerns about rioting or fighting in a particular place, and a court order can be sought to close all licensed premises within a specified distance.[1129] The second relates to section 174, which allows the Police to order licensed premises to close where fighting or serious disorder has occurred or is about to break out. Police advise they rarely exercise the powers to close a bar under either of these sections. Offences for breaching a closure order have been rare, with only seven offences being recorded since 1998/99 and none since 2004/05.[1130]

20.67 In our Issues Paper, we suggested the powers under section 173 are of limited utility because of the time it takes to get a court order. We have considered whether this provision should be removed from the statute book. However, we believe there may be situations where a riot or violence can be reasonably anticipated and, in these circumstances, it is appropriate for the Police to seek a court order to close licensed premises as a preventative measure. The closing of bars in the vicinity of a university campus in anticipation of an event, such as the Undie 500, is a possible example.

1126 Submission of New Zealand Police (submission dated 31 October 2009) at 48, [16.36].

1127 Submission of Ron Taylor (Little Rock Bar & Nightclub) (submission dated 24 October 2009).

1128 New Zealand Bill of Rights Act 1990, s 18.

1129 Sale of Liquor Act 1989, s 173.

1130 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 14 <www.police.govt.nz>.

20.68 Many retailers submitted that the existing powers of the Police go far enough. However, the New Zealand Police considers the current powers should be extended to allow closure in a wider range of circumstances, including where there is fighting or disorder in the immediate vicinity of the licensed premises. The Police notes there are situations where intoxicated patrons spill out of the licensed premises and disorder or fighting takes place in the immediate environs.[1131] The closure power in Western Australian legislation extends beyond the actual licensed premises to the immediate vicinity.[1132] We have some sympathy with the concerns of the Police, but we are concerned about the potential unfairness of closing licensed premises because of disorder in the vicinity. This disorder may have nothing at all to do with the management of the licensed premises, but has the potential to cause significant loss of revenue to the licensee. Moreover, the manager of the premises is unlikely to have any ability to control what goes on outside, and the exit of patrons from non-licensed premises may equally contribute to the problem. Police already have the powers under the Policing Act 2008 to temporarily close roads to traffic, including pedestrians, if there is reasonable cause to believe that public disorder exists or is imminent at or near that place.[1133] This power is sufficient to deal with the problems identified by the Police in its submission.

20.69 We consider, however, that the current provision for immediate closure does require some widening. We propose extending the closure power to deal with a wider range of problem circumstances. The new grounds we propose are based on the powers in the New South Wales legislation.[1134] We propose that the Police may order the licensee or manager to close all or a specified area of the premises until good order is restored where:

- a riot takes place within the licensed premises, or where there is reasonable ground for believing a riot could occur;
- there is fighting or serious disorder, or there is reasonable ground for believing that fighting or serious disorder will break out within licensed premises;
- there is a significant threat to public health or safety;
- the conduct in the premises amounts to a substantial public nuisance;
- offences have been committed that carry a maximum penalty of five years or more and there is a significant risk of further offences being committed by patrons if the premises remain open.

20.70 The circumstances that would give rise to these extended powers of closure are serious. The exercise of such powers may also have a significant impact on the licensee. Therefore we consider that the Police should be required to report the exercise of such a power to the local liquor licensing inspector as soon as possible after its exercise. The Police should also have the ability to make an urgent application to the Alcohol Regulatory Authority if there are concerns that would justify variation, suspension or cancellation of the licence, or suspension or cancellation of the manager's certificate.

1131 Submission of New Zealand Police (submission dated 31 October 2009) at 37, [15.8].

1132 For example, Liquor Control Act 1988, s 114 (WA); Licensing Act 2003 (UK), s 61.

1133 Policing Act 2008, s 35(1)(a).

1134 Liquor Act 2007 (NSW), s 82(3).

20.71 The Police also raised practical difficulties with the limited duration of the current power to close, which has effect only on the day the order is made.[1135] A premises may be ordered to close at 11.30pm, and at midnight the bar can re-open and continue trading, even though safety concerns continue.[1136] The Sale and Supply of Liquor and Liquor Enforcement Bill 2008 proposes an extension of the power to close of up to 48 hours. Similar power to close provisions exist in Australian jurisdictions but extend to 72 hours.[1137] In our view, the period of closure should only be as long as is reasonably necessary to contain the risk that gave rise to the closure. It is important to emphasise that the closure powers are not intended to penalise the licensee or manager. Penalties are issued by courts, not the Police. We suggest the closure should only be for as long as is reasonably necessary to prevent the circumstances that gave rise to the closure order, subject to an upper limit of 24 hours.

PART D: OTHER MECHANISMS TO IMPROVE ENFORCEMENT AGENCIES' RESPONSIBILITIES

20.72 Several agencies are responsible for enforcing the Sale of Liquor Act 1989. These include the Police, liquor licensing inspectors (employees of the District Licensing Agencies) and, to a limited extent, medical officers of health. Their roles have been discussed in detail earlier in this report. This part of the paper discusses the role of these agencies in monitoring compliance and enforcing the law.

20.73 Poor enforcement of liquor laws has been a common criticism for some time.[1138] Particular concern has been expressed about enforcement not being bolstered to monitor the wide availability of alcohol in supermarkets.[1139]

Role of the New Zealand Police

20.74 The New Zealand Police has responsibility for enforcing the general criminal law as well as specific offences under the Sale of Liquor Act 1989. These roles are performed by frontline police as well as dedicated staff focused on alcohol-related harm.

20.75 In our Issues Paper, we discussed the role and portfolio of liquor licensing officers.[1140] Since publication of our Issues Paper, this role has been rebranded as "alcohol harm reduction officers". Although a key part of the role of the alcohol harm reduction officers is to inquire into applications for licences and manager's applications and lodge objections,[1141] the rebranding emphasises that the role is not purely administrative but includes monitoring, compliance and collaboration with partner agencies to achieve the goal of alcohol-harm reduction.

1135 Sale of Liquor Act 1989, ss 173(3) and 174(5).

1136 Submission of New Zealand Police (submission dated 31 October 2009) at 38, [15.13].

1137 Liquor Act 2007 (NSW), s 82(4).

1138 Phillida Bunkle MP, Alliance (27 July 1999) 579 NZPD at 18620.

1139 Hon Phil Goff, MP Labour (27 July 1999) 579 NZPD at 18630.

1140 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 155.

1141 Sale of Liquor Act 1989, s 11(3) and s 20(3).

20.76 The Police has identified that 50 % of alcohol-involved occurrences originate from just under 10 % of licensed premises (or 2 % of the total on-licence and club premises in New Zealand).[1142] The Police prioritises its resources and enforcement actions to the highest risk premises because of the large number of licensed premises around New Zealand and the associated paperwork and compliance requirements they generate.[1143] The operating framework used by the Police is the Graduated Response Model (GRM). In addition to resource prioritisation based on the risk that the premises pose, the other goal of the model is to achieve compliance through dialogue with licensees and managers, as well as enforcement when breaches of the Act or conditions occur.[1144]

20.77 The GRM has an escalating approach for monitoring compliance of all licensed premises based on their level of risk. Licensed premises are assessed for risk on the basis of information from Police's Alco-link database, compliance checks and controlled purchase operations. The GRM is summarised in figure 20.2.

FIGURE 20.2: NEW ZEALAND POLICE GRADUATED RESPONSE MODEL

20.78 The aim of the GRM model is to have all licensed premises in the lower portion of the triangle – signifying no incidents or concerns have been raised with their operation. Minor or widely spaced breaches (low risk) will be dealt with in a low-level way, including dialogue, letters, meetings and risk mitigation plans with licensees. If these efforts fail, and breaches of the law continue to be detected, a final warning may be issued. If there are further problems then an application for licence variation, suspension or cancellation will be made to the LLA, or offences will be prosecuted.

1142 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 70 <www.police.govt.nz>.

1143 New Zealand Police "New Zealand Police's enforcement of liquor legislation" (Wellington, 2009) at 2.

1144 Ibid.

Role of liquor licensing inspectors

20.79 Liquor licensing inspectors are employees of the territorial authorities.[1145] There is a good deal of variation between territorial authorities in the resources they allocate to this role. In some locations, the licensing inspector holds the portfolio of liquor licensing with other portfolios. In others, there is a full-time inspector (or several inspectors) who undertakes this role. The core components of a liquor licensing inspector's role include receiving applications for licences and manager's certificates, making reports on them, and monitoring and enforcing licensing requirements.

20.80 In 2007, the Office of the Auditor-General's performance audit report of liquor licensing by territorial authorities found that District Licensing Agencies have responsibility for monitoring and enforcing the Sale of Liquor Act 1989, but that this role was not being performed effectively.[1146] The Auditor-General found that monitoring was sometimes responsive rather than planned[1147] and there was significant variation in practice, so that licensees were subject to "different levels of scrutiny, with different levels of contact with an inspector, depending on where they were running their business".[1148] Since publishing its report, the Office of the Auditor-General has worked closely with Local Government New Zealand to identify priority areas for improving licensing practice, and to co-ordinate initiatives to share and promote guidance to the sector. The Office intends maintaining close contact with Local Government New Zealand on matters relating to its report.[1149]

20.81 Liquor licensing inspectors are seldom the sole initiator of enforcement action, leading only 16% of enforcement action in 2007.[1150] We have been told the role of liquor licensing inspectors is largely taken up with paperwork and collaboration meetings during regular business hours, and that neither time nor resources are made available to enable intensive monitoring or enforcement. In some areas, licensing inspectors rarely work at night, when inspections are likely to be most useful. If resourcing is only sufficient to complete the paperwork side of the role, the goal of reducing alcohol-related harm cannot be advanced. This goes to the heart of the concerns the Auditor-General raised about monitoring and enforcement.[1151]

20.82 Much of the remedy for some of the Auditor-General's concerns lies in resourcing, rather than legislative change. We discussed the issue of resourcing in chapter 11. However, one legislative change identified in our Issues Paper was giving licensing inspectors the power to enter licensed premises, as police can,

1145 Sale of Liquor Act 1989, s 103(1).

1146 Controller and Auditor-General *Liquor Licensing by Territorial Authorities: Performance audit report* (Wellington, 2007) at 33, [4.2] and [4.4].

1147 Ibid, at 34.

1148 Ibid, at 37 [4.19].

1149 Office of the Controller and Auditor-General *Liquor licensing by territorial authorities – Performance audits from 2007: Follow-up report* (Wellington, 2010) <www.oag.govt.nz>.

1150 Data provided by the Liquor Licensing Authority to New Zealand Police.

1151 Controller and Auditor-General *Liquor Licensing by Territorial Authorities: Performance audit report* (Wellington, 2007) at 40, [4.34].

without the need to identify themselves.[1152] This would enable a liquor licensing inspector to covertly observe bar management practices and levels of intoxication of patrons so that evidence of offences or breaches of licence conditions can be gathered.

20.83 Submissions on our Issues Paper generally supported this proposal, including those from local government, the New Zealand Institute of Liquor Licensing Inspectors[1153] and New Zealand Police.[1154]

20.84 We consider it would be appropriate to put liquor licensing inspectors on the same footing as the Police. The current requirement means the ability of licensing inspectors to detect breaches of the Sale of Liquor Act 1989 is severely undermined because managers and staff will inevitably conceal any breaches of the law or licence conditions as soon as they become aware of the inspector's presence. We therefore recommend that liquor licensing inspectors be given the same power of entry to inspect as the Police under section 175 of the Act.

Role of medical officers of health and New Zealand Fire Service

20.85 The medical officer of health's role is to inject a public health perspective into licensing decisions. Medical officers of health also have a limited role in enforcement.[1155] Members of the New Zealand Fire Service have a role in inspecting premises to assess fire-safety issues, for example, where fire egresses are blocked or maximum numbers of patrons are exceeded. We see no need for an extension of the enforcement powers of either of these agencies.

Collaborative approaches to monitoring and enforcement

20.86 In our Issues Paper, we noted that the law is most effective when the relevant agencies take a collaborative approach to compliance and enforcement.[1156] This observation is not new. The Auditor-General's 2007 performance audit report also saw a need for sharing information and consultation between regulatory agencies.[1157]

20.87 The Auditor-General's 2007 performance audit report also identified the need for:[1158]

> …a formal agreement between local DLAs, the Police, and the public health services – such as a protocol – to record the common goals, differing roles, and agreed approach to processing applications, sharing information, and pooling resources would help. With appropriate endorsement from senior management, such arrangements can serve as an enduring record and practical operating framework for working together.

1152 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 240.

1153 Submission by New Zealand Institute of Liquor Licensing Inspectors Inc (submission dated 31 October 2009).

1154 Submission by New Zealand Police (submission dated 31 October 2009) at 41, [15.29].

1155 Sale of Liquor Act 1989, s 134 (suspension of licence for non-compliance with public health or fire precaution requirements).

1156 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 194, [11.31].

1157 Controller and Auditor-General *Liquor Licensing by Territorial Authorities: Performance audit report* (Wellington, 2007) at 39.

1158 Ibid, at 6.

20.88 We were advised by Police that a combined agency protocol for administering, monitoring and enforcing liquor licensing has been adopted in some but not in all locations around the country. We consider that each of the territorial authorities should, as a matter of priority, enter into arrangements setting out how they will work together to administer, monitor and enforce liquor licensing, with the existing combined agency protocol being a minimum standard.

20.89 The importance of collaboration cannot be overstated. Key benefits include the ability to seek early behavioural changes by licensees and managers to minimise alcohol-related harm, to conduct joint training sessions for licensees, managers, door and serving staff and to increase awareness of the Sale of Liquor Act 1989, as well as to clarify the combined expectations of the partner agencies. Accordingly, we recommend that the statute impose on the regulatory agencies a duty to collaborate on the administration, monitoring and enforcement of liquor licensing. The imposition of such a duty would reinforce the importance of collaboration, which may assist in addressing some of the current problems with ineffective monitoring and enforcement of the Sale of Liquor Act 1989.

20.90 We note, however, that the relationships and outcomes are strongest where dedicated resources have been allocated to enforcement, taking into account the need for collaboration. The Office of the Auditor-General's 2007 performance audit report identified the need to commit resources and funding to District Licensing Agencies so they can meet their regulatory requirements.[1159] The Police's conservative estimate is that at least 31% of offending is alcohol-related,[1160] therefore any investment in proactive monitoring and enforcement of the licensing framework must pay dividends.

20.91 We believe the concerns of the Auditor-General must be addressed at a local level and should be part of the implementation processes when the new legislation comes into force. Strategic ownership and awareness of alcohol-related issues within key organisations, such as the New Zealand Police and Ministry of Health, is also essential.

Data collection and information sharing

20.92 One of the themes that emerged during our consultation is the need for better information sharing by the agencies involved in liquor licensing enforcement. Information sharing and data collection are essential to the effectiveness of liquor licensing enforcement action and are also important for the evaluation of what initiatives work and the impact of changes in both law and practice.

1159 Controller and Auditor-General *Liquor licensing by Territorial Authorities: Performance audit report* (Wellington, 2007) at 26, [3.28] and 28, [3.38].

1160 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 7 <www.police.govt.nz>.

Information sharing

20.93 There is currently no joined-up database where all records about liquor licensing are held. Each agency has its own data system, some are electronic but others are paper files. The Police's National Intelligence Application (NIA) and Alco-link database are the only nationwide data systems that record information relating to both premises and managers. It is desirable that all of the available information about licensed premises is held in a single location so that licensing decisions can be fully informed and enforcement action appropriately prioritised. If our recommendations about infringement offences and automatic cancellation of licences are implemented, it will become even more important to have this information held in a single location.

20.94 One of the strengths of the New South Wales licensing system is that there is a single database that includes all licensing, monitoring and enforcement information. The data are available to all agencies that have a role in licensing and enforcement. We consider that it is highly desirable that all agencies involved in liquor licensing and enforcement have access to nationwide licensing, monitoring and enforcement information. Access to nationwide information is particularly important because of the transience of managers and licensees across the country. During our consultation meetings, we became aware of a State Services Commission shared platform that could facilitate this "across government" information sharing.

Data collection for evaluation purposes

20.95 As well as data about licence matters, submissions highlighted the need for better information so changes in alcohol-related harm can be properly evaluated. We are aware that the Accident Compensation Corporation is in the early stages of a project to look at data collection on alcohol-related harm, using the Wellington Hospital Emergency Department as a starting point for data.[1161]

20.96 During a consultation meeting with members of the Far North Co-Location Project, a framework of alcohol-related harm indicators was provided that documents data that are likely to or should be collected by relative agencies.[1162] The framework lists a range of available data that would all inform agencies about alcohol-related harm within their area. The data include:

- Police data on crimes, family violence, Alco-link, alcohol-related road traffic crashes and Controlled Purchase Operations;
- hospital data, including ambulance, accident and emergency, alcohol-related hospitalisations, alcohol-related hazardous consumption and abuse and dependency data;
- council data, including alcohol noise complaints; and
- fire data on alcohol-related fires.

20.97 We recommend this information be collected by all territorial authorities.

1161 Accident Compensation Corporation and Capital and Coast District Health Board *Project Plan Alcohol Related Harm Data Collection Project* (Wellington, 2009).

1162 Submission of Mandi Hardie (Far North Alcohol Team Indicator Framework) (submission dated 24 August 2009).

RECOMMENDATIONS

> Continued next page

R110 A statutory definition of "intoxication" using the definition of "intoxicated" in the Policing Act 2008 should be adopted in the new legislation.

R111 The new Alcohol Regulatory Authority should be empowered, by statute, to issue a public guideline to assist in determining whether a patron of a licensed premises is or is not intoxicated.

R112 It should be an offence for any manager or employee to be intoxicated while working on licensed premises. The maximum penalty for this offence should be $2,000.

R113 The only defence to sale and supply of alcohol to a minor should be that the person selling or supplying alcohol has sighted an evidence of age document that belongs to the person to whom alcohol is sold and that shows the person to be 18 years or older.

R114 An amendment should be made to the offence of making a false representation to obtain alcohol to the effect that the offence is not committed by a person who makes a false representation (other than in writing) at the request of a member of the Police acting in the course of their duties.

R115 Licensees, managers and licensed door staff should be given the power to confiscate false evidence of age documents or evidence of age documents that have been tampered with. This power should not extend to passports.

R116 A new infringement offence should be created for an individual who lends a genuine evidence of age document to a minor, knowing that the minor intends to use the document to obtain entry into licensed premises or be sold alcohol on those premises.

R117 The Chief District Court Judge should designate several District Court judges in each of the six judicial regions to be involved in the hearing of alcohol offences and associated sentencing. These judges should be given additional training in sale of alcohol matters, and the new Alcohol Regulatory Authority should assist in this.

R118 The following offences should be made infringement offences under the new legislation while retaining the ability to proceed summarily, as currently provided in section 162B of the Sale of Liquor Act 1989:

- permitting people under the age of 20 in a restricted or supervised area;
- sales of spirits otherwise than in a glass;
- licensee offences in respect of a manager being present at all times;
- making a false representation as to age (whether in writing or not);
- serving alcohol on licensed premises while intoxicated.

The maximum penalty for infringement offences should be set by regulations, but should not exceed $1,000.

RECOMMENDATIONS

R119 A breach of a liquor licence condition (mandatory or discretionary) should also be an infringement offence.

R120 Only liquor licensing inspectors and members of the Police should be authorised to issue infringement notices.

R121 A manager's certificate should be automatically cancelled for five years where three adverse findings (either convictions or findings by the new Alcohol Regulatory Authority) are made against the manager for the following offences (whether or not of the same type) within a three-year period:

- sale and supply of alcohol to a minor;
- sale and/or supply of alcohol to an intoxicated person;
- unauthorised sale or supply of alcohol;
- irresponsible promotions of alcohol.

R122 A licensee's licence should be automatically cancelled for five years where three adverse findings (either convictions or findings by the new Alcohol Regulatory Authority) are made against the licensee for the following offences (whether or not of the same type) within a three-year period:

- sale and supply of alcohol to a minor;
- sale and/or supply of alcohol to an intoxicated person;
- unauthorised sale or supply of alcohol;
- irresponsible promotions of alcohol.

R123 There should be no bar on the new District Licensing Committees or Alcohol Regulatory Authority in considering the adverse findings, when determining future suitability to obtain a manager's certificate or licence after the five-year cancellation period.

R124 The New Zealand Police should have the power to close all or a specified part of a licensed premises immediately where:

- a riot takes place within the licensed premises, or where there is reasonable ground for believing a riot could occur;
- there is fighting or serious disorder, or there is reasonable ground for believing that fighting or serious disorder will break out within licensed premises;
- there is a significant threat to public health or safety;
- the conduct in the premises amounts to a substantial public nuisance;
- offences have been committed that carry a maximum penalty of five years or more and there is a significant risk of further offences being committed by patrons if the premises remain open.

RECOMMENDATIONS

R125 As soon as possible after the exercise of the power to close a bar immediately, the Police should be required to notify the local liquor licensing inspectors.

R126 The duration of a court order or police order for closure of licensed premises should extend up to 24 hours beyond the end of the day on which the order is made.

R127 Liquor licensing inspectors should have the same powers of entry as the Police under section 175 of the Sale of Liquor Act 1989.

R128 There should be a statutory duty on the new District Licensing Committees, Police and health authorities to collaborate in the enforcement of liquor licensing.

R129 All agencies should allocate adequate resources to ensure that effective liquor licensing collaboration is possible when implementing the new legislation.

R130 A nationwide shared information system on liquor licensing should be developed.

R131 Territorial authorities should collect data, such as that collected by the Far North Co-Location Project, so that changes in the nature and extent of alcohol-related harm in the area can be monitored and evaluated.

Chapter 21

Alcohol in public places

IN THIS CHAPTER, WE:

- Outline our recommendations on what should be done concerning the current law in relation to alcohol and disorder in public places.
- Discuss whether there should be an offence of being drunk in a public place and the level of personal responsibility taken by individuals for their conduct.
- Discuss the rules about consuming and possessing alcohol in a public place and the law concerning liquor bans created by local body bylaws made by territorial authorities.

CURRENT LAW ON ALCOHOL IN PUBLIC PLACES

21.1 In general, the issues in this chapter are not dealt with by the Sale of Liquor Act 1989 but the Summary Offences Act 1981, Crimes Act 1961 and Local Government Act 2002. At present, it is not an offence for members of the public to drink alcohol in *any* public place. But it is contrary to law to drink in a public place in particular locations, under liquor bans,[1163] and for those under the age of 18 to drink in any public places at any time.[1164] For example, it is an offence, punishable by an infringement notice, for a person under the age of 18 to be found in possession of or consuming alcohol in a public place.[1165] Several offences in the general criminal law have application to people who have consumed alcohol. These include disorderly behaviour,[1166] offensive behaviour or language,[1167] wilful damage,[1168] fighting in a public place[1169] and breach of the peace.[1170] These criminal offences hold people accountable for criminal behaviour in many locations, including public places.

1163 Local Government Act 2002, s 147.
1164 Summary Offences Act 1981, s 38.
1165 Ibid.
1166 Ibid, s 3.
1167 Ibid, s 4.
1168 Ibid, s 11.
1169 Ibid, s 7.
1170 Crimes Act 1961, s 42.

DRUNK IN A PUBLIC PLACE

What the submissions said

21.2 Public drunkenness, as an offence, was removed from the New Zealand statute book with the enactment of the Summary Offences Act 1981.[1171] In our Issues Paper, *Alcohol in Our Lives*, we raised the question whether there should be a return to such an offence, perhaps as an infringement offence.[1172] The public consultations disclosed reasonably high levels of support for the reintroduction of such an offence in order to make people personally responsible for their behaviour. Of the 2,939 submitters, 702 commented on the policy options relating to drinking in public places. Of those 702, 60% supported reintroduction of the offence of being drunk in a public place. Others raised questions about the definition of "drunk", whether there could be exceptions and whether all locations were a concern. The Hospitality Association of New Zealand submitted that creation of such an infringement offence would send a clear and powerful message to the public that intoxication is unacceptable.[1173] It would, therefore, provide an element of personal responsibility for an individual's actions.

21.3 Data presented to us by the New Zealand Police disclosed that, in 1980, there were 7,696 offences of being found drunk in a public place.[1174] The submission from the New Zealand Police analysed the likely impact of reintroducing drunk in a public place as an offence. The submission states:[1175]

> Re-introducing similar offences in the current drinking environment would bring a considerable number of people into the criminal justice system, particularly those groups that are already over-represented in the system. The impact would be particularly significant on Maori and young people, by bringing them into the criminal justice system.
>
> There would be a significant increase of calls for service through the Police communication centres. Because of the visibility of the offence it is likely that many complaints would be made to the Police about drunken people in public places. Many of these would be during the peak offending times for the Police, when there is already high demand for our services. Police's capacity to enforce this offence would damage the community's perception of the Police.

1171 The offence of "drunk in a public place" in s 41 of the Police Offences Act 1927 was repealed by the Summary Offences Act 1981. The offence, when it existed, simply provided that "[e]very person found drunk in any public place" committed an offence. More than three convictions for the offence within six months led to imprisonment for a term of up to three months.

1172 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 55 [Alcohol in Our Lives].

1173 Submission of the Hospitality Association of New Zealand (submission dated 30 October 2009) at 20.

1174 Submission of New Zealand Police (submission dated 31 October 2009) at 47.

1175 Ibid.

21.4 The Police also pointed out that the existence of the offence did not stop people becoming intoxicated. Policing the offence consumed considerable police and court time, but only small penalties were imposed.[1176]

21.5 We find the Police's arguments against reintroduction of an offence of being drunk in public compelling. It is important to balance the amount of personal responsibility that would be secured by the creation of such an offence against the quantity of police resource presently spent on the management of intoxicated people in public places and the extra resource that would be created by the new offence. We do not think such a calculation favours the reintroduction of the offence.

Personal responsibility

21.6 We recommend the offence of public drunkenness not be reintroduced, even as an infringement offence. We think there are more effective ways of sheeting home personal responsibility than by the creation of a criminal offence. We believe the arguments in favour of personal responsibility have weight. They need to be given an appropriate outlet. As outlined above, personal responsibility for individuals whose intoxication results in offending already exists through extensive provisions in the criminal law. These provisions do not require alteration.

21.7 Section 36 of the Policing Act 2008 currently provides police with the power to detain an intoxicated person to either take them home, to a temporary shelter or into custody. The detention can only occur where the person is found intoxicated in a public place or trespassing on private property and is required because the constable reasonably believes the person is incapable of protecting him or herself from physical harm or is likely to cause physical harm to another person, or significant damage to property. A large number of people become so intoxicated they require police intervention, either to drive them home or to a police cell – in 2007/08, 21,263 people were detained under these provisions.[1177]

21.8 In *Alcohol in Our Lives*, we raised the question of the opportunity cost for the Police in undertaking this role.[1178] What it means is police resources are diverted from responding to crime to custodial management through looking after individuals taken into the cells or taken home to sober up. If police do not intervene with people who are in this condition, those people become a risk to themselves and to others. These risks include injury on the roads, personal injury, becoming the victim of violent or sexual assault, and offending against another member of the public.

1176 Submission of New Zealand Police (submission dated 31 October 2009) at 47.

1177 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 26 <www.police.govt.nz> [National Alcohol Assessment].

1178 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 55.

21.9 We think there should be some means of recovering from these individuals some of the expense to which their behaviour puts the state. As Dr Paul Quigley of Wellington Hospital's Emergency Department said when responding to the question of whether it was appropriate for police to manage intoxicated people:[1179]

> Of course not! Nor is it acceptable that they utilise resources like ambulances to attend ED when compared with other "worthy" user groups. However, the Police are the best trained to deal with disorderly people which is what intoxicated people are. The biggest problem is that there is *no consequence to this*. Intoxicated people that need the assistance of the Police should be **charged for this service**.

21.10 While we do not recommend bringing back the offence of public drunkenness for the reasons stated, we do consider that people whose conduct causes expense to the public should be charged a monetary amount. This would help to sheet home personal responsibility. The personal responsibility focus should be limited to recovering at least part of the cost incurred by the Police in providing care and protection for intoxicated persons under section 36 of the Policing Act 2008. This means some of the cost to the taxpayer could be recovered where police exercise their powers of detention to either drive intoxicated people home, put them in a temporary shelter (such as a hospital) or hold them in a police cell until they are sober and able to be released.

21.11 The most suitable approach for cost recovery is a civil regime providing police with the discretion to serve a notice on the individual that requires payment of a prescribed amount. We would expect the Commissioner of Police to provide guidelines around the occasions on which this discretion should be exercised.

21.12 We foresee that non-payment after a period of perhaps 28 days would see the debt passed to a debt recovery agency for collection, which would minimise the administrative burden on the Police. Anyone who wished to challenge the legitimacy of the issuing of the notice would have to prove in a civil jurisdiction that the notice was not fairly served. A complaint could be made to the Independent Police Conduct Authority if the person subject to the order felt it was not properly handled by the Police.

21.13 We therefore recommend the adoption of a civil cost-recovery regime that provides police with the power to serve a notice of debt on anyone who, because of intoxication, is either driven home, placed in a temporary shelter or put in a police cell under the powers of detention police have under section 36 of the Policing Act 2008. We think the prescribed amount should be around $250 or such an amount that makes the debt worth the cost of collection. The proceeds should go to the consolidated fund, not the New Zealand Police. Disputes should be dealt with by the Disputes Tribunals of the District Courts.

1179 Submission of Dr Paul Quigley MbChB, FACEM, Emergency Medicine Speciality, Wellington Hospital (submission dated 29 October 2009) at 4.

Nurses in watch houses

21.14 The police are not trained professionals in dealing with drunks although many are remarkably skilled at the task. As we identified in our Issues Paper, the absence of detoxification or sobering-up centres in New Zealand places considerable strain upon the Police.[1180] We agree with the Police's submission that ownership of this issue needs to be taken by the health system.[1181]

21.15 Since July 2008, there have been mental health/alcohol and drug nurses located in Christchurch and Manukau Police's watch houses funded by the Ministry of Health and New Zealand Police on a pilot basis. These health personnel assist the Police in better managing the risks of those in their custody with mental health, alcohol and other drug problems. They can, where appropriate, make referrals for detainees to treatment providers.

21.16 This pilot system has been the subject of an interim evaluation that was favourable.[1182] About 80% of those arrested are under the influence of alcohol and/or drugs, but particularly alcohol, according to a Christchurch-based nurse.[1183]

21.17 We recommend that, if the final evaluation of the pilot programme is favourable, further funding be provided to enable existing watch-house nurses to continue in this role. Consideration should also be given to setting up additional services in high-volume locations to help police with managing intoxicated persons.

CONSUMING AND POSSESSING ALCOHOL IN A PUBLIC PLACE

21.18 Section 38(3) of the Summary Offences Act 1981 provides that anyone under the age of 18 commits an offence and is liable to a fine of up to $300 who, in any public place and while not accompanied by their parent or guardian, drinks any intoxicating liquor or has in their possession or under their control any intoxicating liquor for consumption. The case law around this provision has established that the definition of "public place" in section 2 of the Summary Offences Act 1981 includes drinking in a vehicle.[1184] We think this case law should be codified to clarify and avoid doubt. The Local Government Act 2002 explicitly covers the presence or use of alcohol in a vehicle in a public place.[1185]

21.19 For this offence, an infringement notice can be issued to youths under the age of 18 with a maximum penalty of $200.[1186] The provision effectively dates back to an amendment to the Police Offences Act 1927 made in 1960 for those under the age of 21. The intention was to prevent "hooliganism".[1187] The offence was carried over to the Summary Offences Act 1981 initially for those who were aged

1180 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 55.

1181 Submission of New Zealand Police (submission dated 31 October 2009) at 53.

1182 Judy Paulin and Sue Carswell *Evaluation of the Mental Health/Alcohol and Other Drug Watch-house Nurse Pilot Initiative: Interim Report* (New Zealand Police, Wellington, 2009) <www.police.govt.nz>.

1183 Teresa O'Connor "Improving relations between police and mental health services: working in the cells at Christchurch Central Police Station, as part of a pilot project placing nurses in the watch house, has been an eye-opener for experienced mental health nurse Steve Howie" Kai Tiaki: Nursing New Zealand (September 2009) at 18–19.

1184 See for example, *Police v Tito* (1994) 11 CRNZ 609; *Andrews v Police* (1988) 3 CRNZ 692.

1185 Local Government Act 2002, s 147(2)(d).

1186 Summary Offences Act 1981, s 38A.

1187 Hon P G Connolly, Minister of Police (21 October 1960) 325 NZPD 3174.

under 20 but then the purchase age was lowered in 1999. In 2007/08, 3,145 liquor infringement notices for minors were issued.[1188] In addition to infringements for drinking in a public place under section 38, this total also includes infringement notices for minors purchasing alcohol[1189] and minors in restricted and supervised areas[1190] under the Sale of Liquor Act 1989.

21.20 The purpose behind the provision is to make it illegal to possess or consume alcohol in a public place by anyone not legally allowed to purchase it. We think this provision is desirable and should be continued. In chapter 16 we recommend the legal purchase age is increased to 20 years, and that there be no defence for parental supply or supervision.

21.21 There is an uncertainty in relation to liquor infringement offences that apply to children and young persons under the Children, Young Persons, and Their Families Act 1989. There is a legal no man's land here as to whether, in situations where a notice is defended or fines enforcement action is required, it is the Youth Court or District Court that should have the power. We think this needs to be fixed.

21.22 We recommend an amendment be made to section 272 of the Children, Young Persons, and their Families Act 1989 to clarify that liquor infringement notices issued to minors, in limited situations where they are defended or for fines enforcement purposes, should be within the jurisdiction of the District Court, unless the young person faces other charges in the Youth Court and it is convenient to hear the matters together in that forum. This is how traffic offences not punishable by imprisonment are managed under that Act.[1191]

Public drinking and liquor bans

21.23 At present, the prime policy problem that exists concerning alcohol in a public place relates to liquor bans. Liquor bans are created by local bylaws made by territorial authorities. The powers exist under the Local Government Act 2002.[1192] Each territorial authority can make bylaws for the purpose of prohibiting, regulating or controlling the consumption of liquor in a public place and the bringing of liquor into a public place or the possession of liquor in a public place.[1193]

21.24 The Local Government Act 2002 contains powers of arrest, search and seizure in relation to liquor to back these bylaws.[1194] Police can search any vehicle entering any public place in a liquor ban area.[1195] They can seize and remove liquor in its container if it is in breach of the bylaw.[1196] The liquor is forfeited

1188 New Zealand Police *National Alcohol Assessment* (Wellington, 2009) at 32 <www.police.govt.nz>.

1189 Sale of Liquor Act 1989, s 162.

1190 Ibid, s 163.

1191 Children, Young Persons, and Their Families Act 1989, s 272(3)(c); s 272(5).

1192 Local Government Act 2002, s 147.

1193 Ibid, s 147(2).

1194 Ibid, s 169.

1195 Ibid, s 169(2)(a)(ii).

1196 Ibid, s 169(2)(b).

to the Crown upon conviction.[1197] Police are authorised to arrest a person found committing an offence or who refuses to comply with a police request to leave the ban area or surrender the liquor in their possession.[1198]

21.25 A prodigious number of bylaws have been made under these provisions, about 170. In 2005, 64% of the 74 territorial authorities had liquor controlled bylaws.[1199] There has been a large increase in the number of territorial authorities with liquor control bylaws – in 2009, 93% of the territorial authorities in New Zealand had at least one liquor ban.[1200] There is widespread public support for the liquor bans and amongst territorial authorities and within the Police. Liquor bans are the prime measure for policing in New Zealand in situations where public disorder can be created by the consumption of liquor. The bylaws are made in response to a local need and there is a lot of input from territorial authorities, the Police and community itself.

Legal problems

21.26 Despite their rapid adoption and widespread support, there are serious legal deficiencies in these liquor bans. A bylaw is an insecure form of law. It could be invalidated as being *ultra vires* the empowering Act. It could be struck down in court as contrary to the New Zealand Bill of Rights Act 1990 or as being unreasonable. It could also be held to be invalid as being repugnant to the law of New Zealand. There do not appear to have been many challenges to these bylaws yet, but their very variety and scope make a legal challenge inevitable eventually.

21.27 There are serious rule of law issues with liquor bans. One requirement of the rule of law is that law has to be accessible. Lord Bingham, until recently the senior Law Lord in the United Kingdom, has written eloquently on the subject of the rule of law. He said this:[1201]

> The law must be accessible and so far as possible intelligible, clear and predictable. This seems obvious: if everyone is bound by the law they must be able to, without undue difficulty, find out what it is, even if that means taking advice (as it usually will), and the answer when given should be sufficiently clear that a course of action can be based on it.

21.28 There is an issue with the accessibility of the law relating to liquor bans. How people affected by liquor bans can find out where those bans do and do not apply is highly problematic. The bans are pepper-potted around New Zealand in an increasingly large number of areas, but only where there have been particular problems with alcohol.

1197 Ibid, s 169(3).

1198 Ibid, s 169(2)(b).

1199 Department of Internal Affairs & Buddle Findlay *Report on Liquor Control Bylaws* (August 2005) at 16.

1200 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 196.

1201 Lord Bingham "The Rule of Law" [2007] CLJ 69 at 69–70; see also From Lord Bingham "What is the law?" (2009) 40(3) VUWLR 597 at 597.

21.29 There is a huge variation in the scope of these liquor bans, both in terms of the hours to which they apply, and their location. The boundaries of where people can and cannot drink in public are not easy to ascertain from signage. In some areas, people would not know there was a liquor ban without conducting a really serious search for the signage, and at night this can be particularly difficult to see.

21.30 Some liquor bans apply for 24 hours a day, others for only 12 hours a day. It is confusing, to say the least, to have large parts of New Zealand but not others covered by bylaws that give police powers to arrest.

21.31 The key principle of the rule of law is that the substantive law must be guided by the principle of "normativism"; meaning the law should possess the characteristics of certainty, generality and equality.[1202] These principles do not characterise the liquor ban law in New Zealand. Liquor bans are not open, clear or stable. Indeed, they multiply exceedingly rapidly as we have observed in the course of this inquiry.

21.32 The liquor bans have developed to deal with particular difficulties arising out of special occasions, such as Christmas and New Year. They have multiplied, spread and become routine and permanent. Every week somewhere or other in New Zealand there is a call for a new liquor ban. The tendency seems inexorable. We received submissions from people who reside outside liquor ban areas who are lobbying their local government to seek a liquor ban to be created to deal with the burgeoning problems of drinking in public, particularly at night, and the ensuing noise, disorder and litter that naturally follow.[1203]

21.33 It seems strange it has not been possible to devise a general law of New Zealand passed by Parliament to deal with this problem. It would be highly desirable to do this if it were possible. There has been a massive devolution of power to territorial authorities involved in this development during the last decade.

Ban drinking in all public places?

21.34 We have examined the situation critically and attempted to devise alternatives. One idea we looked at was to ban drinking in all public places. This would mean, however, that people having a drink at a picnic or on the beach would be breaking the law. This would curtail individual freedom for people who are drinking responsibly and who do not create disorder. Few submissions supported a blanket offence of drinking in a public place, probably for this reason.

21.35 Another option we examined was to fashion a general New Zealand law but with the capacity to make local exemptions that permit drinking in specified public places. Queensland has adopted a provision of this nature.[1204] While it seems to work there we doubt it would work or be acceptable here.

1202 Geoffrey de Quincy Walker *The Rule of Law – Foundation of Constitutional Democracy* (Melbourne University Press, Carlton, Victoria, 1988) at 23–42.

1203 Submission of the Papamoa Progressive Association (submission dated 21 October 2009) at 1.

1204 Liquor Act 1992 (Qld), s 173C.

Powers associated with liquor bans

21.36 Furthermore, the New Zealand Police does not support an offence of drinking in a public place as a general matter.[1205] Indeed, it is implacably opposed to it for what essentially comes down to issues of resources. It is its capacity to enforce the law that worries the Police. In an attempt to design a bright-line rule, we put forward, in discussions with the Police and Ministry of Justice, a new offence of consuming or possessing an open container of alcohol on a road or in a carpark to which the public has access when that possession or consumption occurs between the hours of 8pm and 8am. We thought the offence should be made by way of amendment to the Summary Offences Act 1981. It could be an infringement offence.

21.37 We conducted vigorous discussions with the New Zealand Police. We argued the proposed new offence should not be accompanied by a power of arrest if it were an infringement offence, and there were ample existing powers of arrest where behaviour was objectionable: disorderly behaviour, breach of the peace, and power to detain under section 36 of the Policing Act 2008. We failed in our attempt to convince the Police, which remains firmly committed to the preservation of the liquor ban system.

21.38 Breach of a liquor ban as matters stand brings with it the power of arrest.[1206] If the offence were an infringement offence it should not attract a power of arrest. It would be too small a matter to warrant the use of coercive power. The New Zealand Police regards the power of arrest as important in the policing of liquor bans. If that is the case, we believe the protections of court processes need to be preserved for the offence. It cannot be an infringement offence. The power of arrest should be maintained for seriously objectionable behaviour. If liquor ban breaches fall into that category, as argued by the Police, then the protections of due process of law that accompany those breaches now should be preserved.

21.39 In light of this, we feel unable to press our recommendation further, so we make no formal recommendation along the lines of the one suggested above and suggest liquor bans remain, supported by a summary offence that attracts a power of arrest.

21.40 It is clear, however, that deficiencies remain with the law contained in the Local Government Act 2002 relating to the establishment and scope of liquor bans. We think it is important the criteria on which they are made and developed are clarified. Currently, before commencing the process for making a bylaw, a local authority must determine whether a bylaw is the most appropriate way of addressing the perceived problem.[1207] Having met that requirement, the authority must then determine whether the proposed bylaw is the most appropriate form of bylaw and whether there are any implications under the New Zealand Bill of Rights Act 1990.[1208] Any new, amended or revoked bylaw must undergo the special consultative procedure.[1209]

1205 Submission of New Zealand Police (submission dated 31 October 2009) at 43.

1206 Local Government Act 2002, s 169.

1207 Ibid, s 155(1).

1208 Ibid, s 155(2).

1209 Ibid, s 156.

21.41 Although these provisions provide some protection, we consider there should be particular evidential requirements the authorities must meet to show a liquor ban bylaw is the most appropriate way to address the problem. First, they should show the proposed area and timing can be justified as a reasonable limitation on the rights and freedoms of individuals. This approach should require evidence of a high volume of offending or disorder in the proposed area, which can be linked to alcohol. Second, the evidence should demonstrate the density of offending and disorder, and location of offending. Evidence should also demonstrate the proposed timing is a justified and proportionate response to the alcohol-related harm that occurs. The Police's Alco-link data would be a source of information to justify this approach. We also consider there is a need for a standard template to counter the difficulties we encountered in our review of the bylaws by ensuring that there is consistency between these legal instruments. This could be achieved through collaboration between Local Government New Zealand and the Parliamentary Counsel Office to settle a template as an appropriate model for territorial authorities to follow.

21.42 We note the definition of "public place" in the Local Government Act 2002, as it applies to the liquor ban bylaw, has operational limitations. The definition in section 147(1) is limited to places under the control of the authority and open to, or being used by, the public, whether or not there is a charge for admission, and includes roads within the authority. We are concerned that private carparks have become a place of resort outside the scope of the current liquor bans and believe police should have the power to deal with the consumption of liquor in such carparks within the areas covered by a liquor ban.

21.43 We recommend the definition of "public place" in section 147(1) of the Local Government Act 2002 be amended to include private carparks to which members of the public have access.

21.44 We note the Local Government Act 2002 requires that all liquor bans are reviewed regularly, with an initial review being required no later than five years after it was made,[1210] and a further review occurring ten yearly.[1211] Reviews are appropriate, and our recommendations concerning new criteria for making bylaws should be applied in future revisions.

21.45 We think it is important the signage provisions relating to the bylaws become much clearer and are laid down in a uniform fashion around New Zealand, expensive as that may be for local authorities. This was a regular suggestion for improvements for liquor bans in submissions we received. We recommend the New Zealand government be given the power to prescribe by regulation uniform signage requirements for liquor bans. Uniformity around New Zealand in this regard will assist the rule of law problem.

1210 Ibid, s 158.

1211 Ibid, s 159.

21.46 A breach of a liquor ban bylaw is a summary offence with the maximum penalty of a fine up to $20,000.[1212] Of the liquor bans we analysed in our April 2009 stocktake, only six have deviated from the maximum penalty prescribed for a breach of a liquor ban bylaw under section 242(4) of the Local Government Act 2002.[1213] We consider the maximum penalty of $20,000 is absurd and disproportionate to the nature of the offence. The obvious comparison is the offence of drinking in a public place by a minor under section 38(3) of the Summary Offences Act 1981, which incurs a maximum penalty of a fine up to $300, but can also be dealt with as an infringement offence for $200.[1214] The highest maximum penalty for offences resembling public nuisance[1215] in the Summary Offences Act 1981 is $300.

21.47 A $20,000 maximum penalty in this bylaw is out of proportion with the nature of the offence, as has clearly been signalled by the courts, which imposed an average fine of $231 in 2007/08. This is similar to the value of a liquor infringement notice.[1216]

21.48 We recommend the maximum fine for breach of a liquor ban be fixed at $500 by an amendment to the Local Government Act 2002.

Evidential samples

21.49 Breaches of liquor bans, infringements for drinking liquor in a public place and many Sale of Liquor Act 1989 offences all require proof that "liquor" was possessed or consumed,[1217] or sold or supplied, if it is in issue by the defence.[1218] The Police raised an operational issue in relation to fieldwork and evidential requirements to prove a beverage contains alcohol. In the Police's view,[1219] the situation arises for liquor bans because the primary legislation adopts the definition of "liquor" from section 2 of the Sale of Liquor Act 1989.[1220] The adoption of this definition means analysis is required to establish that any seized substance is liquor, and contains 1.15% or more alcohol by volume.[1221] This was also established by a Court of Appeal decision.[1222]

1212 Ibid, s 242(4).

1213 The liquor bans of Waitaki District Council, Nelson City Council and Tasman District Council have a maximum penalty of $1,000. The maximum penalty is $2,000 in the Gisborne City Council's bylaw. One of the bylaws within Grey District Council carries a penalty of $500, while the one for Runanga, within the Grey District, continues to carry the $20,000 maximum penalty available under section 242(4) of the Local Government Act 2002. Western Bay of Plenty's liquor ban bylaw sets the maximum penalty as that available under section 242(2) of the Local Government Act ($5,000), although this subsection is not relevant to liquor ban offences.

1214 Summary Offences Act 1981, s 38A.

1215 For example, excreting in a public place, bill-sticking and throwing stones all carry $200 fine, while drinking in a public place under s 38 carries a $300 maximum fine.

1216 Email from the Ministry of Justice to the Law Commission regarding liquor infringement notices (8 June 2009).

1217 Summary Offences Act 1981 s 38(3); Local Government Act 2002, s 147(3).

1218 For example, the Sale of Liquor Act 1989, ss 155, 160, 162 and 166.

1219 Submission of New Zealand Police (submission dated 31 October 2009) at 48.

1220 Local Government Act 2002, s 147.

1221 Sale of Liquor Act 1989, s 2 definition of "liquor".

1222 *L D Nathan & Co Led v Hotel Assn of NZ* [1986] 1 NZLR 385 (CA).

21.50 For both Sale of Liquor Act 1989 offences and liquor ban breaches, Police practice is to seize a sample of alcohol. There are difficulties, however, if the offender consumes all of the alcoholic drink before the bottle is seized, as there is no sample to seize. Seizure of a sample involves using an approved sampling kit (at a cost of $5 per kit). The Police have outlined the costs of using the approved sampling kits alone is very large. By our estimates it is around $45,000 per annum.[1223] If analysis needs to be conducted to establish proof the substance is alcohol, the average cost of that analysis is $202.50 per sample.

21.51 The sample must be retained in a safe manner to avoid its erosion in the event analysis is required, until the case is finally determined. Section 179 of the Sale of Liquor Act 1989 provides a safeguard to the system in relation to samples seized under the provisions of that legislation. A sample must be retained but the defence must put the matter in issue within 20 working days of the hearing, otherwise analysis is not required. In the case of liquor bans, this provision does not apply, therefore, analysis will always be required to prove beyond reasonable doubt that it is "liquor". The cost of $202.50 for the analysis of a sample raises a question about whether the public interest test in continuing the prosecution is met, especially if the average fine is only $231.

21.52 Frontline police have raised concerns about the cumbersome process that the existing law requires them to go through to prove a substance is alcohol. We consider that the costs place an undue financial and administrative burden on the Police and that simplifying these matters should be relatively easy. The submission of the New Zealand Police went into detail on this subject. We have not gone through all the legal technicalities here.[1224]

21.53 The law has been changed in important ways by the Evidence Act 2006. A case on the evidentiary values of labels held that labelling was sufficient proof of the contents of a box that contained material that were precursor substances for the making of methamphetamine.[1225] We believe the approach taken by the Court of Appeal is appropriate for any legislative approach concerning the proof of whether a substance possessed or consumed in a public place is alcohol. There may be situations outside the test we propose where alcohol has been decanted into a soft drink or water bottle, and whether the substance is alcohol is an issue. In those circumstances, police will have to take a sample and undertake analysis. But in most routine situations we believe the test we propose should relieve police of the practical burdens they currently face without being unfair to those against whom the law is applied.

1223 Based on a kit cost of $5 each and based on 9,000 prosecutions on average, using the Police's submission data. Submission of New Zealand Police (submission dated 31 October 2009) at 48.

1224 Ibid at 48–49.

1225 *R v Lenaghan* CA54/08 9 May 2008 per William Young P, Chisholm and Ronald Young JJ.

21.54 We recommend proof that a container contains alcohol is sufficient in the absence of other evidence where:

(a) the container is labelled as containing an alcoholic beverage and is sold as such in the ordinary course of trade; or

(b) the content of a container, when opened, smells like an alcoholic beverage and the container appears to be one that contains an alcoholic beverage; or

(c) the defendant has admitted the container contains an alcoholic beverage.

21.55 In effect, in order to rebut this presumption the defendant would need to provide evidence that the substance was not alcohol.

RECOMMENDATIONS

R132 We do not recommend reintroducing the offence of public drunkenness.

R133 We recommend the adoption of a civil cost-recovery regime that provides police with the power to serve a notice of debt on anyone who, because of intoxication, is either driven home, placed in temporary shelter or put in a police cell under the powers of detention that police have under section 36 of the Policing Act 2008, with a prescribed amount of $250 or such extra amount as will make it economic to collect. The proceeds should go to the consolidated fund and any disputes should be dealt with by the Disputes Tribunals of the District Courts.

R134 We recommend that, following a final evaluation, further funding be provided to enable existing watch-house nurses to continue in their role of assisting the Police in better managing the risks of those in their custody with mental health, alcohol and other drug problems, with particular consideration given to setting up additional services in high-volume locations.

R135 We recommend an amendment be made to the definition of "public place" in the Summary Offences Act 1981 to codify case law and clarify that the definition of a public place includes within it a vehicle in a public place.

R136 We recommend an amendment be made to section 272 of the Children, Young Persons, and Their Families Act 1989 to clarify that liquor infringement notices issued to minors, in limited situations where they are defended or for fines enforcement purposes, should be within the jurisdiction of the District Court, unless the young person faces other charges in the Youth Court and it is convenient to hear the matters together in that forum.

R137 We recommend liquor ban bylaws have additional requirements before being created; these being that:

- the proposed area and timing can be justified as a reasonable limitation on the rights of freedoms of individuals;
- there is a high volume of offending or disorder in the proposed area that can be linked to alcohol;
- the evidence demonstrates that the density of offending and disorder, and the location of the offending, is such that the boundaries of the liquor ban are appropriate and proportionate.

RECOMMENDATIONS

R138 We recommend there should be collaboration between Local Government New Zealand and the Parliamentary Counsel Office to ensure an appropriate drafting template is produced to assist territorial authorities in making liquor ban bylaws.

R139 We recommend the definition of "public place" in section 147(1) of the Local Government Act 2002 is amended to include private carparks to which members of the public have access.

R140 We recommend signage provisions for liquor ban bylaws showing where they apply are laid down in a uniform fashion around New Zealand by regulation.

R141 We recommend the maximum fine for a breach of a liquor ban be $500.

R142 We recommend the evidential standard for determining a substance is alcohol be that it is sufficient proof, in the absence of other evidence, where:

- the container is labelled as containing an alcoholic beverage and is of a type sold in the ordinary course of trade; or
- the content of a container, when opened, smells like an alcoholic beverage and the container appears to be one that contains an alcoholic beverage; or
- the defendant has admitted the container contains an alcoholic beverage.

Chapter 22

Regulating alcohol products

IN THIS CHAPTER, WE:

- Consider whether the law should allow the prohibiting of particular alcohol products.
- Look specifically at the issues and problems associated with ready-to-drink beverages (RTDs).
- Propose a regulation-making power to prohibit undesirable alcohol products.

PROHIBITING PRODUCTS

22.1 The Law Commission has considered whether the proposed Alcohol Harm Reduction Act should allow for the banning of certain alcohol products, which are so dangerous or likely to cause alcohol-related harm that they should not be able to be sold. In our Issues Paper, *Alcohol in Our Lives,*[1226] we raised the possibility that the Minister of Justice, on the recommendation of an expert committee, could ban certain products for health reasons. We also asked for comment on whether there are any products that people think should be banned.

22.2 The overwhelming majority of the more than 700 submitters who commented on this issue were concerned about RTDs.

Ready-to-drink spirit-based drinks

22.3 RTDs, also known as "alcopops", are pre-mixed drinks of generally between 5 % and 12 % alcohol by volume that are usually packaged in single-serve containers. In the Issues Paper we outlined how sales of RTDs have markedly increased spirits' share of the alcohol market.[1227] While pre-mixed drinks have been a part of the alcohol market for several decades, it is really only in the last 10 to 15 years that RTDs have become prominent. There is now a diverse range of RTD products available.

1226 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) [*Alcohol in Our Lives*].

1227 Ibid, at 21.

22.4 There are several reasons for the concern about RTDs. The high levels of sugar usually contained in RTDs mask alcohol content, making the drinks more palatable to some young people. In New Zealand, 14 to 17 year olds and 18 to 24 year olds are the most frequent drinkers of RTDs.[1228] In particular, RTDs have been shown to be popular among females.[1229] A survey of school-age drinkers found that 48% of young female drinkers typically drank RTDs, compared with 21% who drank spirits, 19% wine and 12% beer.[1230]

22.5 Researchers have found that the palatability of alcohol increases with age, but that young people do not identify the presence of alcohol in some RTDs because the sweetness disguises the alcohol. This was particularly so in the case of RTDs that mixed vodka with soft drinks or milk-based drinks.[1231] While the taste of beer or wine is often unpleasant for young people, RTDs can make the early drinking experiences immediately enjoyable.[1232] RTDs, therefore, are likely to make drinking alcohol more attractive to young people and facilitate their entry into a lifestyle involving alcohol consumption. Some research has indicated that among females aged 14 to 17 years RTD consumption predicts heavier drinking per occasion.[1233]

22.6 In addition, there is concern that RTDs are marketed to young people. Indeed, much of the packaging and advertising of RTDs is similar to that of soft drinks and energy drinks that are targeted at youth. In an Australian study in 2006, a large proportion of young adolescents felt that RTDs were packaged to appeal to them.[1234]

22.7 While manufacturers of RTDs would argue that their levels of alcohol are relatively low,[1235] the amount of alcohol per RTD container (up to 2.5 standard drinks) can quickly lead to risky consumption levels.[1236] Also, although RTDs are not a cheap

1228 T Huckle, P Sweetsur, S Moyes and S Casswell "Ready to drinks are associated with heavier drinking patterns among young females" (2008) 27 *Drug and Alcohol Review* 398 at 398.

1229 Ibid.

1230 Adolescent Health Research Group *Youth '07: The Health and Wellbeing of Secondary School Students in New Zealand, Technical Report* (University of Auckland, 2008) at 112.

1231 J Copeland, P Gates, D Stevenson and P Dillon *Young People and Alcohol: Taste Perceptions, Attitudes and Experiences, NDARC Technical Report No. 241* (National Drug and Alcohol Research Centre, Sydney, 2005) at XIII.

1232 Alcohol Advisory Council of New Zealand *Policy on Ready-To-Drinks (RTDs)* (Wellington, 2008) at 2.

1233 T Huckle, P Sweetsur, S Moyes and S Casswell "Ready to drinks are associated with heavier drinking patterns among young females" (2008) 27 *Drug and Alcohol Review* 398 at 398.

1234 J Copeland, P Gates, D Stevenson and P Dillon *Young People and Alcohol: Taste Perceptions, Attitudes and Experiences, NDARC Technical Report No. 241* (National Drug and Alcohol Research Centre, Sydney, 2005) at VIII.

1235 Submission of the Distilled Spirits Association of New Zealand (submission dated 28 October 2009) at 31; submission of Diageo (submission dated 29 October 2009) at 14.

1236 Submission of the Alcohol Advisory Council of New Zealand (submission dated 23 October 2009) at 84–85. The submission notes that the RTD Producers' Group has introduced a self-regulation standard of no more than 10% alcohol by volume, which is equivalent to two standard drinks per single-serve container. Not all RTD producers subscribe to the self-regulation and there are some producers who continue to produce RTDs with higher amounts of alcohol, such as a Jim Beam Bourbon and Cola product in a 640ml container, which is equivalent to 2.5 standard drinks.

way to purchase alcohol when measured by the cost of the pure-alcohol content in the product, the relatively cheap price per container does allow young people, who are likely to have less money to spend on alcohol than other age groups, to purchase alcohol at low cost. RTDs sold in a four-pack for $6 or $7 or as individual containers certainly make drinking accessible to young people.

22.8 For all of these reasons, many submitters, particularly from non-governmental organisations and the public, have expressed a desire for RTDs to be banned or at least controlled to a greater extent than occurs currently.

22.9 Despite these concerns, there are strong arguments why it is not feasible to ban or directly target RTDs. The risks associated with drinking RTDs are of no marked difference to any other alcohol product. It is likely that banning one type of alcohol product would simply lead to the development of alternative products by the alcohol industry. Some experts consider that young people would be likely to switch products in order to obtain cheap alcohol if measures were introduced to single out RTDs by increasing their price or removing them from the market. Some of the products to which they may switch are arguably more likely to cause harm because of the high alcohol content, such as straight spirits mixed with other beverages.

22.10 The success of an attempt to reduce consumption of RTDs in Australia in April 2008 by significantly increasing the excise tax on them has yet to be proved on the evidence. There is some indication that the tax has reduced sales of RTDs and that this reduction has been far from wholly offset by a switch to other beverages, such as beer and spirits.[1237] Research regarding an association between RTDs and earlier-onset drinking or harmful drinking is inconclusive.[1238] Arguably, there are advantages to RTDs in that they offer a pre-measured, defined quantity of alcohol.

22.11 We prefer an approach that uses a range of policies to deal with issues of concern relating to RTDs, such as general increases in excise tax, restrictions on on-licence and off-licence promotions, restrictions on advertising and the raising of the alcohol-purchase age to 20 years. Additionally, the regulation-making power proposed in the following paragraphs would be available to ban particular RTD products if they were shown to create unreasonable risk of harm.

1237 T N Chikritzhs and others "The 'alcopops' tax: Heading in the right direction" (2009) 190 Medical Journal of Australia 294, at 294–295.

1238 While a study by T Huckle, P Sweetsur, S Moyes and S Casswell ("Ready-to-drinks are associated with heavier drinking patterns among young females" (2008) 27 *Drug and Alcohol Review* 398) indicates that for females aged between 14 and 17 years RTDs, more than any other beverage, are associated with heavier drinking, Kuntsche and others found in 2006 that adolescents who had the highest drinking levels preferred beer and spirits, but also drank wine and RTDs to a lesser extent (E N Kuntsche, R A Knibbe, G Gmel and R C M E Engels "'I drink spirits to get drunk and block out my problems …': Beverage preference, drinking motives and alcohol use in adolescence" (2006) 41 *Alcohol and Alcoholism* 566).

Regulation-making power to prohibit undesirable alcohol products

22.12 We propose that the legislation contain a provision that allows particular alcohol products or classes of products to be banned. We consider there are some products that by their nature create considerable risk of harm. Where it is established on the basis of informed expert opinion that a product creates such a risk, the government should be able to prohibit the sale of this product in New Zealand.

22.13 Many submitters, particularly from the health and treatment industry and local government, agreed with this proposal.

22.14 Certain types of alcohol products generate particular concern. There is evidence that RTDs containing caffeine or guarana (a natural source of caffeine) may cause a "wide-awake drunk" effect when consumed in large amounts, causing intoxicated people to perceive that they are safe to drive because the caffeine combats the drowsiness normally associated with alcohol.[1239] A recent study found that caffeinated alcoholic energy drinks do not neutralise alcohol intoxication.[1240] The United States Food and Drug Administration has asked manufacturers of drinks containing alcohol and caffeine to supply scientific evidence that the drinks are safe, and will consider whether such drinks should be banned if no evidence is produced.[1241]

22.15 Alcohol legislation in New South Wales and Queensland allows for certain products to be prohibited. Since 2000, the New South Wales Minister for Gaming and Racing has banned alcoholic ice-blocks, alcoholic aerosol products, alcoholic milk sold under the name "Moo Joose" and alcoholic vapour.[1242] The Queensland government has recently implemented an interim ban on "Go Vodka" tubes, in which vodka is packaged in a toothpaste-like tube, as the product targets young people and encourages dangerous consumption of alcohol. It is likely this will lead to a permanent ban.[1243]

22.16 We propose that the legislation allow regulations to be made banning products or classes of products that are considered "undesirable" on the recommendation of the Expert Advisory Committee on Drugs, established under the Misuse of Drugs Act 1975.[1244] We think it is important for the legislation to include criteria indicating the factors that may make a product undesirable. Both the Queensland Liquor Act

1239 Alcohol Advisory Council of New Zealand *Policy on Ready-To-Drinks (RTDs)* (Wellington, 2008) at 2–3.

1240 D Gulick and T Gould "Effects of Ethanol and Caffeine on Behavior in C57BL/6 Mice in the Plus-Maze Discriminative Avoidance Task" (2009) 123 *Behavioral Neuroscience* 1271.

1241 United States Food and Drug Administration "FDA to Look into Safety of Caffeinated Alcoholic Beverages" (press release, 13 November 2009) <www.fda.gov>.

1242 Office of Liquor, Gaming and Racing website <www.olgr.nsw.gov.au>.

1243 Tony Moore "Queensland government set to ban alcohol in a tube" *Brisbane Times* (Brisbane, 1 September 2009) <www.brisbanetimes.com.au>.

1244 Misuse of Drugs Act 1975, s 5AA.

1993[1245] and the New South Wales Liquor Act 2007[1246] list the bases on which the minister may make a decision to ban a product. We recommend the new legislation set out criteria for determining that a product is "undesirable" if it:

- is particularly dangerous to the health;
- is targeted at or particularly attractive to minors; and
- encourages irresponsible, rapid or excessive consumption of the product.

22.17 As is the case under the New South Wales and Queensland provisions, the Minister of Justice should be required to meet with the relevant liquor-industry representatives and the manufacturer of any alcohol product for which a ban is proposed, where it is possible to do so. This will allow the industry to consider self-regulation and the removal of undesirable products without the need for regulations.

RECOMMENDATIONS

R143 The legislation should contain a provision that allows particular alcohol products or classes of products to be banned if considered "undesirable" on the recommendation of the Expert Advisory Committee on Drugs. The criteria for determining that a product or class of products is "undesirable" should be that it:

- is particularly dangerous to the health;
- is targeted at or particularly attractive to minors; or
- encourages irresponsible, rapid or excessive consumption of the product.

1245 The Liquor Act 1993 (Qld), s 156B(3) provides:

(3) The Minister may recommend the making of a regulation under subsection (1) about a liquor product or class of liquor products only if, in the opinion of the Minister—

(a) the name, design or packaging of the liquor product or class of liquor products is likely to be attractive to minors or young people; or

(b) the liquor product or class of liquor products is likely to be confused with soft drinks or confectionery; or

(c) the liquor product or class of liquor products, for any other reason, is likely to have a special appeal to minors or young people; or

(d) it is otherwise in the public interest to declare the liquor product or class of liquor products to be an undesirable liquor product.

1246 The Liquor Act 2007 (NSW), s 100(3) provides:

(3) The Minister may recommend the making of a regulation under this section only if, in the opinion of the Minister:

(a) the name of the liquor product, or its design or packaging, is indecent or offensive, or

(b) the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product, or

(c) the name of the liquor product, or its design or packaging, is likely to be attractive to minors, or

(d) the liquor product is likely, for any reason, to be confused with soft drinks or confectionery, or

(e) the liquor product is, for any other reason, likely to have a special appeal to minors, or

(f) it is otherwise in the public interest to declare the liquor product to be an undesirable liquor product.

Chapter 23
Education

IN THIS CHAPTER, WE:

- Discuss the role of education and social marketing in reducing alcohol-related harm in a variety of different settings.
- Outline the statutory responsibility of the Alcohol Advisory Council of New Zealand for educating the public about alcohol.
- Consider the role and efficacy of schools as a vehicle for targeted alcohol education.
- Consider the case for product labelling to better inform consumers about the potential risks associated with alcohol consumption.

ISSUES PAPER

23.1 In our Issues Paper, *Alcohol in Our Lives*, we did not explicitly address the role of education in tackling alcohol-related harm. We noted the Alcohol Advisory Council of New Zealand (ALAC) has been active in this area for some time and, in recent years, has conducted high-profile social marketing campaigns advocating change in New Zealand's drinking culture.[1247]

23.2 During the public consultation and in the submissions, many people called for a much greater investment in public and school-based education to alert people to the risks associated with the abuse of alcohol and to encourage moderate drinking. In this chapter, we outline how social marketing and education are currently being used to tackle harmful drinking and examine the international evidence regarding their efficacy. We also make suggestions regarding the use of alcohol labelling.

Alcohol Advisory Council of New Zealand

23.3 ALAC is an autonomous Crown entity with a single focus on alcohol. It has a statutory duty to disseminate information to the public concerning the misuse of liquor. It is required to conduct research, and provide alcohol advice and recommendations to government and other relevant authorities or bodies.

1247 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP5, 2009) at 116 [*Alcohol in Our Lives*].

23.4 ALAC's vision is "A New Zealand drinking culture that supports the moderate use of alcohol so that whānau and communities enjoy life, free from alcohol harms".[1248] ALAC explains that this would mean:[1249]

> [A] nation where people understand the harmful results of alcohol misuse and share responsibility for minimising these. People will aspire to moderate alcohol consumption, the environments where alcohol is consumed will also support moderation, and abstinence will be accepted as a valid choice to make. Alongside this, people who have problems with alcohol consumption will be able to receive appropriate support and treatment.

23.5 ALAC works with a range of partners and stakeholders supporting communities to become actively involved in reducing alcohol-related harm. ALAC also works with the suppliers and providers of alcohol to ensure they effectively support responsible drinking behaviours and comply with the law.

23.6 While in the past ALAC focused on strategies to reduce total per capita alcohol consumption, it now focuses on patterns of drinking and the way people drink, having identified this as the area where the most acute harms occur and where the greatest personal, economic and social costs are incurred.[1250]

Social marketing

23.7 Part of ALAC's work programme involves the use of a national marketing programme to highlight the problems associated with alcohol use in New Zealand. Social Marketing is identified by Gordon and others as:[1251]

> The application of commercial marketing technologies to the analysis, planning, execution and evaluation of programmes designed to influence the voluntary behaviour of target audiences in order to improve their personal welfare and that of society.

23.8 In March 2005, ALAC launched the advertising component of its national marketing campaign aimed at demonstrating the connection between intoxication and harm. In April 2008, a third series of three television commercials showing harsh consequences of excessive drinking leading to harm went to air. Since it began in 2005, the campaign has also included billboards and print advertisements focusing on the morning after drinking, with the tagline "Was last night really worth it?" and radio advertising promoting a free phone Alcohol Drug Helpline number.

1248 Alcohol Advisory Council of New Zealand, "Briefing to Incoming Minister" (Wellington, 2008) at 3 <www.alcohol.org.nz>.

1249 Ibid.

1250 Ibid, at 5.

1251 R Gordon and others "The effectiveness of social marketing interventions for health improvement: What's the evidence?" (2006) Public Health 120, 1133 at 1134.

23.9 In its *Statement of Intent for 2009–2012*, ALAC outlines the goals of its national marketing approach:[1252]

> ALAC's national marketing communications will be focused on creating a change in people's attitudes and behaviours towards drinking and drunkenness. The aim is to reduce the acceptance of drunkenness and ensure that if people do choose to drink they do so moderately. Activities include the use of advertising and other marketing across a range of media, free-media/communications PR, and the development of resources. These activities will work in combination with other interventions to create the momentum for change and encourage a change in behaviours…

23.10 The Statement of Intent goes on to discuss the need to ensure this public education campaign is aligned with other public messages relating to alcohol use and to ensure community groups and those working in the health and treatment sector have the tools and resources to "take on a role in alcohol reduction and identify people needing assistance with their drinking behaviour, and to send consistent messages about the harms of alcohol misuse". ALAC also highlights the need to ensure the appropriate resources are available to assist local authorities and community groups to take action in their own areas.

23.11 From this, it is clear ALAC does not regard social marketing as a stand-alone tool but rather as part of a much broader and mutually reinforcing marketing package that includes providing relevant research and resources to the broad range of stakeholders and priority populations with whom it works.

23.12 ALAC is also committed to ongoing evaluation:[1253]

> The programme has achieved high awareness and is encouraging New Zealanders to think about their own behaviour. Approximately one in two people are also reporting that they are starting to take some action about their drinking – ranging from talking to someone about their drinking through to actually starting to cut-back.

23.13 The monitoring research shows significant proportions of the drinking population are now reporting that they are thinking about their drinking behaviour and may be on the verge of modifying their drinking behaviour. The monitor shows:

- nearly all adults recalled seeing at least one of the three television commercials;
- substantial proportions of drinkers continue to report a range of impacts or actions as a result of the advertising and publicity, particularly discussing this publicity with others;
- just over half of all drinkers reported they had thought about how much they drink, discussed it with friends or family, or thought about or started drinking less.[1254]

1252 Alcohol Advisory Council of New Zealand *Statement of Intent 2009–2012* (Wellington, 2009) at 22 <www.alcohol.org.nz>.

1253 Alcohol Advisory Council of New Zealand "Briefing to Incoming Minister" (Wellington, 2008) at 46 <www.alcohol.org.nz>.

1254 Ibid, at 47.

Submissions

23.14 Some submitters suggested ALAC should have more funding for social marketing and education purposes. One submitter suggested:[1255]

> [T]he levy on the multi-billion dollar liquor industry, which funds the Alcohol Advisory Council of New Zealand (ALAC), should be increased to provide for an increased level of nationwide education and awareness raising television campaigns. This form of awareness raising has the widest reach and helps effect a culture change.

23.15 The Royal Australasian College of Physicians suggested:[1256]

> ALAC and other appropriate bodies could be better funded and required to develop more relevant and continuing programmes of education encompassing the particular problems/attitudes of differing groups, sexes and cultures.

23.16 In its submission, ALAC did not comment on its funding levels for marketing campaigns.

Research

23.17 Evaluating the effectiveness of social marketing is complex and usually involves measures across a range of indicators including changes in levels of public awareness, engagement, changes in behaviours and social norms and, ultimately, improved social outcomes. A review of studies by Gordon and others (2006) assessing the effectiveness of social marketing concluded that social marketing campaigns can be effective in tackling the misuse of substances like alcohol and provide "a very promising framework for improving health both at the individual level and at wider environmental policy-levels."[1257] However the researchers raised concerns regarding some of the research design and implementation.

23.18 Research is less supportive of more limited approaches to alcohol education, such as counter-advertising (that is, advertising designed specifically to counteract alcohol product advertising) and public service announcements. Saffer (2002) suggests that, from a public health perspective, counter-advertising has intuitive appeal and may be a more realistic political option than seeking a ban on alcohol advertising. Saffer also reports that counter-advertising had a significant effect on tobacco consumption in the United States.[1258]

23.19 The authors of *Alcohol: No Ordinary Commodity* conclude that public service announcements are not an effective antidote to the high-quality, pro-drinking messages that appear much more frequently as paid advertisements in the mass media.[1259]

1255 Submission of Rawiri Evans (submission dated 18 September 2009).

1256 Submission of the Royal Australasian College of Physicians (submission dated 20 October 2009).

1257 R Gordon and others "The effectiveness of social marketing interventions for health improvement: What's the evidence?" (2006) 120 Public Health 1133 at 1133.

1258 Henry Saffer "Alcohol Advertising and Youth" (2002) Journal of Studies on Alcohol/Supplement no.14 at 179.

1259 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 202 [*Alcohol: No Ordinary Commodity*].

23.20 The World Health Organization Expert Committee on Problems Related to Alcohol Consumption also suggests that, in general, public information campaigns are an ineffective antidote to the high-quality, pro-drinking messages that appear frequently in the media. It seems some intervening variables are affected by these campaigns, such as intention to change drinking patterns (in relation to situations of heightened risk such as drink driving), having conversations about drinking, and willingness to intervene with others who are seen as hazardous drinkers.[1260]

23.21 Road safety is another area in New Zealand that has had a substantive marketing campaign applied in order to change behaviour. Tay (2003) notes both Australia and New Zealand have relied extensively on traffic enforcement campaigns supported by intensive road safety advertising campaigns:[1261]

> The conventional wisdom in the road safety arena is that the road safety advertising campaigns have only a supportive role and do not have an independent effect in reducing crashes. However, this study found some empirical evidence that the road advertising campaign in New Zealand was effective in reducing the number of fatal crashes and, more importantly, it had an effect that was independent of the level of enforcement.

Law Commission view

23.22 Counter-advertising, public service announcements, or public information campaigns as considered in the research noted above, do not cover the full range of the commercial marketing model which ALAC applies to its national marketing programme, but are only subsets of the total marketing tools available. While the research suggests those particular tools will not have a marked effect on the consumption of alcohol, ALAC's own research shows there is significant recall and understanding of the moderation message it promulgates. This is encouraging. None of the interventions that this report advocates operate in isolation, and we believe ALAC's national marketing campaign, and the funding for it, must continue to play an important part in endeavours to reduce alcohol-related harm.

Advertising time for social marketing

23.23 One of the factors that influences the effectiveness of the social marketing campaign is the volume of alcohol advertising compared with the reach of the campaign.

23.24 In 1991, the Broadcasting Standards Authority agreed to issue and approve, in accordance with section 21 of the Broadcasting Act 1989, a revision of the Code of Broadcasting Practice relating to the promotion of liquor that would permit brand advertisements of alcohol products to be broadcast on television.

1260 World Health Organization "Expert Committee on Problems Related to Alcohol Consumption: Second Report" (WHO Technical Report Series 944, 2007) at 32.

1261 Richard Tay "Effectiveness of Road Safety Advertising in Reducing Fatal Crashes in New Zealand" (2003) ANZMAC Conference Proceedings December 2003 at 38.

23.25 This approval was conditional on television broadcasters agreeing to provide gratis airtime for the broadcast of "liquor moderation messages" and/or the "no alcohol option". Television New Zealand and TV3 agreed to, and duly provide, gratis airtime (calculated at rate card value) on each of their channels to satisfy that condition.

23.26 According to the Advertising Standards Authority, radio and television broadcasters annually provide free airtime to government organisations for the broadcast of liquor moderation messages and/or the no alcohol option as a result of commitments made by broadcasters when alcohol brand advertising was introduced in 1992. Such messages can be broadcast at any time.[1262] The free airtime is shared between ALAC, the Ministry of Health, Police and the New Zealand Transport Agency.

23.27 We note that "moderation time" is provided at rate card value. This means the airtime is calculated at the highest rate, which is likely to have the effect of reducing the frequency with which the moderation messages can be broadcast. If it were calculated at a discounted rate, as is much advertising, we would likely see more of the moderation messages.

23.28 One submitter suggested one-fifth of each alcohol advertisement should be required to include a "Drink Safe" message embedded within it. In the United Kingdom, the Health Select Committee has recently recommended that, for every five television advertisements, an advertiser should be required to fund one public health advertisement. The value of such messages is discussed in further detail in chapter 19.

23.29 In our view, moderation time should be protected by being provided for in law. Such a provision could reflect the United Kingdom Health Select Committee recommendation. For every five 60- or 30-second television or radio commercial, the broadcaster could provide, free of charge, 60 or 30 seconds for a moderation message. Moderation time is discussed in further detail in chapter 19.

SCHOOL-BASED EDUCATION

Current situation

23.30 The health and physical education learning area of the New Zealand Curriculum (primary and secondary) focuses on the wellbeing of students themselves, of other people and of society. It has four strands:

- personal health and physical development;
- movement concepts and motor skills;
- relationships with other people; and
- healthy communities and environments.

There are seven key areas of learning: mental health, sexuality education, food and nutrition, body care and physical safety, physical activity, sport studies and outdoor education.

1262 Advertising Standards Authority "Advertising Codes of Practice – February 2009" (Wellington, 2009) at 35.

23.31 Schools nationwide contract with providers, for example Life Education Trust (a non-profit organisation that teaches health, including drug and alcohol information, to over 200,000 primary and intermediate school children each year), for help in teaching these key areas of learning.[1263]

23.32 The Police Youth Education Service has 120 trained police officers who work with schools around New Zealand. Drink driving education is an important part of the school road safety education programme. Police officers also work with schools in areas including Crime Reduction and Social Responsibility, Drug Education, and Violence Prevention. It is important that schools are able to work with Police in this manner, bringing education that is both relevant to the curriculum and specifically tailored to the needs of the school and its community.

23.33 Students Against Drunk Driving (SADD) has a strong presence in New Zealand schools. The primary objective of SADD is to reduce the harm caused on our roads by drink drivers. This peer education programme is run in secondary schools by students, and can be incorporated into the school curriculum. The organisation is open to any student and SADD encourages participation from across the year levels.

Submissions

23.34 At our consultation meetings and in written submissions the call for more education, particularly for young people, was strong.

23.35 In its submission, Plunket recommended a multi-pronged and targeted social marketing campaign to:[1264]

- raise awareness of the risks imposed on or suffered by infants and children with regard to caregiver, parental or other alcohol misuse;
- change alcohol-related attitudes; and
- positively influence alcohol-related behaviours amongst teens and adults to lessen the negative effects on infants and children of adult alcohol use.

23.36 Plunket considers this campaign must present health-promoting messages around infant development and alcohol, specifically targeted at women in their child-bearing years, especially those in their early to mid-30s and Māori teens, because birth rates are highest amongst these groups.[1265]

23.37 One submission suggested the risks of drinking should be included in the high school curriculum for 13 to 16 year olds. "Teenagers, in particular need to know that binge drinking can cause them serious long-term damage."[1266]

23.38 Capital & Coast District Health Board members Dr Judith Aitken and Margaret Faulkner submitted that:[1267]

1263 Information obtained from <www.lifeeducation.org.nz>.

1264 Submission of the Royal New Zealand Plunket Society (submission dated 30 October 2009).

1265 Ibid.

1266 Submission of Rawiri Evans (submission dated 29 September 2009).

1267 Oral Submission of Dr Judith Aitken and Margaret Faulkner (submission delivered 10 September 2009 Wellington).

> A review of the international literature, including New Zealand material, shows little faith in the role of school-based education for major health matters such as childhood obesity, alcohol consumption and drug abuse. There is widespread lack of confidence in schooling on these controversial topics, and the alternative – mirrored in the Law Commission report – is on modifying the addictogenic environment in which young people live.
>
> For educators, this abandonment of the role of schooling is to a large extent counter-intuitive.
>
> We submit that there is strong evidence to support student-designed, student-led and student-implemented alcohol education programmes in schools, with actively encouraged parental and community participation.
>
> We would encourage the Commission and other government agencies to revisit this matter, and re-evaluate the scope for educating young people, in tandem with the measures you have already proposed.

Research – school-based education

23.39 The effectiveness of alcohol education campaigns is well researched worldwide. The World Health Organization Expert Committee on Problems Related to Alcohol Consumption reported:[1268]

> The Committee considered that while provision of information and persuasion is perennially attractive as an intervention to reduce alcohol related harm, particularly in relation to younger people, theory and evidence would suggest that this is unlikely to achieve sustained behavioural change, particularly in an environment in which many competing messages are received in the form of marketing material and social norms supporting drinking, and in which alcohol is readily accessible.
>
> The Committee noted the results of a number of careful systematic reviews that have been published of evaluations of school-based education which aimed to reduce alcohol-related harm and concluded that the results have not provided support for classroom-based education as an effective intervention to reduce alcohol-related harm. Although there is evidence of positive effects on increased knowledge about alcohol and in improved attitudes, there is no evidence for a sustained effect on behaviour.

23.40 *Alcohol: No Ordinary Commodity* concludes that, worldwide, the number of informational and educational programmes has grown exponentially, and:[1269]

> Compared with other interventions and strategies, educational programmes are expensive and appear to have little long term effect on alcohol consumption levels and drinking-related problems. On balance, their hegemony and popularity seem not to be a function of either their demonstrated long-term impact or their potential for reducing alcohol-related harms. It is likely that even with adequate resources, strategies that try to use education to prevent alcohol related harm are unlikely to deliver large or sustained benefits. Education alone is too weak a strategy to counteract other forces that pervade the environment. An unanswered question is why significant resources continue to be devoted to initiatives with limited potential for reducing or preventing alcohol-related problems.

1268 World Health Organization "Expert Committee on Problems Related to Alcohol Consumption: Second Report" (WHO Technical Report Series 944, 2007) at 32.

1269 T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 215–216.

23.41 Dr Judith Aitken answers in part that, while the premise is that education does not work "for educators, this is counter-intuitive". And in *Alcohol: No Ordinary Commodity*, the authors themselves suggest there is the temptation to keep on trying, the triumph of hope over experience.

Law Commission view

23.42 Like many of the submitters to this review, we believe education must continue to be part of the package of measures employed to counter alcohol-related harm. In the absence of evidence supporting school-based education initiatives, it is difficult to make any precise recommendations concerning school-based education. Boards of trustees must continue to make their own decisions for tailor-made programmes that meet the needs of their communities, and should have the encouragement of the Ministry of Education.

Educating members of the public

23.43 A range of measures can be considered as useful means of educating members of the public about alcohol and its affects. Social marketing has already been discussed above. Brief interventions that aim to inform the drinker about risky alcohol use are discussed in chapter 24. Better information on standard drink sizes would enable greater understanding by drinkers about how much alcohol they are actually drinking, and enable them to understand 'standard' drink measurements. This is discussed further in chapter 9.

Product labelling

23.44 Product labelling informs drinkers of the content and nutritional values of drinks, including energy content, and warning labels inform about the risks associated with drinking, for example, in pregnancy.

Issues Paper

23.45 In *Alcohol in Our Lives* we noted that the 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 number of standard drinks in the container. Alcoholic beverages are among only a handful of products not required to show ingredients or a nutritional information panel.

23.46 The role and current work of Food Standards Australia New Zealand concerning health advisory statements on packaged alcohol was outlined in *Alcohol in Our Lives*. In 2006, ALAC made an application to require pregnancy health advisory statements on the labels of alcoholic beverages. Food Standards Australia New Zealand is assessing the application. We noted in light of the work already under way, and the well-established jurisdiction of Food Standards Australia New Zealand, there seemed little point in our taking up the issue of the labelling of alcohol products.[1270]

1270 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP5, 2009) at 203.

Current situation

Pregnancy health advisory labels

23.47 Food Standards Australia New Zealand commissioned two independent reports. The first is a literature review of the evidence relating to the effectiveness of health advisory statements on labels of alcoholic beverages as a strategy for alerting the community to the dangers of drinking alcohol when pregnant. The second is a cost-effectiveness study. Apart from labelling, this study will also consider other strategies for increasing awareness of the risk of drinking alcohol during pregnancy. Food Standards Australia New Zealand says if it decides to recommend mandatory labelling of alcoholic beverage containers with pregnancy health advisory labels, a Draft Assessment Report for Application A576 would be released for public comment in the first half of 2010.[1271]

Health advisory statements

23.48 To progress the project considering mandatory health advisory statements on alcoholic beverages to help curb alcohol misuse, a literature review of the evidence was presented to the Australia New Zealand Food Regulation Ministerial Council in May 2009. The Council agreed to provide the review to the Australian Ministerial Council on Drug Strategy. New Zealand's Associate Minister of Health, Hon Peter Dunne, and Minister of Police, Hon Judith Collins are members of the Ministerial Council on Drug Strategy. The Council meets twice each year.

Review of food labelling

23.49 In October 2009, it was announced the Australia and New Zealand Food Regulation Ministerial Council would undertake a comprehensive review of food labelling law and policy "using an evidence based approach and without compromising public health and safety". The terms of reference for the review note that food labelling supports the policy objectives of public health and safety and enabling consumers to make informed choices.

23.50 The review will be required to:[1272]

- examine the policy drivers impacting on demands for food labelling;
- consider what the role should be for government in the regulation of food labelling (what principles should guide decisions about government regulatory intervention?);
- consider what policies and mechanisms are needed to ensure that government plays its optimum role;
- consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement;
- evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against the terms of reference; and
- make recommendations to improve food labelling law and policy.

1271 Food Standards Australia New Zealand "Health advisory labels on alcoholic beverages" (2009) <www.foodstandards.gov.au>.

1272 Australia and New Zealand Food Regulation Ministerial Council "Food Labelling Law and Policy Review" Terms of Reference <www.foodlabellingreview.gov.au>.

Submissions

23.51 Submitters to our review suggested product labelling would enhance understanding of what people were drinking, and would be part of educating New Zealanders about alcohol. For example:[1273]

> The education campaign should also inform teenagers of the very high sugar and fat content of some…fruit flavoured ready-to-drinks [RTDs].

23.52 The Injury Prevention Research Unit's submission suggested it was hard to understand why a bottle of cola has to display ingredients and nutritional information while a bottle of rum and cola does not. They urged us to recommend that New Zealand should require that beverages containing alcohol include nutritional and ingredients labelling, and health warning labels.[1274]

Law Commission view

23.53 It remains our view that the matter of labelling is adequately covered by work under way at present. Several submitters were supportive of labelling initiatives, and we expect these submitters will also track the Food Standards Australia and New Zealand initiatives. We note there is a complex process in place to arrive at a trans-Tasman standard, and recommend that, while it will take some time, this process should continue.

RECOMMENDATIONS

R144 The national marketing role of the Alcohol Advisory Council of New Zealand should continue.

R145 The Ministry of Education should encourage school boards of trustees to organise drug and alcohol education programmes that meet the needs of their communities.

R146 The multiple processes under way for considering the labelling of alcohol products should continue.

1273 Submission of Rawiri Evans (submission dated 29 September 2009).

1274 Submission of Kypros Kypri, Jennie Connor, John Langley, Injury Prevention Research Unit, University of Otago (submission dated 11 November 2009).

Chapter 24
Treatment

IN THIS CHAPTER, WE:

- Outline the major issues for alcohol treatment in New Zealand.
- Propose a review of treatment services.
- Discuss options for services for intoxicated people.
- Discuss gaps between current and best practice for screening and brief interventions.
- Recommend specific changes to improve capacity and capability to provide appropriate, accessible addiction treatment in New Zealand.

SUMMARY OF TREATMENT ISSUES

24.1 In our Issues Paper, *Alcohol in Our Lives*, we briefly outlined concerns relating to alcohol treatment.[1275] These related primarily to the lack of facilities and programmes around the country for people who drink harmfully. We reached several tentative conclusions and suggested options for improvement in targeted areas. These included:

- increased consideration during sentencing of the need for alcohol and other drug (AOD) assessment and treatment;
- greater efforts to develop the workforce to ensure screening, assessment, referral and brief interventions can be delivered by appropriate professionals across sectors;
- increased funding from the relevant sectors to enable a greater number of services across a greater number of sectors in a way that meets individual needs.

24.2 Submissions to our Issues Paper strongly supported the options we suggested relating to treatment. Currently, a range of treatment services are provided, including the Alcohol and Drug helpline, which takes around 15,000 calls per year, and specialist treatment services through the public health system, which reach around 40,000 people per year. There is significant concern, however, particularly among those working in treatment services or professions dealing with large numbers of people with alcohol-use disorders, that access to treatment is inadequate.[1276]

1275 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 227 [*Alcohol in Our Lives*].

1276 Submission of the Alcohol Drug Association of New Zealand (submission dated 30 October 2009) at 13.

> Currently only approximately 15 to 20% of people with alcohol problems are identified and treated. Significant waiting times exist in specialist alcohol and other drug services. Cost effective alcohol-related health problems have never been a priority focus for any government's health strategy in the last fifty years. Given the significant contribution of alcohol to the overall burden of disease in New Zealand and the evidence for a cost–benefit return for intervention, the reduction of alcohol-related harm needs to become a priority goal within the New Zealand health system.

24.3 From submissions received and further research, we have developed our recommendations, focusing on cross-government issues as an area in which the Law Commission is well placed to comment. Our recommendations are linked to the options under consideration as part of the Law Commission's review of the Misuse of Drugs Act 1975 because they relate to the same treatment system. Recommendations in this area also need to take into account other work in progress, such as the Drivers of Crime programme led by the Ministry of Justice and strategies led by the Ministry of Health.[1277]

24.4 The spectrum of alcohol-use disorders ranges from hazardous use to clinical diagnoses of alcohol abuse and dependence. Substantial literature exists on the effectiveness of various modalities and styles of treatment for managing alcohol-use disorders at all stages along the spectrum.[1278] Although treatment can be effective, it is also relatively expensive. Compared with policies such as excise tax increases, advertising bans and measures to reduce availability, treatment requires relatively costly direct contact with health professionals and services, and can cover only a limited proportion of the population.[1279]

24.5 Cost-effectiveness considerations indicate we cannot expect that improvements in the treatment sector alone could make significant changes to alcohol-related harm overall. However, other population-based strategies cannot treat dependence, and, based on international best practice, it is clear a comprehensive policy framework to reduce the harm from alcohol must include treatment services.[1280] We believe treatment services in New Zealand could be improved significantly, including in directions for which the government already has plans.[1281]

1277 Ministry of Justice *Addressing the Drivers of Crime Background Information* (Ministry of Justice, 2009) at 8; Minister of Health *Te Kōkiri: The Mental Health and Addiction Action Plan 2006–2015* (Ministry of Health, 2006); Ministry of Health *Tauawhitia te Wero – Embracing the Challenge: National mental health and addiction workforce development plan 2006–2009* (Ministry of Health, 2005).

1278 For a review, see T Babor and others *Alcohol: No Ordinary Commodity* (OUP, New York, 2010) at 217.

1279 P Anderson, D Chisholm and D C Fuhr "Effectiveness and cost-effectiveness of policies and programmes to reduce the harm caused by alcohol" (2009) 373 Lancet 2234 at 2234.

1280 World Health Organization Western Pacific Region *Regional Strategy to Reduce Alcohol-Related Harm* (World Health Organization, Geneva, 2007) at 11; World Health Organization "WHO Expert Committee on Problems Related to Alcohol Consumption: Second Report" (WHO Technical Report Series 944, 2007) at 33; World Health Organization *Strategies to Reduce the Harmful Use of Alcohol: Draft Global Strategy* (World Health Organization, Geneva, 2009) at 11.

1281 For example, Minister of Health *Te Kōkiri: The Mental Health and Addiction Action Plan 2006–2015* (Ministry of Health, 2006) at 52; Department of Prime Minister and Cabinet *Tackling Methamphetamine: An Action Plan* (Policy Advisory Group, 2009) at 3.

24.6 The unmet need for alcohol treatment is significant. One estimate suggested treatment capacity would need to double to treat just the 1% of the population with the greatest need, which is a fraction of those who could potentially benefit from some level of treatment.[1282]

24.7 Treatment is not just an issue for the health sector. Submitters were clear that increased access to treatment could improve outcomes in multiple sectors, including justice, corrections, transport, social development and labour. Many argued that all those sectors therefore need to have a role in ensuring services are available, accessible and integrated to reduce duplication and frustration for clients. We acknowledge that significant improvements will require substantial investment, and stress the importance of assessing cost-effectiveness *across* sectors when considering investments in treatment services.

Review of treatment services

24.8 The Mental Health Commission has proposed the following principles guide any recommendations relating to treatment:[1283]

- services for mental health and addiction should work as an integrated system;
- the system should deliver intervention at all levels, from brief to intensive;
- the system should be sufficiently adaptable to assess and respond to the client's type and level of need;
- the roles, responsibilities and powers to coordinate care and treatment systems should be specified;
- the system should be interdepartmental/interministerial and cross sector;
- care pathways should be defined to make it clear how people with acute problems can access care.

24.9 In its submission, the Mental Health Commission proposed developing a blueprint for addictions service delivery that will address the level and type of service, workforce issues, the service system (including models of care, pathways and service delivery systems), transition and implementation planning, monitoring and oversight.[1284] Work in these areas is already under way and could be incorporated into the blueprint framework.

24.10 The Mental Health Commission also proposed mapping pathways into treatment for people with substance-use disorders. Defined pathways would provide clarity about how a client might be referred seamlessly between service providers or sectors to ensure appropriate assessment and treatment were available regardless of the person's entry point to the system.[1285]

1282 National Committee for Addiction Treatment *Investing in Addiction Treatment: A Resource for Funders, Planners, Purchasers and Policy Makers* (National Committee for Addiction Treatment, Christchurch, 2008) at 1.

1283 Submission of the Mental Health Commission (submission dated 16 November 2009) at 4.

1284 Ibid, at 6.

1285 Ibid, at 5.

24.11 We support the need for such a blueprint. The development of such a blueprint needs to include active involvement from all the government agencies and sectors whose outcomes could benefit from improved access to treatment and should not be seen as solely the health sector's responsibility. We consider that cross-sectoral commitment will be necessary.[1286]

24.12 We have also identified several changes that should be pursued while the blueprint is being developed. These are described in the sections below.

SERVICES FOR INTOXICATED PEOPLE

24.13 In *Alcohol in Our Lives*, we raised the option of providing centres for temporary supervision for individuals who are not charged with an offence but who pose a significant concern to their own or others' safety or health.[1287]

24.14 Various models are used in other jurisdictions for dealing with intoxicated people that respond to the different needs of client groups.[1288] Permanent sobering-up[1289] centres may be attached to homeless shelters, addiction treatment or detoxification services, hospitals or other social services, or they may be stand-alone facilities. Clients may be predominantly alcohol-dependent homeless people with chronic alcohol-use disorders or young people who have been on a night out binge drinking. Admission criteria vary in terms of age, route of referral (for example, police, hospitals, ambulances, self-referrals or dedicated transport providers), levels of intoxication and aggression. Service provision varies in terms of length of stay (from an average of 30 minutes to overnight), services provided (for example, first aid for minor injuries, showering, meals, clothing, beds, brief intervention and referrals) and scope of staff training. The sources of funding vary, but can include various government agencies, charities, local businesses and licensees.

24.15 There are examples of medical professionals or nurses stationed in police facilities who assess the fitness of intoxicated people to be in custody and may perform a range of other functions.[1290] As discussed in chapter 21, a New Zealand pilot programme providing nurses in police watch houses has received a favourable interim evaluation and should be considered in other centres once the final evaluation of the programme is completed.[1291]

1286 Minister of Health *Te Kōkiri: The Mental Health and Addiction Action Plan 2006–2015* (Ministry of Health, 2006) at 52; Department of Prime Minister and Cabinet *Tackling Methamphetamine: An Action Plan* (Policy Advisory Group, 2009) at 52.

1287 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 241.

1288 D Griesbach, P Russell and C Lardner *Services that Manage the Care Needs of Drunk and Incapable People: A Review of the Literature* (Scottish Government Social Research, Edinburgh, 2009) at 2.

1289 We have chosen to use the term "sobering-up services" rather than "detoxification" because the latter term is used in the treatment sector to refer to supervised withdrawal from alcohol for people with dependence. Some people in this situation may suffer life-threatening withdrawal symptoms (for example, seizures) and require a high level of medical supervision. In contrast, people who are taken into custody by police may need a level of supervision because of the risks associated with their level of intoxication (for example, choking on vomit).

1290 D Griesbach, P Russell and C Lardner *Services that Manage the Care Needs of Drunk and Incapable People: A Review of the Literature* (Scottish Government Social Research, Edinburgh, 2009) at 36.

1291 J Paulin and S Carswell *Evaluation of the Mental Health/Alcohol and Other Drug Watch-house Nurse Pilot Initiative: Interim Report* (New Zealand Police, Wellington, 2009) at 9.

24.16 There are also examples of temporary and/or mobile services that operate independently or in cooperation with sobering-up services.[1292] These include:

- buses or ambulance-style vehicles that can be placed in high-risk areas and provide medical attention;
- tents or other temporary structures that remove intoxicated people from public places or provide "chill-out" space and social assistance;
- dedicated transport services that may take people to their homes or other facilities, provided by ambulance services, taxi services or community groups.

24.17 The aims of sobering-up centres range from reducing demand on police and health resources to reducing alcohol-related harm (for example, victimisation and offending) to the drinker and others in the community.[1293] Their success and cost-effectiveness depends on the desired outcomes because the services can be expensive to establish and operate.[1294] For example, the cost of establishing a permanent facility with beds, laundry facilities, adequate monitoring and security, and sufficient suitably trained staff may equal or exceed the cost of police resources devoted to holding intoxicated people in a cell. Combinations involving services that are close to the location of drinking and modes of transport that are cheaper than police or ambulance services are likely to be more cost-effective to set up and run.[1295]

24.18 Most sobering-up services overseas were developed as a result of removing the offence of being drunk in a public place.[1296] The situation was similar in New Zealand except that sobering-up centres (referred to as "temporary shelters") provided for in legislation were never developed.[1297]

24.19 It is clear stakeholders seek different outcomes from sobering-up centres that could be established in New Zealand. From a treatment perspective, it is important people receive appropriate brief interventions or the episode is used as an opportunity for entering treatment services or other health and social services that may be required. Police are concerned about the potential dangers of having intoxicated people in cells without supervision from trained health professionals, and also about the burden on police resources of transporting and holding intoxicated people. Similarly, health providers have difficulty managing intoxicated people who become violent. There are also resource implications for ambulance services and hospital emergency departments that are diverted away from other patients to deal with intoxicated people.

1292 Ibid, at 32.

1293 D Griesbach, P Russell and C Lardner *Services that Manage the Care Needs of Drunk and Incapable People: A Review of the Literature* (Scottish Government Social Research, Edinburgh, 2009) at 6.

1294 Ibid, at 21.

1295 Ibid, at 38.

1296 Ibid, at 1.

1297 See Policing Act 2008, s 36. This provision was originally contained in the Alcoholism and Drug Addiction Act 1966, s 37A, from 1987.

24.20 In this area, it is important our recommendation reflects a cost-effective solution from a whole-of-government perspective. The interim evaluation of nurses in the police watch-house pilot programme suggests this is a useful model so we recommend consideration be given to extending the pilot to other areas, if the final evaluation of the programme is similarly positive.[1298]

24.21 We recommend local processes for managing intoxicated people be included in local alcohol policies, which are discussed in chapter 7. This aspect of a policy should be developed collaboratively with police, ambulance, health services and other local stakeholders. The desired outcomes need to be clearly defined, and service plans should take into account local needs, resources and cost-effectiveness across sectors.

COURT-ORDERED REFERRAL

24.22 In *Alcohol in Our Lives* we raised the option of requiring the need for AOD assessment and treatment to be taken into account during sentencing in cases where alcohol and other drugs may have contributed to the offending.[1299] Under the Sentencing Act 2002, people under sentences of supervision, intensive supervision and home detention may be required to participate in a programme that may reduce the likelihood of reoffending.[1300] A programme can include any psychiatric or other counselling or assessment, or attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative, or reintegrative programme, and these can include AOD programmes.[1301]

24.23 The existing provisions do not explicitly refer to substance-use disorders that may have contributed to offending, and do not require the court to consider the need for assessment as a standard part of sentencing. In our view, it may be beneficial to strengthen these provisions in the Sentencing Act 2002 to increase national consistency. We recommend changing the Sentencing Act 2002 to specify that in addition to, or instead of, any other report the court may obtain, a report is provided on any problems the offender has related to alcohol or drugs and the nature of any intervention required to address those problems.

24.24 In our Issues Paper we noted that, where a need for intervention is identified, District Court judges are particularly concerned about the lack of assessment facilities and programmes to which they can refer people with alcohol-use disorders.[1302] The Ministry of Health and Ministry of Justice have piloted programmes that place an on-site AOD clinician in courts to screen offenders and provide information to sentencing judges. The clinicians' screening and reports to judges assists them to identify offenders with potential substance-use disorders and make recommendations for further assessment and treatment if needed.[1303]

1298 J Paulin and S Carswell *Evaluation of the Mental Health/Alcohol and Other Drug Watch-house Nurse Pilot Initiative: Interim Report* (New Zealand Police, Wellington, 2009).

1299 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 241.

1300 Sentencing Act 2002, s 50.

1301 Ibid, s 51.

1302 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 206.

1303 Department of Prime Minister and Cabinet *Tackling Methamphetamine: An Action Plan* (Policy Advisory Group, October 2009) at 17.

24.25 One of the actions in the government's methamphetamine action plan was to develop a preferred model for AOD clinicians in courts to increase referrals for users from the justice system into treatment.[1304]

24.26 We support the direction of existing work in this area and recommend further work be done to investigate the feasibility of using electronic screening and brief interventions in the court setting as discussed below.

Screening and brief interventions

24.27 Brief interventions can range from provision of information through to 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. There is the potential to use brief interventions effectively in a range of community settings, both within and outside the health sector.[1305] There is good evidence brief interventions can be highly effective and potentially cost-effective for treating less severe alcohol-use problems.[1306]

> At a time of severe restraint and pressure on WDHB's [Waitemata District Health Board's] financial position, the Board has to seriously consider strategies that reduce demand for its health services. Early intervention strategies that reduce the harm caused by excessive alcohol use and consequent demand on health services have the potential not only to avoid suffering, but also to reduce avoidable expenditure.[1307]

24.28 In our Issues Paper we noted that, despite their effectiveness in changing patterns of alcohol consumption and reducing alcohol-related problems, brief interventions are underutilised in New Zealand.[1308] For example, research has found they could be used more in primary care, hospital emergency departments and inpatient wards.[1309] Many submitters acknowledged this was an area that needs significant attention.

24.29 Factors that may be limiting the use of brief interventions (or indeed any effective discussion of alcohol issues) in primary care include patient discomfort, general practitioner (GP) discomfort, time pressure, sensitivity of AOD topics, GPs' lack of confidence in their ability to manage AOD issues, GPs' lack of knowledge, lack of incentives for GPs to screen for and treat AOD issues, the lack of fit

1304 Ibid, at 43.

1305 Briefing from the Alcohol Drug Association New Zealand to the New Zealand Law Commission.

1306 E F Kaner and others "Effectiveness of brief alcohol interventions in primary care populations" (2007) Issue 2, Art No: CD004148 Cochrane Database of Systematic Reviews at 12; T F Babor and others "Screening, brief intervention, and referral to treatment (SBIRT): Toward a public health approach to the management of substance abuse" (2007) 28 Substance Abuse 7 at 7.

1307 Submission of the Waitemata District Health Board (submission dated 28 October 2009) at 4.

1308 Law Commission *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009) at 207.

1309 H Moriarty, M Stubbe and S Bradford *Opportunities for Alcohol and Other Drug Advice in the GP Consultation* (University of Otago, Wellington, 2009) at 22; J Hosking and others "Screening and intervention for alcohol problems among patients admitted following unintentional injury: A missed opportunity?" (2007) 120 New Zealand Medical Journal 2417 at 2417; J Pulford and others "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 at 2611.

between structured screening tools and patient-centred consultation methods, and the user-pays system that makes it difficult for GPs to recommend additional appointments not requested.[1310]

24.30 Researchers in this area have identified initiatives that could increase the use of screening and brief intervention in primary care.[1311] We support those recommendations, particularly that the existing New Zealand clinical guidelines for primary care AOD screening and brief intervention should be revised to take into account New Zealand GPs' style of consultation; that alternative primary care funding models should be explored to identify a cost-effective model that could increase incentives for AOD discussions, and reduce cost barriers to effective screening and intervention; and that GP vocational training and continuing professional development should be revised to improve the use of AOD screening and brief intervention. Essentially, we recommend developing a national primary care programme of screening, brief interventions and referral to specialist treatment. We stress that the significant improvements required will mean changes will need to be implemented in a staged process over several years and will require a dedicated investment.

24.31 Research in a hospital medical ward found despite a relatively high prevalence of asking patients about alcohol consumption, the information collected was rarely useful.[1312] Similarly, analysis of medical records of trauma patients who were admitted to hospital suggested only a small proportion of people with alcohol problems were identified and few received a brief intervention or any advice while in hospital.[1313] In contrast to the primary care setting, medical and nursing staff considered alcohol assessment to be a legitimate part of their role and felt relatively comfortable providing assessments, but clearly lacked sufficient knowledge of recommended drinking levels and standard drink measures.[1314]

24.32 We support the researchers' recommendations that for hospital settings, a validated brief alcohol screening tool should be introduced nationally; that an appropriate training programme should be introduced to support staff to conduct screening and brief intervention; and that the possibility of introducing dedicated staff for this purpose should be explored.[1315]

24.33 There is also further scope to use brief interventions in a range of community settings outside the health sector, including by non-health professionals. For example, a pilot programme in District and Youth Courts provides AOD

1310 Moriarty, Stubbe and Bradford, ibid, at 22.

1311 Ibid, at 48.

1312 J Pulford and others "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 at 2611.

1313 J Hosking and others "Screening and intervention for alcohol problems among patients admitted following unintentional injury: A missed opportunity?" (2007) 120 New Zealand Medical Journal 2417 at 2420.

1314 J Pulford and others "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 at 2612.

1315 Ibid, at 2612; J Hosking and others "Screening and intervention for alcohol problems among patients admitted following unintentional injury: A missed opportunity?" (2007) 120 New Zealand Medical Journal 2417 at 2423.

clinicians who can deliver AOD assessments on the same day as sentencing, and provide a referral to specialist services or deliver a brief intervention on site depending on the severity of substance-use disorder.

24.34 Electronic or web-based brief interventions are a new development that has been found to be effective for students presenting to primary care.[1316] Electronic screening and brief interventions have the potential to overcome some of the barriers to increased use of brief interventions in primary care because they can be delivered relatively inexpensively and without requiring much practitioner time.[1317]

24.35 We recommend the Ministers of Health, Corrections, ACC, Social Development, Justice and Education identify options for increased use of screening and brief interventions in each sector, including an analysis of capacity and training needs, and implement the options most cost-effective from a whole-of-government perspective. This should include pilots of electronic screening and brief intervention programmes.

Treatment for drink drivers

24.36 There are issues relating to treatment for drink drivers that have come to our attention since publishing the Issues Paper. The Ministry of Transport's discussion document *Safer Journeys 2020* proposed reducing drink driving by imposing a mandatory blood alcohol content of zero for recidivists and moving towards mandatory alcohol interlocks (breathalysers connected to car ignitions which prevent the car from starting if the driver has been drinking.)[1318] It did not address assessment or treatment for recidivists, but the Ministry of Transport is doing further work in this area and consultation feedback indicated submitters considered assessment and treatment to be important issues for government attention.[1319]

24.37 Section 65 of the Land Transport Act 1998 requires that anyone receiving a second conviction for drink driving within five years (when one conviction involved a particularly high breath or blood alcohol level), or anyone receiving a third conviction within five years, irrespective of blood alcohol levels, be ordered to attend an Assessment Centre. A report from a medical practitioner attached to an Assessment Centre, and any other evidence relating to the person's medical condition, must be considered by the New Zealand Transport Agency in deciding whether the person is fit to hold a driver licence and may have the disqualification removed after one year.[1320]

1316 K Kypri and others "Randomized controlled trial of web-based screening and brief intervention in primary care" (2008) 168 Archives of Internal Medicine 530 at 530.

1317 K Kypri and others "Computerised screening for hazardous drinking in primary care" (2005) 118 New Zealand Medical Journal 1703 at 1703.

1318 Ministry of Transport *Safer Journeys 2020: Discussion Document* (Ministry of Transport, August 2009) at 12.

1319 Ministry of Transport *Safer Journeys 2020: Summary of Submissions* (Ministry of Transport, November 2009) at 18.

1320 Land Transport Act 1998, s 65.

24.38 We are aware there are several problems with section 65, including problems resulting from a lack of capacity for referrals and treatment. We recommend reviewing section 65 of the Land Transport Act 1998 and associated services to ensure that both punishment and rehabilitation are addressed, barriers to receiving treatment are minimised and interventions provided are effective and cost-effective.

CONCLUSIONS AND FUNDING

24.39 Our conclusions on treatment are as follows:

- Treatment can be effective and cost-effective, although not to the same extent as population-level policies to reduce alcohol-related harm.
- There is a lack of access to quality addiction treatment across the spectrum of care because of service gaps, poorly defined systems and mechanisms of governance.
- Co-existing mental health problems are common in addiction treatment populations, with alcohol-related issues a key factor complicating psychiatric cases.
- A major barrier to increasing treatment provision is a shortage of skilled practitioners.
- 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, mental health and emergency department services.
- There is good evidence that brief interventions can be highly cost-effective in helping people with less severe alcohol-related problems to reduce those problems and change their alcohol consumption patterns.
- There is tension between social sectors (for example, health and justice systems) because they are focused on quite different outcomes.
- Where alcohol and other drugs may have contributed to offending, there should be greater consideration during the sentencing of the need for alcohol or drug assessment and treatment.
- While the government is doing further work in this area, there should be efforts to improve the ability of court staff to provide screening and brief interventions.

24.40 Many of our recommendations and, indeed, most initiatives to improve treatment, require additional funding. This is problematic at a time when government and particularly health sector budgets are stretched. Many submitters recommended earmarking an increase in alcohol excise tax to fund treatment, training or other harm-reduction initiatives.

24.41 We recommend an increase in excise tax and believe the government could use some of these funds for treatment and training.

RECOMMENDATIONS

R147 We recommend the key principles underpinning any changes to the alcohol addiction treatment system should be as follows:

- mental health and addiction services need to work as an integrated system;
- the system needs to deliver levels of intervention ranging from brief to intensive;
- the system response must be adaptable – able to assess type and level of need;
- the roles, responsibilities and powers to coordinate care and treatment need to be specified;
- the system is interdepartmental, interministerial and cross sector – it involves, for example, the Health, Justice, Child, Youth & Family, ACC, Corrections and Transport sectors, which also fund treatment and/or rely on it to improve outcomes;
- care pathways are required to define how people with acute problems can get access to care.

R148 We recommend the Ministry of Health and Mental Health Commission be supported to develop a blueprint for addiction service delivery for the next five years. The work should be undertaken with support from key groups. In particular, the Alcohol Advisory Council and National Addiction Centre, along with all government agencies whose outcomes could benefit from improved access to alcohol addiction treatment services. This work should be based on best practice principles and address:

- level and type of service, how much, what type and location;
- required resourcing and staffing levels, including workforce issues;
- the design of a service system, including models of care pathways, service delivery systems and coordination.

R149 We recommend a National Mental Health and Addictions Helpline should be considered providing triage, advice, disposition and service coordination for district health boards.

R150 We recommend a policy be adopted requiring district health boards to develop care pathways along the lines of a plan put forward to us by the Mental Health Commission.

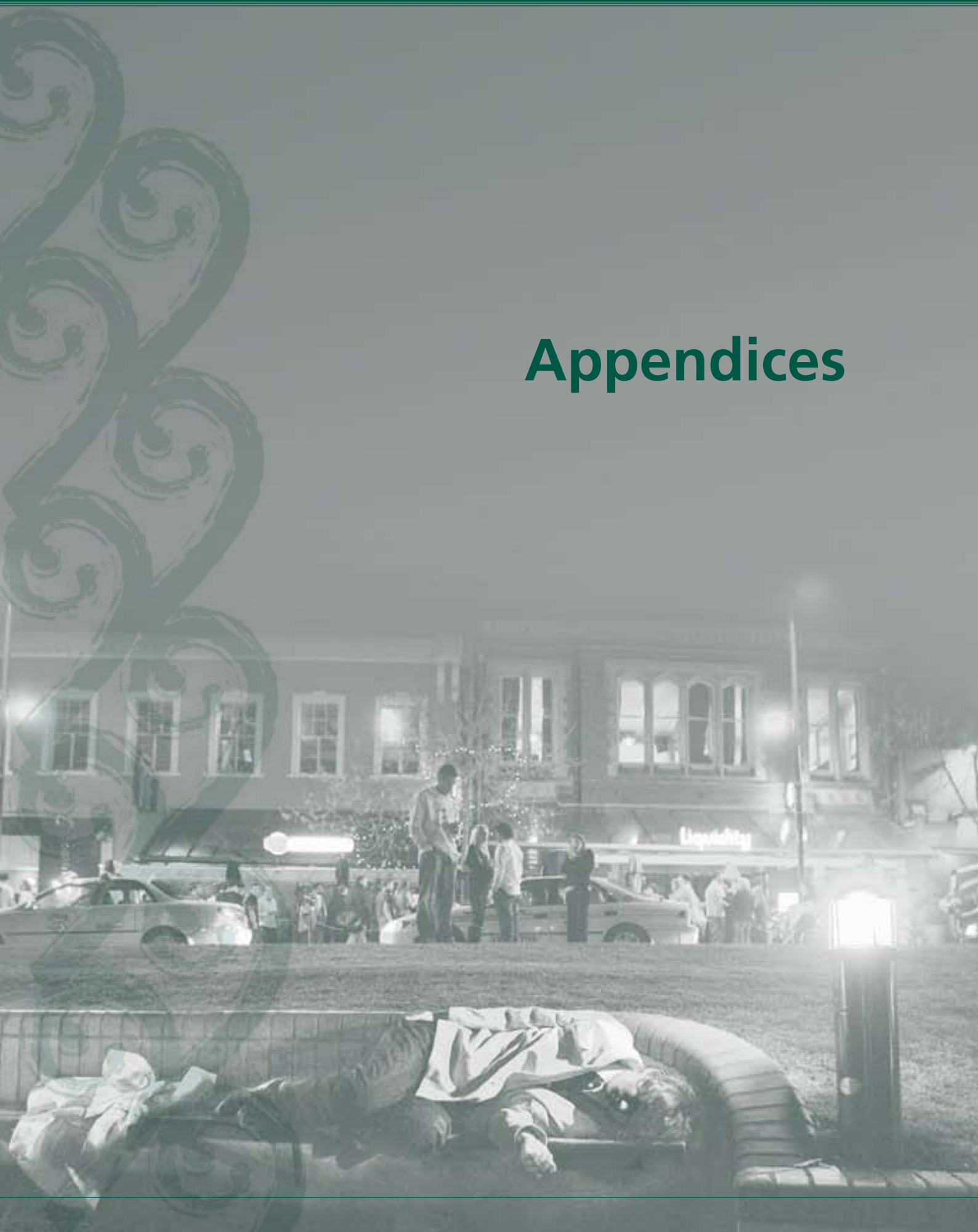
R151 We further recommend some of the proceeds of the increase in alcohol excise tax that we propose be applied to spending on alcohol treatment services and training.

RECOMMENDATIONS

R152 We have also found that intoxicated people are placing an unacceptable burden on police, ambulance services and acute health services but we cannot see a single national solution for this. We recommend relevant sectors work together to develop local strategies for managing intoxicated people.

R153 We recommend reviewing section 65 of the Land Transport Act 1998 and associated services with the aim of ensuring that: rehabilitation is addressed, barriers to receiving appropriate treatment through the process are minimised, and interventions provided are effective and cost-effective.

Appendices



Appendix 1

Marsden Jacob Associates report

THE TREASURY
Kaitohutohu Kaupapa Rawa

2 February 2010

Rt Hon Sir Geoffrey Palmer
President
New Zealand Law Commission
PO Box 2590
WELLINGTON

Dear Sir Geoffrey

The benefits, costs and taxation of alcohol: towards an analytical framework

Following our discussion a few weeks ago I undertook to write to you outlining Treasury's thoughts on the report prepared for the Commission on the benefits, costs and taxation of alcohol by Marsden Jacob Associates.

Treasury regards the paper as a valuable contribution to the existing literature on the consumption of alcohol in New Zealand. The paper presents a balanced consideration of both the economic costs and benefits and should serve to advance the debate on the appropriate policy settings.

In particular, the paper benefits from distinguishing between different value judgements and their analytical implications, which has been a major point of contention in recent academic disputes. While aspects of the paper remain open to challenge, such as estimates of price elasticities for moderate and heavy consumers of alcohol, this is unlikely to undermine the main conclusions of the report.

The report is notable for departing markedly from recent analysis of the cost and benefits of alcohol consumption in the New Zealand and Australian context by relying heavily on the policy-analytical framework developed at the University of Sheffield. This framework has not been previously considered by the Treasury. Given the dependence of the report's conclusions on this framework, we consider that some form of independent quality assurance would be prudent.

In a very broad sense the report is consistent with the Treasury's current approach to tax policy, which has been informed by the recent Tax Working Group (TWG) process. Treasury recognises the need to reduce taxes on capital and labour and supports funding these reductions through increases in taxes least likely to reduce welfare. Welfare losses from excises taxes on alcohol are likely to be lower than for many other forms of tax.

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More specifically, the report relies on recycling all revenue raised from increased excise taxes directly to taxpayers via a rebate or a reduction in other taxes. By doing so, the report concludes that welfare can be enhanced despite conservative consumer sovereignty assumptions. This revenue constraint needs to be clearly conveyed when any policy recommendations to increase the excise rate are made. In particular, using any increased excise revenues as "tied taxes" to fund the costs to Government of alcohol consumption would violate this constraint.

Overall, the paper provides useful insight into the merits of changes to excise taxes on alcohol. However, the analysis assumes that other policy settings remain unchanged. Treasury considers that any attempts to reform New Zealand's liquor laws should consider a range of legislative and regulatory policies. As the Marsden Jacob Associates paper acknowledges, to the extent that other policies are implemented and are effective, less reliance might be placed on an increase in the excise tax to reduce alcohol-related harms.

Yours sincerely

John Whitehead
Secretary to the Treasury

2

The benefits, costs and taxation of alcohol: towards an analytical framework

A report prepared
for the New Zealand Law Commission

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Key points

1. A significant increase in New Zealand's alcohol excise tax, of 50 or even 100 per cent, would yield net economic benefits, reducing the call on the public budget thus allowing either tax reform and/or a reduction in taxation levels and would be worthwhile from the community's point of view in terms of both efficiency and equity.

2. There are several separate, additive economic rationales for an increase in the rate of excise.

   First, if alcohol were a normal economic good (which it is not), then the prime public policy interest would be as a tax base. Since price elasticity of demand for alcohol is low, the excise on alcohol is a highly efficient tax. In contrast, the available evidence suggests that the progressive income tax is not. Thus, consistent with Ramsey's theory of optimal taxation, the net cost of dead weight efficiency losses from all taxes would be reduced and New Zealand would be better off by an increase in the rate of excise on alcohol and a reduction in the rates of income tax.

   Second, since alcohol is associated with large (net negative) consumption externalities, the excise rate on alcohol can be increased so that consumers better recognise the (high) public costs of alcohol. As demonstrated by Pigou, such tax increases would be welfare improving. MJA's threshold analysis and order of magnitude benefit cost analysis indicate that excise increases of at least 50 or 100 per cent are desirable. Potentially, there are large reductions in the social costs of alcohol consumption, while there are only small net costs in terms of forgone private benefits.

   Third, since alcohol is judged by many to involve elements of both short run and long run irrationality, an increase in the excise rate is likely to be welfare improving since, while reducing the small consumer surplus below the corrected demand schedule, it would also reduce costs unmatched by benefits.

3. The criticism that previous alcohol cost studies ignored the benefits of alcohol consumption (particularly consumer surplus) is warranted, but is found not to be material where the policy under assessment is an increase in the excise tax. This is because the reduction in consumer satisfaction (surplus) is little more than the revenue from the increase in excise tax.

4. An excise tax increase, like a policy of minimum price floors, differentially targets the cheapest forms of alcohol, increasing these prices more. Since, heavy drinkers, and teenagers (and likely Maori) preferentially purchase cheap forms of alcohol, the reductions in consumption are likely to be greatest for problem groups.

5. But an increase in excise tax does not suffer from the main disadvantage of minimum pricing, which has the same result as a cartel: excessive industry profits (a large proportion of which flow offshore).

6. While a policy of increasing alcohol excise has strong support, our analysis has not addressed the wider question of the makeup of the desirable full portfolio of policies to address alcohol-related harms in New Zealand.

7. The analysis assumes other policy settings (such as the minimum legal drinking age or the current blood alcohol limit of 0.08 per cent) are unchanged. To the extent that other policies are implemented and are effective, less reliance might be placed on an increase in the excise tax to reduce alcohol-related harms. However, there is widespread evidence that an increase in excise, and therefore prices, is a highly effective policy measure.

8. An assessment of the optimal policy portfolio would require a comprehensive economic modelling exercise, possibly in collaboration with Australian researchers, combining medical (epidemiological) and economic expertise. A research directions checklist is provided as an appendix to the report. However, the search for perfection in policy analysis should not an excuse for delaying an increase in the rate of excise or other reforms of first order importance.

11 December 2009

Introduction*

1. Alcohol is no ordinary commodity.[1,2] In medical terms, it is a toxin with a complex epidemiology. In legal terms, it is a licit drug whose sale and consumption are highly regulated. In economic terms, consumption levels and patterns are associated with result in major external costs (consumption externalities), and, in the judgement of some, there are elements of both short-term irrationality (i.e., intoxication) and long-term irrationality, and/or at least, information failures.

2. The New Zealand Law Commission has requested Marsden Jacob Associates for advice on the pricing and taxation of alcohol. This advice is intended to inform the Law Commission's 'Review of Regulatory Framework for the Sale and Supply of Liquor', which is expected to be completed by March 2010.

3. The price of alcohol is a key driver of alcohol consumption levels and therefore acute and chronic harms. It follows that alcohol taxation and price regulation are potentially important instruments in the wide portfolio of policy measures available to any society to improve the balance of the benefits and costs associated with alcohol consumption.[3]

4. The imposition of a tax to correct for consumption externalities, as described by the early twentieth century English economist A.C. Pigou, requires therefore an understanding of the levels, nature and patterns of alcohol consumption and of the associated benefits and costs.

5. Assembling this information poses some particular challenges because, first, in a small country the range and frequency of relevant studies does not always match that of larger countries, and, second, the depth and breadth of knowledge on the role of and impacts of alcohol in society are changing at an accelerating rate. For instance:

   - alcohol is now recognised as a contributor to colon cancer and, therefore, a wider range of cancers;[4] and
   - the potential protective effect of alcohol consumption against ischemic heart disease has been questioned by a relatively new and major meta-analysis and subsequent papers.[5]

* We gratefully acknowledge the advice and comments of colleagues in Australia and New Zealand.

1 See the Australian National Competition Council foreword to Marsden Jacob Associates 2005, *Identifying a framework for regulation in packaged liquor retailing*.

2 Babor, T., Caetano, R., Casswell, S., et al. 2003, *Alcohol: No ordinary commodity – Research and public policy*, Oxford University Press.

3 Babor et al. 2003 and Casswell, S. and Maxwell, A. 2005, 'What works to reduce alcohol-related harm and why aren't the policies more popular?', *Social Policy Journal of New Zealand*, vol. 25, pp. 118-140.

4 See Corroa, G., Bagnardi, V. et al. 2004, 'A meta-analysis of alcohol consumption and the risks of 15 diseases', *Preventive Medicine*, vol. 38, pp. 613-619, and World Cancer Fund 2007, *Food, nutrition, physical activity and the prevention of cancer: A global perspective*.

5 Fillmore, K., Kerr, W., Stockwell, T., Chikritzhs, T, and Bostrom, A. 2006, 'Moderate alcohol use and reduced mortality risk: Systematic error in prospective studies', *Addiction Research and Theory*, vol. 14, no. 2, pp. 101-132.

6. Our approach involves several steps:

- a comparison of the key features of alcohol consumption in New Zealand, Australia and the United Kingdom;
- a review of existing studies of the benefits and costs of alcohol consumption against MJA's explicit criteria;
- a simple threshold analysis of the required reduction in external costs for a 50 per cent increase in the rate of excise to be worthwhile;
- a preliminary, order of magnitude analysis of the economic benefits and costs of raising the rate of excise on alcohol by 50 and 100 percent; and
- a more detailed examination of the appropriate definitions and measurement of consumer surplus for non-normal goods and services, such as gambling, tobacco and alcohol, where there are elements of addiction, compulsion or irrationality.

Key features of alcohol consumption in New Zealand, Australia and the UK

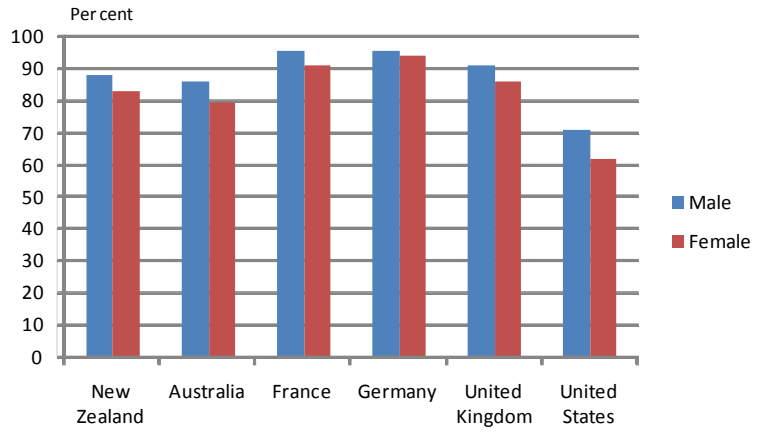
7. This section addresses the question of how similar or different (and where different) are alcohol consumption patterns in New Zealand, Australia and the United Kingdom. The more patterns are similar, the more likely that each country can draw on the research findings and policy experiences of the others. Where there are differences, understanding the differences may allow overseas data and findings to be interpreted as maximums or minimums likely to apply in New Zealand.

8. Salient characteristics of alcohol consumption across the three countries include:

   - the prevalence of drinking, which is at similar levels in New Zealand, Australia and the UK (Figure 1);
   - per capita consumption, which is comparable to Australia but lower than the UK (Figure 2); and
   - a significant prevalence of binge drinking (Figure 3), especially among young people, associated with cheap, readily available alcohol products, including Ready-to-Drinks (RTDs) and, particularly in the UK, ciders.

Figure 1: Drinkers (non-abstainers over the last year)

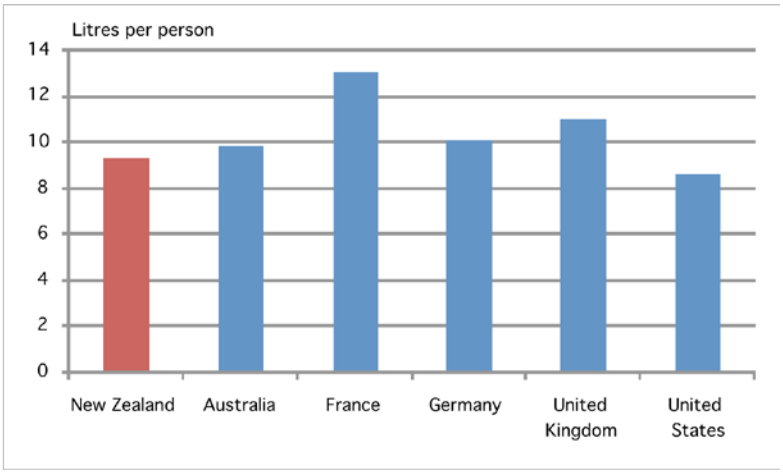
Adults



Source: WHO 2004, Global Status Report on Alcohol 2004, Table 7, p. 27.

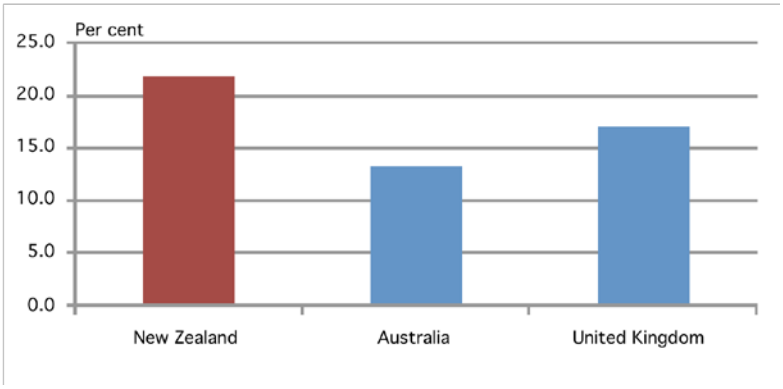
Figure 2: International comparison of per capita alcohol consumption, 2006

Persons aged 15 and over



Source: OECD Health Data 2009.

Figure 3: Prevalence of heavy episodic drinking among the adult population



Source: Ministry of Health 2009, Alcohol use in New Zealand: Key results of the 2007/08 New Zealand Alcohol and Drug Use Survey, Table 8, p. 38 and WHO 2004, Global Status Report on Alcohol 2004, Table 8, p. 28 (international data).
Notes: For New Zealand, the data relate to consumption of more than six standard drinks for males or more than four standard drinks for females on one occasion at least monthly. For Australia, the data relate to consumption of seven or more standard drinks for males (five or more for females) on any one drinking occasion at least monthly. For the UK, data relate to consumption of 6 or more drinks (4.8 or more standard drinks) on one occasion, weekly or more.

9. The major difference between New Zealand, Australia and the UK is the high prevalence of binge drinking among New Zealand's Māori population.[6] Alcohol consumption among Māori appears to be particularly associated with binge drinking, with Māori less likely than non-Māori to be regular drinkers, but more likely to engage in binge drinking when they drink.[7]

ASSESSMENT OF SIMILARITIES AND DIFFERENCES

10. In comparing New Zealand, Australia and the UK, we find noticeable similarities in the areas of prevalence of drinkers in the population and per capita alcohol consumption. Binge drinking is at similar rates in New Zealand and the UK, but, in both countries, binge drinking appears to be more prevalent than in Australia. This suggests that the share of alcohol consumption that is hazardous or harmful in New Zealand may be significantly higher in New Zealand than in Australia.

11. While patterns of alcohol consumption among Māori lend support to measures specifically targeted at binge drinking among Māori, these patterns are unlikely to impact on the applicability of Australian or UK for New Zealand data, given the broad similarities in the aggregate data that exist.

12. We conclude that, in addition to the often asserted cultural similarities, there are sufficient broad similarities in alcohol consumption to make the Australian and UK information useful and relevant (when carefully used) for comparisons, insights and first cut estimates of data that might be missing in the New Zealand case and experiences.

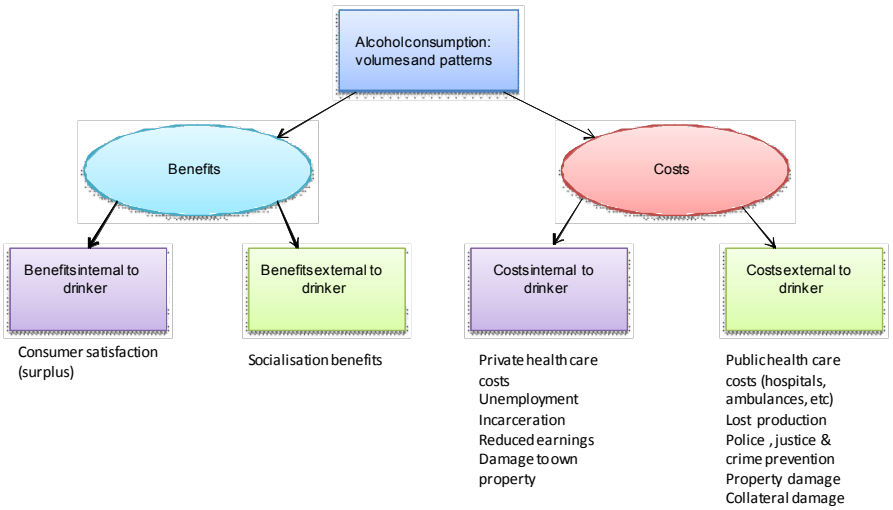
[6] New Zealand's Māori population is around 15 per cent of the New Zealand population. In contrast, Australia's Indigenous population is around 2.5 per cent of the Australian population.

[7] BRC Marketing and Social Research 2004, *The Way we drink: Final report*, p. 79.

Benefits and costs of alcohol

13. Alcohol has a pervasive role in New Zealand and similar societies and involves multiple benefits and costs to individuals and others in society. Figure 4 provides one perspective on the taxonomy of relevant benefits and costs.

Figure 4: A taxonomy of benefits and cost of alcohol consumption, with examples



BENEFITS OF ALCOHOL CONSUMPTION

14. The benefits include:

- private benefits (consumer satisfaction), internal to the drinker; and
- social benefits, external to the drinker, through the lubrication and relaxation of personal, social and business relationships.

15. The role of consumer surplus in measuring the private benefits of alcohol consumption is discussed in paragraphs 21 to 34.

COST OF ALCOHOL-RELATED HARMS

16. Alcohol consumption imposes large costs on the community through the harms it generates (Table 1), particularly through its impact on health, as measured by reductions in Quality-Adjusted Life Years (QALYs).

17. Some costs are tangible and directly impact on the government and the hospital system. These costs include, among others:

- the treatment of alcohol-related injuries or chronic health conditions;
- the administrative costs of compensation for alcohol-related injuries; and

- policing and the administration of justice associated with alcohol-induced crime.

For New Zealand, estimates of these direct costs were made by Devlin et al. (1997) and taken up in a Treasury Working Paper examining the level of the alcohol excise.[8] The understanding of the role and costs of alcohol in society has broadened, but, adjusted for inflation only, the indexed costs are of the order of $500-900 million in 2008-09.

18. BERL collated departmental estimates of the direct costs to government in 2005-06: these totalled $1,111 million. Adjusting for inflation, in 2008-09 the direct costs of alcohol to government are estimated at around $1,200 million.[9]

Table 1: Harms attributable to alcohol use

100% attributable to alcohol use	*Partly attributable to alcohol use*	
Alcoholic psychosis	Lip cancer	Gastro-oesophageal
Alcohol dependence	Oral cancer	haemorrhage
Alcoholic polyneuropathy	Pharyngeal cancer	Cholelithiasis
Alcoholic cardiomyopathy	Oesophageal cancer	Acute pancreatitis
Alcoholic gastritis	Colon cancer	Low birth weight
Alcoholic liver cirrhosis	Rectal cancer	Road injuries
Ethanol toxicity	Hepatic cancer	Fall injuries
Other alcoholic poisonings	Pancreatic cancer	Fire injuries
	Laryngeal cancer	Drowning
	Breast cancer	Aspiration
	Pellagra	Machine injuries
	Hypertension	Suicide
	Ischemic heart disease	Assault (incl. sexual)
	Cardiac dysrhythmias	Domestic violence
	Heart failure	Child abuse
	Stroke	
	Oesophageal varices	

Source: UK Cabinet Strategy Office 2003, Collins and Lapsley 2008, National Expert Advisory Commission on Alcohol (2001).

8 Barker, F. 2002, 'Consumption externalities and the role of government: The case of alcohol', *New Zealand Treasury Working Paper*, 02/25.

9 This estimate is based on BERL 2009, Table 6.7,.p. 76. As BERL note that 70 per cent of joint alcohol use and other drugs (AOD) costs are due to alcohol, 70 per cent of the $284 million of AOD costs were added on to the BERL estimate of $912 million for alcohol-related direct costs.

Table 2: Direct costs to New Zealand government and hospitals in 1991 (2008-09 dollars)

Cost item	*$ million*	*Comment*
Hospital resources	103 [a]	Includes hospital services costs for treatment of alcohol-related illness and injury. It was assumed there is no impact of alcohol consumption on primary health care or pharmaceutical use.
Accident Compensation Corporation (ACC)	42-62 [a]	Does not include income compensation payments (the cost to the community is counted in production losses, which are on top of the direct costs to government and hospitals). The range of costs is due to exclusion or inclusion of non-economic costs (which the Treasury include only up to 50 per cent of the total amount on the basis that much of the loss would be internal to drinkers).
Ministry of Transport	15 [a]	Expenditures on alcohol-related prevention programs and attendance at crashes.[b]
Police	207-411 [a]	Based on estimates of alcohol-related incidents and the costs of police time. The variation in the range is due to different assumptions around the fraction of crime that is alcohol-related.
Penal institutions	50-109 [a]	"
Community sentencing	4-7 [a]	"
Periodic sentencing	18-34 [a]	"
Court costs	59-138 [a]	"
Total	**498-888**	

a. Barker 2002 and Devlin et al. 1997 estimates, converted to 2008-09 dollars using the ratio of the average CPI in 2008-09 to the average CPI in 1991.
b. Property damage due to car crashes (or any other cause, such as arson) is not included in the estimates.

19. The costs of alcohol to an economy and its people are far wider than the direct costs to government, however, and include the following.[10]

    The trauma and distress of alcohol-induced crime. For example, the cost to government of the police taking a report of an alcohol-induced rape may be small but the trauma has a very real cost (perhaps 16 times as large).[11]

[10] There is a large, detailed literature on which specific costs should be included. See especially Single, E. et al 2003, *International guidelines for estimating the costs of substance abuse*, 2nd edition, World Health Organization, Geneva.

[11] See Roman, J. and Farrell, G. 2002, 'Cost-benefit analysis for crime prevention: Opportunity costs, routine savings and crime externalities', *Crime Prevention Studies*, vol. 14, pp. 53-92 and Miller, T., Cohen, M., and Wiersema, B. 1996, *Victim costs and consequences: A new look*, National Institute of Justice Research Report, US Department of Justice.

The loss of production and profits due to absenteeism, morbidity and mortality. The New Zealand economy is typically at full employment and the loss of labour input and efficiency due to alcohol affects the utilisation of all economic resources, both in firms and the economy as a whole. Moreover, unemployment benefits are funded from taxation which involves a distortionary effect (deadweight loss) on the economy.

The costs of alcohol-induced theft and vandalism. These costs are not simply an economic transfer to be netted out of the benefit-cost framework, leaving a focus on compliance costs alone. Agreed or contracted payments of income or assets to other parties may be defined as transfer payments and thus should be netted out of benefit-cost studies. Theft, however, is a non-agreed, non-contracted appropriation and is certainly neither welfare neutral nor welfare improving for New Zealand communities or the population as a whole. Theft also imposes a deadweight cost on the economy and reduces incentives for effort. These costs need to be recognised and, desirably, measured.

The direct costs to private citizens, including violence itself and the installation of better security, extra effort to avoid or reduce its likelihood of alcohol-induced violence.

A wide variety of other costs, which are sometimes dismissed and excluded from further consideration under the value judgement that they are internalised by the drinker. This latter exclusion ignores the fact that partners, families and communities and governments typically (and legitimately) choose to act in their own interests and/or paternalistically – that is to intervene even with mature adults, where risk-taking exceeds community norms. There is no single norm for all circumstances but Australia's NHMRC uses as a basis for developing drinking guidelines a lifetime risk of 1 in 100 from dying of alcohol related causes. [12] See Box 1 below.

20. In addition, some parts of consumer demand for alcohol may be seen as addictive, compulsive or at least ill-informed and, thus, may be described as irrational. For that part of alcohol consumption that is considered irrational, consumers will experience less than the benefits of consumption they expected. Hence, some part of the total cost of alcohol production will not be matched by consumer benefits, and this should be treated as a cost (see paragraphs 21 to 34).

[12] A common norms for tolerable risk is a probability of a single death of 1 in 1000. For examples of the use of this level of risk tolerance see UK Health and Safety Executive Publications and dam safety standards such as the risk guidelines for dam safety from the Australian National Committee on Large Dams (ANCOLD). For an economic interpretation and discussion see Marsden, J. *et al.* 2007, *Dam safety, economic regulation and society's need to prioritise health and safety expenditures,* paper presented to ANCOLD-NZSOLD Conference, Queenstown. See also Australian Medical Association 2007, submission in NHMRC Draft Australian alcohol guidelines for low-risk drinking.

Box 1: NHMRC discussion on choice of risk benchmark

Lifetime risk is a commonly used standard for evaluating the risk associated with exposure to a particular substance or situation, for instance, in evaluating what are acceptable levels of environmental poisons or food additives. The arbitrary limit often used for environmental toxins has been a risk of death of 1 in 1,000,000: that is, that the chance of death attributable to a given level of exposure over a lifetime should be no more than one in a million. This standard is used in Australia for contaminants of drinking water (NHMRC 2004).

A child drinking tap water is not choosing to take on a risk of poisoning. For such involuntary risks, the threshold of acceptable risk is therefore set very low. However, for behaviours that are seen as voluntarily adopted, such as driving a car, higher risks are routinely accepted. For example, the lifetime risk of dying in a traffic accident associated with driving 10,000 miles a year in the US has been calculated to be about 1 in 60 (Walsh 1996). From this perspective, at least some of the risks from drinking alcohol can be seen as voluntarily assumed by the drinker. On the other hand, there are harms from drinking that are not voluntarily assumed; in particular, harm to people other than the drinker. Drinking alcohol is thus a mixed case in terms of whether the associated risks are voluntary.

Judgements about the acceptability of risk presuppose that there is some benefit in undertaking the risky activity in question. However, people do not just judge risk against benefits. Characteristics such as control, familiarity, immediacy of the harm, and the catastrophic or chronic nature of the harm or benefit, all influence individual perceptions of what constitutes 'high' and 'low' risk.

The fact that risk is perceived as multi-dimensional, and judged according to its characteristics and context, makes it difficult to convey concepts of risk at a population level. The NHMRC decided on a lifetime risk of dying from alcohol-caused disease or injury of 1 in 100 (i.e. one death for every 100 people) as the basis for guidance as to what could be seen as an acceptable risk from drinking in the context of present-day Australian society. Guideline 1 in general aims to keep drinking below that risk level for the drinker. This may be seen as too high or too low a risk by the individual drinker. This report also presents tables and figures that show how the risk of harm varies, for those who wish to guide their drinking by another level of risk.

Source: National Health and Medical Research Council 2009, *Australian guidelines to reduce health risks from drinking alcohol*, pp. 34-35.

DISCUSSION ON CONSUMER SURPLUS

21. A general issue in the wider debate on the benefits and costs of alcohol – and hence the net benefits of any policy response – is the concern among economists that the benefits of consumer satisfaction have not, to date, been taken into account. Given the typical reliance on the assumption of consumer sovereignty in economic analysis, this is a valid criticism and needs to be addressed squarely.

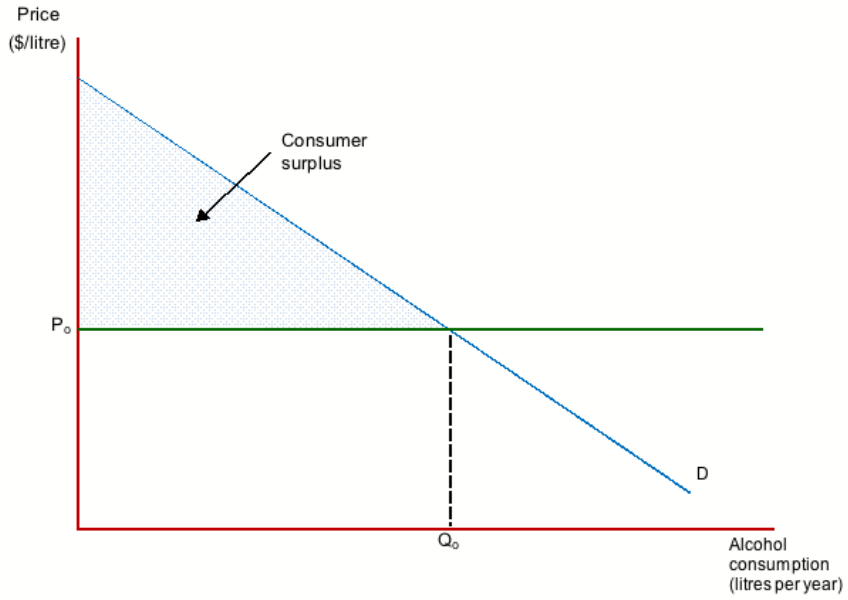
22. Relevant questions relating to consumer surplus, its definition and estimation, include:

- how is consumer surplus defined and how does an increase in the excise tax cause a loss of consumer surplus?;
- what is the definition and integrity of the concept of consumer sovereignty which underpins the definition of consumer surplus?; and
- how should the concepts of consumer sovereignty and consumer surplus be (re-)defined and applied for extra-ordinary goods such as gambling and alcohol?

Definition of consumer surplus

23. On the first question, Consumer surplus is defined as the difference between the value at which a consumer (or the sum of consumers) values his/her consumption and the price he/she paid for the consumption. Thinking about the demand curve for a product (Figure 5), this value is represented by the area between the demand curve (D) and the horizontal line representing the price paid by (all) consumers (P_0).

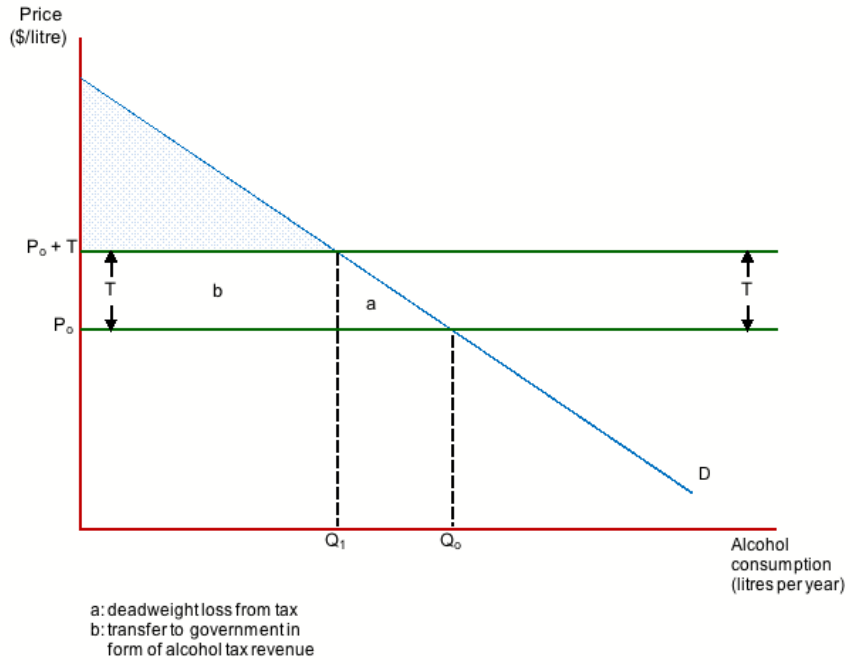
Figure 5: Consumer surplus is the excess of willingness to pay over price



24. Policy measures that affect the demand for goods will impact on consumer surplus, and hence changes in consumer surplus are important criteria by which to assess policies. For example, a tax on a product will reduce consumer surplus, as the gap between what consumers are willing to pay and the price (after tax) is reduced (Figure 6).

Typically, the bulk of the loss in consumer surplus is transferred to the government in the form of taxation revenue (area b), but some part of the consumer surplus disappears altogether. This is because the price rise as a result of the tax leads to a fall in consumption of the product, eliminating the consumer surplus that accrued over that range (area a).

Figure 6: A tax increase reduces consumer surplus



Integrity of the concept of consumer sovreignty

25. On the second question, (i.e., the integrity of the concept of consumer sovereignty), strong and divergent views are frequently taken. For example, Crampton and Burgess state:

> *BERL is too quick to dismiss rational explanations for heavy and addictive use of alcohol and drugs.*[13]

[13] Crampton, E. and Burgess, M. 2009, 'The price of everything and the value of nothing: A (truly) external review of BERL's study of harmful alcohol and drug use', Department of Economics and Finance, University of Canterbury, Working Paper no. 10/2009, p. 13.

However, not all policy makers or communities would accept the theory of rational addiction.

26. Moreover, there are several countering concerns including:

- some consumers are poorly informed on the delayed impact of alcohol consumption, and there is a perception, especially among young drinkers, that whatever the risks 'they don't apply to me';
- as observed in most countries, there is a change in preferences and behaviours with age – in New Zealand, while 54 per cent of 18-24 year olds drink large amounts of alcohol on typical occasions, 19 per cent of 35-44 year olds do so. The decline in alcohol consumption levels with age is common to most countries;
- the existence of family and a welfare system that will look after people if they become ill, disabled or unemployed creates a 'moral hazard', meaning people are likely to take on more risks than if the safety net were unavailable;
- the heavy expenditure on the promotion and advertising of alcohol by the industry (reported to be around $NZ 34 million in 2008). Meta-analysis suggests that advertising has little effect at the population levels, but more recent studies focussing on teenagers and young adults indicate that these promotions and advertisements are highly attractive and effective in stimulating alcohol consumption. Since other research indicates that age of first commencing drinking is a strong predictor of lifetime drinking patterns, advertising and promotion may have a major step impact even if it does not change patterns once they are established. These issues raise the question in what sense can the preferences of individual consumers be said to be 'sovereign', as distinct from 'manipulated'?; and
- the evidence suggesting that peer group pressure is strongly influential in individual values, preferences and drinking behaviour, which again raises the question of the sovereignty of the preferences of individual consumers.[14]

27. The policy relevance of this discussion is that the magnitude of consumer surplus – the economist's preferred method of measuring the level of, or change in, consumer benefits – is directly determined by whether we accept (or 'correct') the observed demand curve.

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[14] Of course there are alternative views to the impact of advertising and peer pressure.

Even if alcohol promotion changes preferences, does that mean that the new preferences are less authentic than the original ones?. Social marketing tries to do the same for the public good (eg don't litter), and this is not viewed as a distortion of consumer preferences. Advertising is a very complex area in respect of preference formation. If the community genuinely does not like it, why not ban or modify the advertising directly? If advertising has this effect for alcohol, it may have the same effect for many other consumer goods, which would raise some very broad policy implications surrounding sovereignty and the regulatory state.

Peer group pressures fall into the same vein. Our preferences must be formed somewhere – genes, family background, peers, life experiences — the fact that they have different origins does not necessarily invalidate benefit cost analysis. Maybe there are some more subtle arguments around peer pressure where people do what others expect them to do through fear, though not wanting to do so, and where the result is some unpleasant equilibrium in which everyone would like to reduce drinking but no one wants to be seen as 'uncool'.

28. This leads to the third related question, how should consumer surplus be defined and measured in the case of extra-ordinary goods such as gambling and alcohol? In addressing this question it is useful to distinguish between the value judgements and their analytical implications.

Value judgements on irrationality and rationality

29. A range of views and value judgements can be distinguished across the spectrum ranging from strongly paternalistic to strongly libertarian. These include the following.

- Alcohol is a drug and confers no benefits in terms of consumer satisfaction. Thus, the loss of consumer satisfaction does not need to be taken into account. Alcohol imposes costs that are unmatched by any benefits. This approach has been taken in the past by many alcohol researchers.
- Moderate drinkers gain benefits, but heavy drinkers gain only the same benefit as do moderate drinkers. Therefore, not only can the consumer benefits of risky drinking be set aside, but costs previously matched by benefits become unmatched and must be brought to account. This is the alcohol counterpart of the Productivity Commission's analysis of gambling in Australia.
- Drinking beyond moderate levels may still confer some genuine satisfaction and willingness-to-pay surveys can be used to distinguish between benefit and dis-benefit. This approach has been applied by Wimer, Vining and Thomas 2006 in the case of tobacco.
- Drinking is a matter of individual choice, preferences are sovereign and the cost of harms are mainly internalised to the individual and only the small costs to wider society are relevant. This approach is consistent with Barker 2002 and Crampton and Burgess 2009.

30. If either the second or third value judgement on the degree of irrationality is made, it is necessary to correct the demand curve, and to reassess costs and benefits. Correcting the observed demand curve to remove the impacts of irrationality means that the benefits and costs of alcohol consumption must now be reassessed against the corrected, non-compulsive demand curve. [15] This has several effects:

- magnitudes of total consumer surplus and of any change in consumer surplus as a result of a tax increase – or other intervention – are substantially reduced; and
- some part of the production costs that were previously offset by the benefits of consumer satisfaction are no longer offset once the corrected demand curve is acknowledged. As a result, this part of production costs is an unmatched cost. When assessing total costs and benefits of the industry, this cost should be recognised, and, when assessing the benefits and costs of a tax increase, the reduction in these costs should be treated as a benefit.

These effects are explained in greater detail in paras 31 to 34.

[15] For a fuller discussion on these issues, refer to Productivity Commission 1999, *Australia's Gambling Industries: Inquiry Report Vol. 3 Appendices*, 'Appendix C:Estimating Consumer Surplus'. This report contains a rigorous exposition of how to interpret consumer surplus in the context of compulsive or addictive behaviour (http://www.pc.gov.au/__data/assets/pdf_file/0006/82554/gambling3.pdf).

31. As noted above, for some non-normal goods, the benefits of consumption may be actually very small, zero, or negative. There is an amount of irrational consumption. Assuming consumers would have a lower willingness to pay for alcohol if they were rational and aware of the full costs, the demand curve (which measures willingness to pay for different quantities of consumption) shifts inward from D_0 to D_1.in Figure 7. This has a number of significant impacts:

- consumer surplus is estimated to be much lower (the triangle *a* in Figure 7 compared with the larger consumer surplus triangle that would exist if the demand curve were not adjusted); and
- there is a range of alcohol consumption over which the price of alcohol exceeds the true willingness to pay for alcohol (according to the adjusted demand curve), meaning there are costs to consumers that are unmatched by benefits.

32. Assuming there is irrational demand and that the demand curve needs correcting, the welfare implications of an excise tax increase (Figure 8) are different from the case of a normal good.

An excise tax increase leads to the following benefits:

- a reduction in unmatched costs of *b´´*; and
- excise tax revenue of *a´´* + *c*.

At the same time it leads to a cost of

- a reduction in consumer surplus of *a´´*.

In net terms, the benefits of the excise tax increase are b´´ + *c*.

33. While this is a gross simplification, and we have abstracted from the loss of consumer surplus relating to rational alcohol consumption (where demand curves do not need adjusting), it illustrates that for irrational alcohol consumption:

- true (adjusted) consumer surplus and the loss of consumer surplus due to excise increases is more than offset by the gain in excise tax revenue; and
- there may be significant costs of consumption unmatched by consumer surplus benefits, and these costs can be reduced through an excise tax increase.

Figure 7: Adjusting the demand curve for 'irrationality'

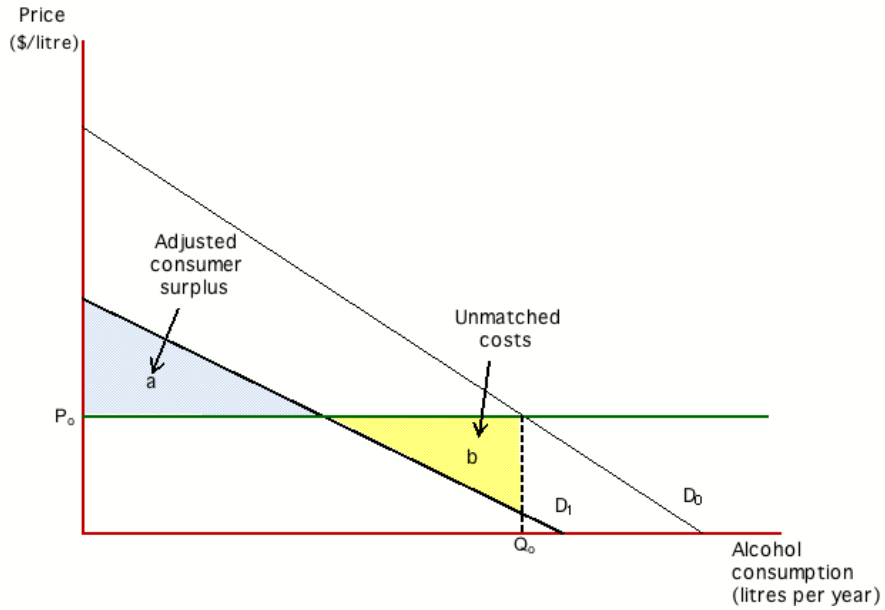
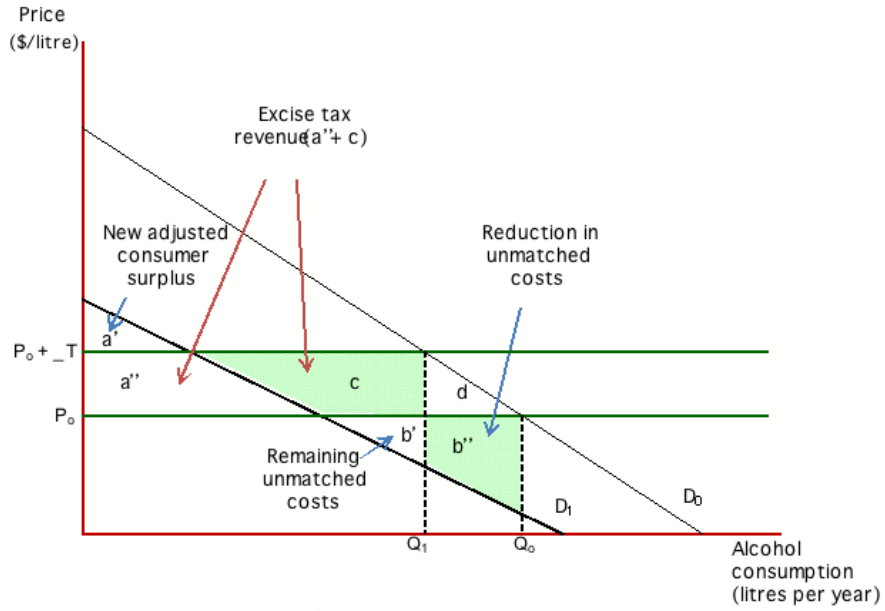


Figure 8: Impact of an excise tax increase



Benefits of increased tax
-reduction in unmatched costs: b''
-tax revenue: a'' + c

Costs of increased tax
-surplus reduction: a'

Net benefit = c + b''

34. The message for benefit-cost analysis is that analysts need to state value judgements explicitly in the assumptions. Further, the analysis could be sensitivity tested to reflect the results of different value judgements. Decision makers can then consider the analytical results that correspond to their view of the appropriate value judgement, taking into account the community's preferences.

PROPORTION OF CONSUMPTION AT HAZARDOUS OR HARMFUL LEVELS

35. The above discussion highlights that, to assess the impact of policy measures, such as an increase in the rate of excise, it is important to know the proportion of total alcohol consumption that can be considered to involve high lifetime or high short-term risk. This is especially important when exploring and quantifying the implications of value judgements that allow for irrationality in consumption decisions on alcohol when intoxicated or over the longer term.

36. Terms such as hazardous or harmful are useful shorthand but must be carefully defined against current benchmarks. However, these guideline levels seem to differ between countries, over time and between studies. Defining the proportion of drinking that is harmful or hazardous is, therefore, not a simple matter.

    Nonetheless, we believe it is useful to conduct a 'thought experiment', based on available data and the new risk-based guidelines for alcohol consumption from Australia's National Health and Medical Research Council (NHMRC). The NHMRC guidelines are based on around a risk of death from alcohol related causes of no more than 1 in 100. The basis for their choosing this level of risk tolerance is shown in Box 1 above.

37. Existing New Zealand data sources offer limited guidance on the proportion of alcohol consumption in New Zealand that is high risk in terms of latest NHMRC Guidelines. Most relevant is the *National Alcohol Survey* 2000 finding that 50 per cent of the total volume of alcohol consumed in New Zealand was consumed in heavier drinking occasions (8 standard drinks or more for men, 6 standard drinks or more for women).[16]

    Note that 8 and 6 standard drinks are not the current standard for New Zealand, and New Zealand recommended levels of drinking are generally in excess of recommended levels in Australia, the UK and, we understand, the United States.

    Note this 50 per cent estimate does not include consumption:

    - **associated with risk of chronic harms**, i.e., it does not include alcohol consumption associated with drinking more than 2 (but no more than 4) standard drinks on a daily basis. According to the NHRMC, such a pattern of consumption raises risks to long-term health; or
    - **short-term consumption at levels above 4 standard drinks** but below 8 standard drinks (for men) or 6 standard drinks (for women) on a single occasion. Consumption at these levels is assessed to involve high risk according to the latest NHMRC guidelines.

[16] Habgood, P., et al. 2001, *Drinking in New Zealand: National Surveys comparison 1995 and 2000*, Alcohol and Public Health Research Unit, Figure 6.

38. This suggests BERL's estimate that 50 per cent of alcohol consumption in New Zealand was harmful is an under-estimate, especially when defined against current New Zealand guidelines on safe drinking or if benchmarked against the explicitly risk-based benchmarks provided by the NHMRC. A comparison of New Zealand with Australia and the UK further suggests that the proportion is much higher than 50 per cent.

Table 3: Comparison of drinking guidelines designed to reduce risks of lifetime or short-term harms

Standard drink equal 10 grams or 12.7 ml

	New Zealand	*Australia*	*UK*
Men			
Lifetime	3	2	2.4-3.2
Short-term	6	4	2.4-3.2
Women			
Lifetime	2	2	1.6-2.4
Short-term	4	4	1.6-2.4

Source: NHMRC, ALAC and UK Health department guidelines.

39. For Australia, a monograph published by the Australian Ministerial Council on Drug Strategy (2004) notes:

- *a common pattern of occasional sessions of heavy alcohol drinking occurs among people whose average daily consumption is low-risk,*
- *a significant proportion of alcohol intake in Australia involves drinking at risky or high-risk levels for acute harm – estimated to be 51% of alcohol consumed by the Australian population aged 15 and over,*
- *when risky patterns of alcohol consumption for acute and/or chronic harm from drinking are combined, this comprises as much as 67% of total alcohol consumption.*

In each case the above estimates are from the 1998 NDSHS [National Drug Strategy Household Survey], which underestimates actual consumption by over 50%.[17]

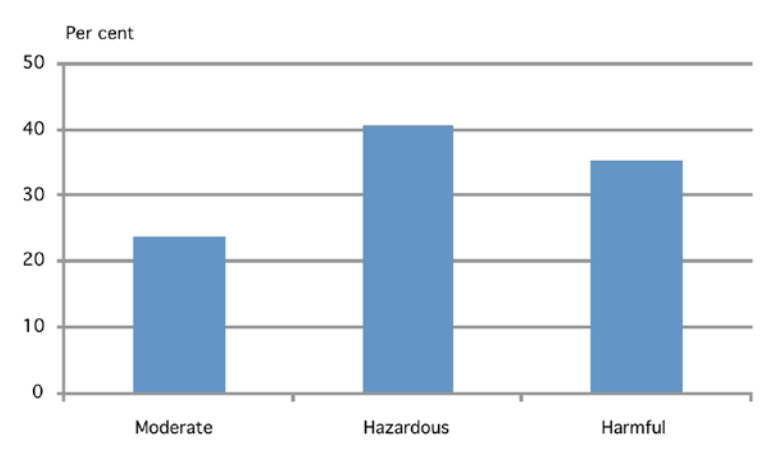
40. For England and Wales, University of Sheffield researchers have estimated that 76 per cent of total alcohol consumption is above recommended levels and therefore at hazardous levels (effectively defined as 1 to 2 times recommended levels) or at harmful levels (effectively defined as more than twice recommended levels) (Figure 9).[18]

[17] Loxley, W., Toumbourou, J., and Stockwell, T. 2004, *The Prevention of Substance Use, Risk and Harm in Australia: a review of the evidence*, Ministerial Council on Drug Strategy, Canberra, pp. 187-188.

[18] Hazardous is defined as drinking 21-50 units of alcohol per week for men or 14-35 units per week for women. Harmful is defined as drinking more than 50 units per week for men or more than 35 units per week for women.

Figure 9: Moderate, hazardous and harmful drinking in England and Wales

Proportion of total alcohol consumption



Source: MJA calculations based on Meier, P. et al. 2008, p. 108.

41. We take the very recent Australian guidelines as the best indication of current medical knowledge. These are calibrated against a risk tolerance of 1 in 100 for a probability of dying from alcohol-related causes. Based on the estimates in Stockwell et al. 2002, it is likely that in excess of 67 per cent of New Zealand alcohol is consumed at levels of risk greater than 1/100. This estimate (67 per cent) should be seen as extremely conservative because:

    - the 67 per cent is based on earlier Australian (NHMRC) guidelines, which are more lenient than the NHMRC's 2009 guidelines (Table 4);
    - the 67 per cent is based on drinking levels reported in survey responses which typically under report volumes actually consumed by around 50 per cent,[19] although it has been suggested that New Zealand survey methods produce unusually accurate estimates of consumption;[20] and
    - New Zealand may have a higher level of binge drinking than does Australia (Figure 3) and binge drinking is the major form of high risk alcohol consumption.

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19 See Stockwell, T. et al. 2002, 'How much alcohol is drunk in Australia in excess of the new Australian alcohol guidelines?', *Medical Journal of Australia*, vol. 176, pp. 91-92. Note that the World Cancer Fund Report 2007 notes that survey under-reporting of consumption levels is likely to be greatest where there are elements of embarrassment or illegality in consumption and that as a result, is likely to be greatest for heavy drinkers and for the young. For a New Zealand specific counter view, see also Casswell, S. et al 2002 "Survey data need not underestimate alcohol consumption", *Alcoholism, Clinical and Experimental Research*, vol. 26.

The quantitative impact of the understatement of the level of harmful drinking can be illustrated by a simple calculation. Assume all of the understatement between survey reported consumption and the sales data is 50 per cent, and assume further that all this under reporting is due to heavy or excessive drinkers. Thus rather than 67/100, the percentage of harmful drinking becomes 167/200 i.e. 83 per cent.

20 For example, BERL 2009 compared estimated consumption volumes based on survey data with Stats NZ data on alcohol available for consumption and concluded that they were comparable. See also World Health Organization 2000, *International guide for monitoring alcohol consumption and related harm*, Geneva.

Table 4: Drinking guidelines - Australia, New Zealand the United Kingdom

Current	*Previous*
Australia (2009)	
To reduce *lifetime risk of harm*, no more than 2 standard drinks on any day (for both men and women)	An average of no more than 4 standard drinks a day and no more than 28 standard drinks in a week (for men)
	An average of no more than two standard drinks a day and no more than 14 standard drinks in a week (for women)
To reduce the *risk of injury* on a single occasion, no more than 4 standard drinks (for both men and women)	No more than 6 standard drinks in any one day (for men)
	no more than 4 standard drinks in any one day (for women)
New Zealand (2002)	
If drinking every day, no more than 3 standard drinks for men or 2 standard drinks for women	No guideline for people drinking every day
In any one week, no more than 21 standard drinks for men or 14 standard drinks for women	Otherwise, since 1994, same guidelines as 2002 update
On any occasion, no more than 6 standard drinks for men or 4 standard drinks for women	
United Kingdom (2007)*	
3 to 4 units of alcohol or less per day (for men)	Weekly limit of 21 units for men and 14 units for females
2 to 3 units of alcohol or less per day (for women)	

Source: NHMRC, ALAC and UK Health department guidelines.

Note: one unit of alcohol in UK is 8 grams or 10ml of alcohol, which is smaller than a standard drink in Australia and New Zealand (10 grams or 12.7 ml).

42. The logic of these comparisons suggests therefore that the proportion of total New Zealand consumption which is consumed at harmful or hazardous levels is in excess of 67 per cent and possibly substantially so.

    The key conclusion from this discussion however is not any precise number. Rather, it is to indicate that for a parameter value of considerable relevance to the economic analysis, there are grounds to doubt the existing, orthodox, estimate. This issue should be systematically investigated and clarified. Obviously the advice of medical experts would be essential in any comprehensive analysis.

43. The relevance of this discussion is that where the value judgement is that some part of alcohol consumption is irrational, any resulting correction of the observed demand curve may well impact on well over half of total consumption and therefore be very material in its impact on the welfare benefits and costs of an excise increase or any other policy intervention.

A review of existing studies of the benefits and costs of alcohol consumption

44. As noted, consideration of optimal levels of taxation for alcohol requires an understanding of the costs and benefits and how these have been measured. This section reports on our review of the main studies available for New Zealand, Australia and the UK on the benefits and costs of alcohol.

45. Any review requires explicit criteria (for an overview see Table 5). The criteria applied here in MJA's review include the following.

Purpose

- Is the study a backward-looking cost study or forward-looking policy calibration tool?
- Does it simply answer the question 'how much does alcohol consumption cost the community?'
- Can it answer the question 'how much should this policy instrument be changed to maximise reductions in alcohol-related costs?'

Base case

- Is the study estimating costs (and benefits) of alcohol consumption relative to a base case of zero alcohol consumption (or alternatively zero harmful alcohol consumption)?
- Or is the study taking current patterns and policies as the starting point, and investigating the implications of changes in patterns and policies? This is closely related to the first set of criteria on purpose.

Comprehensiveness

- Does the study cover the full range of costs and benefits, including private benefits, acute and chronic health harms, productivity losses and difficult to quantify costs of trauma, collateral damage and loss of amenity and wellbeing.
- Does the methodology account fully for the characteristics of alcohol consumption, including, for example, the addictive, compulsive or irrational portion of demand?

Methodology

- Does the study utilise the latest risk-based limits to alcohol consumption (such as the NHMRC guidelines)?
- Does the study explicitly model the impact of alcohol consumption on risks of acute harm and chronic health conditions?
- Does the study use micro-household data on expenditure and consumption of alcohol, allowing detailed modelling of the impact of price or taxation policy measures?

ASSESSMENT OF STUDIES

46. With one minor UK exception, none of the reviewed studies undertaken in New Zealand or Australia or the UK examined benefits at all. None of the studies seek to address the requirement of economics that the benefits of consumer satisfaction be recognised. Of course, it is arguable that these studies could be used to inform later benefit-cost studies of interventions.

47. A major distinction is to be drawn between two different types of studies.

- The several **cost of illness studies** available for New Zealand and Australia (BERL 2009, Collins and Lapsley 2008, Devlin 1997, Easton 1997, Barker 2002). The critiques provided by Crampton and Burgess are part of this type of study.

  These studies seek to measure the costs of alcohol consumption in a particular year, say 2006, against the benchmark of no (harmful) alcohol consumption by the population in that year or any previous year. This gives a headline number but does not allow investigation of the impacts and desirability of different individual policy measures and calibrations, or of different portfolios of such measures. Any policy discussion occurring in these studies is essentially separately informed.

- **Policy models based on epidemiologic-economic simulation frameworks.** The very recent policy-analytical framework developed by the team at the University of Sheffield (see Box 2) is a new and striking departure from the existing Antipodean studies. Since the Sheffield framework is firmly anchored in modern health economics it provides both an explicit and transparent basis for policy analysis, and its modular framework allows new information to be incorporated as risk-response relationships between alcohol consumption and different harms become progressively more robust.

48. As noted above, the review (Table 5) finds the existing studies for New Zealand and Australia lacking in important respects and unsuitable for use as policy calibration tools. The cost of illness studies seek to examine the costs of consumption in total rather than to examine the impact of policy instruments and levels on those costs and benefits.

49. While BERL and Collins and Lapsley present estimates of the avoidable costs of alcohol-related harms, these are not based on modelling the impacts of specific policy changes, but rather on separate consideration of, and judgements on, the local situation, international comparisons and readings of the literature on policy instruments and settings. They seek to present upper limits of what could be achieved in harm reduction, were an optimal policy portfolio implemented. They provide no guidance on how to achieve this optimal portfolio.

50. MJA recommends that the approach taken by the University of Sheffield team be adopted in an extended, augmented form to allow a comprehensive examination of the impacts of policy changes, including on private benefits.[21]

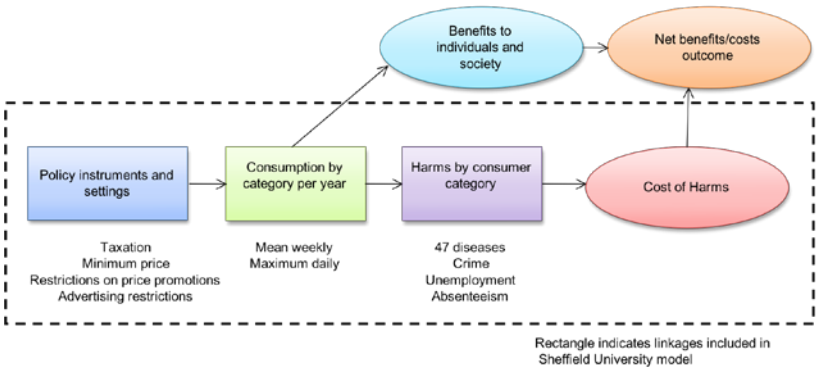
[21] Given recent questioning of the protective health benefits of alcohol (Fillmore et al. 2006), we believe that any benefit-cost study should include scenarios with and without these benefits. Because of the recent questioning of protective health benefits, BERL 2009, p. 29 set the attributable fraction for heart disease at zero for moderate consumption levels.

Box 2: University of Sheffield simulation model

An important innovation in the application of economics to alcohol policy is the University of Sheffield simulation model as described in their 2008 Independent Review of the Effects of Alcohol Pricing and Promotion for the UK Government and subsequent papers. This study has a strong policy focus. Unlike other studies, the link between policy instruments and consumption is explicitly modelled.

> *We have developed an integrated suite of models, linking the aspects of price, advertising, drinking patterns, purchasing patterns, elasticities, health conditions including diseases wholly attributable to alcohol, chronic and acute alcohol related illnesses and mortality, crimes including violence and criminal damage, and work absence and unemployment attributable to alcohol.*

Essential linkages in epidemiological modelling of alcohol



Source: MJA based on Brennan A et al. 2008.

Using an expenditure system approach, which yields internally consistent estimates, the Sheffield researchers estimated own-price and cross-price elasticities of demand for 16 different beverage types and for five different groupings: the total population; moderate drinkers; hazardous drinkers; harmful drinkers; and hazardous and harmful drinkers combined.

While this demand modelling approach is comprehensive, the estimate of the price elasticities for heavy drinkers has been questioned since it is appears higher than previous estimates reported in meta-analyses and other literature. Subsequent sensitivity analysis where the elasticities for harmful and hazardous drinkers were lowered by one-third below the estimates for moderate drinkers led to lower estimated harm reductions due to price increases but still a differentially heavy impact on the consumption of heavy drinkers.

To date, the Sheffield alcohol policy model does not extend beyond the calculation of cost reductions from the policy initiatives being investigated. For instance there is no consideration of the impact of policy changes on consumer satisfaction/surplus, and the simulations of price increases and/or price floors do not consider either how these policy changes are effected or the implications for government budgets.

Overall, the Sheffield research suggests a way forward, but the approach can be augmented and extended. MJA's research directions checklist is provided in Appendix A.

Table 5: Assessment of alcohol benefit-cost studies

Assessment items	*BERL*	*Collins & Lapsley*	*Easton*	*Devlin*	*Deakin*	*NERA (London study)*	*University of Sheffield*	*Access Economics*	*MJA view*
Purpose									
Cost of Illness/Avoidable Cost study	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Low priority
Policy calibration tool	No	No	No	No	No	No	Yes	Yes	Yes
Base case									
Zero (harmful) alcohol consumption	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Current patterns & policies	No	No	No	No	No	No	Yes	Yes	Yes
Comprehensiveness									
Consumer & producer surplus	No	No	No	No	No	Consumer surplus only	No	Yes	Yes
Acute health impacts	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Long-term health impacts	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Trauma, collatéral damage & social dislocation	No	No	No	No	No (a)	No	No	No (b)	Yes
Productivity	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Addictive, compulsive or irrational portion of demand	Yes (c)	Yes (c)	Yes (c)	No	No	No	No	No(d)	Yes (through demand curve adjustment)
Methodology									
Latest risk-based limits	No	No	No	No	No	No	No	- (e)	Yes
Risk response functions	No	No	No	No	No	No	Yes	- (e)	Yes
Micro-household data	No	No	No	No	No	No	Yes	- (e)	Yes

Notes to Table 5:
a. Deakin study includes household production impacts, however.
b. Based on Access Economics' list of included costs, Table 2-1 in Access Economics 2008, Collins and Lapsley Report Review, 28 November 2008, p. 9.
c. Irrationality taken into account by including cost of diverted inputs for consumption deemed abusive.
d. Access Economics 2008, Collins and Lapsley Report Review, 28 November 2008, p. 9.
e. These issues were not explicitly discussed in Access Economics's critique of Collins and Lapsley, so it is not possible to attribute views.

THE POLICY CONUNDRUM

51. Since the point of all public policy is to improve the balance of benefits and costs in the community, it follows that policy advisors and decision makers need to have some reasonable appreciation of the relative magnitudes of benefits and costs. However, the available estimates for New Zealand refer only to costs and there is an exceptionally wide divergence in the cost estimates tabled to date.

52. The divergence between the different estimates of the annual costs of alcohol in New Zealand covers:

- the BERL estimate of roughly $4.8 billion p.a. of the costs of all harms from alcohol;
- the estimate of a net cost of around $148 million p.a. provided by Crampton and Burgess[22] (since revised to a net benefit of around $40 million p.a.);[23]
- the estimate of the direct costs to government by Barker 2002 in her Treasury Working Paper. [24] Adjusted for inflation only, these costs are of the order of $500-900 million in 2008-09 dollars;[25] and
- the BERL collation of departmental estimates of the direct costs of alcohol to government in 2005-06 of $1,111 million. Adjusting for inflation, the direct costs of alcohol to government are estimated at around $1,200 million in 2008-09.[26]

53. An external perspective on these estimates can be derived by inspecting the results of the detailed policy simulations undertaken by the team from Sheffield University for the UK and Scottish Governments. For a 10% rise in alcohol prices the net costs of health and health care are estimated to fall by the equivalent of $NZ 80 million p.a.

54. Clearly, even allowing for any errors, the different authors cannot be talking about the same thing. For any sensible discussion based on the analysis of benefits and costs, it is necessary to define clearly:

- the base or reference case against which the costs are measured;
- the perspective, e.g., is policy merely concerned about efficiency losses, or are policy makers also concerned about equity and income distribution, or other non-efficiency objectives; and

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22 Crampton, E. and Burgess, M. 2009, 'The price of everything and the value of nothing: A (truly) external review of BERL's study of harmful alcohol and drug use', Department of Economics and Finance, University of Canterbury, Working Paper no. 10/2009.

23 Crampton, E. and Burgess, M. 2009, Note on BERL Reply, 10 July.

24 Barker, F. 2002, 'Consumption externalities and the role of government: The case of alcohol', *New Zealand Treasury Working Paper*, 02/25.

25 Estimates of these direct costs were made by Devlin et al. (1997) and taken up by the Treasury in an analysis of excise tax in New Zealand. The understanding of the role of alcohol in society has widened considerably since 1991 (the year on which the Devlin estimates are based) but, adjusted for inflation only, these costs are of the order of $500-900 million in 2008-09 dollars.

26 See footnote 9 above.

- the boundaries, i.e., is the focus of the analysis the town, the provincial economy, the provincial or national government, or New Zealand as a whole.

55. The question of perspective and clarity on policy objectives is particularly important. For example, Crampton and Burgess focus on the efficiency objective. They argue that alcohol consumers are effectively wholly rationale and therefore that they have weighed their benefits and costs from alcohol consumption. Thus as a result, any costs incurred by them individually through adverse health outcomes or loss of employment are offset by the benefits they have received. As a result, these costs can be described as fully internalised and are not a matter for public policy.

> *...the drinker bears the cost of his increased mortality risk, increased probability of unemployment and reduced wages. ...only external costs are of policy consequence if the government worries about efficiency considerations; costs borne by the drinker himself maybe relevant if the government wishes to act paternalistically ... but are not supported by economic analysis without strong assumption.* [27]

Moreover, the costs incurred by governments, partners and family when they choose to share or offset these costs are merely transfer payments or at best pecuniary externalities and as a result these costs to others and to governments are not relevant and should be ignored if the objective of government is solely to promote economic efficiency. Thus, Crampton and Burgess exclude from consideration lost output, alcohol production costs, costs of crime prevention, health care costs, most road crash costs and excise taxes collected.

> *By that measure,* [i.e., allowing technological externalities only] *we would deem net efficiency-relevant external costs of alcohol use as being $108.9 million: the total of external intangible costs of loss of life and lost quality of life and tangible costs of traffic delays* [caused by road crashes]. [28]

56. Not all observers would share the value judgements and the single-minded focus on efficiency alone. Indeed, Crampton and Burgess concede that this is a narrow view on policy objectives and that an alternative and wider perspective is also valid.

> *It is perfectly reasonable to prefer a cost measure that includes both pecuniary and technological externalities rather than only technological externalities: if we care about total imposed net external costs rather than just those of* [merely] *efficiency relevance, the former measure is preferable. ...*[29]

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27 Crampton, E. and Burgess, M. 2009, p.22.

28 Crampton, E. and Burgess, M. 2009, p. 31.

29 Crampton, E. and Burgess, M. 2009, p. 31.

57. Based on previous work commissioned or undertaken by both the New Zealand Business Roundtable and the Treasury, it would appear that these and likely other influential bodies in New Zealand do focus on 'total imposed net external costs' – a prime reason for doing so is the concern that any call on the public purse must be funded by taxation and that the progressive income tax system can impose particularly high dead weight costs on the economy. For instance:

- the Business Roundtable commissioned major research from Diewert and Lawrence 1994[30] which concluded that the dead weight efficiency loss on labour alone associated with the New Zealand system of income tax had increased from around five to around eighteen per cent of tax revenues; and
- the New Zealand Treasury has commissioned working papers and advice from Creedy on the efficiency burden of the income tax system.[31]

Thus, it would be strange if either the Treasury or the Business Roundtable were to find the Crampton and Burgess focus on a very narrow view of the efficiency objective either sufficient or compelling.

58. Even within their narrow focus, however, the Crampton and Burgess estimates are flawed. One methodological flaw concerns the 'internalisation of costs':

If individual drinkers are wholly considered and informed in their preferences, and have weighed the benefits and costs of their drinking, then it must also be acknowledged that the costs that they incur are subsidised by others. They do not bear the full costs because friends, families, partners and governments act to offset these costs. A rational fully informed drinker would recognise and anticipate this support when making his consumption decisions. If the subsidy from the welfare system and/or from the support of other individuals were removed, the individual would make different choices. This is a form of moral hazard since drinkers (even if perfectly informed of the costs and risks) know that they will not bear the full costs. The individual drinker does not count the cost of these subsidies since they are a benefit to him, but they are a cost elsewhere. Only part of the costs of alcohol related harm are borne by, and internalised to, the individual drinker. The remaining costs need to be recognised in the benefit cost calculus.

59. A second flaw in the Crampton and Burgess estimates and argument arises because of the over-emphasis given to the protective effects of alcohol on heart disease. Considerable reliance is based on the meta-analysis by Corroa et al 2000 which concludes that there are strong protective effects. However, Crampton and Burgess do not appear to be aware of the important subsequent meta-analysis by Fillmore et al 2006 and other recent papers, which challenge the previous accepted wisdom and associated research literature (see Box 3).[32]

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30 Diewert, W.E. and D.A. Lawrence 1994, The Marginal Costs of Taxation in New Zealand, Report prepared by Swan Consultants (Canberra) Pty Ltd for the New Zealand Business Roundtable

31 See for example, Creedy, J. 2003 *The Excess Burden of Taxation and Why It (approximately) Quadruples when the Tax Rate Doubles.* New Zealand Treasury Working Paper, 03/29.

32 Some recent studies have found no significant cardioprotective or all-cause associations (Fillmore et al 2006; Fillmore et al 2007) a systematic review (Fuchs & Chambless 2007) and other recent studies (Baglietto et al 2006; Stockwell et al 2007; Friesema et al 2008) have suggested that the cardioprotective or all-cause effect may have been overestimated.

Box 3: Health benefits of light to moderate alcohol consumption?

The hypothesis that low levels of alcohol consumption protects against the incidence of coronary heart disease is supported by a substantial literature. As a result, moderate alcohol use is widely recommended by health professionals. However, the validity of the protective hypothesis has been challenged by a recent meta-analysis (Fillmore, K. M., *et al* 2006) which examines the hypothesis that the findings in support of a protective effect are due to systematic errors arising from the mis-classification of former drinkers and occasional drinkers as abstainers. The relevance of these errors arises from the observation that:

- alcohol declines with advancing ages in nearly all societies;
- as people age with declining health, alcohol consumption slowly decreases;
- many abstainers are former drinkers who now abstain due to health problems; and
- there is chronic under-reporting of alcohol consumption levels in self-report surveys in nearly all societies. For instance, in Australia self-reported alcohol consumption is only around 60% of volume actually sold. The analysis suggests that when the classification errors are removed, the protective effect is removed, or is no longer significant. Conversely, when the classification errors are introduced into 'error free' studies, a protective effect is created.

The resulting debate, commentaries and rejoinders (see Fillmore et al 2007) illustrates:

- the extreme difficulties of being any confident that any epidemiological study is truly bias free; and
- the multiple sources of uncertainty now identified in what was previously seen as 'a solid result'.

It may be hard to disagree with the view that:

> *Is there a protective effect of alcohol against the incidence of* [coronary heart disease] *(or any other illness for that matter)? A careful reading of the contribution of the scientists commenting on ….* [this issue] *…. should result in the conclusion that we simply do not know – certainly not well enough to recommend regular alcohol intake for health reasons.*

WHO (2007),[33] having reviewed the available evidence reached essentially the same conclusion:

> *… from both the public health and clinical viewpoints, there is no merit in promoting alcohol consumption as a preventive strategy.*

The NHMRC (2009) guidelines are similarly doubting. Having noted the divergence in the research, and the basis of the challenge to the conventional wisdom, the NHMRC notes that:

> *It appears that most of any beneficial effect can be gained at a low level of drinking, for instance a drink every second day (Di Castelnuovo et al 2006; WHO 2007) - well below the level of any likely low-risk drinking guideline.*[34]

[33] World Health Organisation 2007 *Prevention of Cardiovascular Disease. Guidelines for assessment and management of cardiovascular risk, pp.37-38.*

[34] Australian Government, National Health and Medical Research Council 2000, *Australian Guidelines To Reduce Health Risks from Drinking alcohol,* p.128.

60. It is also important to note that Crampton and Burgess correctly cite the results from Collins and Lapsley as suggesting that these health benefits are substantial and, on balance, offsetting the sources of health detriments, at least for moderate drinkers.[35] However, the Collins and Lapsley results are inconsistent with those derived by the Sheffield University team which uses explicit risk response functions (largely based on Corroa) in their well documented policy simulation model. There are concerns over the calculations used by Collins and Lapsley.

61. A third flaw is that Crampton and Burgess do not appear to be aware of the policy simulation work undertaken by the Sheffield team. There is no recognition of the fact that increases in the excise rates will preferentially target low cost alcohol which is the preferred purchase of heavy drinkers and the young. Thus, a uniform percentage increase in excise rates will result in non-uniform price increases with the biggest increases occurring in the prices most relevant to the key problem groups, i.e., heavy drinkers and the young. This means that, even if the price elasticities of demand for heavy drinkers were lower than for moderate drinkers, the statement that *"moderate drinkers will curb that consumption by more than will heavy drinkers for any tax increase"* no longer automatically follows. Rather, it becomes an empirical issue: does the differential increase in prices offset the (possibly) lower price elasticities of heavy drinkers compared with moderate drinkers. This cannot be argued from first principles as Crampton and Burgess attempt to do.

    Indeed, inspection of the several Sheffield reports suggests that the Crampton and Burgess statement quoted above is likely to be simply incorrect – unless the patterns of alcohol consumption in New Zealand are strikingly different (and in the opposite direction) from those in the United Kingdom.

62. Overall, Crampton and Burgess have made important contributions to sharpening thinking on the application of economics on alcohol policy. But their calculations and estimates doe not provide a basis for policy advice or formation. Rather, it is necessary to look afresh at the available evidence.

[35] Neither Collins and Lapsley, nor BERL, nor Crampton and Burgess acknowledge the challenges to the previously near unanimous orthodoxy on the protective effects of moderate consumption on heart disease.

Order of magnitude benefit-cost analysis

63. The purpose of this section is to set out the minimal framework for a benefit-cost analysis of a an increase in the rate of excise on alcohol. We proceed in the following manner.

- We begin by noting that any increase in excise revenue can be either rebated to general taxpayers or used to reduce revenue from less efficient taxes, thus improving the efficiency of the total structure of taxes in New Zealand.
- Turning to the question of a Pigovian tax to correct the externalities, we distinguish between approaches that **focus on the totals** of benefits and costs and approaches that **focus on the changes** in benefits and costs.
- We undertake a **threshold analysis** of the benefits and costs of an excise tax increase, assuming that alcohol consumption is entirely rational and that all alcohol consumption brings full consumer surplus with no regrets.
- Continuing with that polar case, we then sketch an **order of magnitude benefit-cost analysis** which focuses on the potential reduction in health costs (and ignores changes in any other costs of harms).[36]

We do not explore quantitatively the impact at any level of irrationality due to short-term intoxication or to long-term habituation, although this can be modelled.

REVENUE NEUTRALITY, REBATES & RAMSEY TAXATION

64. A common assumption to both the threshold analysis and the order of magnitude benefit-cost analysis is that an excise tax increase is a revenue-neutral measure – that is, in net terms, total government revenue does not increase, as either (a) the money raised is rebated to consumers or (b) it allows an equal reduction in other taxes. We believe this is an appropriate assumption because, if governments can fund their expenditure commitments from another source, they can cut income taxes or give back 'bracket creep' earlier than otherwise.

65. The possibility of rebating the proceeds of an excise tax would blunt a common criticism of an excise tax increase to address alcohol-related harms: that it would unfairly burden moderate drinkers. But if the proceeds of an excise tax were rebated to all New Zealand adults on a per capita basis, they would receive just over $100 per annum each for a 50 per cent excise tax increase.[37] Moderate drinkers, who would pay less excise tax than heavier drinkers, would receive proportionately more of the rebate than heavier drinkers.

[36] A final issue with the New Zealand rates of excise on alcohol is the sharp step at 14 per cent alcohol content. While we have not modelled the implications of this sharp step, standard public finance principles would suggest this two level structure is an anomaly that (ultimately) ought to be removed. A sound knowledge of the own and cross-price elasticities would assist this decision.

[37] Of course, this is abstracting from administrative costs of tax collection and redistribution that may mean there is less available to re-distribute that the total increase in revenue.

66. Other forms of rebating are also attractive. In particular, the proceeds of an increase in excise tax could be applied to reduce income taxes and thus reduce the dead weight burden of the New Zealand tax system as a whole. Such a policy would be consistent with the advice and framework provided by Ramsey 1927 [38] and other contributors to the inverse elasticity rule. As outlined below, the net benefit in reduced dead weight losses would appear to be at least 3 cents – and possibly much higher – in every dollar of tax raised by an increase in excise and rebated in the form of lower income tax.

67. Assume for the moment, that alcohol is a completely ordinary, normal good; that there are no consumption externalities, no possibility of ill informed or ill considered consumption and that is it only of interest as a potential source of tax revenue.

68. In addition to the tax paid/received, any form of taxation involves costs to the individuals taxed, to the government and to the economy. These costs include compliance and the arrangement of their affairs by individuals in order to minimise their payments, form filing and filing costs, and deadweight (efficiency loss) costs.

    The economic cost of the efficiency loss due to labour taxation at the margin has (in the past) been estimated to be up to 18 percent in a Business Roundtable commissioned report.

    In contrast, we estimate the efficiency loss due to increasing the rate of excise on alcohol to be 3 per cent or less for a 50 per cent increase in the excise.

69. That is, for the New Zealand Government to raise an additional dollar would cost the economy around 18 cents if labour taxes are raised but less than 3 cents if the excise were raised. Assuming a revenue neutral re-balancing, the New Zealand economy would be better off by around 15 cents for every additional dollar reduction in labour taxes matched by a dollar increase in alcohol excise.

70. The policy conclusion to lower income taxes by raising the alcohol excise is not dependent on the special characteristics of alcohol. Rather, this conclusion derives solely from the respective price elasticities.

71. We now turn to the separate (albeit closely related) question of the benefits and costs of an externality correcting increase in the excise rate.

[38] Ramsey, F. 1927, 'A contribution to the theory of taxation', *Economic Journal*, vol.37, no.145, pp.47–61.

TOTALS VS INCREMENTAL ANALYSIS OF A PIGOVIAN TAX

72. There are two ways of looking at the question of whether an increase in the tax rate on alcohol is justified. These are in terms of:

    A. total costs and benefits; or

    B. incremental costs and benefits.

FOCUSING ON TOTALS?

73. Focusing first on total – as distinct from incremental changes in – costs and benefits, the economics of an externality correcting Pigovian tax are typically seen as requiring that:

    Revenue = Cost of externalities.

74. The economics of Pigovian taxation are not as straightforward as suggested by this equation, however. The optimal level of tax will be less than the total cost of the externality because the tax increase also reduces the satisfaction of consumers. Consumers do enjoy alcohol: their satisfaction has value and the social lubrication provided by moderate consumption in company is a positive social consumption externality. The policy challenge is to improve the balance of benefits and costs.

75. The question of the optimal level of the excise tax therefore requires consideration of:

    - the total (net) cost of harms;
    - the total value of private benefits (as measured by consumer surplus); and
    - total tax revenue.

76. But, inevitably, the estimate for the second line (the total value of private benefits) is difficult to obtain and often missing. While the cost of illness studies provide estimates of total net costs of quantified harms, and the total level of tax revenue are known, the second item, consumer satisfaction, is generally not considered and certainly not estimated. Indeed, total consumer surplus cannot be precisely estimated because the economist's analytical tools tend to fail when applied to larger than incremental changes in policy settings (such as tax rates).

77. For policy purposes, the inability to estimate the total level of consumer surplus means that the cost of illness studies are a cul-de-sac.

FOCUS ON THE CHANGES

78. The question of the optimal rate of tax on alcohol can be more usefully examined in terms of incremental changes. This is the standard approach taken in benefit-cost analysis. The optimal level of tax is found when any change in the current level of tax equates / balances the reduction in externalities and the reduction in private benefits (consumer surplus). There is scope to increase the tax rate so long as, for a change in the tax rate:

    Reduction in social cost ≥ Reduction in private benefits.

In this way, externalities are reduced as much as they can be, until the incremental loss in private benefits equals the incremental gain from reducing the social cost.

In practical terms, this requires consideration of the impacts of an increase in excise on:

- the (net) costs avoided due to reduced harms:
  - chronic health conditions,
  - acute harms,
  - production losses,
  - induced and exacerbated crime,
  - others, including intangibles;
- the reduction in consumer surplus[39]; and
- the increase in tax revenue.

79. The challenge of the incremental approach is to model the change in the level of the cost of harms due to the policy intervention (in this case an increase in the rate of excise). This requires (a) own-price, cross-price and income elasticities of demand and (b) explicit risk-response relationships describing how, for each category of harm, the level of harm changes as the increase in prices causes consumption to fall and behaviour patterns to change.[40]

THRESHOLD ANALYSIS

80. In the absence of access to explicit risk-response functions, the question of whether there are net benefits to the New Zealand economy from increasing the rate of excise tax on alcohol can be examined using a 'threshold analysis'.

That is, given what we know about price elasticities, existing tax collections and therefore the likely increase in tax revenues:

a) what is the upper bound magnitude of the loss of consumer surplus; and

b) how big a reduction in the cost of harm is required to make a 50 per cent increase in the tax rate worthwhile?

81. For simplicity, we assume that all consumption confers benefits regardless of the levels of drinking – that is, even with consumption that is regarded as harmful or excessive by health authorities and health experts, the alcohol consumed is treated as a normal good. We ignore the likelihood that some parts of alcohol consumption may be regarded as addictive, compulsive or irrational. That is, we assume, for simplicity, that alcohol is fundamentally a normal good (in the sense of not being subject to irrationality) and that the demand curve does not need to be corrected.

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39 If we assume that some parts of alcohol demand are irrational or ill-informed the reduction in consumer surplus will need to be measured against the corrected demand curve and will be offset by the reduction in unmatched costs.

40 In assembling pertinent data and understanding MJA has used New Zealand data wherever possible and appropriate. As a second preference, Australian data are used, with data from the UK or elsewhere as third preference.

82. We also assume:

- tax revenue in 2008-09 was $829 million;
- 50 per cent and 100 per cent increases in excise tax rates;
- impact on GST revenue is not modelled;
- total expenditure on alcohol in 2008-09 in the range of $3.6-4.5 billion.
- a price elasticity of demand (uniform across all drinkers) of -0.44 (for consistency with the University of Sheffield study); [41] and
- no substitution across products in response to price changes, i.e., cross-price elasticities are ignored.

83. Based on the above assumptions, we derive the following results.

increase in tax revenue	$352 million
loss of consumer surplus (maximum)	-$362 million
required reduction in cost of harms to breakeven	$10 million

84. Thus, under the conservative assumption that high risk consumption has full benefits to the consumer, a 50 per cent increase in the excise tax is worthwhile so long as the reduction in the cost of alcohol-related harms to the New Zealand economy is more than $10 million a year.

85. This threshold analysis also indicates the practical irrelevance of the libertarian judgement that the health costs of alcohol are internal to drinkers and not a major matter for public policy.

Even under this view, an increase of 50 or 100 per cent in the rate of excise is worthwhile so long as resulting reductions in consumption reduce the direct costs to 'others' by $10 million or $42 million, respectively. The 'costs' to others include costs to government and hospitals, production and income losses to New Zealand firms and the economy and costs to partners, family, communities and third parties. *Prima facie*, such reductions would appear to be easily achieved.

86. The sum of $10 million is small relative to the direct costs to government and hospitals. Based on Barker's 2002 estimates of the direct costs to government and hospitals, the breakeven reduction is only 1.1 to 2.0 per cent, and based on the BERL estimate of the direct costs to government (around $1,200 million in 2008-09) are under 1 per cent.[42] Recognition of the wide range of other costs of alcohol-related harms would result in proportionately lower percentage estimates of the breakeven threshold.

[41] This elasticity is implied by the results on p. 106 of Brennan A et al. 2008, *Independent review of the effects of alcohol policy and promotion Part B: Modelling the potential impact of pricing and promotion policies for alcohol in England – results from the Sheffield Alcohol Policy Model Version 2008(1-1)*.

[42] See BERL 2009, Table 6.7, p. 76.

ORDER OF MAGNITUDE ANALYSIS OF BENEFITS & COSTS

87. The simple breakeven analysis above suggests that an increase of 50 per cent in the rate of excise tax might be readily justified. But how easily is a $10 million per annum reduction in the cost of alcohol-related harms achieved? This question could be addressed in several ways:

    i. more detailed evidence on the link between alcohol consumption and the costs imposed on others can be drawn from the submissions made to the Law Commission's review;

    ii. a review of the research and policy literature; or

    iii. we could move beyond the conservative breakeven analysis above since the Sheffield modelling for the UK offers direct insights into how an increase in the price of alcohol is projected to reduce the level and cost of harms.

    We focus on the third approach. In doing so, we shift from the libertarian view that health harms are primarily internal to the drinker and, therefore, not a matter of public policy interest.

88. The Sheffield analysis modelled the reduction on the relevant costs of harms due to a 10 per cent increase in the price of alcohol and (suitably adjusted) the results for England and Wales give an order of magnitude indication for New Zealand of the likely impact of a 10 per cent price increase on the levels of alcohol consumption, resulting harms and their costs. Recall that the Sheffield modelling uses explicit price elasticities and risk-response functions to make this link.

89. A 10 per cent general price rise in all categories of alcohol is estimated by the Sheffield Alcohol Policy Model for England and Wales to:

    - reduce total consumption by 4.4 per cent;[43]
    - impact most heavily on young drinkers consuming with harmful and hazardous drinking behaviours;[44]
    - reduce health care costs, deaths and morbidity, workplace harms and crime for all categories of drinkers (the health benefits accumulate, rising from negligible in year 1 to substantial by year 10);
    - reduce the social cost of their harms in total over 10 years by £7.8 billion in present value terms over the ten years.[45] Simple pro-rating to New Zealand by the relative populations over 15 and converting at average exchange rates, this is of the order of $NZ 1.7 billion; and
    - reduce health harms and health care costs by around £3.6 billion or, proportionately, around $NZ 800 million both in present value terms.[46]

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43 Brennan A, et al. 2008, *Independent review of the effects of alcohol policy and promotion Part B: Modelling the potential impact of pricing and promotion policies for alcohol in England – results from the Sheffield Alcohol Policy Model Version 2008(1-1)*, p. 106.

44 Ibid.

45 Ibid, p. 109.

46 Ibid, p. 110.

The Sheffield estimates for England and Wales of the costs avoided due to the reduction in harms are substantial and the simple pro-rating indicates, by definition, that they are equally substantial for New Zealand. The benefits from the reductions in health harms and health care costs for New Zealand are large enough to offset the magnitude of the net $10 million loss resulting from the difference between the increase in tax revenue and the reduction in consumer surplus.

90. To complete the picture, the order of magnitude estimates of the change in the benefits and costs as a result of increase in the rate of excise are set out in Table 6 (with more detailed results in Appendix B). The benefits from reductions in harms shown in Table 6 relate merely to the reductions in health harms and the cost of health care.

Table 6: Order of magnitude of benefits and costs of an increase in alcohol excise

	50% increase *($ million)*	*100% increase* *($ million)*
A. Reduction in cost of harms		
– health harms and care	82	164
– other	n.c.	n.c.
B. Increase in tax revenue	352	662
C. Loss of consumer surplus (maximum)	362	704
Net Benefit (A + B - C)	72	122

Note: n.c. = not calculated.
Source: MJA analysis.

91. Against the base case of no change in policy interventions, MJA's order of magnitude assessment of the benefits and costs of a proposal to increase the rate of excise by 50 per cent results in net benefits of around $70 million annually – even if large parts of the benefit stream are excluded from consideration. This order of magnitude results indicates that increases in the excise tax rate of 50 or 100 per cent would more than meets the standard test of public benefit.

92. Our order of magnitude benefit-cost analysis of a 100 per cent increase in the rate of excise indicates increasing net benefit for an increase in the rate of excise (see column 2 of Table 3).

93. The benefit-cost analysis presented above should be regarded as an order of magnitude exercise only. The estimated reduction in the cost of health harms and care rely directly on the English and Welsh demographics, costings, consumption patterns and estimated elasticities, although many of the estimates underlying the risk-response functions are international.[47]

[47] See Brennan A et al. 2008, p. 12.

94. Note, in order to err strongly on the side of conservatism, we are being deliberately inconsistent. We are exploring the impacts of the judgement that high risk behaviour and widespread health harms are a matter of public interest, no matter whose decisions they result from. However, we deliberately fail to follow through the implications of this judgment to correct the demand curve. If we did so, we would reduce the size of the consumer surplus affected and be required to bring into account costs unmatched by benefits.

Focussing on the reduction of health costs alone, increases (of 50 and 100 per cent) in the rate of excise are worthwhile – even if we still use the maximum possible estimate of the loss of consumer surplus (an estimate which is, as noted, inconsistent with the judgement being explored). Hence the case for an increase in the excise rate is likely to be much stronger than shown.

PREFERENTIAL TARGETING THROUGH AN EXCISE TAX INCREASE

95. Specifically, the advantages of preferentially targeting low cost per unit consumption are illustrated by examining the results of the Sheffield Alcohol Policy Model.

A policy of increasing alcohol prices by a uniform 10 per cent and a policy of imposing a 45 pence per unit minimum price floor are estimated to have almost equivalent reductions in total consumption (-4.4 per cent and -4.5 per cent, respectively). However, since the price floor preferentially targets low cost consumption, and therefore risky drinking, the estimated health care and health benefits in total are £3.6 billion and £4.2 billion, in present value terms. Thus, the preferential targeting combines with the higher price elasticities estimated by Sheffield for harmful and hazardous drinkers to boost these benefits alone by £0.6 billion or around 16 per cent.[48]

96. An alcohol excise increase in New Zealand would target harm reduction and/or minimise loss of consumer surplus for a number of reasons.

i. An increase in alcohol excise has the largest price impacts on the cheapest sources of alcohol (Table 7). This follows because the costs of alcoholic beverages contain costs other than the cost of the alcohol itself, and these other costs, which include retail and wholesale margins, tend to be lowest for the cheapest forms of alcohol.

ii. The cheapest sources of alcohol appear to be disproportionately purchased by harmful drinkers and by short term excessive drinkers including teenagers.

iii. Problem categories of drinkers therefore face the biggest increases in prices and therefore the biggest incentive to reduce their consumption.

iv. Since alcohol demand is inelastic for all consumers, all consumers will increase their expenditure on alcohol. With uniform price elasticities, the largest percentage increases in outlays will occur for heavy drinkers and the smallest percentage increases for moderate drinkers. This is due to (ii) above.

[48] Without further analysis we cannot disentangle: how much is wholly due to the greater increase in the price of low cost alcohol, how much is due to the higher price elasticities for heavy drinkers and how much is due to the interaction of these two factors.

Table 7: Differential price impacts of a 50 per cent increase in rates of excise on alcohol

Beverage type	*Volume (l)*	*Strength (%)*	*Units of alcohol**	*Current excise ($ per litre/ alcohol)***	*Current excise on product per unit of alcohol ($)*	*Retail price per unit of alcohol ($)*	*Retail price per unit of alcohol (50% higher excise) ($)*	***Increase in retail price (%)***
Grocery								
Beer (stubbie)	0.33	4.0	1.04	25.476	0.32	1.28	1.44	**12.6**
Wine	0.75	12.5	7.40	2.5476*	0.26	1.89	2.02	**6.8**
Bar								
Beer (stubbie)	0.33	4.0	1.04	25.476	0.32	5.76	5.92	**2.8**
Beer (glass)	0.40	4.0	1.26	25.476	0.32	3.72	3.88	**4.3**
Specialist liquour								
RTD	0.33	5.0	1.30	25.476	0.32	1.54	1.70	**10.5**
Spirits	0.75	40.0	23.67	46.400	0.59	1.77	2.06	**16.6**
Cheap-end products								
Beer	0.33	4.0	1.04	25.476	0.32	1.10	1.26	**14.7**
Wine	0.75	12.5	7.40	2.5476*	0.26	1.08	1.21	**12.0**
RTD	0.33	5.0	1.30	25.476	0.32	1.15	1.31	**14.0**
Spirits	0.75	40.0	23.67	46.400	0.59	1.01	1.30	**29.1**

Source: MJA analysis based on advice from the Law Commission. This assumes full pass-through of excise tax onto prices.
** One unit of alcohol is one standard drink (10 grams or 12.7 ml of alcohol).*
*** Excise on wine is $ per litre. It applies to the total volume, rather than the alcohol content.*

v. Unless the price elasticities of demand for alcohol for heavy drinkers are substantially lower than for other drinkers, the higher price increases for heavy drinkers means that harmful and excessive (and likely) younger drinkers will face the largest reductions in consumption and therefore the biggest changes in harms to themselves – and to other parties.

vi. Alcohol consumed at long-term harmful or short-term excessive levels, according to MJA's assessment in paragraph 41 to 106 above, could be as high as 80 percent of total New Zealand consumption of alcohol. However, the majority of consumers – as distinct from the majority of consumption – are likely to be little affected by an increase in the tax on alcohol.

vii. Because harmful and excessive drinking behaviour exceeds guidelines set generously in terms of the risk tolerances widely accepted as social norms and used formally in the UK, Australia, New Zealand and other common law countries, drinking at levels beyond these guideline levels may be described as 'irrational'. Consequently, depending on the value judgements made, the observed demand curves may need to be adjusted before changes in consumer

surpluses as a result of any policy intervention can be defined and estimated (see paragraphs 29 to 34 above).

viii. An excise tax increase is preferable to minimum pricing because it does not create excess industry profits, which are essentially a transfer to industry rather than to government (see Box 4).

97. These several factors materially diminishes the risk that:

> *"…moderate drinkers respond to price increase by more than heavy drinkers"*[49]

Indeed, for England and Wales and for Scotland, the policy simulation models suggest exactly the opposite. Moreover, the order of magnitude cost benefit analysis presented here indicates that (whatever the distribution of benefits and costs between abstainers, light, moderate and heavy drinkers) in aggregate the benefits of an increase in the excise substantially exceed the costs.[50] Thus, we find that the empirical evidence does not support the view that:

> *"…price increases will destroy more benefit than they prevent in harm."*[51]

This means that any remaining concerns over the distribution of benefits and costs must be concerns about equity and fairness, rather than concerns about efficiency and effectiveness.

98. Our analysis should be seen as conservative for several reasons, however. Not only have reductions in the cost of harms associated with productivity losses been omitted, but an excise tax increase is more efficient in its effects than a uniform price rise, as discussed in the paragraphs below.[52]

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49 Burgess and Crampton (2009) *Submission to the Law Commission on "Alcohol in Our Lives"*.

50 The transfer to industry created by minimum pricing highlights that the impacts on consumer surplus of any non tax measures need to be carefully examined, as the impact on consumer surplus will differ according to the nature of the measure. For instance, an increase in the minimum legal drinking age would significantly impact on the consumer surplus of 18 to 20 year olds, but not the consumer surplus of the majority of drinkers. There would, however, be no offsetting transfer to government, as there is with an excise tax.

51 Ibid.

52 In broad terms, a 50 per cent increase in the rate of excise will result in an average price change of around 10 per cent in New Zealand. The reduction in harms resulting from a uniform 10 per cent price increase (as modelled by Sheffield) will underestimate the reduction in harms resulting from a uniform increase of 50 per cent in excise rates, which gives an average price increase of 10 per cent, since the latter preferentially targets low cost alcohol and therefore problem drinkers.

Box 4: Comparison of price floors and a uniform tax increase

The UK and Scottish governments have given close attention to moving to uniform price floors to raise the prices of the cheapest forms of alcohol up to a minimum of 40 pence per unit. The great advantage of this policy is that it targets very directly the cheapest forms of alcohol which are known to be purchased preferentially by heavy drinkers and teenagers.

However, the disadvantage of minimum price floors imposed by regulation is that they create monopoly profits – that is, the minimum price regulations have the effect of promoting a government-sanctioned cartel.

Minimum price floors would create a major transfer to retailers and producers, which would effectively operate as a cartel due to the regulation that guarantees minimum prices. In terms of the loss of consumer surplus, the transfer to government, which would occur with a tax increase, becomes a transfer to the industry in the form of monopoly rents. In a small country, such as New Zealand, a high proportion of the alcohol sold will be sourced from foreign owned producers – so that a higher proportion of income and profits will be channelled overseas. This leakage does not affect GDP but it certainly affects national income, which would fall, other things equal.

This problem does not arise with a uniform increase (of say 50 per cent) in the rate of excise on alcohol. However, a uniform increase in the rate of excise still has the advantage that, at least to some degree, it causes bigger price increases to the cheapest forms of alcohol (Table 7). An excise tax increase therefore captures many of the advantages of imposing a minimum price floor and avoids the major legitimate objection to the price floors.

The benefits and costs of these two policy interventions will therefore differ and differ according to circumstances.

FINDINGS ON CONSUMER SURPLUS

99. In addressing the materiality of consumer surplus, we find that:

- the integrity of the concept can be questioned for several reasons including that the New Zealand alcohol industry believes it is profitable to spend substantially (more than $30 million a year) on alcohol advertising and promotions to shift consumer preferences; and
- accepting the concept at face value, the loss of consumer surplus due to an increase in excise is offset almost entirely by an increase in tax revenue.

100. Under the standard definition and measurement of consumer surplus (as applicable to normal goods), the loss of consumer surplus due to the increased rate of excise is almost totally offset by the increase in tax revenue. The net welfare loss is therefore small and likely to be easily offset by reductions in harms.

101. For a price elasticity of – 0.44 per cent and a 50 per cent excise tax increase, the maximum loss of consumer surplus is only 3 per cent or less greater than the tax collected, and the tax revenue so collected can be passed back to taxpayers generally in the form of either tax reductions or cash transfers. Rather than focus on the magnitude of the loss of consumer surplus due to a tax increase we need to focus on the small net loss (technically, as measured by the Harberger triangle) after the revenue transfer has been recognised.

102. The results above indicate that when consumer surplus is introduced into consideration, we need to focus on how the loss of consumer surplus occurs and is distributed. With the increased tax revenue recognised as a transfer, we find only a small net (welfare) loss due to the increased rate of excise tax. Thus, in terms of the New Zealand debate, our results give little or no support for the contention by Matt Burgess and Eric Crampton when they state:

> *Dr Easton argues that higher taxes are efficient because they prevent harm, but ignores the lost consumption benefits of taxation that might reverse his conclusion.*[53]

103. They are correct that it might, but it is extremely unlikely. The lost consumption benefits are almost wholly offset by the increased tax revenue and we need to be merely concerned with whether the resulting small welfare loss (equivalent to up to 3 per cent and 6 per cent of the increased revenue resulting respectively from a 50 per cent and a 100 per cent increase in the excise rate) is offset by the reduction in harms.

104. Since much has been made of the previous omission of consumer satisfaction from the cost of illness studies, and indeed from the Sheffield modeling to date, we have examined the concept and its relevance to the benefits of consuming goods and services for which demand is addictive, compulsive or irrational. This is an innovative area in economic analysis, and the authoritative analysis of the Australian Productivity Commission could serve as a basis for further empirical work in New Zealand.[54]

105. As outlined, numerous competing judgements can be made on the degree of irrationality. The key empirical finding is that any pull back from the extreme view (that all consumption, no matter how risky or driven by compulsion or addiction, confers full benefits) results in a much lower – and possibly negative – estimates of (net) consumer surplus.

106. In terms of the economic analysis, the very high percentage of total New Zealand alcohol consumption that is consumed at high levels of risk of acute and chronic harm (see paragraph 42) reduces the likelihood of major reductions in consumer surplus. Consideration of any loss of consumer surplus needs to explore, at least on a scenario basis, the implications of, say, 80, 70 or 50 per cent hazardous or harmful levels.

107. In summary, the concept of consumer surplus must be addressed for economic completeness but the results of doing so do not always appear to impinge materially on the substance of the debate on alcohol policy. Where it does affect the case for

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53 Burgess, M. and Crampton, E. 2009, *Submission to the Law Commission on 'Alcohol in Our Lives',* p. 2.

54 Productivity Commission 1999, *Australia's Gambling Industries: Inquiry Report Vol. 3 Appendices*, 'Appendix C:Estimating Consumer Surplus'.

higher excise rates, it appears that careful evaluation of the nature and magnitude of consumer surplus may actually strengthen the case.

108. MJA's order-of-magnitude benefit-cost analysis of the economic issues and linkages indicates very strong logic and support for a significant increase in the rates of excise tax on alcohol including up to at least 50 or 100 per cent. Larger increases in excise tax rates may be warranted, but, before doing so, it may be appropriate to explore these impacts more fully, and in the context of a wider portfolio of corrective measures.

Concluding comments

109. Public policy analysis of specific interventions requires answers to three questions:

- is the policy proposal likely to pass the public interest test as indicated by a benefit-cost analysis?;
- is this the best policy when compared with other policy alternatives?; and
- since a portfolio of policies is usually required to cover the range of risks, market failures and other objectives / rationales for government involvement in the market, how does this policy proposal (an increase in excise tax) fit within the optimal portfolio of policy interventions?

110. We have sought to address the first of these questions. In terms of the first question, we find that an increase in the excise tax of 50 to 100 per cent is likely to give major net benefits to the New Zealand economy. Although the analysis should not be described as better than 'order of magnitude', the deliberate conservatism of assumptions used, in the threshold analysis and order of magnitude benefit-cost analysis, gives confidence in this conclusion.

111. A significant increase in New Zealand's alcohol excise tax, of 50 or even 100 per cent, would yield net economic benefits, reducing the call on the public budget thus allowing either tax reform and/or a reduction in taxation levels and would be worthwhile from the community's point of view in terms of both efficiency and equity.

112. There are several separate, additive economic rationales for an increase in the rate of excise.

First, if alcohol were a normal economic good (which it is not), then the prime public policy interest would be as a tax base. Since price elasticity of demand for alcohol is low, in terms of Ramsey's theory of optimal taxation, the excise on alcohol is a highly efficient tax. The net cost of dead weight efficiency losses from all taxes would be reduced and New Zealand would be better off by an increase in the rate of excise on alcohol and a revenue equivalent reduction in rates of income tax. Based on the range of past estimates of the dead weight burden of the income tax system, and MJA's estimates of the deadweight loss associated with a 50 per cent increase in the excise rate, the annual benefit is estimated to lie in a range from less than $10 million to more than $50 million.

Second, since alcohol is associated with large (net negative) consumption externalities, the excise rate on alcohol can be increased so that consumers better recognise the (high) public costs of alcohol. As demonstrated by Pigou, such tax increases would be welfare improving. MJA's threshold analysis and order of magnitude benefit cost analysis indicates that excise increases of at least 50 or 100 per cent are desirable. Based on the reduction in health harms and health costs alone, the annual benefit is around $60 to $70 million. When this Pigovian benefit is added to the Ramsey benefits the annual benefit range between $70 to $120 million a year.

Third, since alcohol is judged by many to involve elements of both short run and long run irrationality, an increase in the excise rate is likely to be welfare improving since, while reducing the small consumer surplus below the corrected demand schedule, it would also reduce costs unmatched by benefits. We have not evaluated efficiency benefits resulting from any reduction in irrational consumption.

113. We have also not evaluated the impact of other policy alternatives and thus cannot directly answer the second question posed in paragraph 109. And the evaluation of the other policies would depend more critically on the nature of consumer surplus and the magnitude of unmatched costs that would result from correction of the observed demand curve.

114. In terms of the third question, the rate of excise tax is but one instrument in a wider portfolio of current and future policies and interventions. Based on the order of magnitude estimates, the case for a 100 per cent increase is stronger than for a 50 per cent increase. However, if other policy measures were substantially strengthened to reduce levels of life time drinking and binge drinking, including among Māori, then a case might be made for retreating to an increase of 50 per cent only… but we would need to be very confident indeed that such policy measures would in fact be put in place and be adequately administered and effective before doing so.

    In the absence of strong across the board actions on other measures of known effectiveness (such as minimum legal drinking age, trading hours, BAC limits and local controls over outlet density), a significant increase in the rate of excise of 100 per cent may be a simple, effective, well-tailored and readily implemented measure.

115. For policy advisers and for government there is a question of whether to combine all reforms in a simple package or whether to proceed sequentially. Desirably, harmonisation of excise rates to a single rate or to a more finely graduated rate structure requires some consideration of cross-price elasticities between different beverages. This information is not currently available in either New Zealand or Australia at the necessary level of detail, and there may be a case for deferring harmonization until the results of a rigorous study of cross-price elasticities is available.

116. Economic analysis is currently a small component of the extensive research work and investigations on the effects of alcohol on our societies. The solid grounding of research results provided by medical and other researchers does not, however, reach policy makers, in part because the language of policy makers and government generally is economic or political and the results of the medical research are not translated either comprehensively or authoritatively. The future direction will harness economic frameworks more effectively. These frameworks will then identify gaps in knowledge and in behavioural relationships. We have provided a checklist of more than 20 items for future directions in the economics of alcohol research and policy).

Marsden Jacob Associates

11 December 2009

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Appendix A: Research directions – a checklist

The emerging checklist for future research directions includes the following.

1. **Invest resources in alcohol policy models** (and give up the investment of resources in cost of illness models). The Sheffield Alcohol Policy Model is a first, currently undeveloped, example which can be readily extended in methodological stages to other countries, including to New Zealand and Australia.

2. **Recognise, explore and include the benefits of consumer satisfaction** in the alcohol policy models, recognising that the standard definition of consumer surplus provides a maximum estimate and that alternative definitions are relevant and can give materially different results.

3. **Ensure that the administrative mechanism effecting the simulated policy change being examined is spelt out and followed through**, e.g., how do price rises occur if not through tax changes; or, e.g., if regulation enforces price floors, then to where do the resulting monopoly profits flow?

4. **Identify the spectrum of issues and judgements relating to the integrity of the concept and measurement of consumer surplus**.

5. **Obtain own-price, cross-price and income elasticities** which are internally consistent and estimated under an expenditure systems approach. Ensure that econometric distinctions (such as systems-estimated elasticities versus single equation estimates) are used as distinguishing criteria in meta-analyses.

6. **Categorise consumers by levels of short-term and long-term risk**, **age, gender and racial background** (e.g., Māori, non-Māori).

7. **Consider a three-way classification for both short-term and long-term consumption and associated harms**, i.e., below limits, above and up to twice the limit, greater than twice the recommended limit.

8. **Calibrate all recommended drinking limits in terms of risk likelihoods.** This will facilitate comparisons over time and between countries. If four drinks a day is consistent with a 1/100 risk of acute damage, then what are 6 or 8 drinks a day consistent with?

9. **Develop a risk-based concordance across national recommended drinking limits to facilitate comparisons over time and between countries**.

10. **Ensure that the income and expenditure surveys are adequate** to support the estimation of own-price, cross-price and income elasticities across the multiple relevant consumer groups.

11. **Recognise that self-reporting is under-reporting, and assemble information to allow correction factors to be applied across consumer categories**.

12. **Ensure that the industry is obligated to supply comprehensive sales data readily and transparently** for both on and off-license sales**.** Currently, sales data in New Zealand and Australia have restricted access and, in any event, do not cover on-license sales;

13. **Place protective effects in perspective** by establishing and publishing relative contributions of each source of harm or protective benefit to aggregate harms.

14. **Better inform judgements on the wide range of methodologies and assumptions on the nature and magnitude of production losses due to absenteeism, reduced productivity and unemployment.** This would require:

    – providing separate estimates across the spectrum of methodologies / assumptions e.g., friction cost method, minimum wage, value-added per employee, general equilibrium impacts; and

    – examining how alcohol related absenteeism, productivity loss and unemployment actually impact different types of businesses, e.g., large enterprises versus small and medium enterprises.

15. **Distinguish transparently between the differing roles of alcohol in differing categories of crime**.

16. **Widen the applicability and usefulness of the policy models by developing calibrations of non-price measures and their relationships to consumption and hours**, e.g., availability through hours and outlets and density measures.

17. **In modelling the drivers of acute harms and bingeing behaviour, distinguish between availability and aggregation –** between the availability of alcohol and the availability of sites which aggregate (i.e., bring together) drinkers and bingeing behaviour.

18. **Where expenditure data are restricted in detail, explore the ability to use local totals for row and column data and international detail on cell by cell information to interpolate missing data — as per well-known input output estimation techniques.**

19. **Ensure greater consistency in, and nesting, of the questions and issues explored in income, expenditure and prevalence surveys undertaken in New Zealand, Australia and the UK so that interpolations for missing or outdated data can be made with greater confidence.**

20. **Ensure that governments (Ministers, advisers and Departments) and researchers are aware of the need for a more integrated, disciplined and resourced approach to data gathering, research and analysis.**

21. **Utilise the framework of the policy models to identify research gaps and funding priorities**.

22. **Require scientific logic and rigour in policy decision making, but do not allow good decision making to be subverted by the search for perfection.**

This 22 item checklist refers to the future. It moves considerably beyond the notion of *"let's try to replicate Sheffield down here"*.

Indeed, taken as a checklist, the Sheffield work currently complies with only a third or so of the itemised directions.

Box A1: Elasticities disaggregation and estimation methods

A consumer's demand for a particular type of alcohol depends on its own price, the price of other forms of alcohol and other stimulants (which are substitutes, to different extents) and the consumer's total income or 'budget constraint'.

Statistically, the most consistent estimates of elasticities are obtained by considering the different demand equations for different types of alcohol (e.g. beer, wine and spirits) as a system of equations, and estimating this system using special estimation techniques. By estimating the equations as a system with all the own-price elasticities and cross-price elasticities estimated as part of the same process, internal consistency is ensured. Basically, the system modelling approach forces everything to 'add up'.

Better estimates will also be obtained by having data broken down by enough beverage types that substitution possibilities can be modelled adequately. This allows for estimates of cross price elasticities that are more meaningful in a policy sense. For example, detailed data could allow estimation of substitution from RTDs to low priced beer in response to a price increase affecting RTDs.

Alcohol demand studies typically distinguish between three beverage types: beer, wine and spirits. The University of Sheffield study, however, distinguished 16 different beverage types. For four basic categories of beer, wine, spirits and RTDs, it further distinguished between on trade (e.g. in bars, clubs) and off trade (e.g. in grocery stores, liquor outlets) sales, and between lower price and higher price products. From first principles, the greater the number of substitutes a product has, the higher its own-price elasticity.[1] Thus, it follows that the Sheffield estimates of own-price elasticities based on 16 different types of alcohol might be expected to be higher than own price elasticity estimates based on a simple three way split of beer, wine and spirits.

Further insights into the Sheffield elasticity estimates can be gained by examining the results of Fogarty's 2009 meta analysis. This very recent meta analysis differs from other meta analyses since, in its meta regressions, it weights individual study estimates by their precision. This is seen as preferable to the unweighted approach used in other recent meta analyses, such as, say, Gallet 2007. Fogarty's meta analysis concluded the following.

a) The estimates of price elasticities are significantly influenced by estimation technique, data frequency and time period under consideration.

b) *"...the overall trend ... has largely been an evolution from single-equation OLS approaches to system-wide approaches, to time series approaches."* [page 35]

c) *"... single-equation OLS type approaches ...give statistically different results to system-wide approaches and time series approaches, but system-wide approaches and time series approaches do not appear to generate estimates that differ, systematically."* [page 35]

The implication here is that the Sheffield system estimates should not be pooled or compared with OLS estimates.

d) There is no statistically significant difference between own-price elasticity estimates which acknowledge substitution possibilities between alcohol and other stimulants such as marijuana and those that do not. Thus, as a practical matter, policy makers can pool elasticity estimates which ignore substitution possibilities other than alcohol (such as soft drugs) with estimates that recognise these possibilities. [pp. 34-35]

e) Since around the 1950s, in a range of countries including the UK, Australia and New Zealand, alcohol demand has become increasingly elastic. Thus, recent estimates such as those obtained by the Sheffield team might be expected to be more elastic than estimates from earlier in the post-war period.

The richness of the Sheffield data allowed the estimation of own-price and cross-price elasticities for all 16 beverage types for moderate, hazardous and harmful consumption. Future alcohol demand studies should aspire to this level of richness.

[1] Fogarty 2009.

Appendix B:
MJA preliminary modelling results

Estimates of net benefit of 50 per cent increase in excise

New Zealand Inputs

	NZRA	LC
Expenditure on alcohol[1]	$3,618.00 m	$4,500.00 m
Excise[2]	$829.00 m	
Volume of alcohol[2]	31.576 m litres	
Excise as proportion of expenditure	23%	18%
Implicit price ($/litre)	$114.58	$142.51
Implicit tax ($/litre)	$26.25	
UK inputs		
NPV of saving in harms UK over 10 years	£3.6 b	
Discount rate (real)	3.5%	
Implied constant annual cost	£0.4171 b	
Exchange rate (20 November 2008)	$NZ 2.2779/ £	
New Zealand adult population[3] (2008 - implied excise data)	3.383 million	
England and Wales adult population[3] (2008)	44.892 million	
Convert UK impacts for 4.4% reduction in consumption	$NZ 71.607 m	4.40%
Analysis		
Change in excise	50%	
Pass-through to price	100%	
Price elasticity of demand	-0.44	
Change in price	11.5%	9.2%
Change in volume	-5.0%	-4.1%
Change in excise	$351.816	$351.816
Change in CS	-$362.26	-$360.22
Net change	-$10.45	-$8.40
Change in harms	$82.04	$65.96
Net benefit	$71.59	$57.56

Notes

1 Low figure from NZ Retailer Association figure extrapolates supermarket prices to res market. Salvation Army estimated $3,200m. High figure from NZ Law Commission.

2 NZ Treasury.

3 Aged 15 and over.

Sources : NZ excise data 2008, estimates of alcohol sales NZ Retailers Association and NZ Salv Treasury, NZ Stats, BERL, Sheffield University, UK Office for National Statistics.

Estimates of net benefit of 100 per cent increase in excise

New Zealand Inputs

	NZRA	LC
Expenditure on alcohol[1]	$3,618.00 m	$4,500.00 m
Excise[2]	$829.00 m	
Volume of alcohol[2]	31.576 m litres	
Excise as proportion of expenditure	23%	18%
Implicit price ($/litre)	$114.58	$142.51
Implicit tax ($/litre)	$26.25	
UK inputs		
NPV of saving in harms UK over 10 years	£3.6 b	
Discount rate (real)	3.5%	
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New Zealand adult population[3] (2008 - implied excise data)	3.383 million	
England and Wales adult population[3] (2008)	44.892 million	
Convert UK impacts for 4.4% reduction in consumption	$NZ 71.607 m	4.40%
Analysis		
Change in excise	100%	
Pass-through to price	100%	
Price elasticity of demand	-0.44	
Change in price	22.9%	18.4%
Change in volume	-10.1%	-8.1%
Change in excise	$661.844	$661.844
Change in CS	-$703.63	-$695.44
Net change	-$41.79	-$33.60
Change in harms	$164.08	$131.92
Net benefit	**$122.29**	**$98.32**

Notes

1 Low figure from NZ Retailer Association figure extrapolates supermarket prices to res market. Salvation Army estimated $3,200m. High figure from NZ Law Commission.
2 NZ Treasury.
3 Aged 15 and over.

Sources : NZ excise data 2008, estimates of alcohol sales NZ Retailers Association and NZ Salv Treasury, NZ Stats, BERL, Sheffield University, UK Office for National Statistics.

Appendix 2

List of submitters to *Alcohol in Our Lives: An Issues Paper on the Reform of New Zealand's Liquor Laws* (NZLC IP15, 2009)

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A J MacLaren
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Aaron Thomson
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Accident Compensation Corporation
Accor Hospitality
ACT on Campus & Young Nationals
Active West Coast
Adam Yates
Addiction Help Program
Addington Events
Addo Mulders
Adela Morgan
Adele Frank
Adele Woolley PhD
Adelien van Schalkwyk
Adelle Galloway
Adelle McColl
Adrian Van Noppen
Adriana Bird
Adrienne McPhee
Adrienne Nicholls
Advertising Standards Authority
Ailsa Nicol
Ailsa Potter
Ainslie Talbot
Alan & Betty Gilderdale
Alan (Rusty) Vail
Alan George Davidson
Alan Jackson
Alan Jenkinson
Alan Leadley
Alan Marshall
Alan Menzies
Alan Reith
Alan Sandri
Alan Swallow
Alanna Harrington
Alanna O'Leary
Alanna Ratna
Alastair and Lynette Brown
Alastair Hall
Albert Tang
Albert William Bunn
Alcohol Advisory Council of New Zealand – Pacific Reference Group
Alcohol Advisory Council of New Zealand (ALAC)
Alcohol & Drug Assessment Services Ltd (2)
Alcohol Drug Association NZ
Alcohol Healthwatch
Alex Cheung
Alex de Villiers (2)
Alex Miller
Alex Moreland
Alex Thomas
Alex Woods (2)
Alexander L Sime
Alexandra Sonia Godfrey
Alexia Pauling
Alfred Eckhold
Alfred John Adams
Alice Biju
Alice Burgess
Alice Miller
Alice Noble QSM
Alice Travers
Alison Hulme
Alison Judkins
Alison Linscott
Alison Scott-Mackie
Alison Soper
Alison Wilkie
Alistair Cameron (3)
Alistair Campbell
Alistair R Brown
Alistair Smith

Alistair William Capamagian
Alister Rae
All Saints Community Church
Allan L Goulstone
Allan Ladbrook
Allan McLachlan
Allan Simpson
Allan Unsworth
Allen Anderson
Allen Cookson
Allen J Little QSM JP
Allison de Wet
Allison Rivers
Allister Gillam
Alo Collins
Alun Hodkinson
Alwyn Chinn
Amanda Casci
Amanda Hardie
Amanda Holgate
Amanda Wilson
Amy Gordon
Amy Hurley
Amy Smit
Ana Garbes
Ana-Lindsay Davies
Andre Kneepkens
Andre Kocis
Andrea Hawcridge
Andrea Langan
Andrea Latoa
Andrea Moore
Andrea Wineera
Andrew Dixon
Andrew Falcon
Andrew Fisher
Andrew French
Andrew Gall
Andrew Jackson
Andrew McCabe
Andrew Raven
Andrew Straw
Andrew Sykes
Andrew Thomson
Andrew Thorpe
Andy Lee
Angela Bodley
Angela Claridge
Angela Dold
Angela Fletcher
Angela McPherson
Angela Scott
Angela Stratton RN
Angela Tiller
Angela Tomich
Angelina Mattheiss
Anglican Diocese of Christchurch
Angos Simpson
Angus Dowson
Angus Gibb (2)
Ani Attwood
Anita Stocks
Ann Elizabeth Howell
Ann Fowler
Ann Fowler and others
Ann MacDonald
Ann Moring
Ann Raine
Ann Wilson
Anna Carter
Anna Chapman
Anna Christophorou
Anna Eady
Anna Frost
Anna Gardiner
Anna Leslie
Anna Makiri
Anne Christine Macleod
Anne Gardner
Anne Gosling
Anne Greening
Anne Hurley
Anne Malcolm
Anne Marie Baird
Anne Marshall
Anne Milford
Anne Murray
Anne Peterson
Anne Sparrow
Anne Spicer
Anne Te Kawa
Anne Topp
Anne-Marie Coury
Anne-Marie Russell
Annette Flyger
Annette Paterson
Annie Adams
Anthony Goodall
Anthony John Simmonds
Anthony Meredith
Anthony Short
Anthony Smith
Anthony Tomich
Anwyn Walker
Aoraki Primary Health Organisation
Aotearoa Alcohol & Other Drug Consumer Network
Aotearoa Legalise Cannabis Party
Ardelle Jeffries
Areti Metuamate
Arna & Peter Mountain
Arnold & Molly Winterburn
Arnold Larsen
Aroma Hazelton
Arthur Alan Brammer
Arthur Cameron
Arthur Chamberlain
Arthur Palmer
Ashburton Club & MSA
Ashburton Community Alcohol & Drug Service
Ashburton District Council
Association of New Zealand Advertisers Inc
Auckland City Council
Auckland City Injury Prevention Forum
Auckland District Health Board (Child and Youth Team)
Auckland Regional Public Health
Audrey Stanley
Auke Smaal
Averil Groom
B Burlough
B Butterfield
B C Oates
B Collyns
B D Arnott-Mullings
B G Williams
B J Nalder
B Sims
B Watles
Baptist Churches of New Zealand
Bar Africa Ltd
Barbara Thomson
Barbara Bolam
Barbara Constance
Barbara Doig
Barbara Joppa
Barbara Loveridge
Barbara Manarangi
Barbara McIntosh
Barbara Morris
Barbara Mountier
Barbara Pearce
Barbara Robb
Barbara Shute
Barbara Smart
Barbara Wilkinson
Barbara Winter
Barrie Paterson
Barry Arabin
Barry Burgess
Barry F Ryder
Barry Hannah
Barry L Jackson PhD
Barry Wah Lee (2)
Barworks Hospitality Group
Basil & Norma Kings
Basil Hanson
Basil Tai
Be Free Incorporated
Beam Global (NZ) Ltd
Beaujolais Wine Bar
Bede Meredith
Bel Bormans
Belinda Jones
Ben & Estelle Boakes
Ben Edgar
Ben Lacey
Benita Walden
Beon Leo
Bernard Cosford
Bernard O'Shaughnessy (2)
Bernice Armstrong
Bernice Hey
Bernice Mathys
Bernice Smith
Bernice Tweed
Bernie Dawson
Bernie Gardiner
Beryl Hanson
Bess Wolff
Beth Hisbon
Bethany Webster
Bethlehem College
Betsy Frizzell
Bettina Wilson
Betty & Peter Martin
Betty Thomas
Bev Bruce
Beverley Fremaux
Beverley Kingston
Beverly Glover
Bianca Livesey
Bill Crouch
Bill Parsonson
Bill Rout
Billy Mackee
Blair Hammond
Blenheim Workingmens Club Inc
Blue Ice Investments
Bob Blair
Bob Robertson
Boogie Nites
Botany Community Board
Brad and Michelle Cook
Brainwave Trust Aotearoa
Brandon Holman
Brandon Hutchison
Brenda Cromie
Brenda Hughes
Brent & Jan Soper
Brent Harrison (2)
Brent Parkhill
Brett Fea
Brett McEwan
Brett Smith
Brewers Association
Brewers Guild
Brian Allan
Brian and Shirley Smith
Brian Boddy
Brian Eagleton
Brian Feary
Brian Flynn

Brian Hall
Brian M Walker
Brian Mariner
Brian Sparrow
Brian Walker
Brian Williamson
Bridget Wilson
Brigette Horgan
Brigid O'Meeghan
Brooke Ibbotson
Bruce Cordes
Bruce Flyger
Bruce Jones
Bruce Martin
Bruce McGuigan
Bruce Tulloch
Bryce Dick
Brydie Johnston
Bryony Church
Bush Inn Hotel
Business Roundtable
C A Brunke
C A Doherty
C Burness
C Curry
C G Tang
C H Cull
C H Grimmer
C J H Duncan
C Jean Tennent
C T Kelley
C V Currie
Café for Youth Health
Caleb How
Callum Smith
Camille Wills
Campbells Steak n Ale House
Cancer Society
Candor Trust
Canterbury District Health Board
Canterbury West Coast Secondary Principals
Canterbury Youth Services
Capital & Coast District Health Board
Capital Five Limited
CARE NZ Ltd
Caril Cowan
Carla Drayton
Carmel McGoldrick
Carol Buckley
Carol Cullen
Carol Gilmour
Carol Power
Carol Ward
Carole Garratt
Carole O'Connor
Caroline Officer
Carolyn May
Carolyn Pye
Carolyn Tones
Catherine Hooper
Catherine Lourie
Catherine Neilson
Catherine Sandbrook
Cathy Torvik
Cathy Vickers
Central Otago District Council
Challenge Trust
Chang Wei Zhou
Channa Perry
Charles (Rob) Hawes
Charlotte Diggle
Charlotte McElwee
Charmaine Borland
Charmaine Parkinson
Chartwell Church (Hamilton)
Cheep Liquor Huntly
Chelsea McLaren
Cher [Surname Omitted]
Cherry Parker
Cheryl Cavanagh
Child Advocacy Group
Child and Adolescent Mental Health Service – West Coast District Health Board
Child and Youth Mortality Review Committee
Child Poverty Action Group
Children's Commissioner
Chris & Anna White
Chris Alderdice
Chris Banks
Chris Hartley
Chris Hince
Chris John
Chris Lange
Chris Marshall
Chris Mourant
Chris Myatt
Chris Waide
Christchurch Central Business District Alcohol Accord Management Committee
Christchurch City Council
Christchurch City Mission
Christchurch Tri-agency Group
Christene Bedford
Christian Crusader
Christian Dawson
Christian Galbraith
Christie Kinghorn and Joseph Habgood
Christina Simmonds
Christina Thompson
Christine Cullen
Christine Edgar
Christine Francombe
Christine Gellert
Christine Hogan
Christine Jeffery
Christine Laurie
Christine McAlpine
Christine Morris
Christine Murray & Presbyterian Church of Ohope
Christine Nevitt
Christine O'Connor
Christine Taylor
Christine Walton
Christine Wrigley
Christopher Diggle
Christy McKessar
Cindy Schmidt
City Club Inc
City College Hall of Residence
City Stop
Claddagh Irish Pub
Clair Elson-White
Clair Petley
Claire Dillon
Claire O'Connell
Claire Stock
Claire Wyatt
Clara Kwaramba
Clare O'Connell
Clare Simpson
Clare Wilson RN
Claudia Ning
Claudine Geraets
Clayton Mitchell (2)
Cliff Turner (2)
Clinical Trials Research Unit, University of Auckland
Clinton Cooper
Clive Fischer
Clubs New Zealand
Clutha District Council
Clutha District Youth Council
Clyde Johnson
CM Wederell
Cock & Bull Hamilton
Cock and Bull Botany Downs
Colin Kumpula
Colin Lind
Colin Ritchie Marshall
Colin Rose
Colin Stevenson
Colleen Bowling
Colleen King
Colleen O'Connell
Colleen Squires
Colleen Wright
Commercial Hotel, Te Awamutu
Communication Agencies Association
Community Action on Youth and Drugs Otautahi
Community Action on Youth and Drugs Te Tai Tokerau Region
Community Alcohol and Drug Service Bay Of Plenty District Health Board
Community Alcohol and Drug Services Auckland
Community and Public Health West Coast
Community Law Canterbury
Community Submission (Matt Matahaere (CAYAD Dunedin), Sofia Tuala (Arai Te Uru Whare Hauora, Dunedin), Scott Blair (Adventure Development Counselling, Dunedin))
Concepcion Enriquez
Coralie Gough
Cosmopolitan Club Mt Maunganui
Counties Manukau Grey Power
Craig & Teri Culpepper
Craig Bartlett
Craig Bowden
Craig Smith
Craig Williamson
Crosspower Ministries Trust
Crossroads Bar and Restaurant
Cynarra Ferguson
D A Jack
D A Stewart
D Anderson
D Benton
D Cavaney
D Hodge
D J Charlton
D L Filleul
D M Laubscher
D P Radovanovich
D R Barker
D Ronson
D W Nesham
Dafyd Morgan
Dale Hinton
Dale Holland
Dale Morell
Dale Woolgar
Dame Jocelyn Fish
Dan Haslam
Dan Kircher
Danica & Neil Ryan
Daniel & Angela Forrest
Daniel Anderson
Daniel Dominey

Daniel Robb
Daniela Stringer
Danielle Edwards
Danny Elkington
Darrell Hopkins
Darryl Violich
Daryl Anderson
Dason Hita
Dave & Bev Mullan
Dave Hookway
Dave Jackson
Dave Patrick
Dave Phillips
Dave Watson
Dave White
Dave Williamson
David & Dawn Asher
David & Gloria Ashton
David & Letitia Moorhouse
David & Suzanne Dally
David & Tracy Fisher
David Anderson
David Bay MBE JP
David Brown
David Collard
David Crocker
David Dobbie
David Eaton
David Enright
David Fenwick
David Goodwin
David Greer
David Halligan
David Hawke
David Head
David Higson
David Holmes
David Ihimaera
David Jarden
David K Gordon
David McCrostie
David McDermott
David McKenzie
David Mellor
David Nalden
David Nelson
David Picketts
David Prescott
David Richards
David Rummery
David Rutland
David Stavert
David Steel
David van Prood
Davina [Surname Omitted]
Dawn McDonald
Dawood Latif
Dayna Siarkiewicz
DB Breweries
Dean Bassett-Smith
Dean Sayer
Dean Stanners
Deanne Field
Debbie Biggar
Debbie Downing
Debbie Nicholson
Deborah Crowhurst
Deborah Kevany
Deborah Saunders
Deborah Short
Debra Clarke
Debroah J Burton
Deirdre Cottrell
Deirdre Kent
Deirdre Redmayne
Deirdre Richardson
Denis O'Connell
Denise Armstrong
Denise Fisher
Denise Harris
Dennis Craw
Dennis Tait Jamieson
Dennis Veal
Department of Public Health, Wellington School of Medicine and Health Sciences, University of Otago
Derek and Margaret Cahill
Derek and Wendy Cone
Derek Hoyle
Derek Maggs
Derek Watling
Desiree Matehaere
Diageo Ltd
Diana Bergersen
Diana Haselden
Diane Fitzgerald
Diane Horton
Diane Prue
Diane Welsh
Dianna Pery-Knox-Gore
Dianne & Michael Ewens
Dianne Challis
Dianne Gower
Dietmar Glaser
Dirk De Lu (2)
Distilled Spirits Association
Dollar Brand Ltd
Don Cleugh
Don Francis
Don McKnight
Don Sinclair
Don Stewart
Donald Feist
Donald McMillan
Donald Pettitt
Donald Stewart
Donna Duff
Donna Green
Donna Matheson
Donna Miller
Doreen Blain
Doreen F Tulloch
Doreen Salter
Doris Hamer
Doris McInness
Doris Ranfurly
Dorothy J Miller
Dorothy Murray
Dorothy Ward
Dorris Nicholas
Dot Milne
Doug [Surname Omitted]
Doug Harvie
Doug Oemcke
Doug Sellman (Alcohol Action NZ: 5 + Solution)
Dougal Love
Doughlas McPhail
Douglas Barnes
Douglas Hesp
Douglas Stock
Dr Adrian Cable
Dr Adrian Gray
Dr Adrienne Chin
Dr Alan Russell; Dr Symon Armstrong; Dr Miriam Brown; Dr Tony Farrell; Dr Conrad Shaefer
Dr Alex Bartle
Dr Alexandra Styche
Dr Alistair Dunn
Dr Alma Rae
Dr Andrew Dickie
Dr Andrew Gillespie
Dr Annette Anderson
Dr Ben Hudson
Dr Beth Simpson
Dr Beverley Taylor
Dr Brad Ilg
Dr Brett Mann
Dr Brigid Loughnan
Dr Caroline MacKenzie
Dr Caroline Ryan
Dr Catherine Spencer-Taylor
Dr Catherine Xu
Dr Cecile T Evans
Dr Chris Leathart
Dr Clare Botha-Reid
Dr Clive Hunter
Dr Colin Chin
Dr Colin Ding
Dr Colin Peebles
Dr David Barrowman
Dr David Kerr
Dr David Pilbrow
Dr David Robertson
Dr David Stoner, Canterbury District Health Board
Dr Debbie Dance
Dr Deepa Mahnidra
Dr Derek Hann
Dr Des Keenan
Dr Ed Simpson
Dr Elizabeth Mangan
Dr Elizabeth Schroder
Dr Fred La Hood
Dr Geraldine Wilson
Dr Graeme Bennetts
Dr Graham Macdonald
Dr Harsed Chima
Dr Imogen Thompson
Dr Jan Whyte
Dr Jane Heatherington
Dr Janine Searle
Dr Jason Pryke
Dr Jeffrey Shortt
Dr Jennie Connor
Dr Jenny Keightley
Dr Jeremy Baker
Dr Joan Leighton
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Dr John Sligo
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Dr K N P Mickleson
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Dr Katy Brett
Dr Keith Murray
Dr Kerry Anthony Rodgers JP
Dr Kerry Mannis
Dr Kevin Giles
Dr Kim Burgess
Dr Leigh Hooper
Dr Lesley Bond
Dr Lew Johnson
Dr Lindsay Strang
Dr Lisa McIlwraith
Dr Lynn McBain
Dr Margaret Metherell
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Dr Mark Rogers
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Dr Martin Than
Dr Martyn Fisher
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Dr Michael Tills
Dr Michelle Lai
Dr Mick Ozimek
Dr N C Karalus
Dr Niall Holland
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Dr Paul Quigley Emergency Medicine Specialist Wellington Hospital
Dr Paula Turley
Dr Peter Harty
Dr Peter Moody
Dr Peter Ryan
Dr Peter Strang
Dr Philip Townshend
Dr Pippa MacKay
Dr Ralph Chen-Green
Dr Rebecca Henderson
Dr Rebecca Nicholls
Dr Richard Newman
Dr Rob Van Rij
Dr Robert Guy Nash
Dr Robert Sweeney
Dr Robin J Harvey
Dr Roger Baillie
Dr Rona Maslowski
Dr Rosalie Sneyd
Dr Rosie Ford
Dr Russel Steel
Dr S M Lange
Dr Sarah Bradford
Dr Sarah Carr
Dr Sari Lester
Dr Scott Pearson
Dr Simon Shaw
Dr Sophia Harris
Dr Srimala Kumarapaapillai
Dr Stephen Baker
Dr Sue French
Dr Susan Gordon
Dr Symon Armstrong
Dr Timothy Fletcher
Dr Tom & Kylie O'Rourke
Dr Tom Milliken
Dr Tony Farrell (2)
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Dr Tony Wansbrough
Dr Tonya Sadler
Dr Udaya Samarakkody
Dr Viola Palmer
Dr Vivienne Patton
Dr W G A Watkins
Dr Wim Sheldon
Dr Zhivan Alach
Dr Paul Gee
Drug ARM (Blenheim) Inc
Drusilla Rose
Duane Major
Dugald Wilson
Duncan Michael Poole
Dunedin City Council
Dunedin Community Law Centre
Dylan [Surname Omitted]
Dylan Turner
E J Trezise
E L Page
E M Penning
E W Betts
Eastern Southland Grey Power
Edgar Potter
Edgeware Sports Bar
Endowment for Human Life
Edward Parch
Edward Sisley
Edward Verrity
EJ Whittaker
Elaine Comyn
Elaine Cowie
Elaine M Hadfield (2)
Elaine McLaudy
Eleanor Findlay
Eleanor Stevens
Elizabeth Caughey
Elizabeth Clark
Elizabeth Cleland
Elizabeth Davies
Elizabeth Francke
Elizabeth Henare
Elizabeth John
Elizabeth Keys
Elizabeth Sligo
Elizabeth Taylor
Elizabeth Woollard
Ellie McNicholas
Elva Day
Emeritus Professor Ruth Bonita & Emeritus Professor Robert Beaglehole
Emma Pepperell
Emma Williams
Eric & Beverley Broomhall
Eric and Margaret Pickering
Eric Hind
Erica Bennett
Erin Pattersen
Escape to Picton
Esmae Goodwin
Esme Syme
Esther Denham
Esther Velloza
Euan Ross
Eugene Girardin
Eunice Freer
Eva Pick-Stone
Evan Cheetham
Evan Squires
Evelyn Probert
Ewan Cormack
Ezra Keddell
F & R Carter
F C Bannister
F Jackson
F R Dermode
F Rayner Bernard
Fae Hancock
Familial Trust
Families Commission
Family First NZ
Faye Bergamini
Faye Frelan
Fergus More
Fern Howard-Douglas
Fetal Alcohol Network NZ
Fiona Dunkley
Fiona Greenman
Fiona Hikawai
Fiona Perenoua
Fiona Price
Firemans Arms
Flamish Mackenzie
Florence G Stone & Raymond G Stone
Foodstuffs (NZ) Ltd
Foundation for Advertising Research
Fran Lowe
Frances Basher
Frances Borrie
Frances Calver
Frances Davey
Frances Louis
Frances Mace
Frank & Pat Laming
Frank Neill
Franklin Christian Lobby
Franklin District Council
Frans Taris
Frazer Greenwood
Fred Chand
Fred Williams
Frenzi Group Ltd
Fuafuagaolefaletautu Winterstein
G D Drewery
G Denning-Kemp
G E Smith
G L Sparrow
Gael Blaymires
Gail Anderson
Gail Drennan
Gail Upton
Gareth & Julie Deck
Gareth Hookham
Gareth Perkins
Gary Cavaney
Gary Clarke
Gary Hinton
Gary Hopper
Gary Mawson
Gavin & Bronnie Scarlett
Gavin Bint
Gavin Kennedy
Gavin Maxted
Gaylene Anderson
Geoff Guest
Geoff Lumb
Geoff Sutton
George Boston
George Colin Syme
George Donald McKenzie
George Jones
George Rendall
George Stewart
George W Stewart
Georgia Dobbs
Gerald and Judy Gumpatzes
Gerard Purcell
Gibson Consultants
Gijsbert Martinus van Heuckelum
Gilda Misur
Gill Appleton
Gill Haworth
Gillian Macleod
Gillian McCloy
Gisborne Cosmopolitan Club Inc
Gisborne District Council
Glen Innes Drug & Alcohol Action Group
Glen McLennan
Glenice Carter
Glenn Campbell
Glenn Hunter
Glenn Millar
Glenys Murray
Gloria Baker
Gloria Dingley
Golden Mile Tavern
Good Group Ltd
Gordon A Nairn
Gordon Field
Gordon Gallagher
Gordon Mather
Gordon Murray
Gordon Nicholson
Gordon Rosewall
Gordon Steel
Gore District Council
Grace Bateman
Grace Hale
Graeme Bisseker
Graeme Blackford
Graeme Bulling (2)
Graeme Hewitt
Graeme Judson
Graeme Lester Lyon
Graeme Palmer
Graeme S Smith JP
Graeme Stephens
Graeme Waters JP
Graham and Jess Hodder
Graham Brogden
Graham Calton
Graham Cameron
Graham Coupe
Graham Gough
Graham Jenkins

Graham Ranson
Graham Turley
Grant Absolum
Grant Boyes
Grant Chivers
Grant Ellis
Grant Fausett
Grant Heney
Grant Olsen
Grant Timlin
Grantley Judge
Gray Southon
Greg New
Greg Snelling
Gregory John Ryan
Grere Coutie
Gretha Appleby
Grey Power Auckland
Group Against Liquor Advertising (GALA) (2)
Gwen Kentish
Gwenyth Russell
Gwyneth Rogers
Gythlian Loveday
H A Harneford
H Carlson
H J Morris
H W McVicker
Hagley/Ferrymead Community Board
Hamilton City Council
Hamilton Methodist Parish
Hamilton South Neighbourhood Support
Hamilton Youth Council
Hamish Andersen
Hannah Cleland
Hans Schneider
HANZ Auckland
HANZ Buller & Westland
HANZ Marlborough
HANZ Northland
HANZ South Canterbury
HANZ Southland & Central Otago
HANZ Taranaki
HANZ Thames
HANZ Wellington
Harljit Singh
Harry Hancock
Hastings and Havelock North Alcohol Accords
Hastings District Council & Napier City Council
Hauraki District Council
Hawkes Bay District Health Board
Hawkes Bay Regional Council, RoadSafe HB Governance Group
Hayden Nash
Hayden Smythe
Hayley O'Donoghue
Hayley Zanker
Hazel Dalton
He Oranga Pounamu
Health Action Trust Nelson
Health NZ Ltd
Health Sponsorship Council
Healthy Christchurch
Heather Aronsen
Heather Balasingam
Heather Clay
Heather Dempsey
Heather King
Heather Ninness
Heather Powell
Helen & Warren Bruce
Helen Armstrong
Helen Black
Helen Bollinger
Helen Carey
Helen Cave
Helen Cook
Helen Francis
Helen Gwyn
Helen Hardcastle
Helen Hoare
Helen Ingley
Helen Mary Smith
Helen Meiklejohn
Helen Ray
Helen Reynolds
Helen Trew
Helen Ushaw
Helen Vaz
Helene Fugler
Hendrika Colyn
Henry Balfour
Hern Teo-Sherrell
Hez Lander
HighRes Youth – Kumeu Baptist Church
Hilary Cheeseman
Hilary Colquhoun
Hilary Hart
Hilary Jackson
Hilary Nuttall
Hilary Pickering
Hinemoa Metekingi
Hokitika Interagency Alcohol Advisory Group
Hon. Jim Anderton, MP for Wigram
Hon. Lianne Dalziel, MP for Christchurch East
Hospitality Association of New Zealand (HANZ)
Hospitality Licensing Ltd
Hotel Coachman
Hotel Reefton 2003 Ltd
Howard Andrew & Carolie Andrew
Howard Pocock
Huata Noa
Hugh Gardyne
Hutt Valley District Health Board
I K Hardcastle
I Kemp
I S Steele
Iain Storrie
Ian Beach
Ian Clark
Ian Ernest Greenwood
Ian Hobden
Ian K Smith
Ian Winks
Independent Liquor (NZ) Ltd
Ines Stager
Ingrid Proctor
Injury Free Counties Manukau
Injury Prevention Network of Aotearoa NZ Inc
Inoka Silva
International Missionary Society Health Education Service
Invercargill Licensing Trust
Invercargill Workingmen's Club Inc
Iona MacDonald
Irene Brown
Irene Cameron
Irene Durham
Irene Frendrup
Irene Maxfield
Irene Nixon
Isabel Morgan
Ismo Torvelainen
Ivan Potton
Ivar Scott Smith
Ivy Ellis
J C Trow
J Chris Horne
J Elisabeth Wells
J Ellis
J Hardie
J Lawson
J M Hall
J W D Perston
Jack Pearcy
Jack Rifle
Jack Williams
Jack Wills
Jackie Dee
Jackie Gifford
Jackie Paterson
Jacqualine Clark
Jacqueline & Allan Bowers
Jacquetta Bell & Peter Hay
Jade Corry
Jaimie Bowers
James & Isabel Campbell
James Anderson
James Bryce
James Hamill
James Hogan
James Holly
James Hughes
James J Feehly
James McFarlane
James Ridpath
James Taylor
James William Park
Jamie Allan Hughes
Jamie Clarke
Jamie Sparrow
Jamie Xuan
Jan Bone
Jan Boyes
Jan Eagle
Jan Fulford
Jan Goddard
Jan Greig
Jan MacLean
Jan Nisbet
Jan Pratt
Jan Travaglia
Jane Bougen
Jane Bruce
Jane Churchwell
Jane Grant
Jane Miles
Jane Pearce
Jane Roberts
Jane Wade
Jane Whitmore
Janet Cummin
Janet Dunlop
Janet Horan
Janet Lockyer
Janet Ormsby
Janet Palmer
Janet Peters
Janetta Kim
Janice Cooper
Janice Fay Burton
Janice Gillgren
Janice Kang
Janice Lenihan
Janice Paulin
Janice Thomson
Janice Wilson
Janie King
Janine Cornor & John Hunter
Janis Ewan
Janita Prattley
Jared Davidson
Jarrod Wright
Jasmin Dodge
Jasmin Teague
Jason Caswell
Jason Catley

Jason Deane
Jason King
Jason Macklow
Jason McCarthy
Jason Ryder
Jason Vigis
Jayne Hickland
Jaysen Magan
Jean & Chris Palmer
Jean & Edward Hansman
Jean Adams
Jean Davis
Jean Hignett
Jean Holmes
Jean MacDonald
Jean Salter
Jean Simpson
Jeanette [Surname Omitted]
Jeanette Allen
Jeanette Gomes
Jeanette Grace
Jeanette Hight
Jeanette Neilson
Jeanette Sanford (2)
Jeanette Stanley
Jeff Holloway
Jelena Savage
Jemma Hurst-Long
Jenifer Cooper
Jenna McEwing
Jenna Teesdale
Jenni & Phillip Parkinson
Jennifer Annan
Jennifer Goodson
Jennifer Lloyd
Jennifer Marceau
Jennifer Payton
Jennifer Rennie
Jennifer Toohey
Jennifer Wood
Jenny Dunnett
Jenny Falconer
Jenny Hill &
Andrew Garratt
Jenny Keightley
Jenny Meares
Jenny Naley
Jenny Salmon
Jenny van Kampen
Jeremy Pierce
Jess [Surname Omitted]
Jess Murchison
Jessica Yarrall
Jezreel Women's
Support Home
Jill Ford
Jill Greathead
Jill Knowle
Jill Nutsford
Jill Stewart
Jill Wyper
Jillian Brown
Jillian Connole
Jim & Margot Gratton
Jim and Helen Grayson
Jim Barrowclough
Jim Gratton
Jim McPhee
Jimi McKay
Jimmy Coutts
JM Bell
Jo Claridge
Jo Morris
Joachim Schrimpf
Joan & Des Griggs
Joan Garman
Joan Sherley
Joan Watson
Joanna Eve Horn
Joanne Butfield
Joanne Ellis
Joanne Petrie
Joanne Stenhouse
Jocelyn Buchanan
Jody Benscoe
Joe Hart
Joe Parata
Joe Rameka
Joe Ryan
Joe Stodart
Joe Tamaki
Johannes Balzer
John & Anisila Hutchings
John & Barbara Lusk
John & Helen Rimmer
John & Lorraine Kelly
John Barton
John Boden
John Boyes
John Brignall
John Caygill
John Cecil Hughes
John Craighead
John David Broughton
John Davison
John Dunning
John F G Bell
John Fisher
John Gatley
John George Swan
John Gillespie
John Gregson
John Hegarty
John Henry Still
John Hill
John Jordan
John Judd
John Kelly
John Kennerley
John Kumitau
John Lambert
John Maurice
John Mayrick
John McCracken
John McMullan
John Millichamp
John Muller
John P Maurice
John Powell
John Robb
John Robinson
John Russell
John Salter
John Seaton
John Sellman
John Stanley
John Stodart
John Tagatoa Howell
John Torr
John Turner
John W Joll
John Wallace
John Webster
John Williams
John Worthington RN
Johnathon Peacocke
Johnsonville Club Inc
Jolene Lambeth
Jolene Scott
Jon Maplesden
Jonathan Olsen
Jonathan Ruthven
Jonny Simpkin
Jordan Edgar
Jordan Paterson
Josh Smith
Joshua Ellison-Heath
Joshua White
Joy Chissell
Joy Eckhold
Joy Mace
Joy Smith
Joyce Cooper
Joyce Lynch
Joyce Ryan
Judith Aitken
Judith Galtry &
Paul Callister
Judith McDonald
Judith Spencer
Judy Abrahams
Judy Buchanan
Judy Goulding
Judy Turner
Julia Crosby
Julia Hill
Julia Silvester
Juliana Mauri Venning
Julie Berry
Julie Brooking
Julie Farrant
Julie Mosley
Julie Sullivan
Juliette Parsons
June Dean
June Leota
June Robben
June Thomson
June Vanderveen
Junior Viti
Justin Chalmers
Justin Lee
Justin MacDonald
Justin Warwick
K Lyen
K O Raine
K P Shone
Kaiapoi Workingmens
Club & MSA
Kapiti Club Inc
Kapiti Coast District
Council
Karen Carpenter
Karen Faisandier
Karen Gilbie
Karen Hamilton
Karen McRae
Karilyn Lowe
Karl Barkley
Karrina [Surname Omitted]
Karyn Davis
Kasia Waldegrave
Kat Tobin
Kataraina Anaru
Kate Bradley
Kate Divett
Kate Elsen
Kate Hibbert
Kate Joy Madsen
Kate Lyttle
Kate Robins
Kate Strawbridge
Kath Tomlinson
Kathleen Deacon
Kathleen Deal
Kathleen Forde
Kathleen Gambino
& Vincent Gambino
Kathleen Rose
Kathleen Smith
Kathryn Cannan
Kathy Howie
Katie Earl
Katie Sparrow
Katie Williams
Katrine Cody
Kawakawa RSA
Kawerau Cosmopolitan
Club Inc
Kawerau District Council
Kay Arnold &
Amelia Trevor
Kaye Busby
Keith E Williamson

Keith Milligan
Keith Oakley
Keith Thompson
Kelly Barriball
Kelly Glover
Kelly Mead
Kelly Robson
Kelvin Deal
Ken & Judy Masters
Ken Atmore
Ken Double
Ken McAllister
Ken Rose
Ken Tavui
Kenneth Borland
Kenneth Norness Jr
Kenneth Stuart Suckling
Kent Thwaites
Kent Wollard
Kere Menzies
Kerrie Mather
Kerry Gooch
Kerry Grant
Kerry Harper
Kerry Willoughby
Kerryanne Dalgleish
Kevin Devey
Kevin Horan
Kevin Kavanagh
Kevin McDonald
Kevin Reid
Kevin Robinson
Kevin Schwass
Kevin Tansey
Kevin Wells
Kieran Wakefield
Kim Alexander
Kim Curtayne
Kim Ward
Kirsten Franklin
Kirsten Knights
Kirsten Meyer
Kirsty Greenville
Kirsty Smith
Kiwi International Hotel
KJ Leonard JP
Knox Church Social Justice Work Group
Koroniria Amai
Kosta Tabakakis
Kristin Tanava
Kristina Johnson
Kristina Marck
Kristine Hayward
Kuiwai Horne
Kuldeep Arora
Kurk Brady
Kurt Jarrett
Kyle Caldwell
Kylie Kakau
Kymon Hill
Kyra Quarrie
L A Mowless
L Andrewes
L D McConnell
L Deodongley
L G Campbell
L J Hancox
L Naude
L Tomich
L van den Heuvel
Lady Rhyl Jansen
Laidlaw College Auckland Campus
Lakes District Health Board
Lana Campbell
Lance Campbell
Lance Lenihan
Land's End NZ
Lara Hawke
Lara Walden
Larry Mercer
Launa-Anne Smith
Laura [Surname Omitted]
Laura Clews
Lauren van Coller
Lauren Whitaker
Laurie Durand
Lava East
Lawrence Hebb
Leah Rogers
Leanne Drayton
Leanne Easby
Leanne Rolleston
Learnna Collie
Lee Braithwaite
Lee Phillips
Lee-Ora Lusis
Leigh Mason
Leigh Sullivan
Leila Clarkson
Lena Bassington
Lena Leatherby
Leonie Lewin
Lesley Gamlen
Lesley Hollis
Lesley MacClure
Lesley Mary Hawkins
Lesley Sanders
Lesley Soper & Others
Leslie Smith
Lester Noel Marceau
Lester Silby
Leta Gudmanz
Leviathan Hotel
Liam Butler
Liam Dunstan
Liam McMaster
Liam O'Daly
Libby Moore
Life Choices Charitable Trust
Lilian Lammas
Lillian Bromwich
Lincoln High School
Linda Beuker
Linda Cataloni
Linda Fowler
Linda Gaskin
Linda Hill PhD
Linda Hobden
Linda Kent-Lindsay; Dr M Stephenson; Dr J O'Reilly; Dr L Mellor; Mary Khalk; Dr Hilary King
Linda Lomberg
Linda McDougall
Lindsay May Atkins
Lindsay Zanker
Lindy Davis
Lindy Harward
Lion Nathan
Liquor Licensing Authority
Liquor Retailer
Lisa Alofi
Lisa Ann Chapman
Lisa Christian
Lisa Gardiner
Lisa Hughes
Lisa Nicol
Lisa Tresham
Lisa Wheatley
Lisbet Molving
Liz & Peter Simpson
Liz Beagley
Liz Davies
Liz Douglas
Liz Garbutt
Liz Hay
Liz Richards
Liz Turner
Lloyd & Julie Beech
Lloyd & Margaret Saunders
Lloyd Ward
Lobster Inn Tavern
Local Government New Zealand
Lois Carter
Lois Daunton
Lois McGirr
Lois Taylor
Lorna Chinn
Lorne Burroughs
Lorraine Bennet
Lorraine Doig
Lorraine Donald
Lorraine Jamieson
Lorraine Ould
Louis Inglewood
Louis Liu
Louisa Duckmanton
Louise Banham
Louise Hart
Louise Leonard
Lower Hutt Memorial RSA
Lucy Davis
Luke Collins
Luke Gaskin
Luke Ruiterman
Lydia Sosene
Lyn Burgess
Lyn Ellis
Lyn Heaton
Lyn L Milnes
Lyn Lander
Lynda Gentry
Lynda Holtom
Lynden Wallis
Lyndsey Kleiss
Lynette D Soeters
Lynette Gardyne
Lynette Hanna
Lynette Hardie Wills
Lynette Soeters
Lynley Cook
Lynn Grace
M Adamson
M B Castell
M C Fisher
M Edridge
M H Durrant
M Jardine
M Judd
M Kuiper
M M Sherry
M Talmage
M W Simpkin
M Walker
Madeleine Peacock
Maggie Narbey
Maire Leadbeater
Maire Smith
Malcolm Creagh
Malcolm Hurley
Malcolm Tweed
Malcom Geoffrey Harris
Manaia Health Primary Health Organisation
Manapouri Lakeview Motor Inn
Manawatu Health Promotion Development Group
Mangakino Safer Community Group
Manukau Alcohol Action Group
Manukau City Council
Manukau City Council Pacific Island Advisory Committee
Manurewa-Clendon Community Action Youth and Drugs Reference Group
Maraenui Community Council Trust

Marcia Jones
Marcia Madill
Marecia J J Burt
Maree Borell
Maree Leathers
Maree McLeay
Marg Jackson
Margaret &
Malcolm McPherson
Margaret Baillie
Margaret Bell
Margaret Bloxham
Margaret Bond
Margaret Duncan
Margaret Dunton
Margaret Faulkner &
Dr Judith Aitken
Margaret Feist
Margaret Guthrie
Margaret Gwynn
Margaret Hollis
Margaret Hopkins
Margaret Houghton
Margaret Howcroft
Margaret Hughes/Nichola
Finnie/Deane Lynch/
Deb Killock/Barbara Aitken
Margaret Jackson
Margaret L Sale
Margaret Larsen
Margaret Sissons
Margaret Springett
Margaret Stodart
Margaret Taylor
Margaret Thomson; Nancy
Lawrence; M Natusch
Margaret Ward
Margaret Williams
Maria Stubbe
Marian Clement
Marianne Wilson
Marie Lockie (2)
Marie Purchase
Marie Reveley
Marilyn Hunter
Marilyn McCoy
Marion & Richard Hodson
Marion Jones
Marion Stevens
Mark Bentley
Mark Champion
Mark Cooper
Mark D McNicholl
Mark Disbury
Mark Dorsey
Mark Kirby
Mark Lewis
Mark McGuinness
Mark Price
Mark Robertson
Mark Stewart
Mark Whitaker
Mark Wood
Marlborough
Youth Council
Marleina Te Kaawa
Martin A Kennedy PhD
Martin Bennett
Martin Ferguson
Martin Hill
Mary Bateman
Mary Carmel Joyce
Mary D Woodward
Mary Dowson
Mary Edwards
Mary Harte Barry
Mary Hawkins
Mary Jo Gagan
Mary McGiven
Mary Nola
Mary Richardson
Mary Rose
Mary Ryan-Howan
Mary Sanson
Mary Smillie
Mary Tipoki
Maryse Stanton
Massey University
Masterton District Council
Mathew Walton
Matsons Brewery Ltd
Matt Burgess (VUW)
& Eric Crampton
(Canterbury University)
Matt Taylor
Matt Williamson
Matthew and Nicky
Prestidge
Matthew Clifford
Matthew Elmhirst
Matthew Eru Wepa
Matthew Harvey
Matthew James Williamson
Matthew Pattemore
Matua Raki
Maui Aben
Maungakiekie
Community Board
Maungaturoto
Country Club
Maureen Christensen
Maureen Harper
Maureen Heffernan
Maureen Helman
Maureen Lyons
Maureen Newport
Maurice Hickey
Maurice Skiffington
Mavis Ladbrook
Mawhera Ministers'
Association
Max Edward
Max Neate
Max Saunders
Maxine Boag
Maxine Te
Kowhai-Rennie QSM
May Dye
Maynard Gilgen
Mayors Taskforce for
Youth Palmerston North
Mediterranean Food
Warehouse
Mediterranean Food
Warehouse Nelson
Meenal Duggal
Megan O'Sullivan
Megan Ronalds
Melanie Cooke
Melanie Desmarais (2)
Melanie Steedman
Melinda Miller
Melissa Langley
Mental Health Foundation
of New Zealand
Mercury Bay Club
Mere Elkington
Merlene Hibbs
Merryn Jones
Meryl [Surname Omitted]
Methodist City Action
Mic Dover
Michael & Anne Broad
Michael Burrowes
Michael C Ellwood
Michael Carter
Michael Clark
Michael de Hamel
Michael Geary
Michael Greening
Michael Hardman
Michael Hurrell
Michael J Williams
Michael John Hill
Michael Lester Williams
Michael Meadows Bonner
Michael Norman Dymond
Michael O'Hagan
Michael Pointon
Michael Scherer
Michael Sinclair
Michael Sparrow
Michael Taylor
Michael Trilford
Michael Z Dzech
Michaela Jane Taylor
Michaul Goldstein
Micheal J L McEwen
Michele Cadman
Michella & Trevor
Brosnahan
Michelle Barnard
Michelle Brewerton
Michelle Edwards
Michelle Taylor
Michelle Thompson
Michelle Wyper
Midhirst Tavern
Mike Ardagh
Mike Austin
Mike Binis (2)
Mike Bradley
Mike Conroy
Mike Davies
Mike Gallagher
Mike Hickey
Mike Jackson
Mike Parkes
Mike Stringer
Mike Tonks
Mike Whitton
Miles Farrell
Ministry of Women's Affairs
Ministry of Youth
Development
Mino'aka Kapuaahiwalain-
Fitzsimmons
Mirjana Vilke & Others
Mo Pettit
Moira Winsome Davey
Molly Aitchison
Monica Goulden
Mosgiel Tavern
Mothers' Union
Auckland Branch
Mount Greens Sports Inc
Mount Ocean Sports Club
Mr & Mrs P A Christie
Mrs Cornelia van Werkum
Mrs D Fryett
Mrs Dale MacLeod
Mrs Kaye Sinclair
Mrs Marion Hickey
Muriel Joan Allott
Murray &
Dorothy Wakelin
Murray Allan McMillan
Murray Brown
Murray Edgar
Murray Gardyne
Murray Hayes
Murray Jansen
Murray Levings
Murray MacDonald
Murray McCaskey
Murray Payton
Murray Ramsay
Murray Robertson
Murray Stuart
Murray Trenberth
Murray V Smith
& Yvonne Smith
Murray W Rowden
Myk Rushton
Myrle Bunn
Myrtle Brell
N J Tanner

N R Hill
N R McCann
N Sewell
Nadia Freeman
Nan Kingston Smith
Nancy Betts
Nancy Enriquez
Nancy Hammond
Nanette Alexander
Nani [Surname Omitted]
Naomi Spinks
Napier Cosmopolitan Club Inc
Napier Pilot City Trust
Nartesha Matthews
Natalia Taylor
Natalie Duffy
Natasha Cully
Nate Moore
Nathan Clark
Nathan Johnson
Nathan Millar
Nathan Rush
National Advisory Group on Tertiary Student Drinking
National Committee for Addiction Treatment
National Council of Women – Hutt Valley
National Council of Women Christchurch Branch, Women's Focus Committee
National Council of Women New Zealand
National Hospitality
National Organisation for the Reform of Marijuana Laws New Zealand Inc
National Spiritual Assembly of the Baha'is of New Zealand
Natsuyo Gordon
Neang Mao
Neil Denby
Neil Harrap
Neil K & E Jean Mander
Neil McIntosh
Neil Price
Neil R Morris
Nelida Johnston
Nelson Bays Community Law Service
Nelson City Council
Nelson Marlborough District Health Board
Nelson Residents Association
Nelson Youth Council
Neroli Boschetti
Nery Howard
Neville & Patricia Prestidge
Neville Dawes
Neville Downes
Neville Elvin
Neville Nielsen
Neville Parry
Neville Saunders
New Plymouth District Council
New Zealand Aotearoa Adolescent Health and Development
New Zealand Association of Dairies Groceries and Small Businesses
New Zealand Automobile Association (AA)
New Zealand College of Mental Health Nurses
New Zealand College of Public Health Medicine
New Zealand Council of Christian Social Services
New Zealand Defence Force
New Zealand Drug Foundation
New Zealand Federation of Graduate Women Inc
New Zealand Fire Service Commission & United Fire Brigades Association
New Zealand Fruit Wine and Cider Makers Association
New Zealand Grey Power Federation Inc
New Zealand Hospitality Training Ltd
New Zealand Hotel Council
New Zealand Injury Prevention Strategy Secretariat
New Zealand Institute of Liquor Licensing Inspectors Inc (NZILLI)
New Zealand Licensing Trusts
New Zealand Nurses Organisation
New Zealand Police
New Zealand Police Association
New Zealand Public Health Association – Canterbury Branch
New Zealand Retailers Association
New Zealand Sports Cafes
New Zealand Symphony Orchestra
New Zealand Television Broadcasters' Council
New Zealand Winegrowers
New Zealand Medical Association
Newell Grenfell
Newspaper Publishers' Association
Nga Miro Health Charitable Trust
Ngaire Birch
Ngaire Button
Ngaire Farrell
Ngaire Robinson
Nia Marx
Nichola Rosanowski
Nick Clarkson
Nick Dowson
Nick Jackson
Nick Kirkman
Nicky Goh
Nicky Hampshire
Nicky Handy
Nicola Banks
Nicola Berentson
Nicola Short
Nicola Walsh
Nicolas Gibbens
Nicole Hodkinson
Nigel Cairns
Nigel Howcroft
Nigel Loughton
Nigel Ritson
Nigel Robertson
Nigel Rushton
Night 'n Day Foodstores Limited
Niki Tzirtzilakis
Nikki [Surname Omitted]
Nikki Beazley
Nikki Mollet
Nina Lopes
NingNong Group
Nita Carol Knight
Noel Consedine
Noel Dalton
Noel Ellison
Noel Ferguson
Noelene & Ivan Ford
Noelene Diggs
Noelene Pahl
Noelene Vincent
Noelene Webb
Noeline Burchett
Noeline Gannaway
Nola Tandhi
Nora Calvert
Nora Thompson
Norma Pheasant
Norman Vincent Stead
Norman, Bethany & Stephanie Rigby
North Shore City Council
Northern Hospitality Management Ltd
Northland District Health Board
Odette Haley
Odyssey House Trust
Ola Thorsen
Olive Matthews
Olive Maxwell (2)
Olivia Johnson
Olivia Prieto
Opioio Treatment Service
Oranga Community Centre Incorporated
Oscar Dowson
Otago District Health Board
Otago University, Centre for Theology and Public Issues
Otago University, Injury Prevention Research Unit
Otago University, Student Services
Otahuhu College
Otaki & District Memorial RSA Inc
Otara Community Action
Otara Health Incorporated
Owen Leicester
Oxford Workingmen's Club & MSA
P A Blackwell
P Brough
P E Hardie
P Freeman
P Jackson
P Prior
P X Read
Pa & Ma McDonald
PACIFICA Tamaki Branch (2)
Paige Parker
Paihia and Districts Residents and Ratepayers Association Inc (2)
Pakuranga Community Board
Palmerston North City Council
Palmerston North Cosmopolitan Club
Palmerston North SafeCity Trust
Palmerston North Street Van Inc
Pam Jackson
Pam Pryce
Pam Sexton
Pam Sinclair
Pamela Bernard
Pamela W Bell
Pamela Welch
Panmure Business Association
Papakura Club Inc
Papakura District Council
Papamoa Progressive Association
Papatoetoe Community Board of Manukau City Council
Papatoetoe Cosmopolitan Club Inc

Parents Inc
Parish Council of St Andrew's Presbyterian Church
Pasifika Injury Prevention Aukilana (PIPA)
Pat & Don Jansen
Pat Best
Pat Dean
Pat Howie
Patricia Conradson
Patricia Duncan
Patricia Jenkin
Patricia Lemberg
Patricia McMillan
Patricia Millichamp
Patricia Murchison
Patricia Norton
Patricia Weir
Patrick Deady
Patrick O'Leary
Patsy Umuroa
Pattana Downes
Paul & Andrea Lloyd-Jones
Paul & Julie Hignett
Paul A Williams
Paul Andrews
Paul Ashton
Paul Bridgman
Paul Christoffel
Paul Clark
Paul Currie
Paul Gibson
Paul Hollis
Paul Kang
Paul Melmoth
Paul Millar
Paul O'Connor
Paul Phillips
Paul Rankin
Paul Schreuder
Paul Silvester
Paul Sinclair
Paul Tetley
Paul Zammit
Paula Hanekom
Paula Robinson
Paula Taylor
Paulette Medland
Pauline Downing
Pauline Law
Pauline Morris
Pauline Whyte
Pearl Phippen
Pegasus Health
Penelope Austin
Penelope Scott
Pepe Agius
Pernell Erskine
Perry Tai
Pete Kiley
Pete Rathod
Peter [Surname Omitted] (2)
Peter Adolph
Peter Armstrong
Peter Baars
Peter Beck
Peter Boyes
Peter Briggs
Peter Carpenter
Peter Day
Peter Downes
Peter Fairweather
Peter Galvin
Peter Hartnell
Peter Hickey
Peter Houghton
Peter Innes-Jones
Peter Jacobs
Peter Jamieson
Peter John Bell
Peter John Llewellyn Fisher
Peter K Chapman
Peter Key
Peter Lander
Peter Nixon
Peter Northway
Peter Power
Peter Ruhen
Peter Ryan
Peter Salter
Peter Simpson
Peter Sinclair Mumby
Peter William Cotterill
Peter Wyper
Petone Working Men's Club and Literary Institute Inc
Phebe Taylor
Phil Waters
Philip & Glenda Stewart
Philip Arthur Henry McConkey
Philip Grimmett
Philip Groom
Philip Macdiarmid
Philip Sherry
Philippa Howcroft
Philippa Sandison
Phill Wallace
Philleen Macdonald
Phillip Lee (3)
Phiona Puhora
Phyl Edwards
Phyllis Irvine (2)
Phyllis Ross
Pia Laurin
Piki Kotuku Te Awhi Hinengaro
Pikihuia O'Brien
Pip Wrenn
Polladio Holdings
Poplar Lanes Business Association Inc
Porirua City Council
Porirua City Council Youth Advisory Group
Porirua Healthy Safer City Trust
Porirua RSA
Porto Bello Bar & Grill
Presbyterian Church of Aotearoa NZ
Presbyterian Support (Upper South Island)
Prime Hotels Wellington
Priscilla Blanchet
Prison Fellowship Inc
Problem Gambling Foundation
Professor Pete Ellis
Professor Richard Beasley
Progressive Enterprises
Public Health Association
Public Health Service, MidCentral Health
Public Health South
Public Notices
Pukekawa Wehi
Queenstown Lakes District Council
Queenstown United Against Alcohol Related Violence
Quentin Roberts (2)
R F Tozer
R G Dyson
R G Norris
R Hardie
R M Stark
R N Warner
R O Cunningham
R P Stockley
R Pearson
R V Honis
R W Collins
R W Parry
R Warner
Rachael Harry
Rachel A Clarke
Rachel Clark (4)
Rachel Danilo
Rachel Eyre
Rachel Harper
Rachel Johnstone
Rachel Masters
Rachel Ryan
Rachele Morris
Radio Broadcasters Association
Rae Keightley
Raeburn Bockingham
Raewyn Agate
Raewyn Fish
Raewyn Galvin
Raewyn Smith
Raewyn Webb
Rahera Biddle
Railway Tavern Amberley
Railway Tavern Ltd
Rainier Enriquez
Raj Nayaran
Ralph Penno
Ralph V Corlett
Randi Hutchinson
Rangimarie Morris
Rangitikei Club Inc
Rangitikei District Council
Raphael Harrow-Hodgkinson
Rawiri Evans
Rawiri Residents Association
Ray Johnstone
Ray O'Connell
Ray Woolf
Raymond Cresswell
Raymund Enriquez
Rebecca Boag
Rebecca Brown
Rebecca Everdon
Rebecca Gordon
Rebecca Judd
Rebecca L Armstrong
Rebecca Milne
Rebecca Roe
Rebekah Campbell
Recovery Resources
Regan Taigel
Regional Public Health (Wellington)
Rehia McDonald
Reihana Ngatona
Renee Edge
Renny Robertson (2)
Rev Robin Smith
Rex Calton
Rex Massey-Molloy
Rhiannon Rogers
Rhys Morgan
Riccarton/Wigram Community Board
Richard Baldwin
Richard Drew
Richard Jaffray
Richard Kelsey
Richard Kennedy
Richard McKenzie
Richard McLeod
Richard Northey
Richard Rimer
Richard Savory
Richard Sherriff
Richard Sullivan
Richard Wigelworth
Richard Wilson
Richmond Workingmen's Club & MSA
Rina Kennerley
Ripekapaia Ryan-Humphreys
River Paton

RM Pollard
Rob Ballantyne
Rob Browne (2)
Robert & Alison Smith
Robert Allen Simpson
Robert Blair
Robert Carr
Robert Cotty
Robert Cunningham
Robert Dudley (2)
Robert F Elwood
Robert Frelan
Robert Geoffrey Dawson
Robert Glennie
Robert Hilligan
Robert Holland
Robert Humphreys
Robert John Mackay Crawford
Robert Miedema
Robert Myers PhD (3)
Robert Ritchie
Robin & Maureen Gunston
Robin Donaldson
Robin Fletcher
Robin Hoare
Robin White
Robyn Bridgman
Robyn Burnett
Robyn Chaston
Robyn Dale
Robyn Drummond
Robyn Howden
Robyn Jackson
Robyn Northey
Robyn Reid
Robyn Vass
Robyn Walters
Rochelle Hubbard
Rod Ford
Rod McDonald
Rod McIntyre
Rod Waugh
Rodger Smith
Rodney Biggar
Rodney Chambers
Rodney District Council
Rodney Giddens
Rodoniel Enriquez
Roger Blakey
Roger Driver-Burgess
Roger Ewer
Roger Green
Roger Pheasant
Roger Stanley Beswetherick (2)
Roly Hammond
Roma van Maanen
Roman S Novak
Romola McKay
Ron & Patricia Clouston
Ron Brown
Ron Monaghan
Ron Sproston
Ron Taylor
Ron Van Deun
Ronald Houghton
Ronald Webb
Rosa Cochrane
Rose & Shamrock Village Inn
Rose Ashley
Rose Stone
Rose Whetu-Boldarin
Roseanne Williams
Rosemary Ferguson
Rosemary Matthews
Rosemary Viskovic
Roslyn Ballanyne
Ross & Helen Merrick
Ross Dalton
Ross McKerras
Ross Stewart
Ross Taylor
Rotorua District Council
Rotorua Safe Community Steering Group
Roxanne English
Roxanne Ginden
Roy Fraser
Roy Woods
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Royal Australasian College of Surgeons
Royal Australian and NZ College of Psychiatrists
Royal Australian and NZ College of Psychiatrists, Faculty of Child and Adolescent Psychiatry
Royal New Zealand Plunket Society Inc
Royal New Zealand Returned and Services Association
Royce Ponga
Ruby's Bar & Restaurant
Russell Blair
Russell Brown
Russell School Board of Trustees
Ruth & Alan Bate
Ruth Barrowclough
Ruth Bristowe
Ruth Craighead
Ruth Dudfield
Ruth Forde
Ruth Gerzon
Ruth Gray
Ruth Pickering
Ruth Spearing (2)
Ruth Stewart
Ruth Williamson
Ruth Wilson
Ruth Woods
Ryan Smythe
S Brown, S F Brown & V J Neverman
S C Ellis
S Hall
S Heinga Browen
S Hollis
S M Ewing
S Mackersey
S Macrury
Sach McLeod
Safe and Sustainable Transport Association
Safer Christchurch Injury Prevention Coordinating Committee
Safety Advisory Board of Palmerston North
Sally Darragh
Sally Whitelaw
Salmond College
Salvation Army
Sam Arcus
Sam Bartels
Sam Broughton
Sam Tekima
Samantha Greening
Samuel Rosser
Sandie Cordes
Sandra Davies
Sandra Goodchild
Sandra Malone
Sandra Payton
Sandra White
Sandro Seites
Sapphire Manihera
Sarah Grant
Sarah Halatutavaha
Sarah Haldane
Sarah Helm
Sarah Hilligan
Sarah Madigan
Sarah Taylor
Sarah Williams (2)
Savvie Bar
Scott Buchanan
Scott Dennison
Scott Morrow
Scotty Barnett
Seabreeze Café
Sean Adhitt
Sean O'Connor
Selwyn District Council
Sensible Sentencing Trust, Napier
Sensible Sentencing Trust, Christchurch Branch
Sereima Cokanasiga
Seventh Day Adventist Church North New Zealand Conference
Shane & Catherine Blummont
Shane & Lesley Moon
Shane [Surname Omitted]
Shane Tipene
Shannon Rowe
Sharee Williams
Sharon Hollis
Sharon Matthews
Sharon May RN
Sharon North
Sharon Parry
Sharon Rutherford
Shay Smith
Shelley Hughes
Shelley Johnston
Shelley Spenley
Sheryl Baker
Sheryl Love
Sheryl Monaghan
Shirley Alexander
Shirley Arabin
Shirley Baker
Shirley Bright
Shirley Crabbe
Shirley Dean
Shirley Evans
Shirley Marston
Shirley Oakley
Shirley Strong
Shirley/Papanui Community Board
Shona Munro
Shona Taylor
Shontel Linn
Siliaga Ale
Simeon Copsey
Simina Macovei
Simon Adams
Simon Kopruch
Simon O'Sullivan
Simon Taylor
SKY Network Television Ltd
Skycity Entertainment Group Ltd
Smitty's Sports Bar & Grill
Society Of Beer Advocates
Society of Medical Officers of Health
Sonia Cameron
Sonia Sinclair
Sonia Thompson
Sonja Rowe
Sophia Habib
Sophie Jackson
Sophie Murrow
Sophie Shrimpton
South Canterbury District Health Board
South Taranaki District Licensing Agency
South Wairarapa District Council

South Wairarapa Workingmen's Club

Southland District Council

Southland District Health Board

Southland Interagency Forum Inc

Specialised Services International Ltd

Spokes Canterbury

Sporting Clubs Association of NZ

St Aidan's Church

St Andrew's Presbyterian Church

St John's Club Inc

St Margaret's Presbyterian Church

St Mark's Presbyterian Church

Stan Beavon JP

Stanley Harding

Statement by Representatives, Heads and Leaders of Doctors and Nurses of New Zealand

Steamers Carvery & Bar

Stella Torvelainen

Stephan Dyer

Stephanie Townsend

Stephanie Windsor

Stephen & Janet Judd

Stephen & Sandra Rowe

Stephen Atkinson

Stephen Baker

Stephen Bird

Stephen Green

Stephen Greenfield

Stephen Jelley

Stephen John Kimberley

Stephen Mark Pool

Stephen May

Stephen Petrie

Stephen Russell

Stephen Shepherd

Stephen TeOhia Ututaonga

Stephen Walmsley

Steve Lockie (2)

Steve Williams

Steven (Tipene) Pickett

Steven Gwyn

Stilettos Revue Bar

Stokes Valley Cosmopolitan Club Inc

Strvan Robertson

Stuart Anderson

Stuart Browne

Stuart Munro

Stuart Paterson

Stuart Williamson

Students Against Drunk Driving

Sue Arbaugh

Sue Blyth

Sue Gordon

Sue Mace

Sue Peacocke

Sue Philipson

Sue Pickering

Sue Ramsay

Sue Rowe

Sue Teague

Sue Thompson

Sue Williams

SuperLiquor Holdings Ltd

Suresh Dayal

Surf n Sounds Whangamata

Susan Austin

Susan Baker

Susan Bull

Susan McQueen

Susan Millar

Susan Ramsay

Susan Thin

Susan Woods

Suzanne East

Suzanne M W Pierce

Suzanne Steel

Suzy Wells

Swelarn Kingi

T James

T P Doherty

T Pennell

T Tyrrell

T W Nicholls JP

Tairawhiti District Health

Tammy Viitakangas

Tangiora Thomas

Tania Evans

Tania Gardiner

Tania Hancott

Tania Hawkeswood

Tania Noa

Tanya Percy

Tara-Lee Brennan

Taranaki District Health Board

Tasman Country Hotel Association

Taupaki Walker

Tauranga Citizens Club

Tauranga City Council

Tauranga City Council & Western Bay of Plenty District Council

Tauranga Game Fishing Club

Te Atatu Memorial RSA

Te Kahui Hauora Ngati Koata Trust

Te Runanga o Ngai Te Rangi Iwi Trust

Te Tai Tokerau Branch, Public Health Association

Te Whare Marie Maori Mental Health Service

Te Whare o Ruruhu o Meri

Teia Whiting

Terence Fabish

Teresa Baguley

Teresa McLean

Teresa Snell

Teressa Nicholson

Teressa Rooney

Terrance Ngatai

Terresa Williams

Terri Simpkins

Terry Cox-Smith

Terry Greenham

Terry Hagan

Terry Howard Thomsen

Terry Hurdle

Terry McInness

Terry Steenson

Tessa Owen

Thalia Stewart

The Clare Inn

The Collaborative Trust

The Commercial Hotel, Murchison

The Community Drug and Alcohol Service, Wellington

The Crib Ponsonby

The Flying Moa

The Free House

The Jolly Potter Bar & Café

The Jolly Roger Pub

The Kiwi Party

The Mill Liquorsave

The New Zealand College of Clinical Psychologists

The Pier Hotel

The Roost Café

The Royal Hotel

The Skyline Ltd

The Village Wine Trader Ltd

The Waterfront Hotel

Thea Kloppenburg

Thea Simays

Thelma Cane

Theresa Ruth Scott (2)

Therese O'Connell

Thirsty Weta

Thomas Dick

Thomas Fielding

Thomas Fuller

Thomas John Innes

Thomas Lopes

Three Doors Up

Tiffany Olsen

Till Notel

Tim Kane

Tim Perry

Tim Ronke

Tim Shadbolt

Tim Stewart

Tim Woods

Timaru District Council

Timaru District Safer Communities Committee

Timaru District Youth Access to Alcohol Group

Timothy John Matsis

Timothy Roberts

TOA Pacific Adult Literacy Programme

Toby Broomhall

Todd Bell

Todd Burgess

Todd Godfrey

Toi Te Ora – Public Health Service

Tom Law

Tom Mosley

Tom Saunders

Tom Scott

Tomas Sobek

Toni Ferris RN

Tony & Melva Burges-Short

Tony Downing

Tony Hartnett

Tony King

Tony Milne

Tony Murray

Tony Wanmann

Tony Woodcock

Tourism Industry Association of New Zealand

Touzelle Wilson

Tracey MacRae

Tracy Henderson

Tracy McIlroy

Trade Me

Trent Dallimore

Trent Ivil

Trev Barnett

Trev Den Barrs

Trevor & Stella Wade

Trevor Arthur

Trevor Campbell Shaw

Trevor Currie

Trevor Foster

Trevor Jones (2)

Trevor Middleton

Trevor Morley

Trevor Walker

Tricia Cheel

Trinity Group

Trish Bullard

Trish McCarthy

Tristan Tate

Troy Dekkers

Trudy Meredith

Tui Horne

Tumai mo te Iwi Primary Health Organisation, Kapiti Primary Health Organisation, Capital Primary Health Organisation

Tyla Welsh

UA Zeppa Ltd

Upper Hutt City Council
V B Turton
V Green
V Hildreth
V J Nicholls
V M Coupe
Valerie Black
Valerie Fuller
Valerie Walker
Valmai Grace
Valmaye Dawson
Vance Fulton
Vanessa Christie
Vanessa Petero
Verna Cooper
Verna Morris
Veronica Williams
Vibrant Invercargill
Vicki Graham
Vicki O'Brien
Vicki Patton
Vicki Wilde
Vicky Cole
Vicky Hegarty
Victim Support
Victoria Davis
Victoria King
Victoria Oliver
Victoria University Reduce Harm Committee
Victory Community Health Centre
Vieke Scherer
Virginia Bell
Virginia Maskill
Vision Network
Viv Whimster
Vivienne Baker
Vivienne Bouttarath
Vivienne Ellis
Vivienne Gillan
Vivienne Seiler
Vivienne Shepherd
W Bettle
W Dodds
W Gardner
W H Vink
W Ingham
W Lucas
W M Easther
Waikanae Chartered Club Inc
Waikato District Council
Waikato District Health Board
Waikato/Hauraki Monthly Meeting of the Religious Society of Friends
Waimakariri District Council
Waimakariri Safer Community Council
Wainuiomata Community Board
Waipa District Council
Wairoa District Council
Waitakere City Council
Waitaki District Council
Waitaki Safer Community Trust Inc
Waitemata District Health Board
Wakatipu Community Church
Walter Bell
Wanganui Club Inc
Warren Jones
Warren Knox
Warwick Badham
Warwick Kingston Smith
WaterSafe Auckland
Watershed Bar & Restaurant
Wayne Cameron
Wayne Carter
Wayne Dempsey
Wayne Kane
Wayne Kingi
Welcome Bay Community Church
Wellington City Council
Wellington Community Law Centre and Salvation Army Youth Services
Wellington Inner City Residents and Businesses Association
Wellington Regional Transport Committee
Wendy Ashcroft
Wendy Belworthy
Wendy Harnett
Wendy Huang
Wendy McInnes JP
Wendy Noble
Wendy Talbot
West Auckland Trust Services Limited
Western Bay of Plenty District Council
Western Bay of Plenty Youth Access to Alcohol
Westland District Council
Whakaata Tohu Tohu/Mirror Services
Whakamana te Tangata of Te Korowai Hauora O Hauraki
Whakatane District Council
Whanganui District Health Board
Whanganui Youth Access to Alcohol
Whangarei District Council
Whitianga Hotel
William Jacobson
William Kirkham
William Riley
Winn Tipping
Women's Health Action Trust
Women's Health Section, New Zealand Nurses Organisation
Y Price
Young Greens
Youth Advisory Group, Lakes District Health Board
Youth and Cultural Development Society
YouthLaw Tino Rangatiratanga Taitamariki
Yuleen Devery
Yvonne Chilton
Yvonne Curtis
Yvonne Hogan
Zach Edgar
Zach Gardner
Zoe Windner

Along with seventeen submissions with anonymous or illegible names.

Appendix 3

Law Commission consultation meetings

Public meetings

28 August	Hamilton
31 August	Palmerston North
9 September	Wellington
15 September	Invercargill
17 September	Christchurch
21 September	Auckland Central
22 September	Auckland South
25 September	Nelson
1 October	Dunedin

ALAC targeted consultation meetings

17 August	Cannons Creek, Porirua (2)
18 August	Masterton
20 August	Eastern Institute of Technology, Napier Napier War Memorial Convention Centre
21 August	Alcohol Healthwatch, Auckland Parnell, Auckland
24–25 August	Hockey Stadium, Whangarei (3) Boggats Bar and Restaurant, Whangarei
25–26 August	Pan Industry Symposium, Auckland Auckland Cathedral, Auckland Otara Music Arts Centre, Auckland (2) ALAC office, Auckland Fickling Centre, Mt Albert, Auckland
27 August	Waikato University, Hamilton Hamilton Gardens, Hamilton Hamilton city
3–4 September	Queenstown Liquor Licensing Inspectors Conference, Queenstown ALAC, Queenstown
7 September	Novotel Rotorua (2)
8–10 September	Hutt City, Wellington (3) Cutting Edge Conference, Wellington
14 September	Otago University, Dunedin (3) Dunedin City Council Southern Cross Scenic Circle Hotel, Dunedin

15 September	Gore District Council, Gore
	Invercargill
16 September	Christchurch City Council, Christchurch (2)
17 September	Rydges Hotel, Christchurch
	Waimakariri District Council, Rangiora
27 October	Wellington

Appendix 1

Marsden Jacob Associates report

THE TREASURY
Kaitohutohu Kaupapa Rawa

2 February 2010

Rt Hon Sir Geoffrey Palmer
President
New Zealand Law Commission
PO Box 2590
WELLINGTON

Dear Sir Geoffrey

The benefits, costs and taxation of alcohol: towards an analytical framework

Following our discussion a few weeks ago I undertook to write to you outlining Treasury's thoughts on the report prepared for the Commission on the benefits, costs and taxation of alcohol by Marsden Jacob Associates.

Treasury regards the paper as a valuable contribution to the existing literature on the consumption of alcohol in New Zealand. The paper presents a balanced consideration of both the economic costs and benefits and should serve to advance the debate on the appropriate policy settings.

In particular, the paper benefits from distinguishing between different value judgements and their analytical implications, which has been a major point of contention in recent academic disputes. While aspects of the paper remain open to challenge, such as estimates of price elasticities for moderate and heavy consumers of alcohol, this is unlikely to undermine the main conclusions of the report.

The report is notable for departing markedly from recent analysis of the cost and benefits of alcohol consumption in the New Zealand and Australian context by relying heavily on the policy-analytical framework developed at the University of Sheffield. This framework has not been previously considered by the Treasury. Given the dependence of the report's conclusions on this framework, we consider that some form of independent quality assurance would be prudent.

In a very broad sense the report is consistent with the Treasury's current approach to tax policy, which has been informed by the recent Tax Working Group (TWG) process. Treasury recognises the need to reduce taxes on capital and labour and supports funding these reductions through increases in taxes least likely to reduce welfare. Welfare losses from excises taxes on alcohol are likely to be lower than for many other forms of tax.

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More specifically, the report relies on recycling all revenue raised from increased excise taxes directly to taxpayers via a rebate or a reduction in other taxes. By doing so, the report concludes that welfare can be enhanced despite conservative consumer sovereignty assumptions. This revenue constraint needs to be clearly conveyed when any policy recommendations to increase the excise rate are made. In particular, using any increased excise revenues as "tied taxes" to fund the costs to Government of alcohol consumption would violate this constraint.

Overall, the paper provides useful insight into the merits of changes to excise taxes on alcohol. However, the analysis assumes that other policy settings remain unchanged. Treasury considers that any attempts to reform New Zealand's liquor laws should consider a range of legislative and regulatory policies. As the Marsden Jacob Associates paper acknowledges, to the extent that other policies are implemented and are effective, less reliance might be placed on an increase in the excise tax to reduce alcohol-related harms.

Yours sincerely

John Whitehead
Secretary to the Treasury

2

The benefits, costs and taxation of alcohol: towards an analytical framework

A report prepared
for the New Zealand Law Commission

http://www.marsdenjacob.com.au

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This report may be cited as: The benefits, costs and taxation of alcohol: Towards an analytical framework, Marsden Jacob Associates 2009.

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Key points

1. A significant increase in New Zealand's alcohol excise tax, of 50 or even 100 per cent, would yield net economic benefits, reducing the call on the public budget thus allowing either tax reform and/or a reduction in taxation levels and would be worthwhile from the community's point of view in terms of both efficiency and equity.

2. There are several separate, additive economic rationales for an increase in the rate of excise.

   First, if alcohol were a normal economic good (which it is not), then the prime public policy interest would be as a tax base. Since price elasticity of demand for alcohol is low, the excise on alcohol is a highly efficient tax. In contrast, the available evidence suggests that the progressive income tax is not. Thus, consistent with Ramsey's theory of optimal taxation, the net cost of dead weight efficiency losses from all taxes would be reduced and New Zealand would be better off by an increase in the rate of excise on alcohol and a reduction in the rates of income tax.

   Second, since alcohol is associated with large (net negative) consumption externalities, the excise rate on alcohol can be increased so that consumers better recognise the (high) public costs of alcohol. As demonstrated by Pigou, such tax increases would be welfare improving. MJA's threshold analysis and order of magnitude benefit cost analysis indicate that excise increases of at least 50 or 100 per cent are desirable. Potentially, there are large reductions in the social costs of alcohol consumption, while there are only small net costs in terms of forgone private benefits.

   Third, since alcohol is judged by many to involve elements of both short run and long run irrationality, an increase in the excise rate is likely to be welfare improving since, while reducing the small consumer surplus below the corrected demand schedule, it would also reduce costs unmatched by benefits.

3. The criticism that previous alcohol cost studies ignored the benefits of alcohol consumption (particularly consumer surplus) is warranted, but is found not to be material where the policy under assessment is an increase in the excise tax. This is because the reduction in consumer satisfaction (surplus) is little more than the revenue from the increase in excise tax.

4. An excise tax increase, like a policy of minimum price floors, differentially targets the cheapest forms of alcohol, increasing these prices more. Since, heavy drinkers, and teenagers (and likely Maori) preferentially purchase cheap forms of alcohol, the reductions in consumption are likely to be greatest for problem groups.

5. But an increase in excise tax does not suffer from the main disadvantage of minimum pricing, which has the same result as a cartel: excessive industry profits (a large proportion of which flow offshore).

6. While a policy of increasing alcohol excise has strong support, our analysis has not addressed the wider question of the makeup of the desirable full portfolio of policies to address alcohol-related harms in New Zealand.

7. The analysis assumes other policy settings (such as the minimum legal drinking age or the current blood alcohol limit of 0.08 per cent) are unchanged. To the extent that other policies are implemented and are effective, less reliance might be placed on an increase in the excise tax to reduce alcohol-related harms. However, there is widespread evidence that an increase in excise, and therefore prices, is a highly effective policy measure.

8. An assessment of the optimal policy portfolio would require a comprehensive economic modelling exercise, possibly in collaboration with Australian researchers, combining medical (epidemiological) and economic expertise. A research directions checklist is provided as an appendix to the report. However, the search for perfection in policy analysis should not an excuse for delaying an increase in the rate of excise or other reforms of first order importance.

11 December 2009

Introduction*

1. Alcohol is no ordinary commodity.[1,2] In medical terms, it is a toxin with a complex epidemiology. In legal terms, it is a licit drug whose sale and consumption are highly regulated. In economic terms, consumption levels and patterns are associated with result in major external costs (consumption externalities), and, in the judgement of some, there are elements of both short-term irrationality (i.e., intoxication) and long-term irrationality, and/or at least, information failures.

2. The New Zealand Law Commission has requested Marsden Jacob Associates for advice on the pricing and taxation of alcohol. This advice is intended to inform the Law Commission's 'Review of Regulatory Framework for the Sale and Supply of Liquor', which is expected to be completed by March 2010.

3. The price of alcohol is a key driver of alcohol consumption levels and therefore acute and chronic harms. It follows that alcohol taxation and price regulation are potentially important instruments in the wide portfolio of policy measures available to any society to improve the balance of the benefits and costs associated with alcohol consumption.[3]

4. The imposition of a tax to correct for consumption externalities, as described by the early twentieth century English economist A.C. Pigou, requires therefore an understanding of the levels, nature and patterns of alcohol consumption and of the associated benefits and costs.

5. Assembling this information poses some particular challenges because, first, in a small country the range and frequency of relevant studies does not always match that of larger countries, and, second, the depth and breadth of knowledge on the role of and impacts of alcohol in society are changing at an accelerating rate. For instance:

   - alcohol is now recognised as a contributor to colon cancer and, therefore, a wider range of cancers;[4] and
   - the potential protective effect of alcohol consumption against ischemic heart disease has been questioned by a relatively new and major meta-analysis and subsequent papers.[5]

* We gratefully acknowledge the advice and comments of colleagues in Australia and New Zealand.

1 See the Australian National Competition Council foreword to Marsden Jacob Associates 2005, *Identifying a framework for regulation in packaged liquor retailing*.

2 Babor, T., Caetano, R., Casswell, S., et al. 2003, *Alcohol: No ordinary commodity – Research and public policy*, Oxford University Press.

3 Babor et al. 2003 and Casswell, S. and Maxwell, A. 2005, 'What works to reduce alcohol-related harm and why aren't the policies more popular?', *Social Policy Journal of New Zealand*, vol. 25, pp. 118-140.

4 See Corroa, G., Bagnardi, V. et al. 2004, 'A meta-analysis of alcohol consumption and the risks of 15 diseases', *Preventive Medicine*, vol. 38, pp. 613-619, and World Cancer Fund 2007, *Food, nutrition, physical activity and the prevention of cancer: A global perspective*.

5 Fillmore, K., Kerr, W., Stockwell, T., Chikritzhs, T, and Bostrom, A. 2006, 'Moderate alcohol use and reduced mortality risk: Systematic error in prospective studies', *Addiction Research and Theory*, vol. 14, no. 2, pp. 101-132.

6. Our approach involves several steps:

- a comparison of the key features of alcohol consumption in New Zealand, Australia and the United Kingdom;
- a review of existing studies of the benefits and costs of alcohol consumption against MJA's explicit criteria;
- a simple threshold analysis of the required reduction in external costs for a 50 per cent increase in the rate of excise to be worthwhile;
- a preliminary, order of magnitude analysis of the economic benefits and costs of raising the rate of excise on alcohol by 50 and 100 percent; and
- a more detailed examination of the appropriate definitions and measurement of consumer surplus for non-normal goods and services, such as gambling, tobacco and alcohol, where there are elements of addiction, compulsion or irrationality.

Key features of alcohol consumption in New Zealand, Australia and the UK

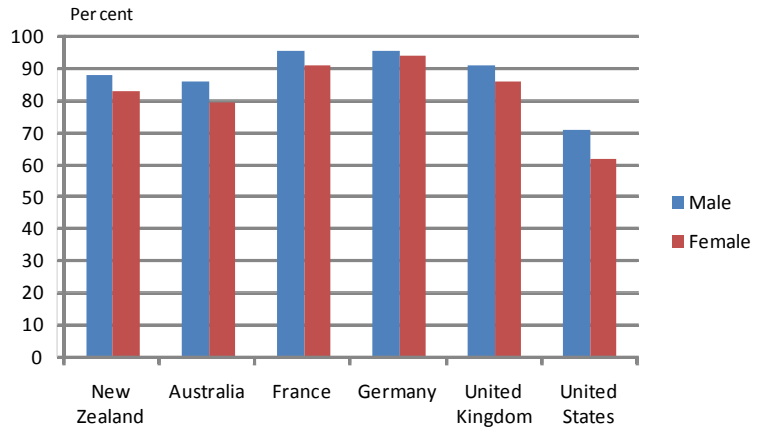
7. This section addresses the question of how similar or different (and where different) are alcohol consumption patterns in New Zealand, Australia and the United Kingdom. The more patterns are similar, the more likely that each country can draw on the research findings and policy experiences of the others. Where there are differences, understanding the differences may allow overseas data and findings to be interpreted as maximums or minimums likely to apply in New Zealand.

8. Salient characteristics of alcohol consumption across the three countries include:

   - the prevalence of drinking, which is at similar levels in New Zealand, Australia and the UK (Figure 1);
   - per capita consumption, which is comparable to Australia but lower than the UK (Figure 2); and
   - a significant prevalence of binge drinking (Figure 3), especially among young people, associated with cheap, readily available alcohol products, including Ready-to-Drinks (RTDs) and, particularly in the UK, ciders.

Figure 1: Drinkers (non-abstainers over the last year)

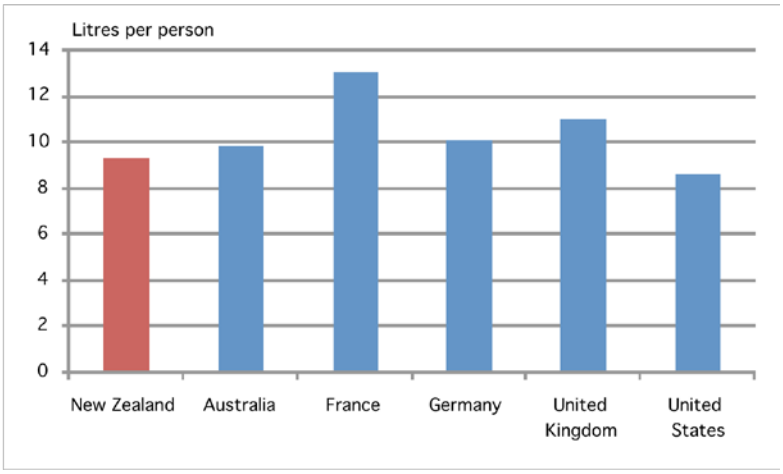
Adults



Source: WHO 2004, Global Status Report on Alcohol 2004, Table 7, p. 27.

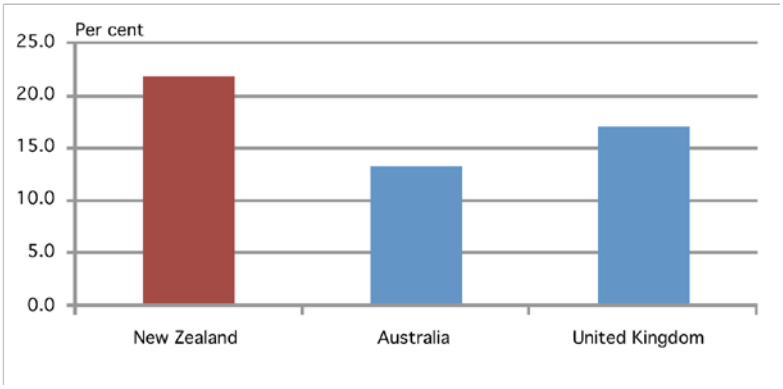
Figure 2: International comparison of per capita alcohol consumption, 2006

Persons aged 15 and over



Source: OECD Health Data 2009.

Figure 3: Prevalence of heavy episodic drinking among the adult population



Source: Ministry of Health 2009, Alcohol use in New Zealand: Key results of the 2007/08 New Zealand Alcohol and Drug Use Survey, Table 8, p. 38 and WHO 2004, Global Status Report on Alcohol 2004, Table 8, p. 28 (international data).
Notes: For New Zealand, the data relate to consumption of more than six standard drinks for males or more than four standard drinks for females on one occasion at least monthly. For Australia, the data relate to consumption of seven or more standard drinks for males (five or more for females) on any one drinking occasion at least monthly. For the UK, data relate to consumption of 6 or more drinks (4.8 or more standard drinks) on one occasion, weekly or more.

9. The major difference between New Zealand, Australia and the UK is the high prevalence of binge drinking among New Zealand's Māori population.[6] Alcohol consumption among Māori appears to be particularly associated with binge drinking, with Māori less likely than non-Māori to be regular drinkers, but more likely to engage in binge drinking when they drink.[7]

ASSESSMENT OF SIMILARITIES AND DIFFERENCES

10. In comparing New Zealand, Australia and the UK, we find noticeable similarities in the areas of prevalence of drinkers in the population and per capita alcohol consumption. Binge drinking is at similar rates in New Zealand and the UK, but, in both countries, binge drinking appears to be more prevalent than in Australia. This suggests that the share of alcohol consumption that is hazardous or harmful in New Zealand may be significantly higher in New Zealand than in Australia.

11. While patterns of alcohol consumption among Māori lend support to measures specifically targeted at binge drinking among Māori, these patterns are unlikely to impact on the applicability of Australian or UK for New Zealand data, given the broad similarities in the aggregate data that exist.

12. We conclude that, in addition to the often asserted cultural similarities, there are sufficient broad similarities in alcohol consumption to make the Australian and UK information useful and relevant (when carefully used) for comparisons, insights and first cut estimates of data that might be missing in the New Zealand case and experiences.

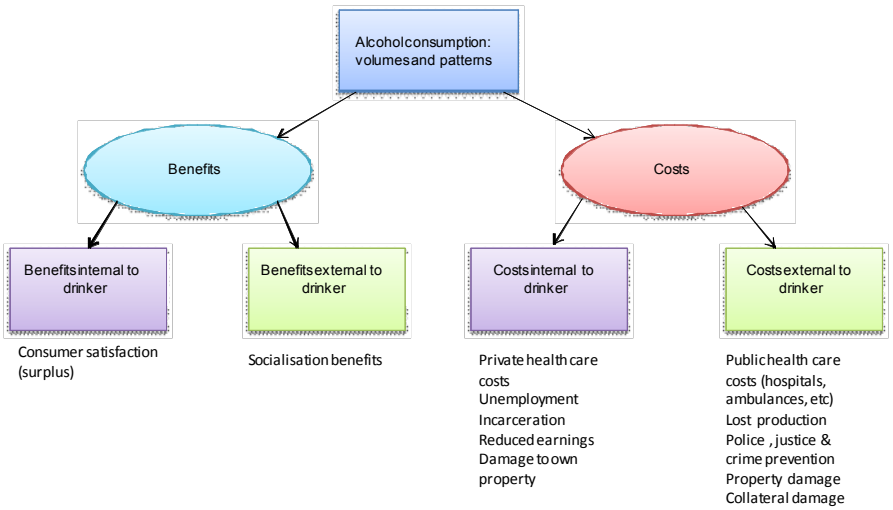
[6] New Zealand's Māori population is around 15 per cent of the New Zealand population. In contrast, Australia's Indigenous population is around 2.5 per cent of the Australian population.

[7] BRC Marketing and Social Research 2004, *The Way we drink: Final report*, p. 79.

Benefits and costs of alcohol

13. Alcohol has a pervasive role in New Zealand and similar societies and involves multiple benefits and costs to individuals and others in society. Figure 4 provides one perspective on the taxonomy of relevant benefits and costs.

Figure 4: A taxonomy of benefits and cost of alcohol consumption, with examples



BENEFITS OF ALCOHOL CONSUMPTION

14. The benefits include:

- private benefits (consumer satisfaction), internal to the drinker; and
- social benefits, external to the drinker, through the lubrication and relaxation of personal, social and business relationships.

15. The role of consumer surplus in measuring the private benefits of alcohol consumption is discussed in paragraphs 21 to 34.

COST OF ALCOHOL-RELATED HARMS

16. Alcohol consumption imposes large costs on the community through the harms it generates (Table 1), particularly through its impact on health, as measured by reductions in Quality-Adjusted Life Years (QALYs).

17. Some costs are tangible and directly impact on the government and the hospital system. These costs include, among others:

- the treatment of alcohol-related injuries or chronic health conditions;
- the administrative costs of compensation for alcohol-related injuries; and

- policing and the administration of justice associated with alcohol-induced crime.

For New Zealand, estimates of these direct costs were made by Devlin et al. (1997) and taken up in a Treasury Working Paper examining the level of the alcohol excise.[8] The understanding of the role and costs of alcohol in society has broadened, but, adjusted for inflation only, the indexed costs are of the order of $500-900 million in 2008-09.

18. BERL collated departmental estimates of the direct costs to government in 2005-06: these totalled $1,111 million. Adjusting for inflation, in 2008-09 the direct costs of alcohol to government are estimated at around $1,200 million.[9]

Table 1: Harms attributable to alcohol use

100% attributable to alcohol use	*Partly attributable to alcohol use*	
Alcoholic psychosis	Lip cancer	Gastro-oesophageal
Alcohol dependence	Oral cancer	haemorrhage
Alcoholic polyneuropathy	Pharyngeal cancer	Cholelithiasis
Alcoholic cardiomyopathy	Oesophageal cancer	Acute pancreatitis
Alcoholic gastritis	Colon cancer	Low birth weight
Alcoholic liver cirrhosis	Rectal cancer	Road injuries
Ethanol toxicity	Hepatic cancer	Fall injuries
Other alcoholic poisonings	Pancreatic cancer	Fire injuries
	Laryngeal cancer	Drowning
	Breast cancer	Aspiration
	Pellagra	Machine injuries
	Hypertension	Suicide
	Ischemic heart disease	Assault (incl. sexual)
	Cardiac dysrhythmias	Domestic violence
	Heart failure	Child abuse
	Stroke	
	Oesophageal varices	

Source: UK Cabinet Strategy Office 2003, Collins and Lapsley 2008, National Expert Advisory Commission on Alcohol (2001).

8 Barker, F. 2002, 'Consumption externalities and the role of government: The case of alcohol', *New Zealand Treasury Working Paper*, 02/25.

9 This estimate is based on BERL 2009, Table 6.7,.p. 76. As BERL note that 70 per cent of joint alcohol use and other drugs (AOD) costs are due to alcohol, 70 per cent of the $284 million of AOD costs were added on to the BERL estimate of $912 million for alcohol-related direct costs.

Table 2: Direct costs to New Zealand government and hospitals in 1991 (2008-09 dollars)

Cost item	*$ million*	*Comment*
Hospital resources	103 [a]	Includes hospital services costs for treatment of alcohol-related illness and injury. It was assumed there is no impact of alcohol consumption on primary health care or pharmaceutical use.
Accident Compensation Corporation (ACC)	42-62 [a]	Does not include income compensation payments (the cost to the community is counted in production losses, which are on top of the direct costs to government and hospitals). The range of costs is due to exclusion or inclusion of non-economic costs (which the Treasury include only up to 50 per cent of the total amount on the basis that much of the loss would be internal to drinkers).
Ministry of Transport	15 [a]	Expenditures on alcohol-related prevention programs and attendance at crashes.[b]
Police	207-411 [a]	Based on estimates of alcohol-related incidents and the costs of police time. The variation in the range is due to different assumptions around the fraction of crime that is alcohol-related.
Penal institutions	50-109 [a]	"
Community sentencing	4-7 [a]	"
Periodic sentencing	18-34 [a]	"
Court costs	59-138 [a]	"
Total	**498-888**	

a. Barker 2002 and Devlin et al. 1997 estimates, converted to 2008-09 dollars using the ratio of the average CPI in 2008-09 to the average CPI in 1991.
b. Property damage due to car crashes (or any other cause, such as arson) is not included in the estimates.

19. The costs of alcohol to an economy and its people are far wider than the direct costs to government, however, and include the following.[10]

    The trauma and distress of alcohol-induced crime. For example, the cost to government of the police taking a report of an alcohol-induced rape may be small but the trauma has a very real cost (perhaps 16 times as large).[11]

[10] There is a large, detailed literature on which specific costs should be included. See especially Single, E. et al 2003, *International guidelines for estimating the costs of substance abuse*, 2nd edition, World Health Organization, Geneva.

[11] See Roman, J. and Farrell, G. 2002, 'Cost-benefit analysis for crime prevention: Opportunity costs, routine savings and crime externalities', *Crime Prevention Studies*, vol. 14, pp. 53-92 and Miller, T., Cohen, M., and Wiersema, B. 1996, *Victim costs and consequences: A new look*, National Institute of Justice Research Report, US Department of Justice.

The loss of production and profits due to absenteeism, morbidity and mortality. The New Zealand economy is typically at full employment and the loss of labour input and efficiency due to alcohol affects the utilisation of all economic resources, both in firms and the economy as a whole. Moreover, unemployment benefits are funded from taxation which involves a distortionary effect (deadweight loss) on the economy.

The costs of alcohol-induced theft and vandalism. These costs are not simply an economic transfer to be netted out of the benefit-cost framework, leaving a focus on compliance costs alone. Agreed or contracted payments of income or assets to other parties may be defined as transfer payments and thus should be netted out of benefit-cost studies. Theft, however, is a non-agreed, non-contracted appropriation and is certainly neither welfare neutral nor welfare improving for New Zealand communities or the population as a whole. Theft also imposes a deadweight cost on the economy and reduces incentives for effort. These costs need to be recognised and, desirably, measured.

The direct costs to private citizens, including violence itself and the installation of better security, extra effort to avoid or reduce its likelihood of alcohol-induced violence.

A wide variety of other costs, which are sometimes dismissed and excluded from further consideration under the value judgement that they are internalised by the drinker. This latter exclusion ignores the fact that partners, families and communities and governments typically (and legitimately) choose to act in their own interests and/or paternalistically – that is to intervene even with mature adults, where risk-taking exceeds community norms. There is no single norm for all circumstances but Australia's NHMRC uses as a basis for developing drinking guidelines a lifetime risk of 1 in 100 from dying of alcohol related causes. [12] See Box 1 below.

20. In addition, some parts of consumer demand for alcohol may be seen as addictive, compulsive or at least ill-informed and, thus, may be described as irrational. For that part of alcohol consumption that is considered irrational, consumers will experience less than the benefits of consumption they expected. Hence, some part of the total cost of alcohol production will not be matched by consumer benefits, and this should be treated as a cost (see paragraphs 21 to 34).

[12] A common norms for tolerable risk is a probability of a single death of 1 in 1000. For examples of the use of this level of risk tolerance see UK Health and Safety Executive Publications and dam safety standards such as the risk guidelines for dam safety from the Australian National Committee on Large Dams (ANCOLD). For an economic interpretation and discussion see Marsden, J. *et al.* 2007, *Dam safety, economic regulation and society's need to prioritise health and safety expenditures,* paper presented to ANCOLD-NZSOLD Conference, Queenstown. See also Australian Medical Association 2007, submission in NHMRC Draft Australian alcohol guidelines for low-risk drinking.

Box 1: NHMRC discussion on choice of risk benchmark

Lifetime risk is a commonly used standard for evaluating the risk associated with exposure to a particular substance or situation, for instance, in evaluating what are acceptable levels of environmental poisons or food additives. The arbitrary limit often used for environmental toxins has been a risk of death of 1 in 1,000,000: that is, that the chance of death attributable to a given level of exposure over a lifetime should be no more than one in a million. This standard is used in Australia for contaminants of drinking water (NHMRC 2004).

A child drinking tap water is not choosing to take on a risk of poisoning. For such involuntary risks, the threshold of acceptable risk is therefore set very low. However, for behaviours that are seen as voluntarily adopted, such as driving a car, higher risks are routinely accepted. For example, the lifetime risk of dying in a traffic accident associated with driving 10,000 miles a year in the US has been calculated to be about 1 in 60 (Walsh 1996). From this perspective, at least some of the risks from drinking alcohol can be seen as voluntarily assumed by the drinker. On the other hand, there are harms from drinking that are not voluntarily assumed; in particular, harm to people other than the drinker. Drinking alcohol is thus a mixed case in terms of whether the associated risks are voluntary.

Judgements about the acceptability of risk presuppose that there is some benefit in undertaking the risky activity in question. However, people do not just judge risk against benefits. Characteristics such as control, familiarity, immediacy of the harm, and the catastrophic or chronic nature of the harm or benefit, all influence individual perceptions of what constitutes 'high' and 'low' risk.

The fact that risk is perceived as multi-dimensional, and judged according to its characteristics and context, makes it difficult to convey concepts of risk at a population level. The NHMRC decided on a lifetime risk of dying from alcohol-caused disease or injury of 1 in 100 (i.e. one death for every 100 people) as the basis for guidance as to what could be seen as an acceptable risk from drinking in the context of present-day Australian society. Guideline 1 in general aims to keep drinking below that risk level for the drinker. This may be seen as too high or too low a risk by the individual drinker. This report also presents tables and figures that show how the risk of harm varies, for those who wish to guide their drinking by another level of risk.

Source: National Health and Medical Research Council 2009, *Australian guidelines to reduce health risks from drinking alcohol*, pp. 34-35.

DISCUSSION ON CONSUMER SURPLUS

21. A general issue in the wider debate on the benefits and costs of alcohol – and hence the net benefits of any policy response – is the concern among economists that the benefits of consumer satisfaction have not, to date, been taken into account. Given the typical reliance on the assumption of consumer sovereignty in economic analysis, this is a valid criticism and needs to be addressed squarely.

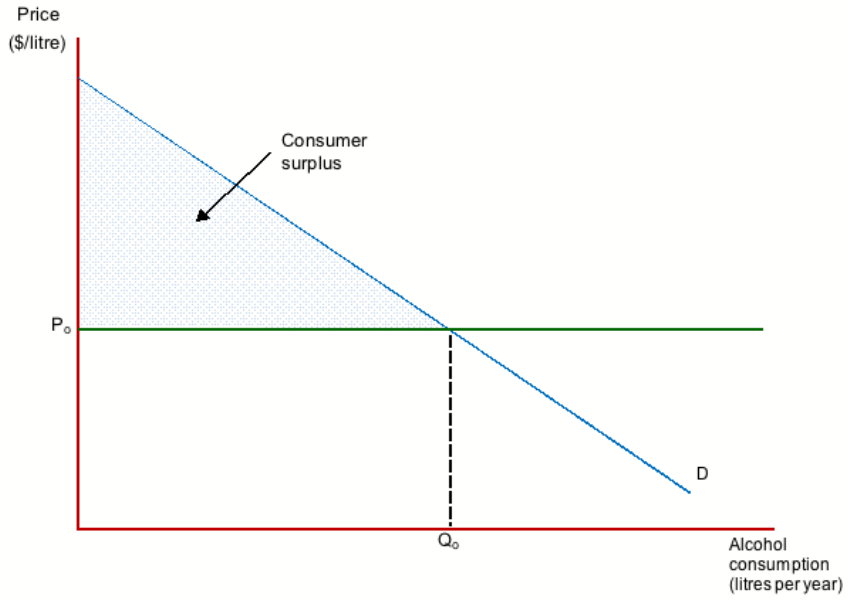
22. Relevant questions relating to consumer surplus, its definition and estimation, include:

- how is consumer surplus defined and how does an increase in the excise tax cause a loss of consumer surplus?;
- what is the definition and integrity of the concept of consumer sovereignty which underpins the definition of consumer surplus?; and
- how should the concepts of consumer sovereignty and consumer surplus be (re-)defined and applied for extra-ordinary goods such as gambling and alcohol?

Definition of consumer surplus

23. On the first question, Consumer surplus is defined as the difference between the value at which a consumer (or the sum of consumers) values his/her consumption and the price he/she paid for the consumption. Thinking about the demand curve for a product (Figure 5), this value is represented by the area between the demand curve (D) and the horizontal line representing the price paid by (all) consumers (P_0).

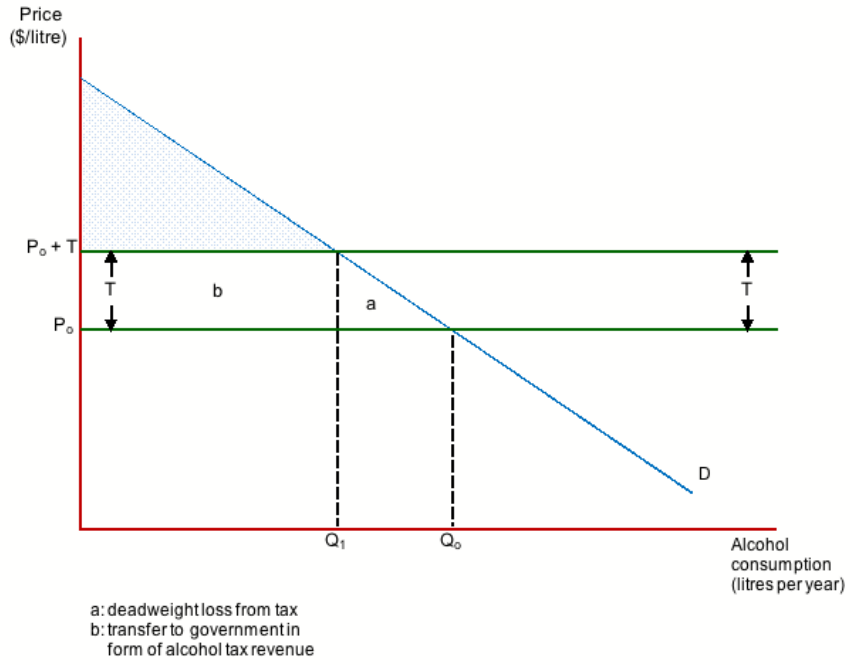
Figure 5: Consumer surplus is the excess of willingness to pay over price



24. Policy measures that affect the demand for goods will impact on consumer surplus, and hence changes in consumer surplus are important criteria by which to assess policies. For example, a tax on a product will reduce consumer surplus, as the gap between what consumers are willing to pay and the price (after tax) is reduced (Figure 6).

Typically, the bulk of the loss in consumer surplus is transferred to the government in the form of taxation revenue (area b), but some part of the consumer surplus disappears altogether. This is because the price rise as a result of the tax leads to a fall in consumption of the product, eliminating the consumer surplus that accrued over that range (area a).

Figure 6: A tax increase reduces consumer surplus



Integrity of the concept of consumer sovreignty

25. On the second question, (i.e., the integrity of the concept of consumer sovereignty), strong and divergent views are frequently taken. For example, Crampton and Burgess state:

> *BERL is too quick to dismiss rational explanations for heavy and addictive use of alcohol and drugs.*[13]

[13] Crampton, E. and Burgess, M. 2009, 'The price of everything and the value of nothing: A (truly) external review of BERL's study of harmful alcohol and drug use', Department of Economics and Finance, University of Canterbury, Working Paper no. 10/2009, p. 13.

However, not all policy makers or communities would accept the theory of rational addiction.

26. Moreover, there are several countering concerns including:

- some consumers are poorly informed on the delayed impact of alcohol consumption, and there is a perception, especially among young drinkers, that whatever the risks 'they don't apply to me';
- as observed in most countries, there is a change in preferences and behaviours with age – in New Zealand, while 54 per cent of 18-24 year olds drink large amounts of alcohol on typical occasions, 19 per cent of 35-44 year olds do so. The decline in alcohol consumption levels with age is common to most countries;
- the existence of family and a welfare system that will look after people if they become ill, disabled or unemployed creates a 'moral hazard', meaning people are likely to take on more risks than if the safety net were unavailable;
- the heavy expenditure on the promotion and advertising of alcohol by the industry (reported to be around $NZ 34 million in 2008). Meta-analysis suggests that advertising has little effect at the population levels, but more recent studies focussing on teenagers and young adults indicate that these promotions and advertisements are highly attractive and effective in stimulating alcohol consumption. Since other research indicates that age of first commencing drinking is a strong predictor of lifetime drinking patterns, advertising and promotion may have a major step impact even if it does not change patterns once they are established. These issues raise the question in what sense can the preferences of individual consumers be said to be 'sovereign', as distinct from 'manipulated'?; and
- the evidence suggesting that peer group pressure is strongly influential in individual values, preferences and drinking behaviour, which again raises the question of the sovereignty of the preferences of individual consumers.[14]

27. The policy relevance of this discussion is that the magnitude of consumer surplus – the economist's preferred method of measuring the level of, or change in, consumer benefits – is directly determined by whether we accept (or 'correct') the observed demand curve.

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[14] Of course there are alternative views to the impact of advertising and peer pressure.

Even if alcohol promotion changes preferences, does that mean that the new preferences are less authentic than the original ones?. Social marketing tries to do the same for the public good (eg don't litter), and this is not viewed as a distortion of consumer preferences. Advertising is a very complex area in respect of preference formation. If the community genuinely does not like it, why not ban or modify the advertising directly? If advertising has this effect for alcohol, it may have the same effect for many other consumer goods, which would raise some very broad policy implications surrounding sovereignty and the regulatory state.

Peer group pressures fall into the same vein. Our preferences must be formed somewhere – genes, family background, peers, life experiences — the fact that they have different origins does not necessarily invalidate benefit cost analysis. Maybe there are some more subtle arguments around peer pressure where people do what others expect them to do through fear, though not wanting to do so, and where the result is some unpleasant equilibrium in which everyone would like to reduce drinking but no one wants to be seen as 'uncool'.

28. This leads to the third related question, how should consumer surplus be defined and measured in the case of extra-ordinary goods such as gambling and alcohol? In addressing this question it is useful to distinguish between the value judgements and their analytical implications.

Value judgements on irrationality and rationality

29. A range of views and value judgements can be distinguished across the spectrum ranging from strongly paternalistic to strongly libertarian. These include the following.

- Alcohol is a drug and confers no benefits in terms of consumer satisfaction. Thus, the loss of consumer satisfaction does not need to be taken into account. Alcohol imposes costs that are unmatched by any benefits. This approach has been taken in the past by many alcohol researchers.
- Moderate drinkers gain benefits, but heavy drinkers gain only the same benefit as do moderate drinkers. Therefore, not only can the consumer benefits of risky drinking be set aside, but costs previously matched by benefits become unmatched and must be brought to account. This is the alcohol counterpart of the Productivity Commission's analysis of gambling in Australia.
- Drinking beyond moderate levels may still confer some genuine satisfaction and willingness-to-pay surveys can be used to distinguish between benefit and dis-benefit. This approach has been applied by Wimer, Vining and Thomas 2006 in the case of tobacco.
- Drinking is a matter of individual choice, preferences are sovereign and the cost of harms are mainly internalised to the individual and only the small costs to wider society are relevant. This approach is consistent with Barker 2002 and Crampton and Burgess 2009.

30. If either the second or third value judgement on the degree of irrationality is made, it is necessary to correct the demand curve, and to reassess costs and benefits. Correcting the observed demand curve to remove the impacts of irrationality means that the benefits and costs of alcohol consumption must now be reassessed against the corrected, non-compulsive demand curve. [15] This has several effects:

- magnitudes of total consumer surplus and of any change in consumer surplus as a result of a tax increase – or other intervention – are substantially reduced; and
- some part of the production costs that were previously offset by the benefits of consumer satisfaction are no longer offset once the corrected demand curve is acknowledged. As a result, this part of production costs is an unmatched cost. When assessing total costs and benefits of the industry, this cost should be recognised, and, when assessing the benefits and costs of a tax increase, the reduction in these costs should be treated as a benefit.

These effects are explained in greater detail in paras 31 to 34.

[15] For a fuller discussion on these issues, refer to Productivity Commission 1999, *Australia's Gambling Industries: Inquiry Report Vol. 3 Appendices*, 'Appendix C:Estimating Consumer Surplus'. This report contains a rigorous exposition of how to interpret consumer surplus in the context of compulsive or addictive behaviour (http://www.pc.gov.au/__data/assets/pdf_file/0006/82554/gambling3.pdf).

31. As noted above, for some non-normal goods, the benefits of consumption may be actually very small, zero, or negative. There is an amount of irrational consumption. Assuming consumers would have a lower willingness to pay for alcohol if they were rational and aware of the full costs, the demand curve (which measures willingness to pay for different quantities of consumption) shifts inward from D_0 to D_1.in Figure 7. This has a number of significant impacts:

- consumer surplus is estimated to be much lower (the triangle *a* in Figure 7 compared with the larger consumer surplus triangle that would exist if the demand curve were not adjusted); and
- there is a range of alcohol consumption over which the price of alcohol exceeds the true willingness to pay for alcohol (according to the adjusted demand curve), meaning there are costs to consumers that are unmatched by benefits.

32. Assuming there is irrational demand and that the demand curve needs correcting, the welfare implications of an excise tax increase (Figure 8) are different from the case of a normal good.

An excise tax increase leads to the following benefits:

- a reduction in unmatched costs of *b´´*; and
- excise tax revenue of *a´´* + *c*.

At the same time it leads to a cost of

- a reduction in consumer surplus of *a´´*.

In net terms, the benefits of the excise tax increase are b´´ + *c*.

33. While this is a gross simplification, and we have abstracted from the loss of consumer surplus relating to rational alcohol consumption (where demand curves do not need adjusting), it illustrates that for irrational alcohol consumption:

- true (adjusted) consumer surplus and the loss of consumer surplus due to excise increases is more than offset by the gain in excise tax revenue; and
- there may be significant costs of consumption unmatched by consumer surplus benefits, and these costs can be reduced through an excise tax increase.

Figure 7: Adjusting the demand curve for 'irrationality'

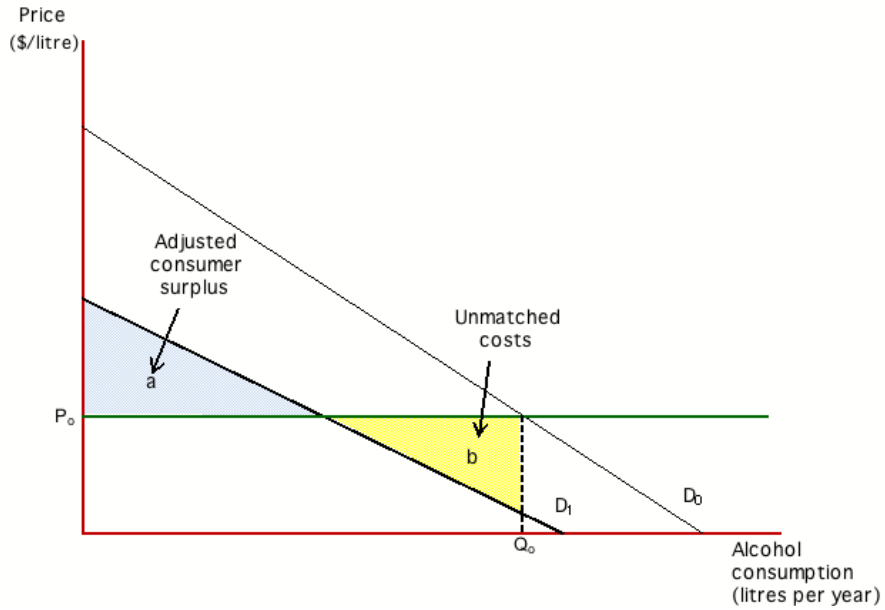
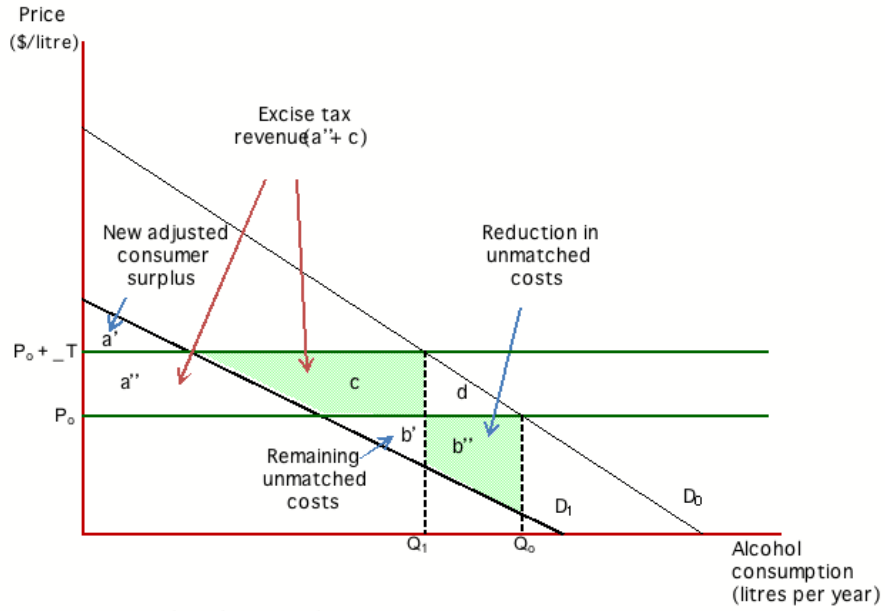


Figure 8: Impact of an excise tax increase



Benefits of increased tax
-reduction in unmatched costs: b''
-tax revenue: a'' + c

Costs of increased tax
-surplus reduction: a'

Net benefit = c + b''

34. The message for benefit-cost analysis is that analysts need to state value judgements explicitly in the assumptions. Further, the analysis could be sensitivity tested to reflect the results of different value judgements. Decision makers can then consider the analytical results that correspond to their view of the appropriate value judgement, taking into account the community's preferences.

PROPORTION OF CONSUMPTION AT HAZARDOUS OR HARMFUL LEVELS

35. The above discussion highlights that, to assess the impact of policy measures, such as an increase in the rate of excise, it is important to know the proportion of total alcohol consumption that can be considered to involve high lifetime or high short-term risk. This is especially important when exploring and quantifying the implications of value judgements that allow for irrationality in consumption decisions on alcohol when intoxicated or over the longer term.

36. Terms such as hazardous or harmful are useful shorthand but must be carefully defined against current benchmarks. However, these guideline levels seem to differ between countries, over time and between studies. Defining the proportion of drinking that is harmful or hazardous is, therefore, not a simple matter.

    Nonetheless, we believe it is useful to conduct a 'thought experiment', based on available data and the new risk-based guidelines for alcohol consumption from Australia's National Health and Medical Research Council (NHMRC). The NHMRC guidelines are based on around a risk of death from alcohol related causes of no more than 1 in 100. The basis for their choosing this level of risk tolerance is shown in Box 1 above.

37. Existing New Zealand data sources offer limited guidance on the proportion of alcohol consumption in New Zealand that is high risk in terms of latest NHMRC Guidelines. Most relevant is the *National Alcohol Survey* 2000 finding that 50 per cent of the total volume of alcohol consumed in New Zealand was consumed in heavier drinking occasions (8 standard drinks or more for men, 6 standard drinks or more for women).[16]

    Note that 8 and 6 standard drinks are not the current standard for New Zealand, and New Zealand recommended levels of drinking are generally in excess of recommended levels in Australia, the UK and, we understand, the United States.

    Note this 50 per cent estimate does not include consumption:

    - **associated with risk of chronic harms**, i.e., it does not include alcohol consumption associated with drinking more than 2 (but no more than 4) standard drinks on a daily basis. According to the NHRMC, such a pattern of consumption raises risks to long-term health; or
    - **short-term consumption at levels above 4 standard drinks** but below 8 standard drinks (for men) or 6 standard drinks (for women) on a single occasion. Consumption at these levels is assessed to involve high risk according to the latest NHMRC guidelines.

[16] Habgood, P., et al. 2001, *Drinking in New Zealand: National Surveys comparison 1995 and 2000*, Alcohol and Public Health Research Unit, Figure 6.

38. This suggests BERL's estimate that 50 per cent of alcohol consumption in New Zealand was harmful is an under-estimate, especially when defined against current New Zealand guidelines on safe drinking or if benchmarked against the explicitly risk-based benchmarks provided by the NHMRC. A comparison of New Zealand with Australia and the UK further suggests that the proportion is much higher than 50 per cent.

Table 3: Comparison of drinking guidelines designed to reduce risks of lifetime or short-term harms

Standard drink equal 10 grams or 12.7 ml

	New Zealand	*Australia*	*UK*
Men			
Lifetime	3	2	2.4-3.2
Short-term	6	4	2.4-3.2
Women			
Lifetime	2	2	1.6-2.4
Short-term	4	4	1.6-2.4

Source: NHMRC, ALAC and UK Health department guidelines.

39. For Australia, a monograph published by the Australian Ministerial Council on Drug Strategy (2004) notes:

- *a common pattern of occasional sessions of heavy alcohol drinking occurs among people whose average daily consumption is low-risk,*
- *a significant proportion of alcohol intake in Australia involves drinking at risky or high-risk levels for acute harm – estimated to be 51% of alcohol consumed by the Australian population aged 15 and over,*
- *when risky patterns of alcohol consumption for acute and/or chronic harm from drinking are combined, this comprises as much as 67% of total alcohol consumption.*

In each case the above estimates are from the 1998 NDSHS [National Drug Strategy Household Survey], which underestimates actual consumption by over 50%.[17]

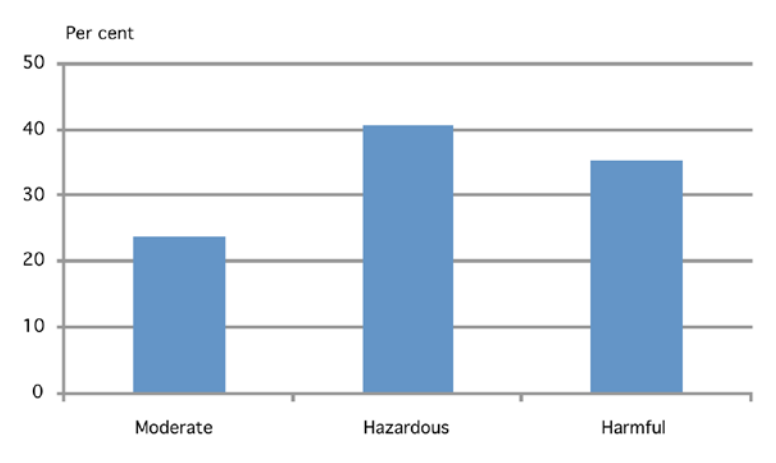
40. For England and Wales, University of Sheffield researchers have estimated that 76 per cent of total alcohol consumption is above recommended levels and therefore at hazardous levels (effectively defined as 1 to 2 times recommended levels) or at harmful levels (effectively defined as more than twice recommended levels) (Figure 9).[18]

[17] Loxley, W., Toumbourou, J., and Stockwell, T. 2004, *The Prevention of Substance Use, Risk and Harm in Australia: a review of the evidence*, Ministerial Council on Drug Strategy, Canberra, pp. 187-188.

[18] Hazardous is defined as drinking 21-50 units of alcohol per week for men or 14-35 units per week for women. Harmful is defined as drinking more than 50 units per week for men or more than 35 units per week for women.

Figure 9: Moderate, hazardous and harmful drinking in England and Wales

Proportion of total alcohol consumption



Source: MJA calculations based on Meier, P. et al. 2008, p. 108.

41. We take the very recent Australian guidelines as the best indication of current medical knowledge. These are calibrated against a risk tolerance of 1 in 100 for a probability of dying from alcohol-related causes. Based on the estimates in Stockwell et al. 2002, it is likely that in excess of 67 per cent of New Zealand alcohol is consumed at levels of risk greater than 1/100. This estimate (67 per cent) should be seen as extremely conservative because:

    - the 67 per cent is based on earlier Australian (NHMRC) guidelines, which are more lenient than the NHMRC's 2009 guidelines (Table 4);
    - the 67 per cent is based on drinking levels reported in survey responses which typically under report volumes actually consumed by around 50 per cent,[19] although it has been suggested that New Zealand survey methods produce unusually accurate estimates of consumption;[20] and
    - New Zealand may have a higher level of binge drinking than does Australia (Figure 3) and binge drinking is the major form of high risk alcohol consumption.

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19 See Stockwell, T. et al. 2002, 'How much alcohol is drunk in Australia in excess of the new Australian alcohol guidelines?', *Medical Journal of Australia*, vol. 176, pp. 91-92. Note that the World Cancer Fund Report 2007 notes that survey under-reporting of consumption levels is likely to be greatest where there are elements of embarrassment or illegality in consumption and that as a result, is likely to be greatest for heavy drinkers and for the young. For a New Zealand specific counter view, see also Casswell, S. et al 2002 "Survey data need not underestimate alcohol consumption", *Alcoholism, Clinical and Experimental Research*, vol. 26.

The quantitative impact of the understatement of the level of harmful drinking can be illustrated by a simple calculation. Assume all of the understatement between survey reported consumption and the sales data is 50 per cent, and assume further that all this under reporting is due to heavy or excessive drinkers. Thus rather than 67/100, the percentage of harmful drinking becomes 167/200 i.e. 83 per cent.

20 For example, BERL 2009 compared estimated consumption volumes based on survey data with Stats NZ data on alcohol available for consumption and concluded that they were comparable. See also World Health Organization 2000, *International guide for monitoring alcohol consumption and related harm*, Geneva.

Table 4: Drinking guidelines - Australia, New Zealand the United Kingdom

Current	*Previous*
Australia (2009)	
To reduce *lifetime risk of harm*, no more than 2 standard drinks on any day (for both men and women)	An average of no more than 4 standard drinks a day and no more than 28 standard drinks in a week (for men)
	An average of no more than two standard drinks a day and no more than 14 standard drinks in a week (for women)
To reduce the *risk of injury* on a single occasion, no more than 4 standard drinks (for both men and women)	No more than 6 standard drinks in any one day (for men)
	no more than 4 standard drinks in any one day (for women)
New Zealand (2002)	
If drinking every day, no more than 3 standard drinks for men or 2 standard drinks for women	No guideline for people drinking every day
In any one week, no more than 21 standard drinks for men or 14 standard drinks for women	Otherwise, since 1994, same guidelines as 2002 update
On any occasion, no more than 6 standard drinks for men or 4 standard drinks for women	
United Kingdom (2007)*	
3 to 4 units of alcohol or less per day (for men)	Weekly limit of 21 units for men and 14 units for females
2 to 3 units of alcohol or less per day (for women)	

Source: NHMRC, ALAC and UK Health department guidelines.

Note: one unit of alcohol in UK is 8 grams or 10ml of alcohol, which is smaller than a standard drink in Australia and New Zealand (10 grams or 12.7 ml).

42. The logic of these comparisons suggests therefore that the proportion of total New Zealand consumption which is consumed at harmful or hazardous levels is in excess of 67 per cent and possibly substantially so.

    The key conclusion from this discussion however is not any precise number. Rather, it is to indicate that for a parameter value of considerable relevance to the economic analysis, there are grounds to doubt the existing, orthodox, estimate. This issue should be systematically investigated and clarified. Obviously the advice of medical experts would be essential in any comprehensive analysis.

43. The relevance of this discussion is that where the value judgement is that some part of alcohol consumption is irrational, any resulting correction of the observed demand curve may well impact on well over half of total consumption and therefore be very material in its impact on the welfare benefits and costs of an excise increase or any other policy intervention.

A review of existing studies of the benefits and costs of alcohol consumption

44. As noted, consideration of optimal levels of taxation for alcohol requires an understanding of the costs and benefits and how these have been measured. This section reports on our review of the main studies available for New Zealand, Australia and the UK on the benefits and costs of alcohol.

45. Any review requires explicit criteria (for an overview see Table 5). The criteria applied here in MJA's review include the following.

Purpose

- Is the study a backward-looking cost study or forward-looking policy calibration tool?
- Does it simply answer the question 'how much does alcohol consumption cost the community?'
- Can it answer the question 'how much should this policy instrument be changed to maximise reductions in alcohol-related costs?'

Base case

- Is the study estimating costs (and benefits) of alcohol consumption relative to a base case of zero alcohol consumption (or alternatively zero harmful alcohol consumption)?
- Or is the study taking current patterns and policies as the starting point, and investigating the implications of changes in patterns and policies? This is closely related to the first set of criteria on purpose.

Comprehensiveness

- Does the study cover the full range of costs and benefits, including private benefits, acute and chronic health harms, productivity losses and difficult to quantify costs of trauma, collateral damage and loss of amenity and wellbeing.
- Does the methodology account fully for the characteristics of alcohol consumption, including, for example, the addictive, compulsive or irrational portion of demand?

Methodology

- Does the study utilise the latest risk-based limits to alcohol consumption (such as the NHMRC guidelines)?
- Does the study explicitly model the impact of alcohol consumption on risks of acute harm and chronic health conditions?
- Does the study use micro-household data on expenditure and consumption of alcohol, allowing detailed modelling of the impact of price or taxation policy measures?

ASSESSMENT OF STUDIES

46. With one minor UK exception, none of the reviewed studies undertaken in New Zealand or Australia or the UK examined benefits at all. None of the studies seek to address the requirement of economics that the benefits of consumer satisfaction be recognised. Of course, it is arguable that these studies could be used to inform later benefit-cost studies of interventions.

47. A major distinction is to be drawn between two different types of studies.

- The several **cost of illness studies** available for New Zealand and Australia (BERL 2009, Collins and Lapsley 2008, Devlin 1997, Easton 1997, Barker 2002). The critiques provided by Crampton and Burgess are part of this type of study.

  These studies seek to measure the costs of alcohol consumption in a particular year, say 2006, against the benchmark of no (harmful) alcohol consumption by the population in that year or any previous year. This gives a headline number but does not allow investigation of the impacts and desirability of different individual policy measures and calibrations, or of different portfolios of such measures. Any policy discussion occurring in these studies is essentially separately informed.

- **Policy models based on epidemiologic-economic simulation frameworks.** The very recent policy-analytical framework developed by the team at the University of Sheffield (see Box 2) is a new and striking departure from the existing Antipodean studies. Since the Sheffield framework is firmly anchored in modern health economics it provides both an explicit and transparent basis for policy analysis, and its modular framework allows new information to be incorporated as risk-response relationships between alcohol consumption and different harms become progressively more robust.

48. As noted above, the review (Table 5) finds the existing studies for New Zealand and Australia lacking in important respects and unsuitable for use as policy calibration tools. The cost of illness studies seek to examine the costs of consumption in total rather than to examine the impact of policy instruments and levels on those costs and benefits.

49. While BERL and Collins and Lapsley present estimates of the avoidable costs of alcohol-related harms, these are not based on modelling the impacts of specific policy changes, but rather on separate consideration of, and judgements on, the local situation, international comparisons and readings of the literature on policy instruments and settings. They seek to present upper limits of what could be achieved in harm reduction, were an optimal policy portfolio implemented. They provide no guidance on how to achieve this optimal portfolio.

50. MJA recommends that the approach taken by the University of Sheffield team be adopted in an extended, augmented form to allow a comprehensive examination of the impacts of policy changes, including on private benefits.[21]

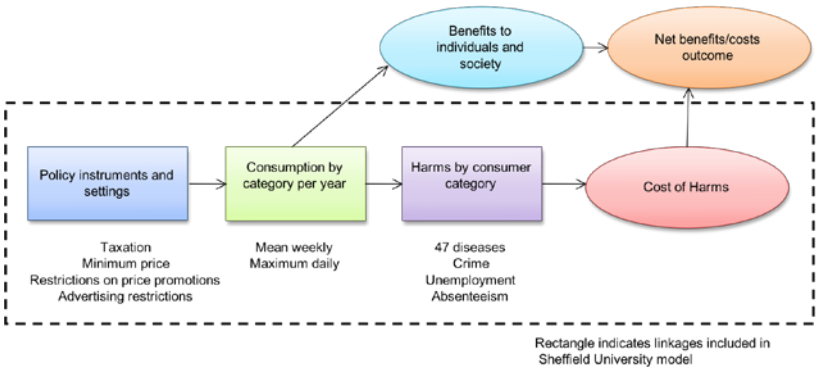
[21] Given recent questioning of the protective health benefits of alcohol (Fillmore et al. 2006), we believe that any benefit-cost study should include scenarios with and without these benefits. Because of the recent questioning of protective health benefits, BERL 2009, p. 29 set the attributable fraction for heart disease at zero for moderate consumption levels.

Box 2: University of Sheffield simulation model

An important innovation in the application of economics to alcohol policy is the University of Sheffield simulation model as described in their 2008 Independent Review of the Effects of Alcohol Pricing and Promotion for the UK Government and subsequent papers. This study has a strong policy focus. Unlike other studies, the link between policy instruments and consumption is explicitly modelled.

> *We have developed an integrated suite of models, linking the aspects of price, advertising, drinking patterns, purchasing patterns, elasticities, health conditions including diseases wholly attributable to alcohol, chronic and acute alcohol related illnesses and mortality, crimes including violence and criminal damage, and work absence and unemployment attributable to alcohol.*

Essential linkages in epidemiological modelling of alcohol



Source: MJA based on Brennan A et al. 2008.

Using an expenditure system approach, which yields internally consistent estimates, the Sheffield researchers estimated own-price and cross-price elasticities of demand for 16 different beverage types and for five different groupings: the total population; moderate drinkers; hazardous drinkers; harmful drinkers; and hazardous and harmful drinkers combined.

While this demand modelling approach is comprehensive, the estimate of the price elasticities for heavy drinkers has been questioned since it is appears higher than previous estimates reported in meta-analyses and other literature. Subsequent sensitivity analysis where the elasticities for harmful and hazardous drinkers were lowered by one-third below the estimates for moderate drinkers led to lower estimated harm reductions due to price increases but still a differentially heavy impact on the consumption of heavy drinkers.

To date, the Sheffield alcohol policy model does not extend beyond the calculation of cost reductions from the policy initiatives being investigated. For instance there is no consideration of the impact of policy changes on consumer satisfaction/surplus, and the simulations of price increases and/or price floors do not consider either how these policy changes are effected or the implications for government budgets.

Overall, the Sheffield research suggests a way forward, but the approach can be augmented and extended. MJA's research directions checklist is provided in Appendix A.

Table 5: Assessment of alcohol benefit-cost studies

Assessment items	*BERL*	*Collins & Lapsley*	*Easton*	*Devlin*	*Deakin*	*NERA (London study)*	*University of Sheffield*	*Access Economics*	*MJA view*
Purpose									
Cost of Illness/Avoidable Cost study	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Low priority
Policy calibration tool	No	No	No	No	No	No	Yes	Yes	Yes
Base case									
Zero (harmful) alcohol consumption	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Current patterns & policies	No	No	No	No	No	No	Yes	Yes	Yes
Comprehensiveness									
Consumer & producer surplus	No	No	No	No	No	Consumer surplus only	No	Yes	Yes
Acute health impacts	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Long-term health impacts	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Trauma, collatéral damage & social dislocation	No	No	No	No	No (a)	No	No	No (b)	Yes
Productivity	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Addictive, compulsive or irrational portion of demand	Yes (c)	Yes (c)	Yes (c)	No	No	No	No	No(d)	Yes (through demand curve adjustment)
Methodology									
Latest risk-based limits	No	No	No	No	No	No	No	- (e)	Yes
Risk response functions	No	No	No	No	No	No	Yes	- (e)	Yes
Micro-household data	No	No	No	No	No	No	Yes	- (e)	Yes

Notes to Table 5:
a. Deakin study includes household production impacts, however.
b. Based on Access Economics' list of included costs, Table 2-1 in Access Economics 2008, Collins and Lapsley Report Review, 28 November 2008, p. 9.
c. Irrationality taken into account by including cost of diverted inputs for consumption deemed abusive.
d. Access Economics 2008, Collins and Lapsley Report Review, 28 November 2008, p. 9.
e. These issues were not explicitly discussed in Access Economics's critique of Collins and Lapsley, so it is not possible to attribute views.

THE POLICY CONUNDRUM

51. Since the point of all public policy is to improve the balance of benefits and costs in the community, it follows that policy advisors and decision makers need to have some reasonable appreciation of the relative magnitudes of benefits and costs. However, the available estimates for New Zealand refer only to costs and there is an exceptionally wide divergence in the cost estimates tabled to date.

52. The divergence between the different estimates of the annual costs of alcohol in New Zealand covers:

- the BERL estimate of roughly $4.8 billion p.a. of the costs of all harms from alcohol;
- the estimate of a net cost of around $148 million p.a. provided by Crampton and Burgess[22] (since revised to a net benefit of around $40 million p.a.);[23]
- the estimate of the direct costs to government by Barker 2002 in her Treasury Working Paper. [24] Adjusted for inflation only, these costs are of the order of $500-900 million in 2008-09 dollars;[25] and
- the BERL collation of departmental estimates of the direct costs of alcohol to government in 2005-06 of $1,111 million. Adjusting for inflation, the direct costs of alcohol to government are estimated at around $1,200 million in 2008-09.[26]

53. An external perspective on these estimates can be derived by inspecting the results of the detailed policy simulations undertaken by the team from Sheffield University for the UK and Scottish Governments. For a 10% rise in alcohol prices the net costs of health and health care are estimated to fall by the equivalent of $NZ 80 million p.a.

54. Clearly, even allowing for any errors, the different authors cannot be talking about the same thing. For any sensible discussion based on the analysis of benefits and costs, it is necessary to define clearly:

- the base or reference case against which the costs are measured;
- the perspective, e.g., is policy merely concerned about efficiency losses, or are policy makers also concerned about equity and income distribution, or other non-efficiency objectives; and

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22 Crampton, E. and Burgess, M. 2009, 'The price of everything and the value of nothing: A (truly) external review of BERL's study of harmful alcohol and drug use', Department of Economics and Finance, University of Canterbury, Working Paper no. 10/2009.

23 Crampton, E. and Burgess, M. 2009, Note on BERL Reply, 10 July.

24 Barker, F. 2002, 'Consumption externalities and the role of government: The case of alcohol', *New Zealand Treasury Working Paper*, 02/25.

25 Estimates of these direct costs were made by Devlin et al. (1997) and taken up by the Treasury in an analysis of excise tax in New Zealand. The understanding of the role of alcohol in society has widened considerably since 1991 (the year on which the Devlin estimates are based) but, adjusted for inflation only, these costs are of the order of $500-900 million in 2008-09 dollars.

26 See footnote 9 above.

- the boundaries, i.e., is the focus of the analysis the town, the provincial economy, the provincial or national government, or New Zealand as a whole.

55. The question of perspective and clarity on policy objectives is particularly important. For example, Crampton and Burgess focus on the efficiency objective. They argue that alcohol consumers are effectively wholly rationale and therefore that they have weighed their benefits and costs from alcohol consumption. Thus as a result, any costs incurred by them individually through adverse health outcomes or loss of employment are offset by the benefits they have received. As a result, these costs can be described as fully internalised and are not a matter for public policy.

> *...the drinker bears the cost of his increased mortality risk, increased probability of unemployment and reduced wages. ...only external costs are of policy consequence if the government worries about efficiency considerations; costs borne by the drinker himself maybe relevant if the government wishes to act paternalistically ... but are not supported by economic analysis without strong assumption.* [27]

Moreover, the costs incurred by governments, partners and family when they choose to share or offset these costs are merely transfer payments or at best pecuniary externalities and as a result these costs to others and to governments are not relevant and should be ignored if the objective of government is solely to promote economic efficiency. Thus, Crampton and Burgess exclude from consideration lost output, alcohol production costs, costs of crime prevention, health care costs, most road crash costs and excise taxes collected.

> *By that measure,* [i.e., allowing technological externalities only] *we would deem net efficiency-relevant external costs of alcohol use as being $108.9 million: the total of external intangible costs of loss of life and lost quality of life and tangible costs of traffic delays* [caused by road crashes]. [28]

56. Not all observers would share the value judgements and the single-minded focus on efficiency alone. Indeed, Crampton and Burgess concede that this is a narrow view on policy objectives and that an alternative and wider perspective is also valid.

> *It is perfectly reasonable to prefer a cost measure that includes both pecuniary and technological externalities rather than only technological externalities: if we care about total imposed net external costs rather than just those of* [merely] *efficiency relevance, the former measure is preferable. ...*[29]

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27 Crampton, E. and Burgess, M. 2009, p.22.

28 Crampton, E. and Burgess, M. 2009, p. 31.

29 Crampton, E. and Burgess, M. 2009, p. 31.

57. Based on previous work commissioned or undertaken by both the New Zealand Business Roundtable and the Treasury, it would appear that these and likely other influential bodies in New Zealand do focus on 'total imposed net external costs' – a prime reason for doing so is the concern that any call on the public purse must be funded by taxation and that the progressive income tax system can impose particularly high dead weight costs on the economy. For instance:

- the Business Roundtable commissioned major research from Diewert and Lawrence 1994[30] which concluded that the dead weight efficiency loss on labour alone associated with the New Zealand system of income tax had increased from around five to around eighteen per cent of tax revenues; and
- the New Zealand Treasury has commissioned working papers and advice from Creedy on the efficiency burden of the income tax system.[31]

Thus, it would be strange if either the Treasury or the Business Roundtable were to find the Crampton and Burgess focus on a very narrow view of the efficiency objective either sufficient or compelling.

58. Even within their narrow focus, however, the Crampton and Burgess estimates are flawed. One methodological flaw concerns the 'internalisation of costs':

If individual drinkers are wholly considered and informed in their preferences, and have weighed the benefits and costs of their drinking, then it must also be acknowledged that the costs that they incur are subsidised by others. They do not bear the full costs because friends, families, partners and governments act to offset these costs. A rational fully informed drinker would recognise and anticipate this support when making his consumption decisions. If the subsidy from the welfare system and/or from the support of other individuals were removed, the individual would make different choices. This is a form of moral hazard since drinkers (even if perfectly informed of the costs and risks) know that they will not bear the full costs. The individual drinker does not count the cost of these subsidies since they are a benefit to him, but they are a cost elsewhere. Only part of the costs of alcohol related harm are borne by, and internalised to, the individual drinker. The remaining costs need to be recognised in the benefit cost calculus.

59. A second flaw in the Crampton and Burgess estimates and argument arises because of the over-emphasis given to the protective effects of alcohol on heart disease. Considerable reliance is based on the meta-analysis by Corroa et al 2000 which concludes that there are strong protective effects. However, Crampton and Burgess do not appear to be aware of the important subsequent meta-analysis by Fillmore et al 2006 and other recent papers, which challenge the previous accepted wisdom and associated research literature (see Box 3).[32]

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30 Diewert, W.E. and D.A. Lawrence 1994, The Marginal Costs of Taxation in New Zealand, Report prepared by Swan Consultants (Canberra) Pty Ltd for the New Zealand Business Roundtable

31 See for example, Creedy, J. 2003 *The Excess Burden of Taxation and Why It (approximately) Quadruples when the Tax Rate Doubles.* New Zealand Treasury Working Paper, 03/29.

32 Some recent studies have found no significant cardioprotective or all-cause associations (Fillmore et al 2006; Fillmore et al 2007) a systematic review (Fuchs & Chambless 2007) and other recent studies (Baglietto et al 2006; Stockwell et al 2007; Friesema et al 2008) have suggested that the cardioprotective or all-cause effect may have been overestimated.

Box 3: Health benefits of light to moderate alcohol consumption?

The hypothesis that low levels of alcohol consumption protects against the incidence of coronary heart disease is supported by a substantial literature. As a result, moderate alcohol use is widely recommended by health professionals. However, the validity of the protective hypothesis has been challenged by a recent meta-analysis (Fillmore, K. M., *et al* 2006) which examines the hypothesis that the findings in support of a protective effect are due to systematic errors arising from the mis-classification of former drinkers and occasional drinkers as abstainers. The relevance of these errors arises from the observation that:

- alcohol declines with advancing ages in nearly all societies;
- as people age with declining health, alcohol consumption slowly decreases;
- many abstainers are former drinkers who now abstain due to health problems; and
- there is chronic under-reporting of alcohol consumption levels in self-report surveys in nearly all societies. For instance, in Australia self-reported alcohol consumption is only around 60% of volume actually sold. The analysis suggests that when the classification errors are removed, the protective effect is removed, or is no longer significant. Conversely, when the classification errors are introduced into 'error free' studies, a protective effect is created.

The resulting debate, commentaries and rejoinders (see Fillmore et al 2007) illustrates:

- the extreme difficulties of being any confident that any epidemiological study is truly bias free; and
- the multiple sources of uncertainty now identified in what was previously seen as 'a solid result'.

It may be hard to disagree with the view that:

> *Is there a protective effect of alcohol against the incidence of* [coronary heart disease] *(or any other illness for that matter)? A careful reading of the contribution of the scientists commenting on ….* [this issue] *…. should result in the conclusion that we simply do not know – certainly not well enough to recommend regular alcohol intake for health reasons.*

WHO (2007),[33] having reviewed the available evidence reached essentially the same conclusion:

> *… from both the public health and clinical viewpoints, there is no merit in promoting alcohol consumption as a preventive strategy.*

The NHMRC (2009) guidelines are similarly doubting. Having noted the divergence in the research, and the basis of the challenge to the conventional wisdom, the NHMRC notes that:

> *It appears that most of any beneficial effect can be gained at a low level of drinking, for instance a drink every second day (Di Castelnuovo et al 2006; WHO 2007) - well below the level of any likely low-risk drinking guideline.*[34]

[33] World Health Organisation 2007 *Prevention of Cardiovascular Disease. Guidelines for assessment and management of cardiovascular risk, pp.37-38.*

[34] Australian Government, National Health and Medical Research Council 2000, *Australian Guidelines To Reduce Health Risks from Drinking alcohol,* p.128.

60. It is also important to note that Crampton and Burgess correctly cite the results from Collins and Lapsley as suggesting that these health benefits are substantial and, on balance, offsetting the sources of health detriments, at least for moderate drinkers.[35] However, the Collins and Lapsley results are inconsistent with those derived by the Sheffield University team which uses explicit risk response functions (largely based on Corroa) in their well documented policy simulation model. There are concerns over the calculations used by Collins and Lapsley.

61. A third flaw is that Crampton and Burgess do not appear to be aware of the policy simulation work undertaken by the Sheffield team. There is no recognition of the fact that increases in the excise rates will preferentially target low cost alcohol which is the preferred purchase of heavy drinkers and the young. Thus, a uniform percentage increase in excise rates will result in non-uniform price increases with the biggest increases occurring in the prices most relevant to the key problem groups, i.e., heavy drinkers and the young. This means that, even if the price elasticities of demand for heavy drinkers were lower than for moderate drinkers, the statement that *"moderate drinkers will curb that consumption by more than will heavy drinkers for any tax increase"* no longer automatically follows. Rather, it becomes an empirical issue: does the differential increase in prices offset the (possibly) lower price elasticities of heavy drinkers compared with moderate drinkers. This cannot be argued from first principles as Crampton and Burgess attempt to do.

    Indeed, inspection of the several Sheffield reports suggests that the Crampton and Burgess statement quoted above is likely to be simply incorrect – unless the patterns of alcohol consumption in New Zealand are strikingly different (and in the opposite direction) from those in the United Kingdom.

62. Overall, Crampton and Burgess have made important contributions to sharpening thinking on the application of economics on alcohol policy. But their calculations and estimates doe not provide a basis for policy advice or formation. Rather, it is necessary to look afresh at the available evidence.

[35] Neither Collins and Lapsley, nor BERL, nor Crampton and Burgess acknowledge the challenges to the previously near unanimous orthodoxy on the protective effects of moderate consumption on heart disease.

Order of magnitude benefit-cost analysis

63. The purpose of this section is to set out the minimal framework for a benefit-cost analysis of a an increase in the rate of excise on alcohol. We proceed in the following manner.

- We begin by noting that any increase in excise revenue can be either rebated to general taxpayers or used to reduce revenue from less efficient taxes, thus improving the efficiency of the total structure of taxes in New Zealand.
- Turning to the question of a Pigovian tax to correct the externalities, we distinguish between approaches that **focus on the totals** of benefits and costs and approaches that **focus on the changes** in benefits and costs.
- We undertake a **threshold analysis** of the benefits and costs of an excise tax increase, assuming that alcohol consumption is entirely rational and that all alcohol consumption brings full consumer surplus with no regrets.
- Continuing with that polar case, we then sketch an **order of magnitude benefit-cost analysis** which focuses on the potential reduction in health costs (and ignores changes in any other costs of harms).[36]

We do not explore quantitatively the impact at any level of irrationality due to short-term intoxication or to long-term habituation, although this can be modelled.

REVENUE NEUTRALITY, REBATES & RAMSEY TAXATION

64. A common assumption to both the threshold analysis and the order of magnitude benefit-cost analysis is that an excise tax increase is a revenue-neutral measure – that is, in net terms, total government revenue does not increase, as either (a) the money raised is rebated to consumers or (b) it allows an equal reduction in other taxes. We believe this is an appropriate assumption because, if governments can fund their expenditure commitments from another source, they can cut income taxes or give back 'bracket creep' earlier than otherwise.

65. The possibility of rebating the proceeds of an excise tax would blunt a common criticism of an excise tax increase to address alcohol-related harms: that it would unfairly burden moderate drinkers. But if the proceeds of an excise tax were rebated to all New Zealand adults on a per capita basis, they would receive just over $100 per annum each for a 50 per cent excise tax increase.[37] Moderate drinkers, who would pay less excise tax than heavier drinkers, would receive proportionately more of the rebate than heavier drinkers.

[36] A final issue with the New Zealand rates of excise on alcohol is the sharp step at 14 per cent alcohol content. While we have not modelled the implications of this sharp step, standard public finance principles would suggest this two level structure is an anomaly that (ultimately) ought to be removed. A sound knowledge of the own and cross-price elasticities would assist this decision.

[37] Of course, this is abstracting from administrative costs of tax collection and redistribution that may mean there is less available to re-distribute that the total increase in revenue.

66. Other forms of rebating are also attractive. In particular, the proceeds of an increase in excise tax could be applied to reduce income taxes and thus reduce the dead weight burden of the New Zealand tax system as a whole. Such a policy would be consistent with the advice and framework provided by Ramsey 1927 [38] and other contributors to the inverse elasticity rule. As outlined below, the net benefit in reduced dead weight losses would appear to be at least 3 cents – and possibly much higher – in every dollar of tax raised by an increase in excise and rebated in the form of lower income tax.

67. Assume for the moment, that alcohol is a completely ordinary, normal good; that there are no consumption externalities, no possibility of ill informed or ill considered consumption and that is it only of interest as a potential source of tax revenue.

68. In addition to the tax paid/received, any form of taxation involves costs to the individuals taxed, to the government and to the economy. These costs include compliance and the arrangement of their affairs by individuals in order to minimise their payments, form filing and filing costs, and deadweight (efficiency loss) costs.

    The economic cost of the efficiency loss due to labour taxation at the margin has (in the past) been estimated to be up to 18 percent in a Business Roundtable commissioned report.

    In contrast, we estimate the efficiency loss due to increasing the rate of excise on alcohol to be 3 per cent or less for a 50 per cent increase in the excise.

69. That is, for the New Zealand Government to raise an additional dollar would cost the economy around 18 cents if labour taxes are raised but less than 3 cents if the excise were raised. Assuming a revenue neutral re-balancing, the New Zealand economy would be better off by around 15 cents for every additional dollar reduction in labour taxes matched by a dollar increase in alcohol excise.

70. The policy conclusion to lower income taxes by raising the alcohol excise is not dependent on the special characteristics of alcohol. Rather, this conclusion derives solely from the respective price elasticities.

71. We now turn to the separate (albeit closely related) question of the benefits and costs of an externality correcting increase in the excise rate.

[38] Ramsey, F. 1927, 'A contribution to the theory of taxation', *Economic Journal*, vol.37, no.145, pp.47–61.

TOTALS VS INCREMENTAL ANALYSIS OF A PIGOVIAN TAX

72. There are two ways of looking at the question of whether an increase in the tax rate on alcohol is justified. These are in terms of:

    A. total costs and benefits; or

    B. incremental costs and benefits.

FOCUSING ON TOTALS?

73. Focusing first on total – as distinct from incremental changes in – costs and benefits, the economics of an externality correcting Pigovian tax are typically seen as requiring that:

    Revenue = Cost of externalities.

74. The economics of Pigovian taxation are not as straightforward as suggested by this equation, however. The optimal level of tax will be less than the total cost of the externality because the tax increase also reduces the satisfaction of consumers. Consumers do enjoy alcohol: their satisfaction has value and the social lubrication provided by moderate consumption in company is a positive social consumption externality. The policy challenge is to improve the balance of benefits and costs.

75. The question of the optimal level of the excise tax therefore requires consideration of:

    - the total (net) cost of harms;
    - the total value of private benefits (as measured by consumer surplus); and
    - total tax revenue.

76. But, inevitably, the estimate for the second line (the total value of private benefits) is difficult to obtain and often missing. While the cost of illness studies provide estimates of total net costs of quantified harms, and the total level of tax revenue are known, the second item, consumer satisfaction, is generally not considered and certainly not estimated. Indeed, total consumer surplus cannot be precisely estimated because the economist's analytical tools tend to fail when applied to larger than incremental changes in policy settings (such as tax rates).

77. For policy purposes, the inability to estimate the total level of consumer surplus means that the cost of illness studies are a cul-de-sac.

FOCUS ON THE CHANGES

78. The question of the optimal rate of tax on alcohol can be more usefully examined in terms of incremental changes. This is the standard approach taken in benefit-cost analysis. The optimal level of tax is found when any change in the current level of tax equates / balances the reduction in externalities and the reduction in private benefits (consumer surplus). There is scope to increase the tax rate so long as, for a change in the tax rate:

    Reduction in social cost ≥ Reduction in private benefits.

In this way, externalities are reduced as much as they can be, until the incremental loss in private benefits equals the incremental gain from reducing the social cost.

In practical terms, this requires consideration of the impacts of an increase in excise on:

- the (net) costs avoided due to reduced harms:
  - chronic health conditions,
  - acute harms,
  - production losses,
  - induced and exacerbated crime,
  - others, including intangibles;
- the reduction in consumer surplus[39]; and
- the increase in tax revenue.

79. The challenge of the incremental approach is to model the change in the level of the cost of harms due to the policy intervention (in this case an increase in the rate of excise). This requires (a) own-price, cross-price and income elasticities of demand and (b) explicit risk-response relationships describing how, for each category of harm, the level of harm changes as the increase in prices causes consumption to fall and behaviour patterns to change.[40]

THRESHOLD ANALYSIS

80. In the absence of access to explicit risk-response functions, the question of whether there are net benefits to the New Zealand economy from increasing the rate of excise tax on alcohol can be examined using a 'threshold analysis'.

That is, given what we know about price elasticities, existing tax collections and therefore the likely increase in tax revenues:

a) what is the upper bound magnitude of the loss of consumer surplus; and

b) how big a reduction in the cost of harm is required to make a 50 per cent increase in the tax rate worthwhile?

81. For simplicity, we assume that all consumption confers benefits regardless of the levels of drinking – that is, even with consumption that is regarded as harmful or excessive by health authorities and health experts, the alcohol consumed is treated as a normal good. We ignore the likelihood that some parts of alcohol consumption may be regarded as addictive, compulsive or irrational. That is, we assume, for simplicity, that alcohol is fundamentally a normal good (in the sense of not being subject to irrationality) and that the demand curve does not need to be corrected.

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39 If we assume that some parts of alcohol demand are irrational or ill-informed the reduction in consumer surplus will need to be measured against the corrected demand curve and will be offset by the reduction in unmatched costs.

40 In assembling pertinent data and understanding MJA has used New Zealand data wherever possible and appropriate. As a second preference, Australian data are used, with data from the UK or elsewhere as third preference.

82. We also assume:

- tax revenue in 2008-09 was $829 million;
- 50 per cent and 100 per cent increases in excise tax rates;
- impact on GST revenue is not modelled;
- total expenditure on alcohol in 2008-09 in the range of $3.6-4.5 billion.
- a price elasticity of demand (uniform across all drinkers) of -0.44 (for consistency with the University of Sheffield study); [41] and
- no substitution across products in response to price changes, i.e., cross-price elasticities are ignored.

83. Based on the above assumptions, we derive the following results.

increase in tax revenue	$352 million
loss of consumer surplus (maximum)	-$362 million
required reduction in cost of harms to breakeven	$10 million

84. Thus, under the conservative assumption that high risk consumption has full benefits to the consumer, a 50 per cent increase in the excise tax is worthwhile so long as the reduction in the cost of alcohol-related harms to the New Zealand economy is more than $10 million a year.

85. This threshold analysis also indicates the practical irrelevance of the libertarian judgement that the health costs of alcohol are internal to drinkers and not a major matter for public policy.

Even under this view, an increase of 50 or 100 per cent in the rate of excise is worthwhile so long as resulting reductions in consumption reduce the direct costs to 'others' by $10 million or $42 million, respectively. The 'costs' to others include costs to government and hospitals, production and income losses to New Zealand firms and the economy and costs to partners, family, communities and third parties. *Prima facie*, such reductions would appear to be easily achieved.

86. The sum of $10 million is small relative to the direct costs to government and hospitals. Based on Barker's 2002 estimates of the direct costs to government and hospitals, the breakeven reduction is only 1.1 to 2.0 per cent, and based on the BERL estimate of the direct costs to government (around $1,200 million in 2008-09) are under 1 per cent.[42] Recognition of the wide range of other costs of alcohol-related harms would result in proportionately lower percentage estimates of the breakeven threshold.

[41] This elasticity is implied by the results on p. 106 of Brennan A et al. 2008, *Independent review of the effects of alcohol policy and promotion Part B: Modelling the potential impact of pricing and promotion policies for alcohol in England – results from the Sheffield Alcohol Policy Model Version 2008(1-1)*.

[42] See BERL 2009, Table 6.7, p. 76.

ORDER OF MAGNITUDE ANALYSIS OF BENEFITS & COSTS

87. The simple breakeven analysis above suggests that an increase of 50 per cent in the rate of excise tax might be readily justified. But how easily is a $10 million per annum reduction in the cost of alcohol-related harms achieved? This question could be addressed in several ways:

    i. more detailed evidence on the link between alcohol consumption and the costs imposed on others can be drawn from the submissions made to the Law Commission's review;

    ii. a review of the research and policy literature; or

    iii. we could move beyond the conservative breakeven analysis above since the Sheffield modelling for the UK offers direct insights into how an increase in the price of alcohol is projected to reduce the level and cost of harms.

    We focus on the third approach. In doing so, we shift from the libertarian view that health harms are primarily internal to the drinker and, therefore, not a matter of public policy interest.

88. The Sheffield analysis modelled the reduction on the relevant costs of harms due to a 10 per cent increase in the price of alcohol and (suitably adjusted) the results for England and Wales give an order of magnitude indication for New Zealand of the likely impact of a 10 per cent price increase on the levels of alcohol consumption, resulting harms and their costs. Recall that the Sheffield modelling uses explicit price elasticities and risk-response functions to make this link.

89. A 10 per cent general price rise in all categories of alcohol is estimated by the Sheffield Alcohol Policy Model for England and Wales to:

    - reduce total consumption by 4.4 per cent;[43]
    - impact most heavily on young drinkers consuming with harmful and hazardous drinking behaviours;[44]
    - reduce health care costs, deaths and morbidity, workplace harms and crime for all categories of drinkers (the health benefits accumulate, rising from negligible in year 1 to substantial by year 10);
    - reduce the social cost of their harms in total over 10 years by £7.8 billion in present value terms over the ten years.[45] Simple pro-rating to New Zealand by the relative populations over 15 and converting at average exchange rates, this is of the order of $NZ 1.7 billion; and
    - reduce health harms and health care costs by around £3.6 billion or, proportionately, around $NZ 800 million both in present value terms.[46]

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43 Brennan A, et al. 2008, *Independent review of the effects of alcohol policy and promotion Part B: Modelling the potential impact of pricing and promotion policies for alcohol in England – results from the Sheffield Alcohol Policy Model Version 2008(1-1)*, p. 106.

44 Ibid.

45 Ibid, p. 109.

46 Ibid, p. 110.

The Sheffield estimates for England and Wales of the costs avoided due to the reduction in harms are substantial and the simple pro-rating indicates, by definition, that they are equally substantial for New Zealand. The benefits from the reductions in health harms and health care costs for New Zealand are large enough to offset the magnitude of the net $10 million loss resulting from the difference between the increase in tax revenue and the reduction in consumer surplus.

90. To complete the picture, the order of magnitude estimates of the change in the benefits and costs as a result of increase in the rate of excise are set out in Table 6 (with more detailed results in Appendix B). The benefits from reductions in harms shown in Table 6 relate merely to the reductions in health harms and the cost of health care.

Table 6: Order of magnitude of benefits and costs of an increase in alcohol excise

	50% increase *($ million)*	*100% increase* *($ million)*
A. Reduction in cost of harms		
– health harms and care	82	164
– other	n.c.	n.c.
B. Increase in tax revenue	352	662
C. Loss of consumer surplus (maximum)	362	704
Net Benefit (A + B - C)	72	122

Note: n.c. = not calculated.
Source: MJA analysis.

91. Against the base case of no change in policy interventions, MJA's order of magnitude assessment of the benefits and costs of a proposal to increase the rate of excise by 50 per cent results in net benefits of around $70 million annually – even if large parts of the benefit stream are excluded from consideration. This order of magnitude results indicates that increases in the excise tax rate of 50 or 100 per cent would more than meets the standard test of public benefit.

92. Our order of magnitude benefit-cost analysis of a 100 per cent increase in the rate of excise indicates increasing net benefit for an increase in the rate of excise (see column 2 of Table 3).

93. The benefit-cost analysis presented above should be regarded as an order of magnitude exercise only. The estimated reduction in the cost of health harms and care rely directly on the English and Welsh demographics, costings, consumption patterns and estimated elasticities, although many of the estimates underlying the risk-response functions are international.[47]

[47] See Brennan A et al. 2008, p. 12.

94. Note, in order to err strongly on the side of conservatism, we are being deliberately inconsistent. We are exploring the impacts of the judgement that high risk behaviour and widespread health harms are a matter of public interest, no matter whose decisions they result from. However, we deliberately fail to follow through the implications of this judgment to correct the demand curve. If we did so, we would reduce the size of the consumer surplus affected and be required to bring into account costs unmatched by benefits.

Focussing on the reduction of health costs alone, increases (of 50 and 100 per cent) in the rate of excise are worthwhile – even if we still use the maximum possible estimate of the loss of consumer surplus (an estimate which is, as noted, inconsistent with the judgement being explored). Hence the case for an increase in the excise rate is likely to be much stronger than shown.

PREFERENTIAL TARGETING THROUGH AN EXCISE TAX INCREASE

95. Specifically, the advantages of preferentially targeting low cost per unit consumption are illustrated by examining the results of the Sheffield Alcohol Policy Model.

A policy of increasing alcohol prices by a uniform 10 per cent and a policy of imposing a 45 pence per unit minimum price floor are estimated to have almost equivalent reductions in total consumption (-4.4 per cent and -4.5 per cent, respectively). However, since the price floor preferentially targets low cost consumption, and therefore risky drinking, the estimated health care and health benefits in total are £3.6 billion and £4.2 billion, in present value terms. Thus, the preferential targeting combines with the higher price elasticities estimated by Sheffield for harmful and hazardous drinkers to boost these benefits alone by £0.6 billion or around 16 per cent.[48]

96. An alcohol excise increase in New Zealand would target harm reduction and/or minimise loss of consumer surplus for a number of reasons.

i. An increase in alcohol excise has the largest price impacts on the cheapest sources of alcohol (Table 7). This follows because the costs of alcoholic beverages contain costs other than the cost of the alcohol itself, and these other costs, which include retail and wholesale margins, tend to be lowest for the cheapest forms of alcohol.

ii. The cheapest sources of alcohol appear to be disproportionately purchased by harmful drinkers and by short term excessive drinkers including teenagers.

iii. Problem categories of drinkers therefore face the biggest increases in prices and therefore the biggest incentive to reduce their consumption.

iv. Since alcohol demand is inelastic for all consumers, all consumers will increase their expenditure on alcohol. With uniform price elasticities, the largest percentage increases in outlays will occur for heavy drinkers and the smallest percentage increases for moderate drinkers. This is due to (ii) above.

[48] Without further analysis we cannot disentangle: how much is wholly due to the greater increase in the price of low cost alcohol, how much is due to the higher price elasticities for heavy drinkers and how much is due to the interaction of these two factors.

Table 7: Differential price impacts of a 50 per cent increase in rates of excise on alcohol

Beverage type	*Volume (l)*	*Strength (%)*	*Units of alcohol**	*Current excise ($ per litre/ alcohol)***	*Current excise on product per unit of alcohol ($)*	*Retail price per unit of alcohol ($)*	*Retail price per unit of alcohol (50% higher excise) ($)*	***Increase in retail price (%)***
Grocery								
Beer (stubbie)	0.33	4.0	1.04	25.476	0.32	1.28	1.44	**12.6**
Wine	0.75	12.5	7.40	2.5476*	0.26	1.89	2.02	**6.8**
Bar								
Beer (stubbie)	0.33	4.0	1.04	25.476	0.32	5.76	5.92	**2.8**
Beer (glass)	0.40	4.0	1.26	25.476	0.32	3.72	3.88	**4.3**
Specialist liquour								
RTD	0.33	5.0	1.30	25.476	0.32	1.54	1.70	**10.5**
Spirits	0.75	40.0	23.67	46.400	0.59	1.77	2.06	**16.6**
Cheap-end products								
Beer	0.33	4.0	1.04	25.476	0.32	1.10	1.26	**14.7**
Wine	0.75	12.5	7.40	2.5476*	0.26	1.08	1.21	**12.0**
RTD	0.33	5.0	1.30	25.476	0.32	1.15	1.31	**14.0**
Spirits	0.75	40.0	23.67	46.400	0.59	1.01	1.30	**29.1**

Source: MJA analysis based on advice from the Law Commission. This assumes full pass-through of excise tax onto prices.
** One unit of alcohol is one standard drink (10 grams or 12.7 ml of alcohol).*
*** Excise on wine is $ per litre. It applies to the total volume, rather than the alcohol content.*

v. Unless the price elasticities of demand for alcohol for heavy drinkers are substantially lower than for other drinkers, the higher price increases for heavy drinkers means that harmful and excessive (and likely) younger drinkers will face the largest reductions in consumption and therefore the biggest changes in harms to themselves – and to other parties.

vi. Alcohol consumed at long-term harmful or short-term excessive levels, according to MJA's assessment in paragraph 41 to 106 above, could be as high as 80 percent of total New Zealand consumption of alcohol. However, the majority of consumers – as distinct from the majority of consumption – are likely to be little affected by an increase in the tax on alcohol.

vii. Because harmful and excessive drinking behaviour exceeds guidelines set generously in terms of the risk tolerances widely accepted as social norms and used formally in the UK, Australia, New Zealand and other common law countries, drinking at levels beyond these guideline levels may be described as 'irrational'. Consequently, depending on the value judgements made, the observed demand curves may need to be adjusted before changes in consumer

surpluses as a result of any policy intervention can be defined and estimated (see paragraphs 29 to 34 above).

viii. An excise tax increase is preferable to minimum pricing because it does not create excess industry profits, which are essentially a transfer to industry rather than to government (see Box 4).

97. These several factors materially diminishes the risk that:

> *"…moderate drinkers respond to price increase by more than heavy drinkers"*[49]

Indeed, for England and Wales and for Scotland, the policy simulation models suggest exactly the opposite. Moreover, the order of magnitude cost benefit analysis presented here indicates that (whatever the distribution of benefits and costs between abstainers, light, moderate and heavy drinkers) in aggregate the benefits of an increase in the excise substantially exceed the costs.[50] Thus, we find that the empirical evidence does not support the view that:

> *"…price increases will destroy more benefit than they prevent in harm."*[51]

This means that any remaining concerns over the distribution of benefits and costs must be concerns about equity and fairness, rather than concerns about efficiency and effectiveness.

98. Our analysis should be seen as conservative for several reasons, however. Not only have reductions in the cost of harms associated with productivity losses been omitted, but an excise tax increase is more efficient in its effects than a uniform price rise, as discussed in the paragraphs below.[52]

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49 Burgess and Crampton (2009) *Submission to the Law Commission on "Alcohol in Our Lives"*.

50 The transfer to industry created by minimum pricing highlights that the impacts on consumer surplus of any non tax measures need to be carefully examined, as the impact on consumer surplus will differ according to the nature of the measure. For instance, an increase in the minimum legal drinking age would significantly impact on the consumer surplus of 18 to 20 year olds, but not the consumer surplus of the majority of drinkers. There would, however, be no offsetting transfer to government, as there is with an excise tax.

51 Ibid.

52 In broad terms, a 50 per cent increase in the rate of excise will result in an average price change of around 10 per cent in New Zealand. The reduction in harms resulting from a uniform 10 per cent price increase (as modelled by Sheffield) will underestimate the reduction in harms resulting from a uniform increase of 50 per cent in excise rates, which gives an average price increase of 10 per cent, since the latter preferentially targets low cost alcohol and therefore problem drinkers.

Box 4: Comparison of price floors and a uniform tax increase

The UK and Scottish governments have given close attention to moving to uniform price floors to raise the prices of the cheapest forms of alcohol up to a minimum of 40 pence per unit. The great advantage of this policy is that it targets very directly the cheapest forms of alcohol which are known to be purchased preferentially by heavy drinkers and teenagers.

However, the disadvantage of minimum price floors imposed by regulation is that they create monopoly profits – that is, the minimum price regulations have the effect of promoting a government-sanctioned cartel.

Minimum price floors would create a major transfer to retailers and producers, which would effectively operate as a cartel due to the regulation that guarantees minimum prices. In terms of the loss of consumer surplus, the transfer to government, which would occur with a tax increase, becomes a transfer to the industry in the form of monopoly rents. In a small country, such as New Zealand, a high proportion of the alcohol sold will be sourced from foreign owned producers – so that a higher proportion of income and profits will be channelled overseas. This leakage does not affect GDP but it certainly affects national income, which would fall, other things equal.

This problem does not arise with a uniform increase (of say 50 per cent) in the rate of excise on alcohol. However, a uniform increase in the rate of excise still has the advantage that, at least to some degree, it causes bigger price increases to the cheapest forms of alcohol (Table 7). An excise tax increase therefore captures many of the advantages of imposing a minimum price floor and avoids the major legitimate objection to the price floors.

The benefits and costs of these two policy interventions will therefore differ and differ according to circumstances.

FINDINGS ON CONSUMER SURPLUS

99. In addressing the materiality of consumer surplus, we find that:

- the integrity of the concept can be questioned for several reasons including that the New Zealand alcohol industry believes it is profitable to spend substantially (more than $30 million a year) on alcohol advertising and promotions to shift consumer preferences; and
- accepting the concept at face value, the loss of consumer surplus due to an increase in excise is offset almost entirely by an increase in tax revenue.

100. Under the standard definition and measurement of consumer surplus (as applicable to normal goods), the loss of consumer surplus due to the increased rate of excise is almost totally offset by the increase in tax revenue. The net welfare loss is therefore small and likely to be easily offset by reductions in harms.

101. For a price elasticity of – 0.44 per cent and a 50 per cent excise tax increase, the maximum loss of consumer surplus is only 3 per cent or less greater than the tax collected, and the tax revenue so collected can be passed back to taxpayers generally in the form of either tax reductions or cash transfers. Rather than focus on the magnitude of the loss of consumer surplus due to a tax increase we need to focus on the small net loss (technically, as measured by the Harberger triangle) after the revenue transfer has been recognised.

102. The results above indicate that when consumer surplus is introduced into consideration, we need to focus on how the loss of consumer surplus occurs and is distributed. With the increased tax revenue recognised as a transfer, we find only a small net (welfare) loss due to the increased rate of excise tax. Thus, in terms of the New Zealand debate, our results give little or no support for the contention by Matt Burgess and Eric Crampton when they state:

> *Dr Easton argues that higher taxes are efficient because they prevent harm, but ignores the lost consumption benefits of taxation that might reverse his conclusion.*[53]

103. They are correct that it might, but it is extremely unlikely. The lost consumption benefits are almost wholly offset by the increased tax revenue and we need to be merely concerned with whether the resulting small welfare loss (equivalent to up to 3 per cent and 6 per cent of the increased revenue resulting respectively from a 50 per cent and a 100 per cent increase in the excise rate) is offset by the reduction in harms.

104. Since much has been made of the previous omission of consumer satisfaction from the cost of illness studies, and indeed from the Sheffield modeling to date, we have examined the concept and its relevance to the benefits of consuming goods and services for which demand is addictive, compulsive or irrational. This is an innovative area in economic analysis, and the authoritative analysis of the Australian Productivity Commission could serve as a basis for further empirical work in New Zealand.[54]

105. As outlined, numerous competing judgements can be made on the degree of irrationality. The key empirical finding is that any pull back from the extreme view (that all consumption, no matter how risky or driven by compulsion or addiction, confers full benefits) results in a much lower – and possibly negative – estimates of (net) consumer surplus.

106. In terms of the economic analysis, the very high percentage of total New Zealand alcohol consumption that is consumed at high levels of risk of acute and chronic harm (see paragraph 42) reduces the likelihood of major reductions in consumer surplus. Consideration of any loss of consumer surplus needs to explore, at least on a scenario basis, the implications of, say, 80, 70 or 50 per cent hazardous or harmful levels.

107. In summary, the concept of consumer surplus must be addressed for economic completeness but the results of doing so do not always appear to impinge materially on the substance of the debate on alcohol policy. Where it does affect the case for

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53 Burgess, M. and Crampton, E. 2009, *Submission to the Law Commission on 'Alcohol in Our Lives',* p. 2.

54 Productivity Commission 1999, *Australia's Gambling Industries: Inquiry Report Vol. 3 Appendices*, 'Appendix C:Estimating Consumer Surplus'.

higher excise rates, it appears that careful evaluation of the nature and magnitude of consumer surplus may actually strengthen the case.

108. MJA's order-of-magnitude benefit-cost analysis of the economic issues and linkages indicates very strong logic and support for a significant increase in the rates of excise tax on alcohol including up to at least 50 or 100 per cent. Larger increases in excise tax rates may be warranted, but, before doing so, it may be appropriate to explore these impacts more fully, and in the context of a wider portfolio of corrective measures.

Concluding comments

109. Public policy analysis of specific interventions requires answers to three questions:

- is the policy proposal likely to pass the public interest test as indicated by a benefit-cost analysis?;
- is this the best policy when compared with other policy alternatives?; and
- since a portfolio of policies is usually required to cover the range of risks, market failures and other objectives / rationales for government involvement in the market, how does this policy proposal (an increase in excise tax) fit within the optimal portfolio of policy interventions?

110. We have sought to address the first of these questions. In terms of the first question, we find that an increase in the excise tax of 50 to 100 per cent is likely to give major net benefits to the New Zealand economy. Although the analysis should not be described as better than 'order of magnitude', the deliberate conservatism of assumptions used, in the threshold analysis and order of magnitude benefit-cost analysis, gives confidence in this conclusion.

111. A significant increase in New Zealand's alcohol excise tax, of 50 or even 100 per cent, would yield net economic benefits, reducing the call on the public budget thus allowing either tax reform and/or a reduction in taxation levels and would be worthwhile from the community's point of view in terms of both efficiency and equity.

112. There are several separate, additive economic rationales for an increase in the rate of excise.

First, if alcohol were a normal economic good (which it is not), then the prime public policy interest would be as a tax base. Since price elasticity of demand for alcohol is low, in terms of Ramsey's theory of optimal taxation, the excise on alcohol is a highly efficient tax. The net cost of dead weight efficiency losses from all taxes would be reduced and New Zealand would be better off by an increase in the rate of excise on alcohol and a revenue equivalent reduction in rates of income tax. Based on the range of past estimates of the dead weight burden of the income tax system, and MJA's estimates of the deadweight loss associated with a 50 per cent increase in the excise rate, the annual benefit is estimated to lie in a range from less than $10 million to more than $50 million.

Second, since alcohol is associated with large (net negative) consumption externalities, the excise rate on alcohol can be increased so that consumers better recognise the (high) public costs of alcohol. As demonstrated by Pigou, such tax increases would be welfare improving. MJA's threshold analysis and order of magnitude benefit cost analysis indicates that excise increases of at least 50 or 100 per cent are desirable. Based on the reduction in health harms and health costs alone, the annual benefit is around $60 to $70 million. When this Pigovian benefit is added to the Ramsey benefits the annual benefit range between $70 to $120 million a year.

Third, since alcohol is judged by many to involve elements of both short run and long run irrationality, an increase in the excise rate is likely to be welfare improving since, while reducing the small consumer surplus below the corrected demand schedule, it would also reduce costs unmatched by benefits. We have not evaluated efficiency benefits resulting from any reduction in irrational consumption.

113. We have also not evaluated the impact of other policy alternatives and thus cannot directly answer the second question posed in paragraph 109. And the evaluation of the other policies would depend more critically on the nature of consumer surplus and the magnitude of unmatched costs that would result from correction of the observed demand curve.

114. In terms of the third question, the rate of excise tax is but one instrument in a wider portfolio of current and future policies and interventions. Based on the order of magnitude estimates, the case for a 100 per cent increase is stronger than for a 50 per cent increase. However, if other policy measures were substantially strengthened to reduce levels of life time drinking and binge drinking, including among Māori, then a case might be made for retreating to an increase of 50 per cent only… but we would need to be very confident indeed that such policy measures would in fact be put in place and be adequately administered and effective before doing so.

    In the absence of strong across the board actions on other measures of known effectiveness (such as minimum legal drinking age, trading hours, BAC limits and local controls over outlet density), a significant increase in the rate of excise of 100 per cent may be a simple, effective, well-tailored and readily implemented measure.

115. For policy advisers and for government there is a question of whether to combine all reforms in a simple package or whether to proceed sequentially. Desirably, harmonisation of excise rates to a single rate or to a more finely graduated rate structure requires some consideration of cross-price elasticities between different beverages. This information is not currently available in either New Zealand or Australia at the necessary level of detail, and there may be a case for deferring harmonization until the results of a rigorous study of cross-price elasticities is available.

116. Economic analysis is currently a small component of the extensive research work and investigations on the effects of alcohol on our societies. The solid grounding of research results provided by medical and other researchers does not, however, reach policy makers, in part because the language of policy makers and government generally is economic or political and the results of the medical research are not translated either comprehensively or authoritatively. The future direction will harness economic frameworks more effectively. These frameworks will then identify gaps in knowledge and in behavioural relationships. We have provided a checklist of more than 20 items for future directions in the economics of alcohol research and policy).

Marsden Jacob Associates

11 December 2009

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Appendix A: Research directions – a checklist

The emerging checklist for future research directions includes the following.

1. **Invest resources in alcohol policy models** (and give up the investment of resources in cost of illness models). The Sheffield Alcohol Policy Model is a first, currently undeveloped, example which can be readily extended in methodological stages to other countries, including to New Zealand and Australia.

2. **Recognise, explore and include the benefits of consumer satisfaction** in the alcohol policy models, recognising that the standard definition of consumer surplus provides a maximum estimate and that alternative definitions are relevant and can give materially different results.

3. **Ensure that the administrative mechanism effecting the simulated policy change being examined is spelt out and followed through**, e.g., how do price rises occur if not through tax changes; or, e.g., if regulation enforces price floors, then to where do the resulting monopoly profits flow?

4. **Identify the spectrum of issues and judgements relating to the integrity of the concept and measurement of consumer surplus**.

5. **Obtain own-price, cross-price and income elasticities** which are internally consistent and estimated under an expenditure systems approach. Ensure that econometric distinctions (such as systems-estimated elasticities versus single equation estimates) are used as distinguishing criteria in meta-analyses.

6. **Categorise consumers by levels of short-term and long-term risk**, **age, gender and racial background** (e.g., Māori, non-Māori).

7. **Consider a three-way classification for both short-term and long-term consumption and associated harms**, i.e., below limits, above and up to twice the limit, greater than twice the recommended limit.

8. **Calibrate all recommended drinking limits in terms of risk likelihoods.** This will facilitate comparisons over time and between countries. If four drinks a day is consistent with a 1/100 risk of acute damage, then what are 6 or 8 drinks a day consistent with?

9. **Develop a risk-based concordance across national recommended drinking limits to facilitate comparisons over time and between countries**.

10. **Ensure that the income and expenditure surveys are adequate** to support the estimation of own-price, cross-price and income elasticities across the multiple relevant consumer groups.

11. **Recognise that self-reporting is under-reporting, and assemble information to allow correction factors to be applied across consumer categories**.

12. **Ensure that the industry is obligated to supply comprehensive sales data readily and transparently** for both on and off-license sales**.** Currently, sales data in New Zealand and Australia have restricted access and, in any event, do not cover on-license sales;

13. **Place protective effects in perspective** by establishing and publishing relative contributions of each source of harm or protective benefit to aggregate harms.

14. **Better inform judgements on the wide range of methodologies and assumptions on the nature and magnitude of production losses due to absenteeism, reduced productivity and unemployment.** This would require:

    – providing separate estimates across the spectrum of methodologies / assumptions e.g., friction cost method, minimum wage, value-added per employee, general equilibrium impacts; and

    – examining how alcohol related absenteeism, productivity loss and unemployment actually impact different types of businesses, e.g., large enterprises versus small and medium enterprises.

15. **Distinguish transparently between the differing roles of alcohol in differing categories of crime**.

16. **Widen the applicability and usefulness of the policy models by developing calibrations of non-price measures and their relationships to consumption and hours**, e.g., availability through hours and outlets and density measures.

17. **In modelling the drivers of acute harms and bingeing behaviour, distinguish between availability and aggregation –** between the availability of alcohol and the availability of sites which aggregate (i.e., bring together) drinkers and bingeing behaviour.

18. **Where expenditure data are restricted in detail, explore the ability to use local totals for row and column data and international detail on cell by cell information to interpolate missing data — as per well-known input output estimation techniques.**

19. **Ensure greater consistency in, and nesting, of the questions and issues explored in income, expenditure and prevalence surveys undertaken in New Zealand, Australia and the UK so that interpolations for missing or outdated data can be made with greater confidence.**

20. **Ensure that governments (Ministers, advisers and Departments) and researchers are aware of the need for a more integrated, disciplined and resourced approach to data gathering, research and analysis.**

21. **Utilise the framework of the policy models to identify research gaps and funding priorities**.

22. **Require scientific logic and rigour in policy decision making, but do not allow good decision making to be subverted by the search for perfection.**

This 22 item checklist refers to the future. It moves considerably beyond the notion of *"let's try to replicate Sheffield down here"*.

Indeed, taken as a checklist, the Sheffield work currently complies with only a third or so of the itemised directions.

Box A1: Elasticities disaggregation and estimation methods

A consumer's demand for a particular type of alcohol depends on its own price, the price of other forms of alcohol and other stimulants (which are substitutes, to different extents) and the consumer's total income or 'budget constraint'.

Statistically, the most consistent estimates of elasticities are obtained by considering the different demand equations for different types of alcohol (e.g. beer, wine and spirits) as a system of equations, and estimating this system using special estimation techniques. By estimating the equations as a system with all the own-price elasticities and cross-price elasticities estimated as part of the same process, internal consistency is ensured. Basically, the system modelling approach forces everything to 'add up'.

Better estimates will also be obtained by having data broken down by enough beverage types that substitution possibilities can be modelled adequately. This allows for estimates of cross price elasticities that are more meaningful in a policy sense. For example, detailed data could allow estimation of substitution from RTDs to low priced beer in response to a price increase affecting RTDs.

Alcohol demand studies typically distinguish between three beverage types: beer, wine and spirits. The University of Sheffield study, however, distinguished 16 different beverage types. For four basic categories of beer, wine, spirits and RTDs, it further distinguished between on trade (e.g. in bars, clubs) and off trade (e.g. in grocery stores, liquor outlets) sales, and between lower price and higher price products. From first principles, the greater the number of substitutes a product has, the higher its own-price elasticity.[1] Thus, it follows that the Sheffield estimates of own-price elasticities based on 16 different types of alcohol might be expected to be higher than own price elasticity estimates based on a simple three way split of beer, wine and spirits.

Further insights into the Sheffield elasticity estimates can be gained by examining the results of Fogarty's 2009 meta analysis. This very recent meta analysis differs from other meta analyses since, in its meta regressions, it weights individual study estimates by their precision. This is seen as preferable to the unweighted approach used in other recent meta analyses, such as, say, Gallet 2007. Fogarty's meta analysis concluded the following.

a) The estimates of price elasticities are significantly influenced by estimation technique, data frequency and time period under consideration.

b) *"...the overall trend ... has largely been an evolution from single-equation OLS approaches to system-wide approaches, to time series approaches."* [page 35]

c) *"... single-equation OLS type approaches ...give statistically different results to system-wide approaches and time series approaches, but system-wide approaches and time series approaches do not appear to generate estimates that differ, systematically."* [page 35]

The implication here is that the Sheffield system estimates should not be pooled or compared with OLS estimates.

d) There is no statistically significant difference between own-price elasticity estimates which acknowledge substitution possibilities between alcohol and other stimulants such as marijuana and those that do not. Thus, as a practical matter, policy makers can pool elasticity estimates which ignore substitution possibilities other than alcohol (such as soft drugs) with estimates that recognise these possibilities. [pp. 34-35]

e) Since around the 1950s, in a range of countries including the UK, Australia and New Zealand, alcohol demand has become increasingly elastic. Thus, recent estimates such as those obtained by the Sheffield team might be expected to be more elastic than estimates from earlier in the post-war period.

The richness of the Sheffield data allowed the estimation of own-price and cross-price elasticities for all 16 beverage types for moderate, hazardous and harmful consumption. Future alcohol demand studies should aspire to this level of richness.

[1] Fogarty 2009.

Appendix B:
MJA preliminary modelling results

Estimates of net benefit of 50 per cent increase in excise

New Zealand Inputs

	NZRA	LC
Expenditure on alcohol[1]	$3,618.00 m	$4,500.00 m
Excise[2]	$829.00 m	
Volume of alcohol[2]	31.576 m litres	
Excise as proportion of expenditure	23%	18%
Implicit price ($/litre)	$114.58	$142.51
Implicit tax ($/litre)	$26.25	
UK inputs		
NPV of saving in harms UK over 10 years	£3.6 b	
Discount rate (real)	3.5%	
Implied constant annual cost	£0.4171 b	
Exchange rate (20 November 2008)	$NZ 2.2779/ £	
New Zealand adult population[3] (2008 - implied excise data)	3.383 million	
England and Wales adult population[3] (2008)	44.892 million	
Convert UK impacts for 4.4% reduction in consumption	$NZ 71.607 m	4.40%
Analysis		
Change in excise	50%	
Pass-through to price	100%	
Price elasticity of demand	-0.44	
Change in price	11.5%	9.2%
Change in volume	-5.0%	-4.1%
Change in excise	$351.816	$351.816
Change in CS	-$362.26	-$360.22
Net change	-$10.45	-$8.40
Change in harms	$82.04	$65.96
Net benefit	$71.59	$57.56

Notes

1 Low figure from NZ Retailer Association figure extrapolates supermarket prices to res market. Salvation Army estimated $3,200m. High figure from NZ Law Commission.

2 NZ Treasury.

3 Aged 15 and over.

Sources : NZ excise data 2008, estimates of alcohol sales NZ Retailers Association and NZ Salv Treasury, NZ Stats, BERL, Sheffield University, UK Office for National Statistics.

Estimates of net benefit of 100 per cent increase in excise

New Zealand Inputs

	NZRA	LC
Expenditure on alcohol[1]	$3,618.00 m	$4,500.00 m
Excise[2]	$829.00 m	
Volume of alcohol[2]	31.576 m litres	
Excise as proportion of expenditure	23%	18%
Implicit price ($/litre)	$114.58	$142.51
Implicit tax ($/litre)	$26.25	
UK inputs		
NPV of saving in harms UK over 10 years	£3.6 b	
Discount rate (real)	3.5%	
Implied constant annual cost	£0.4171 b	
Exchange rate (20 November 2008)	$NZ 2.2779/ £	
New Zealand adult population[3] (2008 - implied excise data)	3.383 million	
England and Wales adult population[3] (2008)	44.892 million	
Convert UK impacts for 4.4% reduction in consumption	$NZ 71.607 m	4.40%
Analysis		
Change in excise	100%	
Pass-through to price	100%	
Price elasticity of demand	-0.44	
Change in price	22.9%	18.4%
Change in volume	-10.1%	-8.1%
Change in excise	$661.844	$661.844
Change in CS	-$703.63	-$695.44
Net change	-$41.79	-$33.60
Change in harms	$164.08	$131.92
Net benefit	**$122.29**	**$98.32**

Notes

1 Low figure from NZ Retailer Association figure extrapolates supermarket prices to res market. Salvation Army estimated $3,200m. High figure from NZ Law Commission.
2 NZ Treasury.
3 Aged 15 and over.

Sources : NZ excise data 2008, estimates of alcohol sales NZ Retailers Association and NZ Salv Treasury, NZ Stats, BERL, Sheffield University, UK Office for National Statistics.