



# ALCOHOL IN OUR LIVES: CURBING THE HARM

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

Summary extracted from Final Report NZLC R114

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

Summary extracted from Final Report NZLC R114

## 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.<sup>1</sup> 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.

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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:

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*Geoffrey Palmer*

President

Summary extracted from Final Report NZLC R114

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**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 wowsersism. 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;<sup>1</sup>
  - 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,<sup>2</sup> 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:<sup>3</sup>

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.

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.<sup>4</sup>
- 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.<sup>5</sup> 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.<sup>6</sup> 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:<sup>7</sup>
- 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”.<sup>8</sup> Regrettably, 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.

<sup>8</sup> 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”.<sup>9</sup> 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.

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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:<sup>10</sup>
- 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.<sup>11</sup> 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.

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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:<sup>12</sup>

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”.<sup>13</sup>
- 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:<sup>14</sup>
- 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:<sup>15</sup>

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.

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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.<sup>16</sup> 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.

Summary extracted from Final Report NZLC R114