

“Alcohol Policy in New Zealand: Unfinished Business”

Opening address to the 5th Annual Conference, Alcohol Action New Zealand

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Introduction

I am not a wowser; I enjoy a drink as much as most New Zealanders.

The drinking culture in which I grew up was that of six o'clock closing and it remained right up until 1967, having lasted fifty years. The six o'clock swill was truly awful. Only men were permitted in the public bars of most pubs. My recollections as a law student and young lawyer are of the old Midland Hotel in Wellington. The place was crowded out between five and six. There was enormous urgency to drink as much as you could before the bar closed. The beer was dispensed in long plastic hoses and members of a group took turns in buying a round. To say that this was not a civilised environment would be an understatement. But it was not unlike the “binge” drinking culture in which many young people engage today. The strange law we had in those days represented an uneasy accommodation between the “wets” and the “dries”, the struggle between which had occurred generations before my time, going right back to ferocious debates on prohibition that began in New Zealand in the nineteenth century.

Ever since its earliest days New Zealand has had problems with alcohol. Maori had no exposure to alcohol until the Europeans arrived here. Colonial New Zealand was awash with alcohol. During the last twenty years of the nineteenth century the prohibition movement came to New Zealand, and alcohol became a social battleground and a dominating factor in New Zealand politics. New Zealanders were given the chance to vote for prohibition of alcohol in 1911. More than fifty per cent voted for it but the law required 60 per cent majority. Between 1919 and 1984 there was a referendum every three years, in conjunction with the general election. Three choices were offered and to be successful only fifty per cent was required:

1. I vote for National Continuance.
2. I vote for State Purchase and Control.
3. I vote for National Prohibition.

The third choice was prohibition of the sale and manufacture of alcohol, as existed in the United States from 1920 to 1933. Prohibition was a disastrous social experiment and New Zealand was fortunate it was never voted in here. Prohibition nearly carried in 1919, and would have done so but for the votes of the servicemen away at the First World War that were cast in favour of continuance.

Working with liquor law over a long period has convinced me that alcohol-fuelled violence is a critical social problem and drives up the rates of criminal offending. Without alcohol, policing in New Zealand would be a far more sedate and safe affair. A combination of factors has caused political timidity in this field, and the public interest is not being well served by the law that was passed by Parliament in 2012. Legislators should take seriously what the empirical social science research tells us about what is occurring in society with alcohol. Many of the decisions taken by Parliament either ignore the evidence or are contrary to it. In my judgment the reason for this laxity lies in the heavyweight lobbying influence of the liquor industry, an influence exerted behind closed doors. Alcohol in New Zealand is a multi-billion dollar industry and the wine sector alone was estimated to have contributed \$1.5 billion to the gross domestic product of New Zealand in 2008. No doubt this has much to do with the tenderness by which the industry has been treated.

Alcohol used in moderation promotes sociability, friendship, entertainment, fun and relaxation, things that many New Zealanders enjoy. What needs to be faced up to, however, is that we know much more

about the effects of alcohol than we used to know. There is much more reliable research available. Alcohol is a potent producer of serious health hazards. Heavy costs are imposed on society through the excessive use of alcohol – law and order costs, health costs, accident compensation costs, and the costs of individual harm.

My exposure to the policy issues raised by alcohol began in earnest when I became a Member of Parliament, when I witnessed first-hand the shambles produced in the Parliament by the conscience vote that ensured alcohol law was a lottery. On no other issue did Parliament behave in such a strange way. I tried to bring order to the field when I was Minister of Justice by asking Sir George Laking to head an inquiry and write a report for me as Minister of Justice to chart a course forward. Big changes resulted from that report and were successfully but not easily enacted. Unfortunately, we did not get it quite right, as I realised when I led the Law Commission's review of our liquor laws twenty years later. I shall try to provide what insights I can from this experience, because few fields are as resistant to sensible change as this one.

I began in this field as an advocate of liberalisation of the alcohol law compared with that which prevailed in the days of my youth, but when I examined the evidence available in 2010 compared with that available in 1989, I came to the unpalatable conclusion that we had liberalised too far. The 1999 changes as they were interpreted over time allowed grocery stores to sell alcohol and the lowering of the purchase age made things worse. Good things had been accomplished. I thought restaurants and cafés flourished as a result of changes permitted by allowing outlets to proliferate and that was a significant social advance. The need for an outlet no longer had to be demonstrated. But the proliferation of outlets in other types of liquor businesses, the tendency to 24 hour trading, and the lowering of the legal purchase age in 1999 could be seen to have had bad effects. It was very hard to deny an applicant a licence to sell alcohol, whatever the state of public opinion in the locality. In assessing the evidence available to the Law Commission inquiry I had to revise my thinking. I came to some sobering conclusions.

Alcohol is a drug and no ordinary commodity. There has been a pronounced tendency to commercialise it and treat it as an ordinary commodity by applying the modern techniques of marketing in order to maximise profit and consumption. If alcohol were only discovered now it is doubtful that its manufacture or sale would be approved by health authorities. In reality heavy constraints exist on what the law can achieve in controlling the use and abuse of alcohol. Every law has to pass the test of public acceptability. The trick is how to reduce the baleful influences of alcohol but permit the use of the product within reasonable limits. Despite the fact that the use of alcohol is deeply embedded in the sporting, social, and home lives of New Zealanders, the theme of this chapter is that New Zealand can achieve better results in curbing harms than it has so far.

The Law Commission Inquiry

We began by talking to all the stakeholders and reviewing all the research literature. This in itself was a big job. Compared with the material in front of the Laking Working Party in 1986 the world of alcohol research had progressed very far. The Laking Committee was concerned about abuse but found little reference to the health effects of alcohol. But by 2009 the research on this was profound, and further good research was being undertaken in New Zealand by Professor Sally Casswell at Massey University and many people at the University of Otago Medical School. Professors Jenny Connor and Professor Doug Selman particularly come to mind. A book put together by experts approved by the World Health Organisation made this observation:¹

During the past decade there have been major improvements in the way alcohol problems are studied in relation to alcohol policies. With the growth of the knowledge base and the maturation of alcohol science, there is now a real opportunity to invest in evidence-based alcohol policies as an instrument of public health.

We were fortunate that another edition of the book bringing the research record up to date was published in 2010 before we finalized our report, and we were able to have an advanced copy so that we could refer to the most recent research.² I had advised the tobacco industry in law practice over many

¹ Thomas Babor et al *Alcohol: No ordinary commodity* (Oxford University Press, New York, 2003) at 119.

² Thomas Babor et al *Alcohol: No ordinary Commodity* (Oxford University Press, New York, 2010).

years and I could see the pattern emerging in the parallels between tobacco regulation and alcohol. I became convinced that in relation to advertising, promotion, and marketing, alcohol will in time travel down the same road as tobacco regulation. I did not begin with that view; it came to me from reading the research.

On a visit to Scotland I found the big reform efforts there were driven by the University of Edinburgh medical faculty and medical researchers all over Scotland. When I returned to New Zealand I got in touch with the leaders of the medical profession here to ensure that they would be active in helping the Law Commission by contributing their expertise. And health emerged as a big issue in a way it had never been before in New Zealand liquor debates.

We produced a 208-page Issues paper in July 2009.³ A new government had been elected since we began the project and the new Minister of Justice Simon Power told the Law Commission he regarded the alcohol project as very important and urgent. He wanted it sped up and after a lot of soul searching we did speed it up by a year. But this meant that we did not have the time to produce a draft Bill, a considerable loss I thought and still think. It certainly made it much easier for the government to slide off the final recommendations. Worse, it exacted a heavy toll on the staff.

The Issues paper was rather a riveting document by Law Commission standards. It told a story, starting with the death of Navtej Singh, shot in his South Auckland liquor store in 2008 by a robber who took boxes of liquor as well as cash in the till. The Issues paper went on to set out the basic facts concerning the involvement of alcohol in criminal offending, alcohol related death, the health consequences of alcohol consumption, how to reduce demand, and what a new framework for liquor could look like. It set out options on supply controls, demand controls, and limiting the problem. The issues paper contained two key appendices. The first was from New Zealand's District Court Judges. They see the consequences every day when they sit in court. In their preliminary submission the Judges reported to the Commission that:⁴

[A]t least 80 per cent of defendants coming before the criminal courts have alcohol or other drug dependency or abuse issues connected with their offending. It is estimated that in 80 per cent of those cases the drug involved is alcohol. It is exceptional for intoxication not to be mentioned in a police summary of facts in relation to violent offending, and in relation to offensive and disorderly behaviour offences and other street disorder.

Intoxication is generally a feature in cases before the Family Violence Courts, with both the perpetrator and victim often affected by alcohol.

The Police told the Commission that at least 31 per cent of all recorded crime involved an offender who had consumed alcohol prior to committing the offence.⁵ The presidents of the Medical Colleges in New Zealand told the Commission they wished "to express our collective concerns about the pervasive medical harms that continue to occur as a result of alcohol intoxication, abuse and dependency."⁶ They said that it was likely that 10 to 20 per cent of hospital and emergency department admissions in New Zealand are related to alcohol.⁷

The Law Commission's programme of public consultation and involvement involved 50 meetings around New Zealand from Whangarei to Invercargill. We received 2,939 submissions from members of the public. It was clear there was great public concern and worry about the excessive use of alcohol in New Zealand society.

What the Public Told the Law Commission

We picked up in many places the sense that for thousands of young people today drinking is no longer merely an adjunct to their social lives. It is the focal point of their social life. Drunkenness is not an occasional by-product of drinking. It is for many an end in itself. Intoxication and the behaviours

³ Law Commission *Alcohol in Our Lives: An issues paper on the reform of New Zealand's liquor laws* (NZLC IP15, 2009).

⁴ Above, at 245-246.

⁵ At 65.

⁶ At 255.

⁷ Law Commission *Issues paper* at 255.

associated with it – violence, sexual assault, risky sexual behaviour, offensiveness and anti-social behaviour were highlighted again and again as amongst the most pressing social issues confronting communities.

There were also comments about the general erosion of values, including a lack of self-respect and respect for others, coupled with an absence of personal and parental responsibility. Frequent reference was made to women's rapid rise to equality in the drinking culture. Dr Judith Aitken, the former Chief Executive of the Education Review Office, told us in our Wellington consultation:

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

Parents and law-makers came in for strong criticism as well for failing to set clear boundaries and failing to impose meaningful consequences for unacceptable behaviour. We heard a lot from secondary school principals around the country, some of whom thought parents had to a large extent abdicated responsibility for their adolescents' drinking. The environment in which alcohol is marketed came in for criticism at our meetings. Many said that the sale and use of this drug has been normalised to such an extent that it is regarded as another food. Yet it is no ordinary commodity. It is a drug.

The normalisation of alcohol in New Zealand life has proceeded at pace since 1989. Many were critical as well of the heavy commercial emphasis in trying to discount prices and sell more alcohol. In Napier, a community worker told us:

You tell us alcohol is causing us harm and is carcinogenic, but how can we expect young people to take this on board when they see the whole adult world turns on it?

There is no question that the 1989 reforms brought many positive changes. These included a far more diverse and interesting dining and entertainment sector. But as a result of the highly competitive market created by some of the same reforms, access to and affordability of alcohol has increased significantly. The latest New Zealand research published in October 2009 indicates that more than 1.4 million New Zealanders between the age of 16 and 64 engaged in binge drinking on at least one drinking occasion in the last 12 months.

Many in the hospitality industry expressed the view that aggressive promotion by supermarkets and the pricing of cheap alcohol had played a major part in the acceleration of drinking away from licensed premises. There was a widespread sentiment that the tendency towards 24 hour trading had made alcohol-related harms worse. There were many supporters of limiting the hours of off-licenses and on-licenses at a national level. The latter was much more controversial than the first.

There was a great deal of criticism of spirit-based drinking or RTDs as providing a gateway to adolescent drinking. The issue attracted heated debate at our meetings. While acknowledging that on the face of it these products were simply a convenient form in which to drink light spirits, many expressed the view that their high sugar contents, packaging and price were designed to mimic that of popular non-alcohol beverages.

No single issue galvanised the public to such a degree as the alcohol advertising and sponsorship issue. The Commission's treatment of the issue in its Issues Paper included the tentative suggestion that the current system of self-regulation under the Advertising Standards Authority should be largely left alone. This met with widespread criticism. A Wellington addiction specialist told us as follows:

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 safe, harmless, health inducing product that helps people enjoy life and have fun. The more you drink the more fun you will have.

In many of the larger public forums there was strong support for applying a tobacco “smoke-free” model to alcohol with a ban on all advertising and a staged withdrawal of all alcohol sponsorship. There was extensive concern about how advertising helped shape a culture where drinking was seen to be the key to social and sexual success. In many communities we found evidence that the communities themselves were taking action against what they thought was excessive use of alcohol. And indeed the community is an important place for such actions to start. Many of the people at these meetings wondered why there was no requirement for advertisers and manufacturers to provide basic consumer information, such as the recommended maximum intake and risks to pregnant women and the young.

Many believed that the widespread availability of alcohol at prices lower than many basic commodities was contributing to the culture of excessive drinking. In the late night entertainment precincts of the major cities it is clear that the majority of people visiting bars and clubs have already consumed shop-bought alcohol before coming into town. This trend, referred to as pre-loading, is being driven in part by the relatively high costs of on-premise alcohol compared with off-premise alcohol. When it came to price, there was quite a lot of support for increasing the price as being the most efficient way to reduce consumption and therefore harm. But the hospitality people who attended our consultations were certainly not keen on this.

The need for increased personal responsibility in both consumption and sale of alcohol was a clear theme that emerged from the public consultation in every centre. Many expressed a strong appetite for the reintroduction of the offence of being drunk in a public place. This provision was repealed in 1981. We heard a lot about the problems with liquor bans. There are more than 160 by-laws around New Zealand that impose liquor bans and they have spread very rapidly.

The most graphic illustrations of abuse that the Law Commission gathered came from our many nocturnal visits around New Zealand with the Police. There were many of these visits and I went on four of them in Wellington, Hamilton, Queenstown and Nelson. Courtenay Place in Wellington after midnight on a Saturday night was a sight to behold. The scenes of such disorder were quite remarkable. The Police had to have a team available ready to make arrests and they made quite a number the night I was there. People were fighting, yahoing, falling down, and vomiting. Young women I saw were unable to walk and rendered vulnerable I thought to sexual predators. Many people were plainly intoxicated. They came into the venues, many of which were very large, already liquored up by pre-loading at home. This was cheaper than drinking at the venue. I visited the Police cells and saw how incapable were some of those arrested and what a mess the Police had to contend with.

In Hamilton it was worse. There I met with a group of young people, mainly students, who conducted me around what they called “the chlamydia triangle.” Students went from pub to pub, and as one young woman told me, sometimes ended up “bonking” someone in the toilets, whose identity they could not recall in the morning. The object of these expeditions was to get drunk. I heard instances of people who threw up because they drank so much, and their mates took photos of them doing so to post online on the social media site Facebook. In one establishment I came across a promotion that represented the height of irresponsibility. The sign said “All you can drink for \$30,” a clear breach of the existing law, and I brought it to the attention of the Police. Women were just as prone to get drunk as men. In Nelson we went to a nightclub after midnight, where topless women danced for the entertainment of drinkers. It was a signal demonstration to me how social mores had changed. Perhaps the worst scene I visited was in Queenstown. There the District Council employed people to get up early in the morning and go around the town cleaning up vomit from the streets and entrances to shops. The highly competitive situation between the outlets seemed to add to the problems. The Queenstown police were highly effective but the burdens they carried could have been relieved by changes in the law.

The Policing Act 2008 gives Police the power to detain intoxicated persons where the person appears to be incapable of protecting him or herself from harm. The Police either take them to the Police Station or drive them home. In 2007-2008, 21,263 were detained under this provision. The Law Commission recommended that the Police should be able to proceed civilly to recover the costs of this activity, but that was not done. That change would have sheeted home personal responsibility.

Whatever policy recommendations the Law Commission could make, we were under no illusion that they would change the New Zealand drinking culture overnight. The law cannot do that alone. It can help. It can nudge people towards a different way of looking at things.

What the Law Commission Recommended

The Issues paper outlined some tentative policy steps that could be taken. It floated the idea of a split age – 20 for purchase at off-licenses, and 18 for on-licenses.⁸ It suggested that advertising restrictions were not required.⁹ On both those issues the submissions and public opinion was against us and in its final report both these matters were hardened up. By the time we had been through the extensive procedures that we had set ourselves, I felt we knew more about the state of New Zealand public opinion on liquor than the Government did. But of course, the lobbying of the liquor industry was concentrated upon the government in addition to the Law Commission. Some parts of the industry were co-operative with us and shared confidential information. I had heard it all before and the lack of logic, special pleading, and wilful refusal to examine the scientific evidence was woeful. I retain something approaching contempt for some spokespersons of the liquor and hospitality industry, who never turn down a media opportunity to peddle their bromides of half-truths and quarter truths. The prospect of alcohol regulation is strangely suited to the production of misleading sound-bites on television.

Some of the heaviest lobbying we received at the Law Commission was from Roger Kerr of the Business Roundtable. A number of his members would be adversely affected by the changes and he was remorseless in saying we had to produce a regulatory impact statement. We did but he did not like it, and I refused to repeat the exercise for the final report. I have seen a lot of Roger Kerr over the years, and his techniques became more ideological over time and less directed to what I saw as the public interest. He thought what was good for business was good for people. He was prone to argue public policy questions in a way that sounded objective but I did not think they were. As one of my friends from Canada says, the purpose of the government is to look after humans, not corporations.

I knew the business and economic lobbies would not want any increase in the excise tax on liquor. I also knew that the research showed that price was the best way to curb consumption. So I commissioned a report from an Australian firm of economic consultants that recommended that excise tax be doubled. Marsden Jacobs' key point in a closely argued piece of economic analysis was:¹⁰

A significant increase in New Zealand's alcohol 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 reduction in taxation levels and would be worthwhile from the community's point of view in terms of both efficiency and equity.

It was what economists call a Pigovian tax to ensure consumers better recognise the public costs of alcohol. The Australian consultants were, I found, amazed to find how right-wing and politically ideological were some of the New Zealand economists with whom they had exchanges over this issue.

The remarkable thing about the government response to the Law Commission's report was that the Prime Minister immediately rejected the recommendation about increasing excise tax as soon as the report was announced. Of course, the Government itself had had the report from some time before it was tabled in Parliament, but I thought such a decision was not sensible given the economic situation facing the government, especially as a 50 per cent increase in excise tax would provide much needed extra revenue. The excise tax on alcohol yielded about \$900 million at the time the Law Commission was studying the issue. Given the massive health and Police costs met by the state in New Zealand, it seems clear that the policy would be a good step to take and it would not much adversely affect moderate drinkers. On an ordinary bottle of beer the tax would go up from 34 cents to 50 cents. I made an Official Information request of the Treasury in 2013. I was astonished to find no analysis of the excise tax proposals had ever been conducted by the Treasury. The Treasury reports I did secure from my request simply say that there was insufficient analysis of the costs and benefits of the Law Commission's proposals and that Treasury recommended the focus be on the issues of trading hours, purchase age, the civil debt proposal and possibly the unnecessary use of legislation.¹¹ This surprised me because I had written to the Secretary of the Treasury in 2010 about the excise tax issue and he replied affirmatively for the most part on the economic research.¹² If this is the way we are to deal with our social problems then the outlook is bleak. Price was the most important recommendation the Law Commission made.

⁸ Law Commission *Issues paper* at 234.

⁹ At 238.

¹⁰ Law Commission *Alcohol in Our Lives: Curbing the Harm, A report on the review of the regulatory framework for the sale and supply of liquor* (NZLC R114, 2010) at 485.

¹¹ The Treasury, Information being released OIA 20130088, 2 April 2013.

¹² Law Commission *Curbing the Harm*, at 435.

One of the most fruitful interchanges the Law Commission had was with the Prime Minister's Chief Science Advisor, Sir Peter Gluckman. He was working on his seminal report aimed at reducing youth mortality and morbidity. The report made many references to alcohol and identified price as the most effective strategy for reducing youth drinking. It also discussed alcohol in relation to youth suicide. What the report says remains important and relevant to future alcohol policy.

What Sir Peter said was:

With alcohol abuse featuring strongly as a risk factor for youth suicide, legislation to limit access to, and the affordability of, alcohol could make a real difference. If the opportunity to reduce drinking by implementing recommendations of the Review of the Regulatory Framework for the Sale and Supply of Liquor is missed, many young lives may be lost that could otherwise have been saved. This has the potential to impact heavily particularly on young Maori, who have even higher rates of problem drinking than non-Maori.

The opportunity was lost. I left wondering what evidence is needed to produce change that is meaningful.

The final report of the Law Commission ran to more than 500 pages and it cannot be easily summarized but the document is available on the Law Commission's website. The main recommendations and what occurred to them in the legislation finally passed by Parliament in 2012 is as follows:

A new Alcohol Harm Reduction Act to replace the Sale of Liquor Act was recommended.¹³ A new Act was passed, but it was not concentrated upon the purpose of reducing harm in the way the Law Commission recommended.¹⁴ It involved a significantly softer object clause, which is the clause that tells the courts how to interpret the legislation. I asked George Tanner QC, one of the Law Commissioners and former Chief Parliamentary Counsel, to draft a purpose clause. This is what he drafted:¹⁵

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 minimization 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.

The purpose clause that emerged was rather milder and less specific. The Bill as enacted had two provisions, a purpose and an object section relevant to the above, sections 3 and 4 of the Sale and Supply of Alcohol Act 2012. This was the Bill the Law Commission would have entitled the Alcohol Harm Reduction Act.

Purpose

- (1) The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole,
 - (a) to put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2); and
 - (b) to reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.
- (2) The characteristics of the new system are that
 - (a) it is reasonable; and
 - (b) its administration helps to achieve the object of this Act.

¹³ At 119.

¹⁴ Sale and Supply of Alcohol Act 2012.

¹⁵ Law Commission *Curbing the Harm*, at 121.

Object

- (1) The object of this Act is that—
 - (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
 - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
 - (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
 - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

There is more wiggle room for the alcohol industry in the enacted provisions than there was in the recommendation of the Law Commission. The enacted provisions do not set out the different types of alcohol-related harm that the Law Commission wished to target.

- We recommended increasing the price of alcohol through excise tax increased by 50 per cent to reduce alcohol consumption. This was rejected. We thought a minimum price policy for alcohol should be investigated and that is being investigated.
- We recommended regulation of promotions that encourage increased consumption or purchase of alcohol. This was not done as recommended, but there are provisions prohibiting advertising or promotion of alcohol in a way that has special appeal to minors. In supermarkets and grocery stores, alcohol and any advertising and promotion will be restricted to a single non-prominent area not near a checkout or entrance. The Government will also establish an expert forum to consider whether there should be further restrictions on advertising and sponsorship.
- We recommended moving over time to regulate alcohol advertising and sponsorship. This was not done.
- We recommended increasing the purchase age to 20. This was not done.
- We recommended strengthening the responsibility of parents for supplying alcohol to minors. This was done.
- We recommended increasing personal responsibility for unacceptable or harmful behaviours induced by alcohol. This was done by a variety of enforcement measures.
- We recommended cutting back the hours that licensed premises are open. This was done but not to the degree recommended. We recommended that off-licenses should be required to stop trading no later than 10 pm at night and not open again until 9am. On-licenses should be required to close no later than 4am with a mandatory one-way door from 2am, and not reopen until 9 am. The law enacted national maximum trading hours from 7am to 11 pm for bottle stores, supermarkets and grocery stores, and 8am to 4 am for restaurants, bars and clubs.
- We recommended introducing new grounds upon which licenses to sell alcohol can be declined, and this was followed. The new law tightens up on the proliferation of outlets. Under the new law licenses will be harder to get and easier to lose.
- We recommended allowing more local input into licensing decisions through local alcohol policies and District Licensing Committees. This was largely followed although local alcohol policies are optional, not mandatory as we recommended.
- We recommended streamlining the enforcement of alcohol laws and placing overall decision making in a new Alcohol Regulatory Authority presided over by a District Court Judge. This was not done.
- We recommended a substantially improved and reorganised system for the treatment of people with alcohol problems. This was not done.

The Law Commission had long discussions with the Ministry of Justice officials when that Ministry was preparing its report for the Minister and Cabinet. I formed the opinion that the Ministry had no analysts capable of assessing the recommendations in any rigorous way, since they lacked the expertise, were not familiar with the literature and had not been through the process that the Law Commission had experienced over two years. They were the ones instructing parliamentary counsel and I early on

became convinced the aims would be watered down. No doubt this was the clear intention of ministers who were probably concerned at the political backlash from coming down hard on alcohol.

But to be fair to the Government they did enact a big and new Bill containing a new regulatory framework. It is just that the changes that would have made a real difference were not accepted or enacted. The Government's response to the Law Commission's report said they had accepted 133 of 154 recommendations, but I regret to say this is misleading, when one considers the ones not accepted and the changes made to many of those recommendations that were accepted.

It really is true of a reform effort like this one that the devil genuinely is in the detail of the drafting. And there are so many examples of where the recommendations were softened or rejected to suit the industry that I cannot go through them all; one example will suffice. The Law Commission recommended that supermarkets should be required to keep liquor in one place on their premises as a condition of their license. Cabinet rejected this recommendation as it would unduly impede the right of supermarkets to manage their own businesses. But when one considers the enormous impact that supermarket promotions have had on the sale of wine and beer, and their loss-leading marketing to get people in the shop, this decision was too tender in my view.

The development of policy on alcohol in New Zealand is fraught. It always has been. But there is less excuse now for adopting weak policy on alcohol because we know so much more. Where there is ample evidence of harm and there are clear methods of ameliorating that harm, which are not taken up that is disappointing. We have so much more research available on this issue than we used to have available. How sad it is that the policy adopted ignores the most important elements of what we know. The performance of Parliament was not good enough and the issue will no doubt have to be revisited.