

ALCOHOL LAW REFORM

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Regulatory Impact Statement

ALCOHOL LAW REFORM

Proposal

1. This paper responds to DOM Min (10) 8/1 and addresses the 153 recommendations of the Law Commission (the Commission) in its report *Alcohol in Our Lives: Curbing the Harm*. It seeks Cabinet's agreement to the Government response on the Commission's report. The proposed response includes legislative and operational components.
2. I propose that the Government accept, in full or part, 113 of the Commission's recommendations that require a legislative response. I propose that 27 recommendations are either not taken forward or addressed differently. I propose that the Government accept, or accept in principle, the 13 operational recommendations that do not require a legislative response.
3. The legislative proposals agreed to by Cabinet will form the basis for an Alcohol Reform Bill, which is intended to proceed to select committee in 2010.

Executive summary

4. Excessive drinking and intoxication are a significant problem in New Zealand. The majority of New Zealand drinkers get drunk occasionally, with a consequent increased risk of acute harm such as accidents and injury.¹
5. Frequent and pervasive excessive drinking and intoxication is contributing to our crime rate, our injury rate, our road crash statistics and is affecting our overall level of health. It impacts on absenteeism and workplace productivity and contributes to family violence and child abuse.
6. Reducing the harm caused by alcohol is a priority for addressing the drivers of crime. Reducing excessive drinking and intoxication are particularly important to achieving this goal. Reducing excessive drinking and subsequent alcohol-related harm will also have a positive impact on other sectors, including health, transport and welfare.
7. The Commission's report to Government recommends comprehensive changes to our regulatory framework for the sale and supply of alcohol, centred on a philosophy of harm minimisation. Evidence suggests that a wide-ranging, integrated response to the problem of harmful drinking is necessary.²
8. I propose that the Government accept the majority of the Commission's recommendations, in full or in part.

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

² See attached Regulatory Impact Statement, page 17, paragraphs 33-35.

Approach to reform

9. I want to reduce harm, especially crime and victimisation, caused by heavy episodic drinking. I do not, however, want to unduly inconvenience low and moderate drinkers. My reform proposals therefore target those who drink excessively, particularly at licensed premises and in the public domain.
10. My intention is to focus on the availability and accessibility of alcohol to reduce opportunities for excessive drinking. I also propose additional measures in the areas of licence conditions, promotions and product banning to reduce the risk of alcohol-related harm.
11. I recommend reforms in the following areas:
 - The licensing framework and licensing exemptions;
 - Enforcement of the licensing framework;
 - The alcohol purchase age;
 - Requirements for parental consent and supervision for others to supply alcohol to under-18 year olds;
 - The management of alcohol in public places through liquor bans;
 - Promotion of alcohol (stage one of the Commission's advertising recommendations); and
 - Provision to ban products.
12. I recommend rejecting the Commission's proposals on excise tax. I recommend monitoring international developments on minimum price regimes and exploring voluntary options for obtaining sales and price data from alcohol retailers, which is required for an informed consideration of minimum pricing.

Licensing framework

13. I propose adjusting the settings of the licensing framework to improve community input into licensing decisions, reduce the availability of alcohol, and minimise the risk of alcohol-related harm at licensed premises. Evidence demonstrates that high outlet density and lengthened trading hours, both of which are features of our current framework, lead to greater levels of harm, including violence and other crime. New Zealand communities are expressing increasing frustration at their limited ability to influence licensing decisions in their areas, in particular regarding the number and location of alcohol outlets.
14. In summary, I recommend:
 - Broadening the aim of legislation to focus on reducing alcohol-related harm (recommendation 11);
 - Increasing community involvement in the management of alcohol in their areas, including the location and density of outlets, through optional statutorily recognised local alcohol policies (recommendations 14 to 30);

- Broadening the matters that must be considered in licence decision-making, thereby providing communities with a greater ability to object to licence applications and renewals in their area (recommendation 31);
 - Refining the types of stores that are eligible to sell alcohol for off-premises consumption to address current anomalies, including the fact that many dairies have been granted an off-licence (recommendations 32 to 45);
 - Broadening the range of conditions that may be imposed on licences to address potential alcohol-related harm (recommendations 47 to 53);
 - Prohibiting 24-hour trading by setting national maximum trading hours of 7:00am-11:00pm for off-licences (including supermarkets) and 8:00am-4:00am for on-licences, club licences and special licences (recommendations 55 and 56);
 - Empowering licensing decision-makers to impose a one-way door condition on on-licences, club licences and special licences at their discretion (recommendation 57); and
 - Allowing territorial authorities to restrict or extend the national maximum trading hours to suit local conditions, including by specifying one-way door conditions, through local alcohol policies (recommendation 59).
15. I also recommend the following changes to improve the efficiency of liquor licensing:
- Streamlining the structure of local decision-making bodies (recommendation 82);
 - Devolving all licence decision-making to the local level in the first instance (recommendation 88);
 - Setting licence fees according to risk and at a level that, as far as possible, recovers the cost of administering the system that is placed on local government (recommendation 108);
 - Establishing a process for authoritative guidelines to facilitate implementation of the legislation (recommendation 100).
16. I recommend removing the existing licence exemption for prison officers' canteens, because they no longer exist (recommendation 113). I also recommend removing the licence exemption for the House of Representatives (recommendation 114). I recommend retaining the licence exemptions for Police canteens, Fire Service canteens and Defence Force canteens (recommendation 115). I recommend no changes to the current provisions for permanent charter clubs (recommendation 116).

Enforcement

17. Effective enforcement is necessary to support the licensing system's role in reducing alcohol-related harm. I recommend a series of improvements to the current offences and enforcement powers under sale of liquor legislation to facilitate swift and appropriate enforcement action (recommendations 142 to 173).

Alcohol in public places

18. I agree with the Commission that the offence of public drunkenness should not be reintroduced. When used previously, this offence did not stop people from becoming intoxicated. It consumed a lot of Police and court resources and drew people into the criminal justice system. I recommend that Cabinet reject the Commission's proposal for a civil debt scheme for intoxicated people dealt with by the Police due to the cost of such a scheme and the risk that vulnerable people could be discouraged from seeking Police assistance in unsafe situations (recommendation 174).
19. I recommend tightening the criteria for liquor bans so that they are more appropriately targeted to areas and times where there is evidence of alcohol-related harm (recommendation 177). I also recommend making provision for prescribed signage requirements for liquor ban areas to improve public awareness of liquor ban laws (recommendation 178). At the moment, breach of a liquor ban is summary offence for which a person may be arrested. I recommend making breach of a liquor ban an infringement offence for which a person may be arrested. An infringement notice could be issued on the spot, or following an arrest (recommendation 179).

Promotions, advertising and sponsorship

20. I recommend that the existing offence for irresponsible promotion of alcohol be strengthened through adopting the Commission's phase one proposals in this area (recommendation 140). It is inconsistent that the offence currently applies to on-licence promotions but not off-licence promotions or promotions elsewhere. It would also be helpful for the law to provide direction on what constitutes an irresponsible promotion.
21. I recommend that the Commission's proposals for further restrictions on alcohol advertising be rejected (recommendation 141). I acknowledge that this is an area of strong public concern; however, I consider that it would be premature at this time to make far-reaching changes to the existing advertising regime, given that research is still emerging in this area. I propose instead that officials continue to monitor the national and overseas research on the effects of exposure to advertising.

Banning products

22. I recommend that legislation provides for a process to ban particular products or classes of products that are deemed undesirable on the basis of their effect on health or appeal to young people (recommendation 181).

RTDs

23. I recommend setting a maximum permitted strength of 5% alcohol by volume for pre-mixed ready to drink beverages (RTDs) (recommendation 182). I also recommend limiting the standard drink content of RTDs to 1.5 standard drinks per container (recommendation 183).

Purchase age

24. The purchase age is currently set at 18 years of age. The Commission recommends that the purchase age be raised from 18 to 20 years with no exceptions.
25. I recommend introducing a split alcohol purchase age of 18 for on-licence sale and supply and 20 for off-licence sale and supply (recommendation 119).
26. I note that alcohol legislation has traditionally been subject to a conscience vote and a decision to vote along party lines is a matter for each caucus. I anticipate that any proposal to amend the alcohol purchase age will continue to be considered by Parliament as a conscience matter and the Alcohol Reform Bill will be drafted in a way that supports this approach.

Parental supply of alcohol to their children

27. Parents and legal guardians may supply alcohol to their own children at any time in their own home or any other private setting. Parents and guardians are also allowed to supply alcohol to their children under the purchase age on certain licensed premises, such as restaurants. People under the age of 18 are prohibited from drinking in public, unless they are accompanied by a parent or legal guardian.
28. The Commission recommends that people under the age of 20 should be prohibited from drinking on licensed premises and in public in all circumstances. This would mean that parents and legal guardians could not give their under-20 year old an alcoholic drink with a family dinner at a restaurant or at a picnic in the park or at the beach.
29. I recommend that parents and legal guardians continue to be permitted to supply alcohol to their own children at any time in their own home or any other private setting (recommendation 123).
30. I recommend that parents and legal guardians should continue to be allowed to supply alcohol to their children at certain licensed premises, such as restaurants (recommendation 124).
31. I recommend that it continue to be unlawful for a person to drink or possess alcohol in public if they are under the age of 18, unless they are accompanied by a parent or legal guardian (recommendation 125).

Parental consent for supply to minors and responsible supply

32. I consider that there is scope for the law to give parents more tools to manage their children's access to alcohol and to require more parental and individual responsibility for supply to minors (under-18 year olds).
33. I recommend that consent of a parent or legal guardian be required for any other person to supply alcohol to a person aged under 18 (recommendation 127). I note that the Police would have discretion not to prosecute when there is no public interest to do so.

34. I recommend that parents, guardians and authorised suppliers be required to supply alcohol responsibly, including by supervising the consumption of alcohol that they have supplied to an under-18 year old (recommendation 131).
35. Failure to gain parental consent or supply responsibly to under-18 year olds would be summary offences punishable by a fine of up to \$2000.
36. These proposals would apply only to under-18 year olds because legal guardianship ceases at 18.

Pricing policies

37. Given other Government tax priorities and concerns about inflationary pressure over the next few years, I consider that now is not a suitable time to raise alcohol prices or excise rates. While evidence indicates that price increases would reduce excessive consumption, they would also negatively impact on light and moderate drinkers.
38. I recommend rejecting the Commission's excise tax proposals (recommendations 134 and 135). In summary, the Commission recommends:
 - Raising the excise tax rate by 50% to achieve an average 10% increase in retail prices; and
 - Removing the excise tax on low-alcohol products up to 2.5% alcohol by volume.
39. In relation to minimum pricing, I recommend that the Government monitors international developments (recommendation 137).
40. The Commission recommends that retailers and producers be required to provide sales and price data to enable Government to investigate a minimum price regime and be able to effectively model the impacts of changes in excise levels. I recommend that alternative approaches be explored before regulating to obtain this information (recommendation 138).
41. I recommend that the Government reviews the information available on alcohol sales and price after one year and considers at that time whether regulation is required (recommendation 139).

Non-legislative proposals

42. Legislative reform must be supported by public education, improvements to treatment services for those people with an alcohol use disorder. To this end, I propose accepting the Commission's education recommendations, which require no further action. I propose that work be undertaken on the Commission's treatment, training and collaboration recommendations (recommendations 6 to 10).

Reform process

43. If Cabinet agrees, drafting instructions on the agreed legislative proposals will be provided to Parliamentary Counsel. I intend that an Alcohol Reform Bill be introduced in October 2010.

Format of the paper

44. This paper broadly follows the order of the Commission's recommendations. Significant proposals are addressed in the body of this paper. Technical or more straightforward proposals are covered in Appendix 2. Non-legislative proposals are covered in Appendix 3. A summary of the Commission's recommendations and my proposed responses is attached as Appendix 4.
45. Throughout the paper, my recommendations to Cabinet are highlighted in **bold** text. Where applicable, the number of the relevant Law Commission recommendation is noted in square brackets []. The relevant recommendation of this paper is noted in parentheses (). My recommendations are set out in full in a separate section, which is marked by a divider.

Problem definition

46. Around 85% of the adult New Zealand population consume alcohol at least occasionally. Alcohol is often used safely and enjoyed by people as a part of social interaction and relaxation. In this way, alcohol provides benefits to individuals and society. Its manufacture, sale and export also provide economic benefits to New Zealand. On the other hand, a sizeable portion of New Zealanders drink a large volume of alcohol on single drinking occasions, with a subsequent heightened risk of harm. International research shows that those people whose total annual alcohol intake may be moderate or even low, but who drink excessively on occasion, account for a large burden of acute harm.³
47. The alcohol-related harm affecting New Zealand includes crime, public disorder, victimisation, accidents, injuries, motor vehicle crashes, illness, disease, absenteeism, lowered productivity, family violence and child abuse and neglect. A range of studies indicates a high social and economic cost arising from New Zealand's alcohol consumption. Estimates of direct costs to government range from \$500 million to \$1200 million per annum.⁴

³ T Babor et al (2010) *Alcohol: No Ordinary Commodity*, New York: OUP.

⁴ For example: B Easton (1997) *The Social Costs of Tobacco Use and Alcohol Misuse*; B Easton (2001) *Estimating the Economic Costs of Alcohol Misuse*; B Easton (2002) *Taxing Harm: modernising alcohol excise duties*; F Barker (2002) "Consumption externalities and the role of government: The case of alcohol", *New Zealand Treasury Working Paper*, 02/25; BERL Economics (2009) *Costs of Harmful Alcohol and Other Drug Use*.

48. The following table provides an overview of alcohol's impact on crime and accidents, injury and disease in New Zealand. Further details are provided in Appendix 1.

Alcohol & crime ⁵	Alcohol & accidents, injury & disease
<ul style="list-style-type: none"> • In 2007/08 over 21,000 people were driven home by police or taken to a safe place to sober up, due to their level of intoxication - an increase of nearly 25% from 1998/99. • Alcohol is implicated in: <ul style="list-style-type: none"> - 30% of all Police recorded offences - 50% of all recorded homicides (1999-2008) - 34% of all recorded family violence. • On average, 33% of all recorded offences are committed on Friday and Saturday nights and Sunday mornings. This coincides with peak apprehension times for alcohol-related crime. • Māori and Pacific people and young people (16-24 years) represent a higher proportion of offenders where alcohol was consumed prior to committing the offence. 	<ul style="list-style-type: none"> • About 1,000 New Zealanders were estimated to have died in 2004 from alcohol-attributable causes.⁶ About 50% of these were due to the intoxicant effects of a heavy episode of drinking. • In 2008 there were 119 deaths, 582 serious injuries and 1,726 minor injuries from vehicle crashes where driver impairment from alcohol or drugs was a contributing factor.⁷ • Up to 22% of all ACC claims are estimated to have alcohol as a contributing factor.⁸ • 18-35% of injury-based emergency department presentations are estimated to be alcohol-related, rising to 60-70% on the weekend.^{9,10} • The 18-29 age group has the highest rates of alcohol-related mortality and the highest rates of hospital presentations for alcohol-related injuries.^{11,12}

Law Commission review

49. The Law Commission has conducted a comprehensive review of the law governing the sale, supply and consumption of alcohol in New Zealand. Due to the priority accorded to reducing the negative impacts of alcohol use, I asked

⁵ New Zealand Police (2009) *National Alcohol Assessment*, Wellington: New Zealand Police.

⁶ J Connor, J Borad, R Jackson, S Vander Hoorn and J Rehm (2005) *The Burden of Death, Disease and Disability Due to Alcohol in New Zealand* (ALAC Occasional publication 23) Wellington: Alcohol Advisory Council of New Zealand.

⁷ Ministry of Transport (2009) *Alcohol and Drug Crash Factsheet*, http://www.transport.govt.nz/research/Documents/alcohol_drugs_2009.pdf

⁸ ACC general manager of injury prevention Katie Sadler, quoted in Mike Houlahan (18 June 2009) "Academics Slam Result of Study into Alcohol Abuse", *The Press*, Christchurch. <http://www.stuff.co.nz/the-press/news/2510640/Academics-slam-result-of-study-into-alcohol-abuse>

⁹ G Humphrey, S Casswell and D Yeo Han (2003) "Alcohol and injury among attendees at a New Zealand emergency department", *The New Zealand Medical Journal* 116 (1168).

¹⁰ I Jones, C McElnay and M Robinson (2009) *Alcohol related injury presentations*, Public Health Report 6 (1).

¹¹ G Humphrey, S Casswell and D Yeo Han (2003) as per footnote 10.

¹² K Lee and L Snape (2008) "The role of alcohol in maxillofacial fractures", *The New Zealand Medical Journal* 121 (1271).

the Commission to speed up its review of alcohol legislation, so that Government decision-making could be informed by its views. The Commission reported back one year ahead of its original schedule and I acknowledge its effort to meet my request.

50. I tabled the Commission's final report to Government, *Alcohol in Our Lives: Curbing the Harm*, on 27 April 2010. The Commission received 2,939 written submissions on its issues paper and held more than 50 public meetings. The Commission's report to Government contains 153 recommendations for changes to legislation and operational policies and procedures. The report represents a substantial piece of work and is a valuable resource to guide alcohol law reform now and into the future.
51. The Government is required to respond to the Commission's report within 120 working days of it being tabled.¹³ This paper addresses the Commission's recommendations and seeks agreement on the Government's response.

Previous Cabinet decisions

52. Alcohol law reform was discussed at the Cabinet Domestic Policy Committee on 2 June 2010 [DOM Min (10) 8/1], as an oral item at Cabinet on 21 June 2010, at Cabinet on 26 July 2010 [CAB Min (10) 26/8] and at Cabinet Strategy Committee meetings on 14 December 2009 and 19 April 2010 [STR Min (10) 6/1].
53. In November 2009, Cabinet agreed that *Addressing the Drivers of Crime*, a project coordinated by the Ministry of Justice, would be a whole-of-government priority [CAB Min (09) 39/3A refers]. Cabinet agreed that reducing the harm caused by alcohol would be one of the four initial areas for cross-government action on addressing the drivers of crime. Legislative reform is one of my primary actions to reduce alcohol-related harm.

Approach to reform

54. Evidence indicates that an integrated package of reform would be most effective to reduce harm.¹⁴ Isolated changes to aspects of legislation, or education, or treatment are unlikely to have a significant effect on behaviour and harm. An interactive set of actions across a range of spheres (licensing, enforcement, the wider drinking environment) would have a larger cumulative effect on behaviour.
55. The Commission's report adopts a harm minimisation approach, consistent with the central principle of the National Drug Policy (2007-2012). The harm minimisation principle is underpinned by three strategies: supply control, demand reduction and problem limitation. The Commission makes recommendations in each of these areas, to which this paper responds.
56. Alcohol is a regulated product due to the risk of acute and long-term harm associated with its consumption. I acknowledge that regulation alone will not

¹³ Cabinet Office Circular CO (09) 1, Law Commission: Processes for Setting the Work Programme and Government Response to Reports.

¹⁴ See attached Regulatory Impact Statement, page 17, paragraphs 33-35.

turn our excessive drinking culture around.¹⁵ Its effect is concentrated on licensed premises and the public domain. It has limited impact in the private sphere. Legislative settings can, however, support a moderate drinking culture through controls on the availability of alcohol, requirements for safe and responsible licensed premises, and the management of alcohol in public. The current legislative settings need to be adjusted to minimise harm and better support a moderate drinking culture. The Government's reform package needs to be supported by robust public education and treatment interventions.

57. My objectives for alcohol law reform are to:

- target the key drivers of harm, with a focus on reducing heavy episodic drinking;
- reduce excessive drinking by young people;
- reduce the harm caused by alcohol use, including crime, disorder, public nuisance and negative public health outcomes; and
- implement a sustainable solution to address alcohol-related harm that facilitates community involvement.

58. In reforming alcohol legislation, I also seek to:

- minimise the regulatory impact of reform on New Zealand's economic performance overall; and
- target those who drink excessively, with little impact on low and moderate drinkers.

59. Evidence shows that some of the strongest levers to reduce excessive consumption include restrictions on availability and accessibility of alcohol (supply control strategies).

60. I propose to focus legislative reform on reducing the availability and accessibility of alcohol and improving community input into licence decision-making, in order to minimise harm. Since the commencement of the Sale of Liquor Act 1989, strong evidence has emerged that increased availability of alcohol is related to increased consumption and subsequent harm. In particular, increased outlet density and trading hours have been strongly linked to violent crime.¹⁶ I also propose to reduce demand by deterring irresponsible promotions that encourage excessive consumption.

¹⁵ Similarly, increased public education and treatment services, without enhanced regulatory controls, are unlikely to reduce alcohol-related harm. See for example, P Anderson, D Chisholm & D Fuhr (2009) "Effectiveness and cost-effectiveness of policies and programs to reduce the harm caused by alcohol", in *The Lancet*, 373: 2234-2246.

¹⁶ For example, M P Cameron et al (2010) *The Impacts of Liquor Outlets in Manukau City: Summary Report*, Wellington: Alcohol Advisory Council of New Zealand; C Jones et al (2009) "The impact of restricted alcohol availability on alcohol-related violence in Newcastle, NSW" *Crime and Justice Bulletin* 137; M Chen, P Gruenewald, and L G Remer (2009) "Does alcohol outlet density affect youth access to alcohol?" *Journal of Adolescent Health* 44; World Health Organisation (2007) *Expert Committee on Problems Related to Alcohol Consumption*, Geneva: World Health Organisation; S Duailibi et al (2007) "The effect of restricting opening hours on alcohol-related violence" *American Journal of Public Health* 97 (12).

61. I propose that my intended legislative supply control and demand reduction strategies are supported by education and improvements to treatment services (problem limitation strategies) as recommended by the Commission.
62. As well as implementing measures to reduce alcohol-related harm, I also seek to remove unnecessary or inefficient regulation and minimise compliance costs as far as possible.

CONTROLLING SUPPLY

LICENSING

Obtaining a licence

Context

63. The Act sets criteria for securing a licence. The licence criteria also serve as the grounds on which a licence application may be objected to and declined. The suitability of the applicant is a criterion for all licences, alongside criteria that concern the operation of the licence and the applicant's proposed systems for managing their legal obligations as a licensee. Resource management certification is a prerequisite for a licence application.
64. The licence criteria specified in the Act are limited and inflexible in accommodating local needs. If an applicant has a resource management certificate and is deemed to be suitable, it is difficult to object to or decline a licence, even if the community does not support that licensee operating in that area. The nature of the criteria in the Act means that licences are fairly easily obtained, regardless of the views of the community.
65. New Zealand communities are expressing increasing frustration at their limited ability to influence licensing decisions in their area, in particular the number and location of outlets. This is demonstrated by some high profile community protests against particular licence applications,¹⁷ submissions received on the Sale and Supply of Liquor and Liquor Enforcement Bill and the Commission's review.
66. Furthermore, the current criteria do not explicitly refer to the object of the Act. This situation has limited the extent to which the object has been taken into account in licensing decisions.
67. Some territorial authorities have voluntarily prepared local alcohol policies to assist their administration of the Act and manage alcohol in their communities. These policies may include, for example, the council's policy on maximum trading hours to be imposed as a condition on licences. These policies have no legal standing under the Act, but they have been taken into account by the Liquor Licensing Authority.¹⁸ The Authority has noted that the weight given to a policy may be affected by the level of community consultation that preceded it.

¹⁷ For example, protests in South Auckland, Cannons Creek (Porirua), and Halswell (Christchurch).

¹⁸ The Court of Appeal has recently upheld the High Court decision that the Liquor Licensing Authority is entitled to take a local authority's alcohol policy into account when considering applications for renewals or grants of licences, notwithstanding the absence of any express reference to such policies in the Act.

Local alcohol policies

Law Commission recommendations and proposed response

Requirement to adopt a local alcohol policy

68. To increase community input into licensing decisions that affect their area, the Commission recommends that all territorial authorities be required to adopt a local alcohol policy [LC rec. 4]. The provisions of a local alcohol policy (LAP) would be reflected in licensing decisions and licence conditions [LC rec. 13].
69. The Commission recommends mandatory LAPs to ensure that all territorial authorities consider the nature of alcohol use in their district and all communities are given the opportunity to share their views on how alcohol should be managed in their district. The Commission considers that voluntary LAPs could create a risk that communities never receive the opportunity to say whether further controls are desirable for their area. A requirement for LAPs is consistent with the mandatory requirement for territorial authorities to adopt a class 4 gambling ('pokie machine') venue policy.
70. LAPs would need 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; as well as a broad assessment of alcohol-related problems occurring within the district [LC rec. 7].
71. **I recommend that LAPs be voluntary, recognising that some communities may not desire further restrictions or extensions over and above the national legislation (recommendation 14).** LAPs adopted under the proposed provisions would enable communities to vary certain national provisions. Communities that do not want to tighten or extend restrictions should not have to incur the cost of consulting on such a proposal. Where an LAP is not adopted, the national framework would apply.
72. **Where an LAP is desired, I recommend accepting the Commission's proposal that LAPs must have regard to a local stocktake and assessment of harm (recommendation 15).**
73. **The adoption of an LAP will impose one-off costs on territorial authorities at least every six years, but I propose allowing these to be recovered through licensing fees, as discussed later in this paper.**
74. **I recommend that the Police and Medical Officers of Health be required to provide relevant information to territorial authorities to assist with the stocktake and assessment for the LAP (recommendation 16).**

Consultation

75. The Commission recommends that, in preparing the proposed LAP, territorial authorities should consult with local iwi and hapū, Police, liquor licensing inspectors, Medical Officers of Health and any other persons they consider appropriate [LC rec. 5].

76. Given the importance of alcohol issues to the community and because the LAPs will have some bearing on licence decision-making, the Commission recommends that public consultation be undertaken on the proposed policy pursuant to the special consultative procedure under section 83 of the Local Government Act 2002 [LC rec. 6]. This is also consistent with the requirements for class 4 gambling venue policies.
77. **I recommend largely accepting the Commission's proposed consultation requirements for LAPs (recommendations 19 and 20).**

Content of LAPs

78. The Commission proposes that LAPs be required to include permitted areas for licensed premises;¹⁹ areas, if any, subject to liquor ban bylaws; and a local process for managing intoxicated people in public places [LC rec. 7].
79. The Commission recommends that LAPs may include a strategy for reducing alcohol-related harm in the district; local restrictions on the national hours prescribed in statute for the opening and closing of premises; and a rebuttable presumption that further licences will not be granted in areas that have been identified as being close to, or as having reached, saturation levels in terms of the number of licensed premises²⁰ [LC rec. 8].
80. **I recommend largely accepting the Commission's proposals for LAP content. Specifically, I propose that LAPs may include the following (recommendation 17):**
- **Permitted locations for licensed premises (through broad area restrictions or restrictions on proximity to types of community premises specified by the LAP);**
 - **A rebuttable presumption that further licences will not be granted in areas that have been identified as being close to, or as having reached, saturation levels in terms of the number of licensed premises;**
 - **Local restrictions on or extensions to the national maximum trading hours, including by specifying one-way door policies;**
 - **Any other non-licensing matter relating to the management of alcohol in the district. This may include, for example, a local collaborative process for managing intoxicated people in public places or proposed liquor ban areas or a strategy for reducing alcohol-related harm.**

¹⁹ Where such LAPs have the effect of limiting (directly or indirectly) the number of foreign service suppliers or service operations permitted in a location, New Zealand's trading partners may argue that those LAPs are in breach of our market access obligations under the General Agreement on Trade in Services (GATS) and other free trade agreements. Such a breach may, however, be justifiable pursuant to Article XIV of the GATS and similar provisions in other agreements that allow otherwise non-compliant measures if they are "necessary" to maintain public order or to protect human health.

²⁰ The presumption against further licences could be rebutted through an application for a licence. This proposal does not allow for density to be reduced through a LAP, but the scope for increases in density would be limited. Density reduction could be achieved through natural attrition and a reduction in new entrants to the industry due to broader licence criteria and restricted eligibility. See also footnote 19.

81. Restricting the content of LAPs to that specified above will provide some certainty for licensees and a degree of consistency in licensing settings across the country.

Process for LAPs

82. The Commission proposes that LAPs be renewed at least every six years [LC rec. 9]. Two or more territorial authorities could develop a joint LAP for their combined districts [LC rec. 10]. Neighbouring authorities with common issues may wish to do this.
83. LAPs would need to be consistent with the primary legislation. This means that any restriction included in an LAP would need to be a reasonable control and not unduly restrict the sale and supply of alcohol. For example, the creation of dry areas could be deemed to be an unreasonable control. Once an LAP has been consulted on and agreed by the local authority, the Commission proposes an appeal right to the national licensing tribunal for those who submitted on the LAP [LC rec. 11]. An appeal process would ensure a degree of national consistency and quality control in LAPs.
84. **I recommend accepting these proposals (recommendations 21, 26 and 27).** I note that an LAP could also be tailored to meet different needs of different areas within its applicable district.

Application and status of LAPs

85. LAPs would apply to all four licence types, though they may deal with the different licence types in different ways. Aspects of LAPs could apply to all licensed premises, or only to specified types of licensed premises, or they may be tailored for different types of licensed premises.
86. LAPs would not be binding. Decision-makers would be required to have regard to an LAP when considering a licence application [LC rec. 13]. While, generally, the LAP should be applied, decision-makers would be able to depart from the licensing provisions of an LAP if it was justified in the particular circumstances of the case.
87. The Commission recommends that where existing licensed premises are inconsistent with an LAP, conditions should be imposed to reduce the inconsistency as much as possible [LC rec. 14].
88. **I recommend accepting the Commission's proposals concerning the application and status of LAPs (recommendations 22, 24, 28, 29 and 30).**
89. **I recommend that provisions of LAPs about the permitted locations for licensed premises should not apply to existing licences or special licences (recommendation 23).** This means that existing licensed premises would not be required to move or close if an LAP included restrictions on location that would otherwise apply to such premises. This approach means that it will take time to give effect to the intention of the LAP in respect of location.

90. **To provide certainty to communities at the earliest possible point, I recommend that a finalised LAP should take effect following public notification, subject to the outcome of any appeals (recommendation 25).**
91. **I anticipate that guidelines and templates will be created by the Ministry of Justice to assist territorial authorities to develop LAPs.**

Criteria for all licences

Law Commission recommendations

92. The Commission proposes factoring the incidence and management of alcohol-related harm into decision-making through additional criteria [LC rec. 13], including:
 - the object of the Act;
 - the provisions of a relevant LAP; and
 - whether the amenity or good order of the locality would be lessened by the granting of the licence.
93. Resource Management Act and Building Code approvals for proposed licensed premises would continue to be a prerequisite for a licence application [LC rec. 12]. Further to the Commission's recommendations, I consider that the design and layout of the proposed premises should be factored into decision-making.
94. Criteria specific to the different licence types would be retained. For example, it would continue to be a criterion for club licences that the consumption of alcohol is not the predominant purpose for which the premises will be used.
95. It would likely become more difficult than at present to obtain a liquor licence under these proposed criteria. This proposal may increase the number of opposed licence applications and the number of licence applications that are declined.

Proposed response

96. **I recommend accepting the Commission's licence criteria proposals (recommendation 31). I consider that the proposed criteria will make a significant difference to communities' ability to have a say on a particular licence application.**
97. Further to the Commission's proposals, I consider that good layout and design of premises can assist in reducing harm. **I therefore recommend that the design and layout of the proposed premises also be a licence criterion (recommendation 31).**

Types of premises that may hold an off-licence

Context

98. The Sale of Liquor Act restricts the types of premises from which alcohol may be sold under an off-licence.

99. Under the current system, an off-licence may be granted:
- to the holder of an on-licence in respect of a hotel or tavern;
 - to the holder of a club licence (but not a sports club);
 - in respect of premises in which the principal business is the manufacture or sale of liquor;
 - in respect of any supermarket (defined as having a floor area of at least 1000m²); or
 - in respect of any grocery store where the principal business is the sale of main order household foodstuff requirements.
100. Currently, an off-licence may also be granted in respect of any other premises where the sale of liquor in premises of a kind listed above would not be economic or where the sale of liquor would be an appropriate complement to the kinds of goods sold in the premises (but for the latter, not a store where the principal business is the sale of food or groceries).
101. There is an explicit prohibition in the current law on alcohol being sold from a service station and any type of shop commonly known as a dairy.
102. Supermarkets and grocery stores are restricted to selling beer, wine, fruit wine and mead.
103. The existing off-licence eligibility provisions have led to several major problems:
- **Difficulty in determining the difference between a grocery store and a dairy:** Traditionally, a dairy was a small shop in a suburban area that sold goods such as bread, milk, butter and confectionary, and which was able to operate outside of normal trading hours. Today there is no one sense of what a dairy is and many shops with the word “dairy” in their name sell a wide range of grocery items. With deregulation of Sunday trading the distinction between a dairy and a grocery store has become even less clear. The legislative provisions on the definition of a grocery store have also given rise to interpretational difficulties. These factors mean that some stores have been granted a licence contrary to Parliament’s intention.
 - **Lack of guidance on “complementary goods”:** The current complementary provision opens the door for any type of premises (except a dairy, service station or food store) to gain an off-licence. Because no guidance is provided, the Liquor Licensing Authority has been required to decide whether the products that an applicant sells have sufficient synergy with alcohol. Further, the exclusion of stores selling food from the complementary category have meant that some types of stores that may be considered appropriate to sell alcohol as a complement to other goods, such as delicatessens, have been prevented from obtaining a licence.
 - **Sale of spirits within supermarkets:** Some supermarkets have circumvented the restriction that prevents them from selling spirits and spirit-based drinks through establishing a full-range alcohol store within the physical floor plan of the supermarket. The Liquor Licensing

Authority has moved against this practice, but the law does not specifically prohibit it.

Law Commission recommendations: types of eligible premises

104. The Commission recommends that the types of premises eligible for an off-licence be reduced to the following categories:
- a specialist alcohol retailer or manufacturer;
 - a food retailer (including supermarkets);²¹ and
 - premises for which an on-licence is held (but not a restaurant, nightclub, entertainment venue or licensed club) [LC rec. 15].
105. The Commission also recommends that any other type of retailer should be eligible for an off-licence if no other off-licence retailer is reasonably available to the public and the granting of the licence would not unduly encourage alcohol-related harm [LC rec. 16]. This provision would be particularly applicable to rural areas and small isolated communities.
106. The Commission proposes that the legislation expressly prohibit service stations and take-away food outlets from being eligible for an off-licence [LC rec. 17]. The Commission considered that service stations should not hold an off-licence given the risks associated with alcohol and driving. Takeaway food outlets were considered inappropriate by the Commission because they are often frequented by unsupervised minors. Allowing these outlets to sell takeaway alcohol would also have a high risk of increasing the number of alcohol outlets, contrary to the policy goal of controlling outlet density.
107. The Commission also recommends that clubs holding an off-licence be allowed to continue to hold that licence, but that no further off-licences be granted to clubs on the basis that the focus of clubs is on activity within the club and club premises.

Proposed response

108. **I recommend largely adopting the Commission's off-licence eligibility proposals to address deficiencies in the current provisions and provide more certainty for potential applicants and decision-makers (recommendations 32, 36, 38, 39).** These proposals will reduce the proliferation of off-licence outlets while maintaining ease of purchase for most people. The proposals concerning "food retailers" are consistent with a recent High Court decision that affirmed the Liquor Licensing Authority's current approach to distinguishing between grocery stores and dairies or convenience stores, and which held that convenience stores are not eligible for an off-licence (*CH and DL Properties Ltd v Christchurch District Licensing Agency* HC, Christchurch, CIV 2009-409-002906, 27 July 2010, at [79]).

²¹ The definition of food retailer would require food, excluding confectionary, ice-cream, soft drinks or ready-to-eat or takeaway food, to comprise at least 50% of the annual sales turnover. This would ensure that alcohol may only be sold in stores where the principal business is food and not stores where only a small proportion of sales is food. The Commission considers that such an approach facilitates the positive association of alcohol with food.

109. **To prevent any unintentional widening of the current eligibility restrictions, I recommend that the term “grocery retailer” (including supermarkets) be used rather than “food retailer”.** The definition of grocery retailers will be clarified in legislation and will be designed with a view to avoid unnecessary compliance costs.
110. **I recommend that the definition of “specialist alcohol retailer” should require that alcohol comprises at least 85% of the annual sales turnover (recommendation 32).** This requirement would ensure that sales of food and other products remain a small part of the business at these premises.
111. Removal of the complementary off-licence category, as proposed by the Commission, will prevent some premises, such as florists and gift basket providers, selling alcohol as part of a composite gift. These retailers represent only a small part of off-licence trade, and are primarily low-risk and low-volume operations.
112. **I therefore recommend that the complementary off-licence category be maintained as currently applied, subject to prescribed conditions (such as requiring that alcohol be only one component of the item that is sold). I also recommend that there be a regulation-making power to exclude specific types of retailers (recommendation 35).** The ability to prescribe conditions and the power to regulate to exclude specific types of premises will prevent the abuse and expansion of this category.
113. **I recommend that regulations specify the required information and processes to determine off-licence eligibility (recommendation 37).**

Impact

114. It is likely that some current off-licence holders will not meet the proposed requirements and would therefore not be able to renew their licence. Transitional provisions will be necessary. **I recommend that no licences are cancelled during their currency as a result of the proposals (recommendation 44). I propose that whether a licensee continues to be eligible is determined through the renewal process (recommendation 44).** This will give licensees time to prepare for the cancellation. Some of the licences that will no longer meet the off-licence requirements arguably should not have been granted in the first place. A liquor licence is a renewable privilege, not a permanent right. **For these reasons, no compensation will be payable (recommendation 45).**

Law Commission recommendations: restrictions on off-licences

115. Only specialist alcohol retailers or manufacturers, premises for which an on-licence is held, and off-licences granted to stores where no other off-licence retailer is available would be able to sell spirits and spirit-based drinks under an off-licence [LC rec. 18]. Specialist alcohol retailers would be able to sell a small amount of food and other products. Food retailers would be limited to selling wine, beer, cider and mead, which is consistent with the current restriction on supermarkets and grocery stores. In its report, the Commission considers that allowing supermarkets to sell strong alcoholic beverages would be inconsistent with a harm-reduction goal. Submissions to the Commission demonstrated that

there is no public appetite for an expanded role for supermarkets and grocery stores.

116. Specialist alcohol retailers within a supermarket or grocery store ('store within a store') would also only be permitted to sell wine, beer, cider and mead [LC rec. 19]. Specialist alcohol stores adjacent to a supermarket would be able to sell the full range of alcohol products, but such an alcohol shop would need to be distinct from the supermarket or other adjacent store and a person must not be able to enter the alcohol shop from the adjacent store, including from a foyer area.
117. The Commission recommends that supermarkets should be required to display alcohol in only one area on the premises to limit the impact of product placement on price and availability [LC recs. 20 and 26].²² Submissions to the Commission showed significant public concern about the visibility and commercialisation of alcohol throughout supermarkets, particularly in respect of children and people with alcohol use disorders.

Proposed response

118. **I recommend accepting the majority of the Commission's proposals for restrictions on off-licences (recommendation 40).**
119. **I recommend that stores not permitted to sell alcohol should also be prohibited from setting up a store within a store to circumvent the restrictions on them (recommendation 41).**
120. **In relation to the proposal for a single area display restriction in supermarkets, I acknowledge that such a restriction could assist in reducing the exposure of young people and those recovering from alcohol dependency issues to alcohol promotions. Submissions to the Commission showed significant public concern about the visibility and commercialisation of alcohol throughout supermarkets. On the other hand, such a restriction could unduly impede the right of supermarkets to manage their own business and creates a risk that the alcohol display area is placed in a prominent position, such as the front of the supermarket. On balance, I do not recommend introducing a single area display restriction for supermarkets (recommendation 42).**

Trading hours

Context

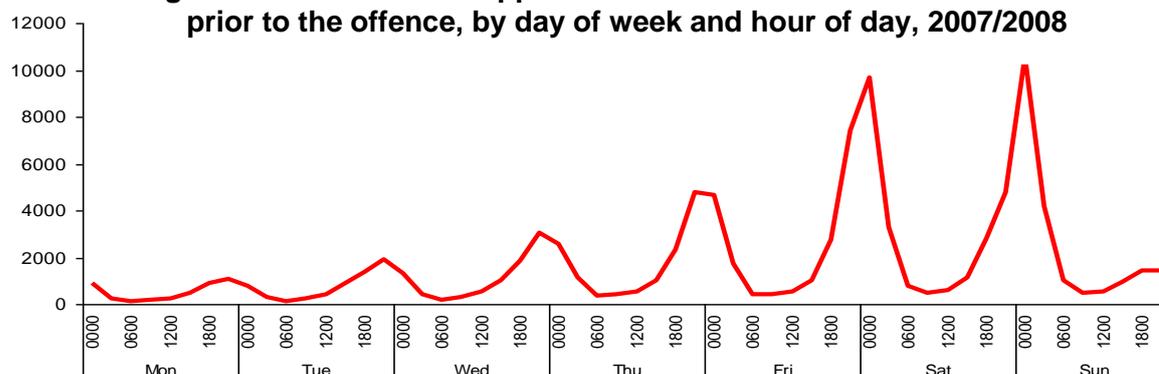
121. All licences have a discretionary condition that sets out when alcohol is able to be sold from the licensed premises or conveyance.
122. Unlike the previous Sale of Liquor Act 1962, the Sale of Liquor Act 1989 does not expressly restrict the hours that alcohol can be sold. This has resulted in

²² The Commission states that supermarkets favour a high volume/low margin retail model to sell alcohol. Strategic product placement is part of this model by encouraging unplanned purchases. Combined with their purchasing power, the Commission suggests that product placement strategies help to keep supermarket alcohol prices low. Low prices and strategic product placement facilitate a high volume of sales.

longer licensing hours, with average licensing hours increasing noticeably in the 1990s and reaching a plateau in the last decade.

123. A small percentage of licences allow 24-hour trading. Not all of these premises will open 24 hours a day, but the option is available. In general, licensed premises will open for longer hours on the most popular socialising nights, which are Thursday to Saturday.
124. Longer licensing hours provide increased opportunities for purchase and, consequently, for the consumption of alcohol. This contributes to crime, disorder and traffic accidents and leads to poorer health outcomes. Reduced hours have the opposite effect.²³
125. Police reporting shows that violent offending peaks on Thursday to Saturday. On these nights, licensed premises are most likely to open late and host large numbers of people. Temporal peaks in apprehensions for violence occur between 9:00pm and 3:00am and 6:00pm and 3:00am on Friday and Saturday nights respectively (see Figure 1).

Figure 1: Peak times for apprehensions where alcohol was consumed prior to the offence, by day of week and hour of day, 2007/2008



Source: New Zealand Police National Alcohol Assessment (2009), Alco-Link data.

Law Commission recommendations

126. To reduce opportunities for excessive consumption of alcohol and alcohol-related harm, the Commission proposes national maximum trading hours as follows:
 - Off-licences should be required to close no later than 10:00pm and not reopen until 9:00am [LC rec. 31];

²³ For example, C Jones et al (2009) "The impact of restricted alcohol availability on alcohol-related violence in Newcastle, NSW" *Crime and Justice Bulletin* 137; T Stockwell and T Chikritzhs (2009) "Do relaxed trading hours for bars and clubs mean more relaxed drinking? A review of international research on the impacts of changes to permitted hours of drinking" *Crime Prevention and Community Safety*, 11; S Duailibi et al (2007) "The effect of restricting opening hours on alcohol-related violence" *American Journal of Public Health* 97 (12); E Vingilis et al (2007) "Impact of extended drinking hours in Ontario on motor-vehicle collision and non-motor-vehicle collision injuries" *Journal of Studies on Alcohol and Drugs*, 68 (6); T Ragnarsdottir, A Kjartansdottir and S Davidsdottir (2002) "Effect of extended serving-hours in Reykjavik" in R Room (ed) *The Effects of Nordic Alcohol Policies: Analyses of Changes in Control Systems*, Helsinki: Nordic Council for Alcohol and Drug Research.

- On-licences and licensed clubs should be required to close no later than 4am, with a mandatory one-way door from 2:00am²⁴, and not reopen until 9:00am [LC rec. 32].
127. Special licences would also be bound by the national hours unless exceptional circumstances apply [LC rec 83].
128. National maximum hours would prevent 24-hour trading, with the resulting high risk of excessive consumption and increased opportunities for harm.
129. LAPs would be able to set tighter hours within the national maxima, to reflect local needs [LC rec. 35].
130. The Commission proposes no change to the current exemption for casinos from licence conditions relating to hours [LC rec. 33].

Comment

131. In considering maximum trading hours, it is important to balance the aim of reducing alcohol-related harm with the impacts on licensees and responsible drinkers. Restricted trading hours are likely to reduce the opportunities for excessive drinking, target the heaviest drinkers and have the least impact on low to moderate drinkers.

Proposed response

132. **I recommend adopting the following national maximum trading hours for the sale and supply of alcohol:**
- **For off-licences (including supermarkets), 7:00am to 11:00pm (recommendation 55); and**
 - **For on-licences, club licences and special licences, 8:00am to 4:00am (recommendation 56).**
133. These hours differ slightly from the Commission's recommendations, which propose that licensed premises would not be permitted to sell alcohol until 9:00am and beyond 10:00pm for off-licences. The rationale for the Commission's 9:00am commencement of trading is to reduce school-aged children's exposure and access to alcohol on the way to school. However, licensed stores where the primary business is the sale of food (such as supermarkets and grocery stores) would still be able to open and to display alcohol, so there would be little reduction in exposure to alcohol, while early morning shoppers would be inconvenienced. For these reasons, I recommend 7:00am commencement of trading for off-licences and 8:00am commencement for on-licences, club licences and special licences. A later closing hour of 11:00pm for off-licences would also accommodate later night shoppers.
134. **I recommend that decision-makers be enabled to impose a one-way door condition on on-licences, club licences and special licences at their discretion (recommendation 57). One-way door conditions would not apply to off-licences.**

²⁴ The one-way door requirement means people cannot enter after 2am, but do not have to leave until 4am or the premises' closing time, whichever is earlier.

135. **I recommend that territorial authorities be permitted to use LAPs to either restrict or extend the national maximum trading hours, including by specifying one-way door conditions (recommendation 59).** Where LAPs set local trading hours, the LAP hours would override the national provisions.
136. There may be some occasions where it is desirable for there to be the possibility of extensions to any maximum trading hours. **One such occasion is Anzac Day, where I recommend that special licences be authorised to permit the sale and supply of alcohol outside of any maximum trading hours for events connected with the commemoration of that day (recommendation 61, discussed at paragraph 38 in Appendix 2). I recommend inviting the select committee to consider whether there should be any other provision for limited extensions to any maximum hours for special events (recommendation 62).**
137. **I recommend that casinos continue to be exempt from any restrictions on trading hours under sale of alcohol legislation as provided by the Gambling Act 2003 (recommendation 64).**²⁵

Impact

138. The proposed hours are unlikely to have a significant impact on licensees, but will set a clear rule that 24-hour trading is not appropriate. Shorter trading hours for off-licences compared to on-licences would reduce the opportunities for “pre-loading” or “post-loading”²⁶ by decreasing the chance that people purchase further alcohol once they are already intoxicated or influenced by alcohol. Reduced off-licence hours may encourage people into regulated and supervised drinking environments and away from unsupervised drinking in private or public settings. A one-way door policy would assist with the dispersal of people and prevent bar-hopping, which will reduce the risk of altercations and violence during the early hours of the morning.
139. A maximum trading hour of 4:00am on-licences and club licences, in association with possible one-way door conditions and earlier closure of off-licences, should begin to flatten and shift the peak apprehension times to earlier in the evening and reduce the incidence of very serious crime that often occurs after 4:00am due to the people’s higher levels of intoxication.²⁷ It will also reduce the negative effect of 24-hour trading on the cleanliness and amenity of public spaces.

²⁵ There are six casinos in New Zealand. Of the six, three operate beyond 4:00am. Skycity Auckland and Christchurch Casino operate 24 hours a day, seven days a week. Skycity Hamilton opens from 9:00am-5:00am on Thursdays to Saturdays. From Sunday to Wednesday it opens from 9:00am-3:00am. The Dunedin and two Queenstown casinos close at, or before, 4:00am on all days of the week.

²⁶ Pre-loading is the practice of drinking large quantities of alcohol purchased from an off-licence, often to the point of intoxication, before going to an on-licence. This practice increases the likelihood of intoxicated people converging in city centres, creating a risk of disorder and violence. Post-loading is the practice of drinking large quantities of alcohol after leaving licensed premises. The alcohol may have been purchased earlier in the evening, but may also be bought from a late-night off-licence after leaving on-licensed premises.

²⁷ A recent Police study in Timaru found a reduction in recorded violent crime following the introduction of 3:00am closing. The most profound reduction appeared during weekends between 3:00am and 6:00am, with recorded violent incidents dropping by two-thirds (64%) in the vicinity of Timaru's five inner-city bars (<http://www.police.govt.nz/timaru-licensed-premises-trading-hours>).

140. In terms of the impact on off-licences, very few grocery stores have off-licences that allow trading after midnight. The main off-licence categories affected by having a closing hour before midnight would be taverns, hotels, bottle stores and some chartered clubs that have an historical concession to sell liquor for off-premise consumption. Around 650 of these four types of premises are able to sell liquor after 12:00am. This represents around 16 % of all off-licences. In terms of the impact on on-licences, a 4:00am closing time would affect around 800 licences. This represents about 11 % of all on-licences.
141. There are concerns that a one-way door policy could reduce the profitability of on-licences. Around 2800 on-licences (taverns and nightclubs) would be affected by this proposal. What may happen is that people would stabilise at one bar shortly before 2:00am rather than “bar-hop”, with the overall result that people continue to patronise bars between the hours of 2:00am and 4:00am.

Management requirements for club licences and BYO restaurants

Context

142. Licensees are generally required to appoint at least one manager, who needs to hold a manager’s certificate. Where a manager is required to be appointed, a manager must be on duty at all times that alcohol is being sold or supplied to the public.
143. The Sale of Liquor Act establishes two kinds of managers’ certificates: a general manager’s certificate and a club manager’s certificate. A general manager’s certificate authorises the holder to manage any licensed premises. A club manager’s certificate authorises the holder to manage any licensed club or premises subject to a special licence. A general manager must hold a prescribed qualification (the Licence Controller Qualification). A club manager is not required to hold a prescribed qualification.
144. BYO restaurants are exempt from the requirement to appoint a manager.
145. Club licences are exempt from the requirement for a manager to be on duty at all times that alcohol is being sold or supplied to the public by virtue of the fact that clubs do not serve the general public, but rather club members and their guests.

Law Commission recommendations

BYO restaurants

146. The Commission recommends that BYO restaurants be required to appoint a manager who holds a general manager’s certificate and therefore the Licence Controller Qualification [LC report page 216]. A BYO restaurant manager would need to be on duty at all times that alcohol is allowed to be consumed on the premises.
147. BYO restaurants represent only a small number of licensed premises and are generally low-risk. For some premises, the BYO environment may encourage heavier drinking because the alcohol may be cheaper and brought in larger quantities than in licensed restaurants.

148. To mitigate this, **I recommend empowering licensing decision-makers to require a BYO restaurant to have a manager on duty, either in general or for particular days or times, through imposing a discretionary condition on the licence (recommendation 72).** This proposal will impose costs on some BYO restaurant licensees, but I consider this is outweighed by the reduced risk of intoxication on these premises.

Club managers

149. **The Commission recommends that managers of licensed clubs be required to have the same qualifications as general managers [LC rec. 76]. I propose accepting this recommendation (recommendation 73).**

150. The risks of intoxication and service to minors are no different for many clubs than they are for on-licences and the skills and knowledge required are the same. The requirements for the Licence Controller Qualification are also not particularly onerous.²⁸ There is therefore no need to continue to differentiate between a club manager's certificate and a general manager's certificate in relation to licensed clubs.

Requirement to be on duty at all times that alcohol is being sold or supplied

151. The Commission also recommends that licensed clubs be required to have a manager on duty at all times that alcohol is being sold, but should be exempted from this requirement when 20 or fewer people are present on the premises [LC rec. 75].

152. I am not persuaded by the Commission's exemption proposal because it may be difficult to manage in practice. A club may be expecting 15 people on a particular day, but 25 may arrive and a manager would then need to be on duty at short notice.

153. **I recommend that, in general, licensed clubs should not be required to have a manager on duty at all times that alcohol is being sold or supplied. However, licensing decision-makers should have the discretion to require a licensed club to have a manager on duty at all times or on particular days or at particular times (recommendation 74).** This recommendation recognises that there is considerable variation in the size and function of clubs and their contribution to alcohol-related harm. It will prevent unnecessary compliance costs being imposed on low-risk clubs while allowing for appropriate requirements to be placed on higher-risk clubs.

Serving guests

154. The Commission recommends that decision-makers be authorised to allow a club to serve guests of a member of a club that has reciprocal visiting rights. This right would be noted as a condition of the licence [LC rec. 77]. This would

²⁸ The Licence Controller Qualification consists of two unit standards: NZQA Unit 4646 – *Demonstrate knowledge of the Sale of Liquor Act 1989 and its implications for licensed premises* and NZQA Unit 16705 – *Demonstrate knowledge of host responsibility requirements as a duty manager of licensed premises*. The standards can be completed on-line. The requirements can also be completed in a one-day course followed by an assessment. The course costs around \$150-\$250 depending on the provider.

require a club to seek this condition for its licence. The right to serve such guests would be clearly stated on the licence and could be easily communicated between reciprocal clubs and to members. **I propose accepting this recommendation (recommendation 75).**

SPARC comment

155. The proposal set out in paragraph 154 allows clubs to serve alcohol to guests of a member of a club with reciprocal visiting rights only if the club has obtained the right to do so from the decision-maker. SPARC welcomes the greater flexibility of this provision, but considers that this may create considerable confusion among those clubs with reciprocal visiting rights. SPARC also questions the practicality of enforcing a distinction between members of those clubs and their guests. SPARC recommends that a more practicable approach would be to allow guests of members of clubs with reciprocal visiting rights to be served, except where the decision-maker has restricted this as a licence condition. This would again mean more effective targeting of high-risk clubs, rather than starting from a position of a 'blanket' restriction.

Licence fees

Context

156. The Sale of Liquor Act 1989 allows fees for licences and manager's certificates to be set through regulation. Fees are set nationally and differ according to the type of licence and any endorsements under certain sections of the Act. Fees are payable to District Licensing Agencies upon application for a new or renewed licence or manager's certificate. A portion of licence fees received is transferred to the Liquor Licensing Authority to fund its operation.

157. It has become apparent that the current fee system does not cover the costs to territorial authorities of their licensing functions and that local rates are being used to subsidise licensing activities. Fees are adjusted sporadically and are not inflation-adjusted.

158. Further, holders of on-licences, off-licences and club licences all pay the same licence fee, regardless of the risk-level of the premises. This means that a restaurant or café pays the same fee as a nightclub, even though a nightclub is generally considered to pose a higher risk of harm and may therefore require a higher degree of monitoring.

Law Commission recommendations

159. The Commission recommends that a risk-based fee scheme be consulted on and established by regulation [LC rec. 68]. Relevant risk factors may include the type of venue, the capacity of the venue, trading hours, activities that reduce the risk of alcohol-related harm and the previous conduct of the licensee.

Proposed response

160. **I recommend accepting the Commission's proposal for a risk-based licence fee scheme (recommendation 108).**²⁹
161. **I consider that licence fees should cover the licensing activities of territorial authorities as far as possible, so that costs of licensing are borne by those that benefit directly from the licence, rather than by rate-payers. I note that this may increase licensing costs for industry.**
162. **To assist territorial authorities to budget for licensing activities, licence fees should be payable on an annual basis (recommendation 110).**

Licence renewal

Context

163. On-, off- and club licences are initially granted for one year, after which they are required to be renewed every three years (unless a lesser period is imposed). Renewal allows for the licensee's systems and general operation to be reviewed in terms of compliance with the Act. The costs and requirements associated with renewal have been seen as excessive for low-risk premises.

Law Commission recommendations

164. The Commission recommends a streamlined renewal process that sets out lesser requirements for low-risk premises. Low-risk premises with no compliance issues in the previous year would be granted a yearly renewal on the basis of payment of an annual fee [LC rec. 69]. Where there were compliance issues, a licensing inspector would be able to require the licensee to formally apply for renewal of a licence within three years of the last renewal [LC rec. 70]. The existing renewal requirements would remain for premises that were not categorised as low-risk, but with licence fees paid annually [LC rec. 71].

Proposed response

165. I support the intent of the Commission's recommendations to reduce compliance costs for low-risk premises. This would, however, remove the opportunity for public objection, which is available on renewal. It also does not allow for changes in risk status to be easily identified, since enforcement resources would, and should, be focused on high-risk premises. I note that many other licensing processes require regular renewal of the licence.
166. **For these reasons, I recommend retaining the current requirement for all licences to be renewed after one year initially and at least every three years after that (recommendation 111).**

²⁹ The regulation-making power for licence fees will need to enable either a centralised or devolved model, or a combination of both. Devolution would enable territorial authorities to set elements of licence fees. The final model will need to be subject to consultation and approved by Cabinet at a future date (recommendation 109).

167. **Renewal for low-risk premises with no compliance issues could be completed on the papers, without the need for a hearing. I recommend that the legislation make this explicit (recommendation 112).**
168. **As noted above, I consider that licence fees should be payable on an annual basis, rather than tied to renewal.**

Licensing exemptions

Context

169. The following types of premises are currently exempted from the requirement to hold a licence to sell and supply alcohol:
- The House of Representatives;
 - Police canteens;
 - Prison officers' canteens;
 - New Zealand Fire Service canteens;
 - Defence Force canteens.

Law Commission recommendation

170. The Commission recommends that the premises listed above no longer be exempt from licensing requirements [LC recs. 89-93]. These premises would be required to hold an on-licence or a club licence, with tailored enforcement provisions. For example, the Commission proposes that House of Representatives' licences could be under the control of the Speaker, to maintain the Speaker's control of the administration of Parliamentary precincts, and that licensing inspectors not be granted power of entry on to Parliamentary premises.
171. The exemption for prison officers' canteens would be removed because these canteens no longer exist. The Commission's view is that the exemptions undermine the premise that the law should apply equally to all. The Commission considers that if the law is to be respected and perceived as fair by the public, it is vital that it is implemented and upheld by government-controlled premises.
172. I note that Police does not oppose the exemption for Police canteens being removed. The Police Association, however, does not support this exemption being removed. The Fire Service and the Defence Force do not support their exemptions being removed.

Proposed response

173. **I recommend removing the licence exemption for prison officers' canteens on the basis that these canteens no longer exist (recommendation 113).**
174. **I recommend removing the licence exemption for the House of Representatives (recommendation 114).**

175. **I recommend retaining the licence exemptions for Police canteens, Fire Service canteens and Defence Force canteens (recommendation 115).**

Permanent charter clubs

176. Clubs that hold a permanent club charter are exempt from the requirement to obtain a liquor licence. However, they are required to appoint a manager as if they were the holder of a club licence, keep records, file returns and pay fees.³⁰ Permanent charter clubs are subject to the offence provisions in the Sale of Liquor Act and cannot extend their trading hours.

Law Commission recommendation

177. The Commission recommends that permanent charter clubs be required to obtain a club licence on the basis that the current exemption from the requirement to hold a licence undermines the premise that the law should apply equally to all. It states there would be little difference for these premises in practice because they are already required to meet most of the requirements for other clubs.

Proposed response

178. **I do not support the Commission's proposal to remove the licence exemption for permanent charter clubs (recommendation 116). There are very few permanent charter clubs left³¹ and there is no provision to grant new permanent charters. I consider that the existing requirements on permanent charter clubs are sufficient to manage the risk of harm posed by these premises. I recommend listing the active permanent charter clubs in regulations (recommendation 117).**

Other licensing proposals

179. The Commission makes a number of recommendations in other licensing areas, which I consider to be of a technical or relatively straightforward nature. These proposals, as described below, are discussed in Appendix 2. I recommend that the Commission's proposals in these areas are generally accepted or in some cases are accepted with minor amendments. In summary, I recommend the following licensing changes in Appendix 2:

- Broaden the aim of sale of liquor legislation to focus on minimising alcohol-related harm;
- Require caterers to obtain an on-licence rather than an off-licence;
- Broaden the range of conditions that must or may be imposed on licences;
- Standardise the rules for trading on a prohibited day for all on-licences;
- Introduce specific provisions for remote (internet, phone or mail-order) off-licence sales of alcohol;

³⁰ Permanent charter clubs currently pay an annual fee of \$1,035.

³¹ The number of permanently chartered clubs decreased from 48 in 1997 to 34 in 2009. The existing permanent charter clubs are listed in Appendix 5.

- Clarify the requirements for special licences;
- Enhance licence decision-making structures;
- Improve public notification of licence applications and reduce the notification compliance costs for applicants.

PURCHASE AGE

Context

180. The current purchase age for alcohol is 18 years. It was lowered from 20 years in 1999. It is an offence to sell alcohol to anyone under the age of 18 and it is an offence for anyone aged under 18 to purchase alcohol.
181. People under the age of 18 are permitted in some licensed premises (for example, supermarkets and cafés) but are not permitted in others (for example, most nightclubs). In some licensed premises, under-18 year olds are only permitted to be there if they are in the company of a parent or guardian (eg, most bottle stores and some restaurants and taverns).
182. The Commission points to New Zealand evidence that the level of alcohol-related harm experienced by young people has increased since the purchase age was lowered in 1999 and that young people may be starting to drink earlier. Following the lowering of the purchase age, there have been increases in the trends for rates of prosecutions for driving with excess alcohol levels, road traffic crashes involving alcohol and fatal traffic crashes involving alcohol among several youth cohorts.³²
183. The majority of submissions to the Commission on the purchase age supported raising the age to 20 years.

Law Commission recommendation

184. The Commission recommends that the purchase age for alcohol be raised to 20 years with no exceptions [LC rec. 96]. The minimum age for a person to be a seller and supplier of alcohol in restricted areas would also increase to 20 to be consistent with the purchase age [LC rec. 99]. Under-20 year olds would continue to be allowed to be employed in non-restricted areas (for example, supermarkets, cafés and restaurants) and for certain duties in restricted areas, such as cleaning and stocktaking.

Comment

185. New Zealand evidence suggests that young people have experienced a greater degree of harm as a result of lowering the purchase age in 1999.³³

³² For example, T Huckle, M Pledger and S Casswell (2006) "Trends in alcohol-related harms and offences in a liberalised alcohol environment", *Addiction* 101.

³³ For example, T Huckle, M Pledger and S Casswell (2006) "Trends in alcohol-related harms and offences in a liberalised alcohol environment", *Addiction* 101 (2); K Kypri et al (2006) "Minimum purchasing age for alcohol and traffic crash injuries among 15- to 19-year-olds in New Zealand", *American Journal of Public Health* 96 (1); R Everitt and P Jones (2002) "Changing the minimum legal drinking age – its effect on a central city Emergency Department", *New Zealand Medical Journal* 115 (1146).

186. Evidence indicates that raising the purchase age would be likely to have a positive impact on the level of alcohol-related harm, through increasing the age at which people start drinking and reducing the amount they consume in their youth.³⁴
187. I note that the highest proportion of alleged offenders that are affected by alcohol are aged between 17 and 20.
188. Raising the purchase age would, however, potentially affect the current rights of around 132,000 18 and 19 year olds.³⁵ The market of potential purchasers would be reduced, which may have some impact on the industry, particularly off-licences. Some young people would, however, be likely to continue to source alcohol through a legal intermediary, tempering the potential reduction in market size.
189. The Commission considered the possibility of a split purchase age that would allow on-licence purchase from age 18 and off-licence purchase from age 20. The rationale for a younger on-licence purchase age was the assumption that these premises provide a supervised environment, which reduces the risk of alcohol-related harm compared to other locations, particularly private residences. In its final report, the Commission discounted this option on the grounds that the evidence does not support the assumption that on-licences provide a lower-risk drinking environment.

Proposed response

190. I consider that a split purchase age provides a sensible, graduated approach to obtaining the right to purchase alcohol. A split purchase age would reduce alcohol-related harm associated with off-premise consumption, particularly the practice of “pre-loading”,³⁶ though this age group may continue to access off-licence alcohol through a legal intermediary. The opportunity for supply by 18 and 19 year olds to younger peers would be reduced. A split purchase age would also maintain existing employment opportunities for 18 and 19 year olds.
191. **I recommend introducing a split purchase age of 18 years for on-licence sale and supply and 20 years for off-licence sale and supply (recommendation 119).**
192. **I recommend keeping the age at which a person may sell alcohol in restricted areas of licensed premises at 18 years, to maintain existing employment opportunities for 18 and 19 year olds (recommendation 120).**
193. **People under the age of 18 should continue to be allowed to be employed in non-restricted areas (for example, supermarkets, cafés and**

³⁴ Massey University research cited in Law Commission (2009) *Alcohol in our Lives*, Wellington: Law Commission: 38.

³⁵ Statistics New Zealand (2010) Projected Population of New Zealand by Age and Sex, 2009–2061: <http://wdmzpub01.stats.govt.nz/wds/TableViewer/tableView.aspx>.

³⁶ Drinking large quantities of alcohol purchased from an off-licence, often to the point of intoxication, before going to an on-licence. This increases the likelihood of intoxicated people converging in city centres, creating a risk of disorder and violence.

restaurants) and for certain duties in restricted areas, such as cleaning and stocktaking.

PARENTAL SUPPLY OF ALCOHOL TO THEIR CHILDREN

Context

194. Currently, parents and legal guardians may supply their own children alcohol at any time in their own home or other private setting.
195. In certain licensed premises, parents and legal guardians may supply their own child with alcohol to drink (for example, at a restaurant or café). Parents and legal guardians may also purchase alcohol for their children from an off-licence.
196. It is currently an offence for people under the age of 18 to drink or possess alcohol in a public place, including a vehicle, unless accompanied by a parent or guardian.

Law Commission recommendations

197. The Commission recommends that people under the age of 20 should be prohibited from drinking on licensed premises and in public in all circumstances [LC rec. 97]. **This would mean that parents and legal guardians could not legally give their under-20 year old an alcoholic drink with a family dinner at a restaurant or at a picnic or barbeque at a park or beach. The Commission's proposals would effectively set a public drinking age of 20.** Under-20 year olds would be able to drink in private situations, but would not be able to drink in public or on licensed premises in any circumstances.
198. The Commission's proposals would provide a clear set of rules that would be easy for the public to understand and relatively simple for Police and staff at licensed premises to enforce. The proposals would, however, introduce quite a different approach from the current law and could encroach on parents' freedom to decide when, where and how they introduce their children to alcohol.

Proposed response

199. **I recommend that parents and legal guardians continue to be permitted to supply alcohol to their own children at any time in their own home or other private setting (recommendation 123).** This would mean that parents would continue to be able to purchase alcohol from an off-licence to give to their children.
200. **I recommend that parents and legal guardians should continue to be allowed to give their children alcohol at certain licensed premises, such as restaurants (recommendation 124).**
201. **I recommend that it continue to be unlawful for a person to drink or possess alcohol in public if they are under the age of 18, unless they are accompanied by their parent or guardian (recommendation 125).**

PARENTAL CONSENT TO SUPPLY ALCOHOL TO MINORS AND RESPONSIBLE SUPPLY

Parental consent to supply

Context

202. The Sale of Liquor Act prohibits purchase of alcohol with the intent of supplying it to a minor, unless the purchaser is the minor's parent or guardian or is a person that intends to supply the alcohol at a private social gathering. There are no other controls on private supply of alcohol to minors.

203. The current provisions often enable supply of alcohol to young people at private parties, including after-ball parties and other teenage parties, because they are held as private social gatherings. One of the few protections against this occurring is where the after-ball party is held at licensed premises, when the offences concerning sale and supply to minors apply.³⁷

Law Commission recommendations

204. To address deficiencies in the current supply law, the Commission recommends that it be an offence for any person, other than a parent or guardian, to supply alcohol to someone under the age of 18 unless a parent or guardian has provided consent [LC rec. 98]. The consenting parent or guardian would need to be satisfied that the supplier is a suitable adult aged 20 or over and will provide supervision. The Australian states of New South Wales, Queensland and Tasmania have similar laws.

205. The Commission considers that a requirement for parental consent would give parents a tool for managing their child's drinking and provide a strong normative signal to under-18 year olds. There was strong support in submissions to the Commission, including from parents, for imposing greater responsibility on parents and guardians.

Responsible supply to minors

Context

206. There are currently no legal requirements concerning how alcohol should be supplied to under-18 year olds, including supervision of their consumption.

Law Commission recommendations

207. The Commission recommends that it be an offence for a parent or guardian who, having supplied alcohol to a child under 18 years of age, fails to supply the alcohol in a responsible manner [LC rec. 98]. Similarly, there would be an offence for a supplier who, having received consent from a parent or guardian

³⁷ Three other offences are also available for after-ball parties depending on the circumstances: sales by an unlicensed person (eg, where a ticket or entrance fee covers the cost of alcohol supplied), allowing sale of alcohol on or from unlicensed premises and using unlicensed premises, other than a residence, as a place of resort for the consumption of alcohol.

and supplied alcohol to a person under 18 years of age, fails to supply it in a responsible manner.

208. The test for “responsible supply” would include the adequacy of adult supervision, age of the minors, quantity supplied, duration of supply, presence of intoxication and availability of food.

Comment

209. Parents are a major source of alcohol for minors. Older friends, siblings and associates are also a significant source of supply, with no current requirement for parental knowledge or authorisation.³⁸ Alcohol is often supplied to young people in large quantities, without adequate supervision or controls. After-ball parties are a prime example.

210. Given the heightened risk of harm from alcohol consumption for young people, and that young people receive a large proportion of their alcohol from family and friends, there is scope for the law to require more parental and individual responsibility for supply to minors.

211. As noted by the Commission, its proposal to require parental consent for supply of alcohol to an under-18 year old would provide a useful tool for parents to control supply to their children. It would also send a strong message to parents and children that parents are required to be responsible and accountable for their children’s consumption.

212. Requirements for consent and supervision provide a strong normative signal to minors and give parents greater power to restrict their child’s drinking and the Police a tool for intervening in unsupervised or poorly supervised teenage parties, including after-ball functions. It would emphasise parental and adult responsibility for the behaviour of young people in their care and encourage responsible supply and consumption. It could, however, encroach on citizens’ private lives, risk criminalising parents and be difficult to enforce.³⁹

Proposed response

213. **I recommend that Cabinet accept the Commission’s proposals for strengthening the controls on supply of alcohol to minors, to:**

- **Require a person to have the consent of a parent or guardian before supplying alcohol to an under-18 year old (recommendation 127); and**
- **Require parents, guardians and authorised suppliers to supply alcohol responsibly and supervise the consumption of alcohol that they have supplied to an under-18 year old (recommendation 131).**

³⁸ Adolescent Health Research Group (2008) *Youth '07: The Health and Wellbeing of Secondary School Students in New Zealand: Initial findings*, Auckland: The University of Auckland; Ministry of Health (2007) *Alcohol Use in New Zealand: Analysis of the 2004 New Zealand Health Behaviours Survey – Alcohol Use* (Public Health Intelligence Occasional Bulletin 40), Wellington: Ministry of Health.

³⁹ Where Police hold serious concerns about lack of parental supervision of under-17 year olds, action may be taken under current child welfare legislation. Such action is more likely to be pursued in respect of younger people whose alcohol consumption is undermining their wellbeing.

214. I note that the Police would have discretion not to prosecute when there is no public interest to do so. This will provide protection to low-level, low-harm supply and avoid over-interference in the private domain.
215. **Should Cabinet agree to these proposals, I consider that a maximum fine of \$2000 would be appropriate (recommendations 129 and 132).** This level is consistent with the existing penalties for sale or supply to minors on or from licensed premises by someone other than a licensee or manager.
216. I note that these proposals only apply to under-18 year olds because legal guardianship ceases at age 18. If these proposals are adopted, the requirement for consent or responsible supply would not apply to supply to a person aged 18 or over. Should Cabinet agree to the proposal to introduce a split purchase age, 18 and 19 year olds would not be able to purchase off-licence alcohol, however they may continue to access off-licence alcohol through a legal intermediary without parental consent and without supervision.

REDUCING DEMAND

PRICING POLICIES

Context

217. Consumption of alcohol, as with most other commodities, is affected by changes in price. There is increasing public concern about the easy accessibility of cheap alcohol encouraging people to drink more often or larger amounts.
218. The existing lever available to influence price of alcohol is excise tax. Excise tax is applied to all alcohol imported or manufactured for sale in New Zealand. It is not applied to alcohol products when they are exported and is also waived for some purchases, such as the duty-free alcohol allowance for international travellers.
219. The current excise rates can be summarised as follows:
- Products with an alcohol content below 14% are taxed at \$25.476 per litre of alcohol;
 - Products above 14% are taxed at \$46.40 per litre of alcohol.
220. The two-tier system means that excise tax tends to make up a larger proportion of the retail price of stronger alcohol products.

Law Commission recommendations

221. In summary, the Commission recommends:
- Raising the excise tax rate by 50% to achieve an average 10% increase in retail prices [LC rec. 100];
 - Removing the excise tax on low-alcohol products up to 2.5% alcohol by volume to encourage the production and availability of more low-alcohol products [LC rec. 101];

- Investigating a minimum price regime [LC rec. 102];
- Requiring retailers and producers to provide sales and price data to enable the government to investigate a minimum price regime and be able to effectively model the impacts of changes in excise levels [LC rec. 103].

222. Evidence cited by the Commission shows that the price of alcohol is a significant factor in moderating demand.⁴⁰ Increased affordability facilitates excessive and harmful consumption. The Commission advises that an increase in the price of cheap alcohol, achieved through an increase in excise tax, would be the most effective pricing policy to reduce harm in the current competitive market environment.

Proposed response

223. Given other Government tax priorities and potential inflationary pressures over the next few years, I consider that now is not a suitable time to raise alcohol excise rates. In addition, Government may wish to review the effects of other liquor reform proposals before determining whether excise changes, which could negatively impact on low and moderate drinkers, are required.

224. **I recommend rejecting the Commission's excise tax proposals (recommendations 134 and 135).**

225. [Information withheld – related matters still under consideration]

226. A minimum price regime would directly target cheap alcohol, which is preferred by heavy and young drinkers, without having a big effect on moderate drinkers. There is, however, little evidence of its effectiveness in a competitive market environment. The Scottish Parliament has legislated for a minimum price scheme, which provides a model for a New Zealand examination of minimum price. The United Kingdom coalition government has recently indicated its intention to review alcohol taxation and pricing policies, with a particular focus on cheap alcohol. The increased profits of a minimum price scheme would go to retailer or producer.

227. **I recommend monitoring international developments on minimum price regimes (recommendation 137).**

228. Price and sales data are required to successfully evaluate the costs and benefits of a minimum price regime. **I recommend exploring voluntary options for obtaining this information from retailers in the first instance (recommendation 138). If industry is not prepared to provide this information within one year, I recommend that the Government consider regulatory options at that stage (recommendation 139).**

⁴⁰ For example, L Rabinovich et al (2009) *The affordability of alcoholic beverages in the European Union: Understanding the link between alcohol affordability, consumption and harms*, Prepared for the European Commission by RAND Europe; World Health Organisation (2007) WHO Expert Committee on Problems Related to Alcohol Consumption (WHO Technical Report Series 944).

ADVERTISING, SPONSORSHIP AND PROMOTIONS

Context

229. Alcohol advertising was deregulated over the 1980s and 1990s. In 1992, Cabinet allowed brand advertising and charged the Advertising Standards Authority, an industry-based body, with regulating brand advertising. Alcohol advertising remains self-regulated today.

230. Section 154A of the Sale of Liquor Act 1989 creates an offence punishable by a maximum \$5000 fine if a licensee or manager:

“...does anything in the promotion of the business conducted on the premises, or in the promotion of any event or activity held or conducted on the premises, that is intended or likely to encourage persons on the licensed premises to consume alcohol to an excessive extent.”

231. Section 154A has been interpreted to apply only to on-licences and clubs by virtue of the words “...encourage persons on the licensed premises to consume alcohol...”. It therefore has not been applied to off-licence promotions.

Law Commission recommendations

232. The Commission recommends a three stage programme of advertising reforms [LC rec. 104], which would be in place within five years [LC rec. 105]:

- Stage 1 [LC recs. 106 and 107]: Immediate implementation of a new offence relating to the irresponsible promotion of supply and consumption of alcohol (replacing the existing offence under section 154A of the Sale of Liquor Act). It would become an offence to:
 - In the course of carrying on a business, encourage the consumption of an excessive amount of alcohol, whether on licensed premises or at any other place;
 - Promote or advertise alcohol in a manner that has special appeal to people under the age of 20;
 - Promote or advertise alcohol, except in store or on premises, in a manner that leads the public to believe the price is 25% or more below the price at which the alcohol is ordinarily sold;
 - Promote alcohol that is free; or
 - Offer any goods or services on the condition that alcohol is purchased;
- Stage 2 [LC rec. 108]: Introduction of legislative measures aimed at reducing exposure to advertising, particularly for young people;
- Stage 3 [LC rec. 109]: Introduction of measures that aim to restrict the promotion of alcohol, including sponsorship, in all media.

233. The Commission’s reasons for these recommendations include:

- Research establishes a link between alcohol advertising, sponsorship and the consumption of alcohol, particularly by young people;

- There is clear evidence of the irresponsible promotion and advertising of alcohol that industry self-regulation has failed to curb;
- There was very strong support in submissions to the Commission for doing more to curb irresponsible advertising and promotions;
- The existing offence in section 154A of the Sale of Liquor Act is targeted at only one form of irresponsible promotion and there are other forms of promotion that are equally reprehensible.

Proposed response

234. **I recommend accepting the Commission's stage one recommendation to strengthen the existing irresponsible promotion offence (recommendation 140).** It is inconsistent that this offence applies to on-licence promotions but not off-licence promotions or promotions elsewhere. I also consider it helpful for the law to provide direction on what constitutes an irresponsible promotion.
235. **I do not recommend any changes to the existing self-regulatory advertising scheme. I therefore recommend that the Commission's stage two and three recommendations be rejected for the time being (recommendation 141).**
236. Regulating alcohol advertising is difficult and its effect uncertain, particularly because alcohol advertising is a rapidly evolving area with new technologies and marketing techniques providing new opportunities to influence purchase and consumption behaviour. Restrictions may, therefore, be easily circumvented. Restrictions on advertising could potentially raise issues under the New Zealand Bill of Rights Act 1990 in respect of freedom of expression and could be difficult to justify based on current evidence about the relationship between advertising and consumption patterns. Controls on alcohol sponsorship would likely also have significant economic and community consequences.⁴¹
237. Past research has been equivocal on the effect of advertising on consumption, though I acknowledge that new research is now emerging that links the advertising of alcohol and increased consumption, particularly by young people. I consider it is premature at this time to make far-reaching changes to the existing advertising regime and propose instead that officials continue to monitor the national and overseas research on the impacts of exposure to advertising on consumption. Should the evidence support it, restrictions on advertising and sponsorship could be considered at a future date.

LIMITING ALCOHOL-RELATED PROBLEMS

238. This section covers proposals about offences, monitoring and enforcement and alcohol in public places. Proposals about banning products, education and treatment are discussed in Appendices 2 (banning products) and 3 (education and treatment).

⁴¹ For example, transitional funding may be needed for activities currently sponsored by alcohol companies; ongoing replacement funding may be difficult to obtain for activities currently sponsored by alcohol companies.

OFFENCES, MONITORING AND ENFORCEMENT

239. A proposal to include a definition of intoxication in the legislation is discussed in Appendix 2.

Offence for manager or employee to be intoxicated on duty

Context

240. It is currently not an offence under sale of liquor legislation for a manager to be intoxicated while on duty in licensed premises, nor is it an offence for serving staff to be intoxicated while serving alcohol. Management of licensed premises requires sound judgement and decision-making. Serving staff also need the ability to make judgments about the age and degree of intoxication of people they serve.

Law Commission recommendation

241. The Commission recommends that it be an offence for a manager or serving staff to be intoxicated on duty [LC rec. 112]. The Commission recommends a fine of up to \$2000 for the offence and that the offence should also be able to proceed as an infringement.

Proposed response

242. **I recommend accepting the Commission's proposal (recommendations 143 and 144). I recommend that the maximum penalties for managers and employees convicted of being intoxicated whilst on duty be as follows:**

- **For a manager, a fine not exceeding \$4000;**
- **For an employee, a fine not exceeding \$2000.**

243. **I recommend that these offences may also proceed as an infringement offence (recommendation 143).**

244. **I also recommend a corresponding offence for a licensee of allowing a manager or employee to be intoxicated on duty, which would be punishable by a fine of up to \$5000 (recommendation 145).**

Establishing age

Context

245. The Sale of Liquor Act provides that it is a defence to a charge of selling or supplying alcohol to a minor if it can be proved that the defendant believed on reasonable grounds that the person to whom alcohol was sold had attained the age of 18 years. An amendment in 1999 clarified that reasonable grounds exist if the defendant proves that an evidence of age document was sighted indicating the person was 18 years of age or older. This is a non-exhaustive provision and reasonable grounds for believing the person was at least 18 may be proved in some other way. The unlimited nature of this amendment increased the risk that alcohol may be sold to a minor.

Law Commission recommendation

246. The Commission proposes that the only defence for sale and supply of alcohol to a minor on or from licensed premises be that the person selling or supplying the alcohol sighted an approved evidence of age document that belongs to the person to whom the alcohol is being sold or supplied and shows the person to be of or over the purchase age [LC rec. 113].
247. This proposal would effectively remove the ability to establish the 'reasonable grounds for belief' on grounds other than sighting approved evidence of age.

Proposed response

248. **As it stands, the Commission's recommendation risks incentivising fraudulent use and production of accepted evidence of age documents and lessens the judgement required on the part of the seller. I recommend accepting the Commission's proposal and strengthening it to include that the retailer reasonably believed that the purchaser appeared to be over the minimum purchase age (recommendation 146).**
249. **I further recommend that specification of what constitutes approved evidence of age for the purchase of alcohol is moved from the primary legislation to regulations (recommendation 147).** This proposal will enable the legislation to keep up with advances in proof of identity technology.

False representation of age

Context

250. The Sale of Liquor Act makes it an offence for a person to make a false representation, orally or in writing, to licensees, managers, or employees of licensed premises that the person is entitled to be sold or supplied alcohol or enter the licensed premises. The offence has not been updated since the introduction of the evidence of age document regime.
251. Where a false evidence of age document is presented to a licensee, manager or staff, including door staff, they may deny entry or require the young person to leave the premises. False evidence of age documents are sometimes surrendered to the staff of licensed premises. There is currently no process for the management of evidence of age documents (genuine or fake) that are surrendered to staff at licensed premises.

Law Commission recommendations

252. The Commission recommends:
- An amendment should be made to the offence of making a false representation to obtain alcohol to the effect that the offence is not committed by a person who makes a false representation (other than in writing) at the request of a member of the Police acting in the course of their duties [LC rec. 114];
 - Licensees, managers and licensed door staff should be given the power to confiscate false evidence of age documents or evidence of age

documents that have been tampered with, but this power should not extend to passports [LC rec. 115]. This would prevent young people from attempting to use the document at other licensed premises and would possibly deter people from lending genuine documents to young people;

- A new infringement offence should be created for an individual who lends a genuine evidence of age document to a minor, knowing the minor intends to use the document to obtain entry into licensed premises or be sold alcohol on those premises [LC rec. 116].

Proposed response

253. **I recommend that the offence of making a false representation of age to obtain alcohol is updated so that it is an offence to present to a licensee, manager or employee of any licensed premises a document or other evidence that the person knows is fraudulent (recommendation 148).**
254. The offence of making a false representation of age to a licensee or their representative, other than in writing, would no longer be required, as a verbal representation of age would no longer be a valid defence for a sale to a minor [LC rec. 114] (recommendation 150). Ascertaining that a false verbal representation was made is also difficult, given that it usually a case of one person's word against another, and is almost never relied upon. Minors who successfully gain entry or purchase alcohol are more likely to have their offending detected. At this point, other offences are available, such as purchase of alcohol by a minor and being found in a restricted or supervised area. In conjunction with the proposed change to the defence for sale to a minor, this proposal will place the onus on licensees and staff not to sell alcohol to young people on the basis of a verbal representation.
255. **I recommend accepting the Commission's proposal that it be an infringement offence to give or lend a genuine evidence of age document to a person under the purchase age knowing that they intend to use the document to obtain entry into licensed premises or to purchase alcohol (recommendation 151). I also recommend that it be a summary offence for any person to sell, hire, give or lend forged evidence of age to a person under the purchase age for use to obtain entry into licensed premises or purchase alcohol (recommendation 152).**
256. **I recommend rejecting the Commission's proposal that licensees, managers and licensed door staff should be given the power to confiscate false evidence of documents at this time (recommendation 153).** I understand that the current action available to licensees, managers and door staff means that false evidence of age documents may remain in circulation, with the risk that young people continue to attempt to use them. I note that this is a serious issue. Fake evidence of age documents can, however, be so difficult to distinguish from genuine documents that there is an unacceptable risk of genuine documents being confiscated.

Repeat offending by managers or licensees

Context

257. The existing enforcement system does not provide specific penalties for licensees or managers who frequently commit offences under the Act. A firmer and more uniform line towards cancelling licences or certificates would send a clear signal to licensees and managers to raise their standards or face an imminent risk of having their licence cancelled or certificate revoked for putting public safety at risk.

Law Commission recommendations

258. The Commission recommends that where a manager or licensee has been found to have committed any one or combination of the following offences three times on separate occasions within a period of three years, a member of the police or an inspector may apply for mandatory cancellation of the certificate or licence:

- Sale and supply of alcohol to a minor;
- Sale and supply of alcohol to an intoxicated person;
- Unauthorised sale or supply of alcohol;
- Irresponsible promotion of alcohol [LC recs. 121 and 122].

259. A manager or licensee would be prevented from re-applying for a certificate or licence for five years. This proposal builds on provisions of the Sale and Supply of Liquor and Liquor Enforcement Bill.

260. Decision-makers would be able to take into account the previous adverse findings when determining future suitability of the manager or licensee after the end of the five-year cancellation period [LC rec. 123].

Proposed response

261. **I recommend accepting the Commission's proposals in respect of managers (recommendation 154).**

262. In respect of licensees, I am concerned that such a proposal may not be effective because of the possibility of licensee bodies changing structure or control in order to evade such a penalty. Mandatory cancellation would also create problems where such a licensee holds a number of licences. If a licensee had one licence automatically cancelled, it is possible that they could be considered unsuitable to continue holding other licences; however, there would be no automatic process for considering this issue.

263. **Instead, I recommend that, where a licensee has been found three times within three years to have committed any of the specified offences on the same premises, an inspector or member of the Police be required to lodge an application for cancellation of that licence with the Authority (recommendation 155).** The Authority could then consider the circumstances of the case and use its discretion to cancel the licence. A cancelled licence would be a consideration in any future determination of suitability for a licence.

Closure of licensed premises

Context

264. The Sale of Liquor Act provides two situations where licensed premises can be ordered to close:

- a) Where there are concerns about rioting in a particular place, a court order can be sought to close all licensed premises within a specified distance;
- b) Where fighting or serious disorder has occurred or is about to break out, Police can order the licensed premises to close.

265. The powers for rioting are of limited utility because of the time it takes to get a court order. Where a closure order is made, the order only applies until the end of the day on which it is made. This means that premises ordered to close at 10:00pm may re-open at 12:00am, only two hours later. This does not always provide adequate time to deal with the situation for which the order was made. There are also circumstances other than those currently provided for in which it may be appropriate to immediately close a premises.

Law Commission recommendations

266. The Commission recommends that Police should have the power to close all or a specified part of licensed premises immediately where:

- a) a riot takes place within a licensed premises, or where there are reasonable grounds for believing a riot would occur;
- b) there is fighting or serious disorder, or there are reasonable grounds for believing that fighting or serious disorder will break out within licensed premises;
- c) there is a significant threat to public health or safety;
- d) the conduct in the premises amounts to a substantial public nuisance; or
- e) offences have been committed that carry a maximum penalty of five years or more and there is a significant risk of further offences being committed by patrons if the premises remain open [LC rec. 124].

267. The Commission also recommends that as soon as possible after the exercise of the power to close a bar immediately, the Police should be required to notify the local liquor licensing inspectors [LC rec. 125] and the duration of a court order or police order for closure of licensed premises should extend up to 24 hours beyond the end of the day on which the order is made [LC rec. 126].

268. The ability to seek a court order where it is believed rioting will occur would be retained.

Proposed response

269. **I recommend accepting the Commission's proposals for extending the circumstances in which Police may close licensed premises and extending the duration of a closure order (recommendations 157 and 158).**

270. **I recommend that Police operational guidelines should cover notification requirements where premises are closed, rather than legislating for this particular Police activity (recommendation 159).**

Increased penalties

Context

271. The Commission's review of the serious offences and maximum penalties in the Sale of Liquor Act found that the current penalties are already high and more rigorous enforcement is required rather than higher penalties. The Commission does, however, recommend increases to some penalties [LC report pages 374 to 375].

Law Commission recommendations and proposed response

272. An offence under section 168 contains two aspects that directly apply to managers or licensees, both of which are punishable by a fine not exceeding \$4000:

- (a) Allowing any intoxicated person to be or to remain on the licensed premises;
- (b) Allowing any violent, quarrelsome, insulting or disorderly conduct to take place on the licensed premises.

273. The Commission recommends that the maximum penalty for both offences be increased to \$10,000.

274. **I recommend that for part (a) of this offence, the maximum penalty level be increased to \$5000 (recommendation 160).** I consider that a maximum fine of \$5000 is more proportionate to the offence. There is a separate offence of serving an intoxicated person, punishable by a fine of up to \$10,000. I consider that the latter offence is more serious and the relevant penalty levels for these offences should reflect this.

275. **I do recommend, however, that the penalty for part (b) should increase from a fine not exceeding \$4000 to a fine not exceeding \$10,000 (recommendation 161).** This conduct involves a flagrant disregard of responsible management duties and brings with it the potential for criminal offending and injury.

276. **I recommend accepting the Commission's recommendation that the penalty for failing to close licensed premises following the order of either the court or police should, in addition to a fine not exceeding \$10,000 for licensees and managers, be suspension for up to seven days (recommendation 162).**

277. **The Commission proposes the maximum fine for an employee that serves alcohol while a closure order is in place be increased from \$2000 to \$4000. I recommend that the maximum fine for this offence be increased from \$2000 to \$3000, which recognises the seriousness of this offence while acknowledging the lesser degree of responsibility on employees in this situation compared to licensees and managers (recommendation**

163). Employees may not always be aware of the closure order or may be subject to pressure to continue serving.

278. **I recommend that the penalty for an offence against section 176(4) (failing to provide information when requested by an enforcement officer in or about licensed premises) be increased from a maximum fine of \$1000 to \$2000, as per the Commission's proposal (recommendation 164).** This is important as it enables enforcement officers to adequately monitor licensed premises' management practices.
279. **I also recommend accepting the Commission's proposal that the penalty for a section 154A offence (irresponsible promotion by a manager or licensee) should be raised from \$5000 to \$10,000, with the additional possibility of suspension of the licence for up to seven days (recommendation 165).** The higher penalty will provide a better deterrent effect and will align it with those that apply to the sale or supply of alcohol to a minor or an intoxicated person.

Infringement offences

Context

280. Some of the offences within the Sale of Liquor Act 1989 are relatively minor and the time and effort to prosecute them is seen as disproportionate by enforcement agencies. However, lack of enforcement undermines the credibility of the regime and can lead to disrespect for the law. Making infringement notices available for a greater number of offences would make the law simpler to enforce, and may increase enforcement action, thereby making managers, licensees and individuals immediately accountable. The maximum penalty for infringement offences under the Sale of Liquor Act is \$500. Regulations currently set the infringement penalty at \$200.

Law Commission recommendations

281. The Commission recommends that the following offences be made infringement offences [LC rec. 118]:
- Permitting people under the purchase age to be in restricted or supervised areas;
 - Sales of sprits for consumption on the premises in a drinking vessel that exceeds 500 millilitres' capacity;
 - Licensee failing to ensure a manager is present at all times;
 - Making a false representation of age to obtain alcohol.
282. Police would continue to have the discretion to prosecute the offences listed above as summary offences in cases where a more serious approach may be warranted.
283. Breach of a licence condition would also be an infringement offence [LC rec. 119]. Currently, the only option available for dealing with breaches of licence conditions is for an application to be made to the Authority, attracting unnecessary cost and delay where an immediate sanction would be more

effective. In the case of more serious breaches of licence conditions, an application for variation, cancellation or suspension of the licence would continue to be available.

284. The penalty for infringement offences under sale of liquor legislation should be set by regulations, but should increase from a maximum \$500 to a maximum \$1000 [LC rec. 118].
285. Only liquor licensing inspectors and Police would be authorised to issue infringement notices [LC rec. 120].
286. The Commission identifies a lack of clarity currently about the jurisdiction for liquor infringement notices where the young person in question is under 17 years of age. The Commission recommends an amendment to the Children, Young Persons, and Their Families Act 1989 to place jurisdiction for liquor infringement notices against young people in the District Court [LC rec. 136].

Proposed response

287. **I recommend largely accepting the Commission's proposals for offences to be dealt with by way of infringement (recommendations 166 to 169).**
288. **I consider the offence of a licensee failing to ensure that a manager is on duty when alcohol is being sold is too serious to be dealt with by infringement notice. However, I consider that the offence of a licensee failing to ensure that the duty manager's name is displayed is suitable to be an infringement offence (recommendation 166).**
289. The current lack of clarity about the process for youth liquor infringement notices is a serious issue and is impeding enforcement of these notices. It is, however, part of a wider issue about the jurisdiction and process for all infringement notices against under-17 year olds (youth infringement notices).
290. In principle, I consider that youth infringement notices should be challenged and enforced in the youth jurisdiction. Currently, traffic infringement notices issued to young people are dealt with in the District Court. Changing the jurisdiction for challenged or unpaid traffic infringement notices and equipping the Youth Court to deal appropriately with the challenge and enforcement of all infringement notices requires careful examination. A review of the jurisdiction for non-imprisonable traffic offences is occurring under the Criminal Procedure (Simplification) Project. The approach to enforcement of youth liquor infringement notices needs to be consistent with the outcome of that work and any related policy work.
291. **As an interim response to enable the effective enforcement of youth liquor infringement notices, I recommend amending section 272(3) of the Children, Young Persons, and Their Families Act 1989 to provide that the jurisdiction for challenging and enforcing youth liquor infringement notices is the District Court (recommendations 170 and 171).** This approach is in keeping with the current regime for traffic infringement notices. Young people would not receive a conviction for infringement offences enforced in the District Court. This recommendation is subject to progress in this area

under the Criminal Procedure (Simplification) Project and any related policy work.

Powers of liquor licensing inspectors

Context

292. Liquor licensing inspectors appointed by local authorities play an important role in ensuring licence conditions are being met. An inspector may exercise the power to enter licensed premises for the purpose of ascertaining “whether the licensee or any manager is complying with the conditions of the licence”. An inspector must produce evidence of identity to the person appearing to be in charge of the premises on first entering the premises.

293. The current requirement means the ability of licensing inspectors to detect breaches of the Sale of Liquor Act 1989 is severely undermined because managers and staff will inevitably conceal any breaches of the law or licence conditions as soon as they are aware of the inspector’s presence.

Law Commission recommendation and proposed response

294. The Commission recommends that liquor licensing inspectors should have the same powers of entry as Police under section 175 of the Sale of Liquor Act [LC rec. 127]. **This would enable a liquor licensing inspector to discreetly observe bar management practises and levels of intoxication of patrons so that evidence of offences or breaches of licence conditions can be gathered. I recommend accepting this proposal (recommendation 172).**

Collaborative arrangements

Context

295. The law is most effective when the relevant agencies take a collaborative approach to compliance and enforcement. The benefits of collaboration in the liquor environment include the ability to seek early behavioural changes by licensees and managers to minimise alcohol-related harm, to conduct joint training sessions for licensees and managers, door and serving staff and to increase awareness of the legislation.

Law Commission recommendation and proposed response

296. The Commission recommends that there be a statutory requirement for collaborative arrangements at the local level between liquor licensing inspectors, Police and Medical Officers of Health [LC rec. 128]. This would reinforce the importance of collaboration, which may assist in addressing some of the current problems with ineffective monitoring and enforcement of the Sale of Liquor Act. Examples of collaborative arrangements that could be adopted include memoranda of understanding or regular inter-agency meetings. **I recommend accepting this proposal (recommendation 173).**

ALCOHOL IN PUBLIC PLACES

Personal responsibility for public intoxication

Context

297. There is no general prohibition on drinking in a public place, except for people under the purchase age who are not accompanied by their parent or guardian. It is, however, illegal to drink alcohol in a public place that is subject to a liquor ban made under the Local Government Act 2002.
298. Currently, there is no offence of being drunk in a public place. It was removed from the statute book with the enactment of the Summary Offences Act 1981. Several offences in the general criminal law have application to people who have consumed alcohol. These include disorderly behaviour, offensive behaviour or language, wilful damage, fighting in a public place and breach of the peace.
299. Police data shows that a large number of people become so intoxicated they require police intervention, either to drive them home or to a police cell. In 2007/08, 21,263 people were detained by police due to intoxication under section 36 of the Policing Act 2008.^{42,43}

Law Commission recommendations

300. The Commission recommends that the offence of public drunkenness should not be reintroduced on the basis that the offence previously did not stop people becoming intoxicated, but did consume considerable police and court time [LC rec. 132]. It would also bring a significant amount of people into the criminal justice system, particularly groups that are already over-represented, such as young people and Māori.
301. Instead, the Commission recommends a civil cost-recovery regime that provides Police with the power to serve a notice of debt on anyone who, because of intoxication, is driven home, placed in a temporary shelter or put in a police cell under section 36 of the Policing Act [LC rec. 133]. The Commission suggests a debt of around \$250 or such a figure that would recover costs. It recommends the proceeds should go to the consolidated fund and disputes should be dealt with by the Disputes Tribunals of the District Courts.

Proposed response

302. **I agree with the Commission and do not support the reintroduction of the offence of public drunkenness.**
303. Police has undertaken some modelling of the Commission's civil debt proposal. They estimate that \$1.5 million dollars would be recovered per annum from

⁴² New Zealand Police (2009) *National Alcohol Assessment*, Wellington: New Zealand Police.

⁴³ Section 36 of the Policing Act 2008 authorises Police to detain an intoxicated person who is found in a public place or trespassing on private property and detention is required because the person is believed to be incapable of protecting themselves from physical harm or to be likely to cause physical harm to another person or damage to property.

section 36 Policing Act detainees. Police estimate they would need to spend between \$3 to 3.35 million in year one for initial capital (IT systems) and implementation costs, and would then have ongoing operational costs of \$325,000 to \$600,000 per annum. The Ministry of Justice would also incur IT costs and operational costs to enable disputes to go through the Disputes Tribunal process.

304. Changes would need to be made to the Policing Act 2008, and the remit of the Disputes Tribunal Act 1988 would need to be widened to include claims in respect to money due under an enactment.
305. While in principle I support proposals that foster personal responsibility, the costs of administering such a scheme and the changes to existing rights and roles required outweigh the benefits. The fear of being fined could also discourage people from seeking Police assistance in situations where that may be the best thing to do, and so place vulnerable people at greater risk of harm.
306. **I recommend rejecting the Commission’s proposal that intoxicated people detained or transported by Police for their own care or protection are required to pay a fee, which would be enforced through a civil process (recommendation 174).**

Definition of public place

307. The Commission recommends that the definition of “public place” in the Summary Offences Act 1981 should be amended to clarify that it includes drinking in a vehicle in a public place [LC rec. 135]. **I agree with this proposal (recommendation 175).**

Public drinking and liquor bans

Context

308. Liquor bans are an important tool for dealing with alcohol in public places. They are created by local bylaws under the Local Government Act 2002 and may prohibit the consumption and possession of alcohol in defined public places, including in vehicles. A liquor ban does not prohibit transport of unopened alcohol to or from licensed premises or residences that adjoin the public place covered by the ban. Before developing a bylaw, a territorial authority must determine whether a bylaw is the most appropriate way of addressing the perceived problem. Any new, amended or revoked bylaw must be consulted on under the special consultative procedure set out by the Local Government Act.
309. There are few restrictions on where and when liquor bans may apply and as a result there is little consistency from place to place around New Zealand. It can be very difficult for otherwise law-abiding members of the public to know whether a liquor ban is in place at a particular time or location.

Law Commission recommendations and proposed response

Criteria for liquor bans

310. The Commission recommends the introduction of particular evidential requirements to show that a liquor ban bylaw is the most appropriate way to address a perceived alcohol problem [LC rec. 137].
311. **I agree with the Commission and recommend that the following additional requirements must be met before a liquor ban bylaw may be created:**
- **that the proposed liquor ban area and its time limits can be justified as a reasonable limitation on the rights and freedoms of individuals; and**
 - **that there is evidence that the proposed area has experienced a high level of offending or disorder that is shown to be linked to, or exacerbated by, alcohol use within the area; and**
 - **given the evidence of alcohol-related harm, that the boundaries and timeframes of the proposed ban are appropriate and proportionate (recommendation 177).**

Areas to which liquor bans may apply

312. The Commission recommends the definition of “public place” in section 147(1) of the Local Government Act 2002 should be amended to include private carparks to which members of the public have access [LC rec. 139].
313. **I consider there are other private areas to which the public has access that should also be covered, such as school grounds. I recommend making the definition of public place in section 147(1) of the Local Government Act consistent with the definition in the Summary Offences Act 1981 (recommendation 176). This would mean that public place would include school grounds, private carparks and other private spaces to which the public has legitimate access.⁴⁴**

Signage for liquor bans

314. The Commission recommends that regulations set signage provisions for liquor ban bylaws to uniformly show where they apply [LC rec. 140].
315. **I agree with the Commission that uniform signage for liquor bans would assist the public to know where and when a liquor ban was in place. I recommend that regulations be developed under the Local Government Act to prescribe signage requirements for liquor bans (recommendation 178). I note that this proposal will have cost implications for territorial authorities.**

⁴⁴ The Summary Offences Act 1981 defines “public place” as a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and includes any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle carrying or available to carry passengers for reward.

Penalty for breach of liquor ban

316. Breach of a liquor ban is currently a summary offence, punishable on conviction by a fine of up to \$20,000. Summary offences require proceedings in the District Court to enforce the offence. The Local Government Act contains powers of arrest, search and seizure in relation to alcohol to support liquor ban bylaws.

Law Commission recommendation

317. The Commission recommends that breach of a liquor ban continues to be a summary offence with the power of arrest, but considers the maximum penalty to be disproportionate to the nature of the offence. The current \$20,000 maximum fine is a general penalty that applies to a number of bylaw breaches covering a range of offending. In 2007/08, the courts imposed an average fine of \$231 for breach of a liquor ban. The Commission recommends that the offence be punishable by a maximum fine of \$500 [LC rec. 141].

318. The Commission considered the possibility of making this an infringement offence, but discounted that option on the basis that Police wish to retain the power of arrest for breach of a liquor ban. Infringement offences result in an infringement notice (an instant fine) being issued at the time an offence is detected. An infringement notice may be challenged in the District Court. The Commission views the use of arrest as incompatible with an infringement offence.

New Zealand Police comment:

319. Police supports an infringement offence regime for liquor bans where an infringement notice could either be given on the spot or following arrest. The United Kingdom and the Victoria in Australia have similar schemes for low level disorderly type offending.

320. An infringement regime would enable enforcement action on the spot and allow Police to remain in public and be visible during peak times. There would be a significant reduction in paperwork for Police staff, enabling them to return from back office to frontline duties more quickly than at present. The power of arrest is critical for managing high-risk situations and preventing escalation of alcohol-related offending in liquor ban areas. Arrest followed by an the issuing of an infringement notice would allow the Police to remove people from liquor ban areas when necessary, while reducing inflow into the court system (from summary offence proceedings) by around 9,000 cases per annum. This would bring obvious savings for Police and courts.

Proposed response

321. **I recommend that breach of a liquor ban should be punishable by an infringement notice of \$250 that is either given on the spot, or following arrest (recommendation 179).**

322. I note that there are currently no infringement offences that also carry a power of arrest. This recommendation would set a new precedent.

323. This recommendation also raises potential issues in relation to the New Zealand Bill of Rights Act 1990, which are discussed at paragraph 372.

Standard of proof

324. The Commission recommends changes to the evidential standard for determining that a substance is alcohol where Police wish to confiscate a beverage. Specifically, the Commission recommends that it be sufficient proof, in the absence of other evidence, where the container is labelled as containing an alcoholic beverage; the contents of the container, when opened, smell like an alcoholic beverage and the container appears to contain an alcoholic beverage; or the defendant has admitted that it is an alcoholic beverage [LC rec. 142]. **I recommend accepting this proposal (recommendation 180).**

New Act required

325. The Commission recommends that the Sale of Liquor Act should be repealed and replaced by a new Act. I agree that a new Act is desirable. The current Act has been amended twelve times since its enactment in 1989. It is inconsistent, outdated and unclear in places. The scope of the proposed changes would exacerbate this situation. A new Act is the best way to ensure that the law relating to the sale and supply of alcohol is clear and consistent.

326. **I recommend that the Sale of Liquor Act 1989 be repealed and replaced by a new Sale and Supply of Alcohol Act (recommendation 184).** The vehicle to achieve a new Act will be an omnibus bill called the Alcohol Reform Bill. The intent of existing provisions of the Sale of Liquor Act to which no policy change is recommended will be retained in the new Act.

Relationship with other legislative work underway

Safer Journeys

327. *Safer Journeys*, New Zealand's Road Safety Strategy 2010-2020 was launched on 3 March 2010 and includes four significant actions to reduce the impact of alcohol impaired driving. The Minister of Transport is taking these proposals forward separately to this reform process.

Rugby World Cup Empowering Bill

328. The Rugby World Cup Empowering Bill, which was introduced on 10 June 2010, contains liquor licensing provisions to facilitate licensing for that event. There may, therefore, be two bills dealing with liquor licensing being considered by the public and select committee at the same time. However, I do not expect that legislative proposals arising from this paper will be in effect ahead of the Rugby World Cup 2011.⁴⁵ I propose officials are directed to ensure that licensing certainty is maintained over the Rugby World Cup period.

⁴⁵ I expect an Alcohol Reform Bill to be passed by mid-2011. Lead-in time will be required for significant reforms and a number of proposals will require regulations to be developed before they can commence.

Sale and Supply of Liquor and Liquor Enforcement Bill

329. The Justice and Electoral Committee is due to report back on the Sale and Supply of Liquor and Liquor Enforcement Bill (SSLLE Bill) by 1 October 2010.
330. In this paper I have recommended building on some of the proposals in the SSLLE Bill, particularly improved community input, restrictions on who may obtain an off-licence and stronger enforcement options. I recommend that the SSLLE Bill is discharged following the Justice and Electoral Committee's report to the House.

Process for responding to Law Commission's report

331. As discussed in this paper, I propose that work be undertaken on the Commission's operational recommendations.
332. I also propose that the Government agree to the majority of the Commission's legislative recommendations. As outlined in this paper, I propose that no action is taken in some areas that are the subject of recommendations by the Commission. **I seek Cabinet's agreement that the Government's response to the Commission's other legislative recommendations be in the form of a bill to amend liquor legislation (recommendation 192).**
333. Usually, where the Government rejects the Commission's recommendations, a government response to the Commission's report must be tabled within 120 working days from when the Commission's report is presented to the House.⁴⁶
334. In this case, while I recommend taking no action on some of the Commission's legislative recommendations, if Cabinet agrees to the proposals in this paper, the majority would be accepted and a bill to give effect to them drafted. There is therefore no need for a further formal government response to the Commission's report.

Consultation

Consultation with government agencies

335. These papers have been circulated for comment to the following agencies: the Ministries of Economic Development, Health, Social Development, Youth Development, Transport, Culture and Heritage, and Pacific Island Affairs, the Department of Internal Affairs, the New Zealand Police, the New Zealand Customs Service, Te Puni Kōkiri, the Treasury, the Law Commission, the Alcohol Advisory Council of New Zealand, and the Accident Compensation Corporation.
336. The Sport and Recreation Council of New Zealand (SPARC) was consulted on the proposals that concern licensed clubs. Comments from SPARC are included at paragraph 155.
337. The Department of Prime Minister and Cabinet and the Parliamentary Counsel Office have been informed of the content of these papers.

⁴⁶ Cabinet Office Circular CO (09) 1, Law Commission: Processes for Setting the Work Programme and Government Response to Reports.

Comment from the Treasury

338. The Treasury is concerned that while some high level analysis has been done on alcohol-related harm, the paper includes no detailed analysis of the costs and benefits of the policy proposals put forward. Nor is there any significant consideration of how other evidence-based policy responses could be used to curb alcohol-related harm, without making use of regulation. The Treasury therefore recommends that Cabinet defers consideration of some matters until presented with quantified analysis of the costs and benefits of these proposals.

Purchase age

339. The paper does not attempt to quantify the benefits in terms of reducing alcohol related harm from the proposed split purchase age. Nor does the paper provide any quantification of the costs to business and individuals, or effects on the employment of 18 and 19 year olds, of making the proposed changes. If a decision is taken in this area, the Treasury considers it should be taken with the support of appropriate analysis of the likely costs, as well as an understanding of the scale of benefits available.

340. The Treasury therefore recommends that Cabinet defers consideration of this issue and invites the Minister of Justice to return to Cabinet with an estimate of the likely costs and benefits of the proposal, alongside other policy proposals as appropriate that may achieve the stated goals through non-regulatory means.

Ministry of Justice response

341. The Ministry considers there is strong evidence that an increase to the alcohol purchase age would reduce the amount of alcohol-related harm experienced by young people, which is referenced in this paper⁴⁷ and in the accompanying Regulatory Impact Statement. Critical data to quantify the costs of the different options detailed, such as the amount of money spent by 18 and 19 year olds on alcohol, does not exist. Therefore, a deferral of consideration by Ministers will not improve the information available.

Trading hours

342. The intention of the proposed change to trading hours is to reduce the ill effects associated with excessive alcohol consumption. However, the evidence supplied by the Ministry shows that the peak times for alcohol-related harm occur *within* the proposed trading hours, and therefore are unlikely to be affected by the proposed change. The Treasury does not believe that restricting trading hours to 11:00pm for off-licences as proposed will have a noticeable impact on reducing pre-loading, and the paper does not provide evidence that it will.

343. The paper asks Cabinet to consider whether the negative consequences of a national closing hour (the possibility of public disorder when large numbers of patrons leave establishments at the same time) could be mitigated by a 'one-

⁴⁷ See footnote 32 on page 31, footnote 33 on page 32, and footnotes 35, 36 and 37 on page 33.

way door' policy, operating from 2.00am. Under this policy, new patrons could not be admitted into establishments between 2.00am and the closing hour of 4.00am. There are some safety concerns associated with the one-way door policy that are not covered in the paper. These include the possibility of vulnerable patrons being separated from their friends and being unable to re-enter establishments.

344. There is no analysis in the paper of the economic costs – particularly the impacts on business – of the proposed changes to trading hours. The paper asserts that the costs will not be significant and outlines the proportions of licences affected (11% of on licences and 16% of off licences), but there is no quantitative analysis of the scale of impacts these changes may have on the hospitality or retail industries. Nor is there quantification of the likely harm-reduction benefits.
345. Given the lack of evidence to support a considered judgement on the benefits of the trading hours proposals (which are not quantified), and in light of its likely costs (which are also not quantified), the Treasury recommends that Cabinet defer consideration of the matter and ask the Minister of Justice to come back with more analysis of the costs and benefits of changing trading hours before any decision is taken.

Ministry of Justice response

346. The Ministry considers there is strong evidence that restrictions on trading hours would reduce the amount of alcohol-related harm experienced by New Zealand communities, which is referenced in this paper⁴⁸ and in the accompanying Regulatory Impact Statement. Quantification of the costs and benefits of the proposals concerning trading hours in a New Zealand context would require data that is only available from retailers. The industry has not been willing to share commercial data on alcohol sales to date. Therefore, a deferral of consideration by Ministers is not likely to improve the information available.

Ministry of Health comment

347. The Ministry supports the majority of the recommendations in the Cabinet paper, as they are expected to have a positive impact on the health of New Zealanders and the Health Sector.
348. The Ministry of Health does not, however, support recommendations 134 and 135 to reject the Commission's recommendations to raise excise tax on alcohol and remove excise tax on low-alcohol products, as it considers some intervention in this area would be beneficial due to the strong link between the price of alcohol and alcohol-related harm.
349. While the Ministry supports the recommendation to introduce national trading hours (recommendations 55 and 56), it would prefer an earlier closing time for on-licences (for example, 2:00am or 3:00am), as alcohol-related hospital emergency department presentations and Police apprehensions currently peak around 1:00am. The Ministry is also concerned that allowing local alcohol

⁴⁸ See footnote 24 on page 22.

policies to extend national maximum trading hours in their region (recommendation 59), making the one-way door condition for on-licences and club licences after 2:00am discretionary (recommendation 57), and extending the trading hours for off-licences (recommendation 55) could further reduce the positive impact of the proposed national trading hours.

350. Similarly, while the Ministry supports the recommendation to strengthen the existing offence of promoting excessive alcohol consumption (recommendation 140), it would prefer additional action focused on reducing the exposure of young people to alcohol marketing. Research has found alcohol advertising increases the likelihood that young people will start to use alcohol and to drink more if they are already using alcohol.
351. In principle the Ministry considers all premises should require a licence to sell alcohol, and therefore does not support retaining the licensing exemptions for New Zealand Police canteens, New Zealand Fire Service canteens and the New Zealand Defence Force (recommendation 115).
352. The Ministry supports increasing the alcohol purchase age to 20 years. While a split purchase age (recommendation 119) would go part of the way to achieving this, there is no evidence that people who drink in licensed premises suffer less alcohol-related harm. Exposure to binge drinking in adolescence can damage the brain, which is still developing until the early 20s.

Police comment

353. Police supports the recommendation to introduce national trading hours, but would like to see the maximum trading hours for on-licences to be 3:00am. This is because the peak apprehension time for alcohol-related offending occurs until 3:00am. A 4:00am closing time will not impact on the peak offending time, and with half an hour drinking-up time, intoxicated people will still be mingling around in public spaces until well after 5:00am in the morning.
354. Police does not support the ability for territorial authorities to extend national maximum trading hours. Police prefers nationally-set maximum hours with no provision for extensions. The proposed policy for local extensions devalues the principle of having national mandated trading hours and could negate the benefits that shorter trading hours would have in reducing offending and victimisation. It could also lead to problems with migration of intoxicated people to those areas with later trading hours, increasing the risk of violence, disorder, nuisance and other criminal behaviour such as drink driving. It is probable that in some areas there will be different views of those wanting longer trading hours, such as the hospitality industry, against those wanting shorter trading hours, such as the Police. The ability to extend national trading hours could potentially generate a substantial number of legal challenges associated with LAPs as it is left to the local level to determine the trading hours.
355. Police supports the recommendation to reject a civil cost recovery scheme for intoxicated people detained under section 36 of the Policing Act 2008. This is because:
 - There is insufficient evidence to show that it will change people's behaviour;

- There would be high implementation and ongoing costs that would have to be funded from Police's existing budget;
- There is potential for the scheme to discourage people from seeking assistance from Police;
- It may create the perception that Police enforce the law to solely gather revenue.

Department of Internal Affairs comment

356. The Department considers that the paper should make it clear that licensing fees should be set by each council within a defined fees framework. The differing circumstances of each district make it improbable that a uniform fees system will allow individual councils to fully recover the costs of licensing and inspection.

357. The Department supports the proposals in this paper that give opportunities for substantial local influence on alcohol regulation, which communities and their councils are likely to take up. The requirement that councils must maintain a District Licensing Committee fails to provide options for any communities and councils whose local choice would be to not take up this function and its associated costs.

Ministry of Youth Development comment

358. The Ministry of Youth Development supports the reform of the legislation relating to the sale and purchase of alcohol. In particular it supports the proposed moves to limit alcohol outlets and hours of sale. The Ministry is disappointed, however, that no changes are proposed to pricing policies or to regulations around advertising and sponsorship. It thinks it is important to change community attitudes to alcohol. Almost 40% of 13 year olds are "current drinkers". Most are introduced to alcohol at home, by family and friends. This is a concern, given alcohol's toxicity and the research that shows that its effect on the developing adolescent brain can be significant and lasting. While the Ministry of Youth Development supports moves that discourage and reduce the consumption of alcohol by teenagers, it favours a broader suite of measures to signal that the responsibility for creating a healthier environment is shared among us all.

Consultation with the public

359. The public had two opportunities during 2009 to provide feedback on proposed changes to the Sale of Liquor Act through submissions on the SSLLE Bill and through submissions on the Commission's discussion document. The Justice and Electoral Committee received 228 submissions and heard from submitters in Auckland, Wellington and Christchurch. The Commission received 2939 submissions and held over 50 public meetings. The submissions made through those processes have informed the proposals outlined in this paper.

360. The public will have further opportunity to comment on the specific proposals during the select committee process.

Financial implications

Financial and fiscal implications

Central government (hours extension proposal)

361. Implementation of the proposals I am recommending is likely to result in some costs to government, particularly for the Ministry of Justice and Police. For example, there will be costs associated with updating computer systems, delivering training on the new legislation and enforcing new offences. Wider use of infringement notices should, however, offset increased enforcement costs.
362. The proposals would also have resource implications for District Health Boards, as Medical Officers of Health would have increased responsibilities in relation to alcohol licensing. It is difficult to quantify what the implications might be because Medical Officers of Health will continue to be required to report only where there are concerns with a licence application. I would expect, however, that the workload of Medical Officers of Health may increase.
363. I anticipate that the costs to government will be able to be met within departmental baselines, but this will need to be confirmed once the legislation is finalised. Subject to decisions on this paper, initial cost information will be provided with the Cabinet Legislation Committee paper seeking approval to introduce a bill.
364. Implementation of the proposals will, however, lead to reductions in crime, injury and disease and therefore deliver overall savings for government. Modelling of the effect of a reasonably small reduction (4.4%) in total alcohol consumption by the Sheffield Alcohol Policy Model for England and Wales showed reduced health care costs, deaths and morbidity, workplace harm and crime for all categories of drinkers.⁴⁹ Reduced health harm and health care costs would be, when adjusted for New Zealand's population size, around NZD 800 million in present value terms.⁵⁰ Social costs from alcohol were projected to be reduced over ten years by, proportionately, around NZD 1.7 billion.⁵¹
365. Indicators for government savings to Police, Justice and Health will be developed and monitored to assess the impact of legislative reform.

Local government

366. Given the proposal for licensing costs incurred by territorial authorities to be recovered through licence fees, any financial impact on territorial authorities in relation to the licensing proposals, including local alcohol policy development, will be recovered as far as possible. The complexity of local alcohol policies will depend on population size. There may be some financial implications for councils in relation to requirements for new liquor ban signage.

⁴⁹ A Brennan et al (2008) *Independent review of the effects of alcohol pricing and promotion: Part B - Results from the Sheffield Alcohol Policy Model*, Sheffield: University of Sheffield.

⁵⁰ J Marsden et al (2009) *The benefits, costs and taxation of alcohol: Towards an analytical framework*, Melbourne: Marsden Jacob Associates.

⁵¹ Ibid.

Economic implications

367. Most costs of the proposals would fall on existing and new licensees in the form of higher licensing fees and costs to comply with potential new licensing conditions, including restricted trading hours. This may affect the viability of some existing licensed premises. There will, however, be a reduction in certain compliance costs such as licence notification requirements.
368. Submissions from territorial authorities indicate that the existing licence fees levels are not adequate to cover all licensing activities undertaken by local government. Inevitably, licence fees will increase. It is not possible to quantify what the increase may be at this point. The development of a new fee regime will be a separate process finalised through regulation. Consultation will be required with local government and other stakeholders once the final shape of the legislation is clear. I propose that fees take into account the risk of alcohol-related harm posed by particular premises, so that low-risk premises will pay a lower fee.
369. The other major driver of potential increased costs for licensees would be the wider range of potential licence conditions. These costs are likely to impact more significantly on high-risk premises. Examples of potential costs include the requirement to provide food at all places where consumption occurs on the premises and a discretionary requirement for closed circuit television cameras to be installed.
370. Some off-licensed premises could cease to be eligible for a licence under my proposals, but these are likely to be convenience-type stores and dairies that Parliament intended to be prohibited from holding an off-licence.
371. Overall, I do not expect the effect on the economy to be large and I expect positive economic benefits through reductions in injury, sickness and loss of life. The proposals target excessive drinking and I would expect that the amount of alcohol drunk on single occasions would reduce but there may not be a significant change in total consumption levels.

Human rights

372. Any age-related proposals (paragraphs 180 to 216), the proposal to restrict alcohol promotions (paragraph 234), and the Police proposal to have the power of arrest prior to issuing an infringement notice for breach of a liquor ban (paragraphs 319 to 323) raise potential issues under the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Final advice cannot be provided to the Attorney-General on compliance with the Bill of Rights Act until the Crown Law Office has had an opportunity to review the legislation proposed for introduction.
373. There is strong evidence on alcohol-related harm to support the age and promotions proposals. However, the Crown Law Office and the Ministry of Justice advise that the legislative proposal for Police to have a discretion to arrest and detain for an unspecified period of time prior to issuing an infringement notice for breach of a liquor ban raises more significant concerns regarding consistency with the Bill of Rights Act because of the risk of arbitrary detention. The Bill of Rights Act issues could result in the Crown being

exposed to risks of litigation or complaints to the Police Infringements Bureau or the Independent Police Conduct Authority.

374. Police considers that concerns with the consistency of the infringement proposal for breach of a liquor ban could be addressed by developing appropriate guidelines to significantly reduce the risk of each individual arrest decision by an officer being found by the courts to be an arbitrary detention under section 22 of the Bill of Rights Act.

Privacy

375. Some of the proposals have potential privacy impacts on:

- privacy in the home; and
- collection, use and disclosure of personal information.

376. The Ministry will work through the privacy impacts with the Privacy Commissioner's Office during the development of the Bill.

Legislative implications

377. A Bill is required to implement any agreed proposals to reform alcohol legislation. An omnibus Bill will be required to implement my recommendations as changes to several Acts are necessary. The Alcohol Reform Bill has been included on the 2010 legislative programme with a category 3 priority, to be passed within the year if possible. A proposed timeline for progressing the reforms is set out below:

Cabinet policy approval	July/August 2010
LEG approval of Bill for introduction	October 2010
Introduction	October 2010
First reading	October 2010
Select Committee report back	April 2011
2 nd reading	May 2011
Committee of the whole House	May 2011
3 rd reading and Royal Assent	June 2011

378. Regulations will be required to implement some of the proposals. These will likely be needed within 12 months of the Bill being enacted. Some regulations will be able to be completed within a shorter period.
379. The Sale of Liquor Act 1989 and other alcohol-related legislation bind the Crown. There are no good reasons why the proposed legislation should not bind the Crown. I therefore recommend that the proposed legislation will bind the Crown.

Regulatory impact analysis

380. The regulatory impact analysis requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

381. The Treasury's Regulatory Impact Analysis Team has reviewed the RIS prepared by the Ministry of Justice and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.
382. This reflects the constraints outlined in the agency disclosure statement, that is, the RIS does not provide sufficient evidence that the benefits of any of the broad options presented would exceed the costs and risks. This is largely because of the complexity of the problem, the inconclusive nature of research available and the difficulty in applying overseas research to New Zealand. The RIS points to the need for further analysis, including the preparation of RISs and consultation as part of any implementation strategy.
383. Also, public consultation has been limited to that undertaken by the Law Commission. The 'options package' put forward has not been consulted on outside government.

Ministry of Justice comment

384. The Ministry of Justice considers that there is strong evidence to support core measures of liquor regulation, particularly measures that control outlet density, hours of sale and age, which is referenced in this paper and the accompanying RIS. The Ministry commends the RIS as the best available assessment of the costs and benefits of the proposals recommended in this paper, within the existing data and information constraints.
385. The Ministry acknowledges the limits of the official consultation possible in the preparation of this paper, but notes that the proposals are based on those recommended by the Commission after consideration of 2939 submissions, over 50 public meetings, nine meetings of the cross-government interdepartmental committee supporting the Commission's review and many more one on one meetings with government, non-government, industry and individual specialist stakeholders.

Minister of Justice comment

386. I have considered the analysis and advice of my officials as summarised in the attached RIS. I am satisfied that, aside from the risks, uncertainties and caveats already noted in this paper and the RIS, the regulatory proposals recommended in this paper are required in the public interest and are consistent overall with our commitments in the Government statement "Better Regulation, Less Regulation". Due to the complex nature of this issue, ongoing assessment and monitoring will be required to evaluate the effect of the proposals.
387. I consider that adequate consideration has been given to the distributional impacts of the proposals within the RIS.

Gender implications

388. Men are more likely to be drinkers than females, with women drinking lesser amounts of alcohol and less frequently than men. Young men aged 18 to 24 are more likely to drink a large amount, and drink more often, than any other

group. Women's alcohol consumption on a typical drinking occasion has been increasing over time, particularly among young women.

389. The impacts of my intended proposals will therefore likely have a greater impact on men, especially young men, and young women.

Disability perspective

390. There are no specific impacts on people with disabilities arising from the proposals outlined in these papers.

Publicity

391. There will be a high level of public interest in the proposals for reform, demonstrated by the number of submissions received by the Commission on its discussion document.

392. The proposal to focus on changing the law relating to availability, with no changes to, for example, advertising and price, is likely to be controversial and draw heavy submission from health and community groups and some sections of the general public.

393. I intend to make a public statement once Cabinet decisions have been made about the Government's reform proposals.

394. I intend to make these papers publicly available on the Ministry of Justice's website once a bill has been introduced into the House.

RECOMMENDATIONS

395. I recommend that the Committee:

Recommendation

Paragraph

Context for reform

46 - 53

1. **Note** the evidence that excessive drinking is having a negative effect on New Zealand, particularly in relation to crime, injury and disease;
2. **Note** that reducing alcohol-related harm is one of the priority actions for Addressing the Drivers of Crime;
3. **Note** that the Law Commission's report on liquor legislation, *Alcohol in Our Lives: Curbing the Harm*, was released on 27 April 2010 and contains 153 recommendations for changes to legislation and operational processes in a wide range of areas;
4. **Note** that this paper responds to the Law Commission's report on liquor legislation;

Non-legislative recommendations

Appendix 3

5. **Note** that work is already underway on a number of the Law Commission's recommendations concerning treatment services, which are outlined in Appendix 3;
6. **Agree** that further work be undertaken on the Law Commission's recommendations concerning treatment services;
7. **Authorise** the Minister of Health to make a final determination on the treatment recommendations, contingent on implementation being achievable within existing funding;
8. **Agree** that work be undertaken on the Law Commission's recommendations for training and collaboration, which are discussed in Appendix 3;
9. **Authorise** the Minister of Justice to make a final determination on the training and collaboration recommendations, contingent on implementation being achievable within existing funding;
10. **Accept** the Commission's recommendations concerning public education, which are discussed in Appendix 3;

CONTROLLING SUPPLY

Licensing

Object of sale of alcohol legislation

11. **Agree** that the objective of sale of alcohol legislation be broadened from a focus on reducing alcohol abuse to a focus on minimising alcohol-related harm, including crime, disorder and public health problems;
12. **Agree** that the term “alcohol” be used in sale of alcohol legislation rather than “liquor”;
13. **Agree** that the definitions of alcohol in sale of alcohol legislation, the Summary Offences Act 1981 and any other relevant legislation be amended for consistency;

Local alcohol policies

14. **Agree** that territorial authorities may voluntarily adopt a local alcohol policy to supplement and modify the national framework established by the new legislation;
15. **Agree** that, where adopted, local alcohol policies must have regard to:
 - a.) a stocktake of the number, type and hours of licensed premises in the district; any areas covered by liquor ban bylaws; the demographic and socio-economic make-up of the local population; and overall health indicators; and
 - b.) a broad assessment of the level of alcohol-related problems occurring within the district;
16. **Agree** that Police and Medical Officers of Health be required to provide relevant information to territorial authorities to assist with the stocktake and assessment of harm for a local alcohol policy;
17. **Agree** that local alcohol policies may contain any or all of the following:
 - a.) permitted locations for licensed premises (through broad area restrictions or restrictions on proximity to types of community premises specified by the policy);
 - b.) a rebuttable presumption that further licences will not be granted in areas that have been identified as being close to, or as having reached, saturation levels in terms of the number of licensed premises;
 - c.) local restrictions on or extensions to the national maximum trading hours, including by specifying one-way door policies; and

Appendix 2

63 - 91

d.) any other non-licensing matter relating to the management of alcohol in the district;

18. **Note** that if a territorial authority does not adopt a local alcohol policy, the national provisions would apply;

Consultation on local alcohol policies

75 - 77

19. **Agree** that territorial authorities be required to consult with Police, liquor licensing inspectors, Medical Officers of Health and any other people they consider appropriate when preparing a local alcohol policy;
20. **Agree** that territorial authorities be required to consult with the public on a proposed local alcohol policy using the special consultative procedure under the Local Government Act 2002;
21. **Agree** that the licensing provisions of a local alcohol policy be appealable on the ground of reasonableness to the Liquor Licensing Authority (to be renamed the Alcohol Regulatory and Licensing Authority) by any person that submitted on the draft policy;

Application of local alcohol policies

82 - 91

22. **Agree** that local alcohol policies may apply to any or all of the four types of licence and may deal with different types of licences and premises in different ways;
23. **Agree** that provisions of local alcohol policies about permitted locations for licensed premises would not apply to existing licences or special licences;
24. **Agree** that, where existing licensed premises are otherwise inconsistent with a new local alcohol policy, conditions should be imposed to reduce the inconsistency to the extent possible (for example, conditions about management practices or signage);
25. **Agree** that a finalised local alcohol policy would take effect following public notification, subject to the outcome of any appeals;
26. **Agree** that, where adopted, local alcohol policies must be reviewed at least every six years;
27. **Agree** that two or more territorial authorities may develop a joint local alcohol policy for their combined districts;
28. **Note** that a local alcohol policy could be tailored to meet different needs of different areas within its applicable district;

Status of local alcohol policies

82 - 91

29. **Agree** that licensing decision makers be required to have regard to any licensing restriction in an applicable local alcohol policy when considering a licence application and may take into account any other provision of a local alcohol policy;
30. **Note** that licensing decision-makers would not be required to always follow an applicable local alcohol policy but it would be expected that departure from the policy would be rare;

Licence criteria

92 - 97

31. **Agree** that the following matters must be given regard to in the consideration of any licence application by decision makers:
 - a.) whether the applicant is a suitable person;
 - b.) the object of the Act;
 - c.) the provisions of the relevant local alcohol policy;
 - d.) whether the amenity or good order of the locality would be lessened by the granting of the licence;
 - e.) the design and layout of the proposed premises; and
 - f.) whether the applicant has the appropriate systems, staff and training to comply with the law;

Types of premises that may hold an off-licence

98 - 120

32. **Agree** that the types of premises that are eligible for an off-licence be restricted to the following main categories:
 - a.) a specialist alcohol retailer or manufacturer, where alcohol comprises at least 85% of the annual sales turnover; or
 - b.) a grocery retailer (including supermarkets) where food primarily intended for preparation or consumption in the home comprises 50% of the annual sales turnover; or
 - c.) hotels and taverns for which an on-licence is held (but not nightclubs or entertainment venues);
33. **Note** that the nature of the 50% test for grocery retailers will be clarified in legislation and will be designed with a view to avoid unnecessary compliance costs;
34. **Note** that the proposals concerning grocery retailers are consistent with recent High Court decision on the distinction between grocery retailers and dairies or convenience stores, which held that convenience stores are not eligible for an off-licence;

35. **Agree** that the complementary off-licence category be maintained as currently applied, subject to prescribed conditions and to a regulation-making power to exclude specific types of retailers;
36. **Agree** that any other type of retailer may be eligible for an off-licence if no other off-licence retailer is reasonably available to the public and granting the licence would not unduly encourage alcohol-related harm;
37. **Agree** that regulations set out the required information and processes to determine off-licence eligibility;
38. **Agree** that licensed clubs will no longer be eligible to hold an off-licence, but those clubs that currently hold an off-licence will be able to keep that licence;
39. **Agree** that service stations and takeaway food outlets be prohibited from holding an off-licence;
40. **Agree** that grocery retailers (including supermarkets) granted an off-licence continue to be restricted to selling wine, beer, cider and mead;
41. **Agree** that the establishment of a store within a store to sell off-licence alcohol that would otherwise be illegal in those premises be prohibited;
42. **Agree** to reject the Law Commission's recommendation that supermarkets be required to display alcohol in one area within the store;
43. **Note** that some existing licensees, in particular convenience stores, may not meet the new criteria for off-licences;
44. **Agree** that:
 - a) no current off-licences will be cancelled during their term as a result of the proposed changes to eligibility; and
 - b) eligibility to hold an off-licence under the proposed changes will be determined if and when the current licence expires and the licensee applies to renew it;
45. **Agree** that no compensation will be payable for licensees who are not eligible to have their current off-licence renewed under the proposed criteria;

Caterers

46. **Agree** that caterers be required to obtain an on-licence, as is appropriate for the conduct of their business, rather than an off-licence;

Appendix 2

47. **Agree** that the provision of free drinking water where alcohol is consumed on the premises be a mandatory condition for all licence types;
48. **Agree** that the following be mandatory conditions for all on-licences and club licences:
 - a.) the provision of food for consumption on the premises;
 - b.) the sale and supply of low-alcohol beverages;
 - c.) the sale and supply of non-alcoholic beverages; and
 - d.) the provision of assistance with, or information about, alternative forms of transport;
49. **Agree** that any of the conditions specified in recommendation 48 may be imposed on a special licence at the discretion of the decision-maker;
50. **Agree** that licensing decision-makers be authorised to impose any reasonable condition designed to minimise the risk of harm or facilitate enforcement on any licence;
51. **Agree** that the Ministry of Justice be required to develop guidelines on the application of discretionary licence conditions, to be approved by the Alcohol Regulatory and Licensing Authority (the renamed Liquor Licensing Authority);
52. **Agree** that designation of any off-licence as a supervised area remain a discretionary condition;
53. **Agree** that the legislation include a power to consult and make regulations concerning the provision of point of sale information about the alcohol unit content of drinks and health information;

Trading hours

54. **Either**
 - a) **Agree** to set national maximum trading hours according to recommendations 55 to 64;
OR [supported by the Treasury]
 - b) **Invite** the Minister of Justice to report back to Cabinet with quantified analysis of the costs and benefits of the proposed changes to trading hours;
55. **Agree** to maximum trading hours for off-licences (including supermarkets) of 7:00am to 11:00pm;
56. **Agree** to maximum trading hours for on-licences, club licences and special licences of 8:00am to 4:00am;

57. **Agree** that licensing decision-makers be empowered to impose a one-way door condition on on-licences, club licences and special licenses at their discretion;
58. **Note** that one-way door requirements would not apply to off-licences;
59. **Agree** that territorial authorities be able to set their own local trading hours through local alcohol policies that either restrict or extend the national maximum trading hours, including by specifying one-way door policies;
60. **Note** that if a territorial authority did not adopt any local maximum trading hours through a local alcohol policy, the national maximum hours would apply;
61. **Agree** that special licences may authorise the sale and supply of alcohol outside of the national or any local maximum trading hours on Anzac Day for events in connection with the commemoration of that day;
62. **Agree** to invite the select committee to consider whether there should be any other provision for limited exceptions to any maximum trading hours for special events;
63. **Note** that casinos are currently permitted to sell alcohol for consumption in a casino during the hours that the casino is open, regardless of the Sale of Liquor Act 1989;
64. **Agree** that the current provisions of the Gambling Act 2003 that allow casinos to sell alcohol at all times that the casino is open for business will continue to apply;

Prohibited trading days

65. **Agree** that on the prohibited trading days all on-licences would only be allowed to sell and supply alcohol to people living or dining on the premises;
66. **Agree** that the existing provisions applying to club licences on prohibited trading days continue with no change, allowing alcohol to be sold and supplied without a requirement that the purchaser must be dining;
67. **Agree** that the prohibited trading days continue to begin at 12:00am on the relevant day;

Remote sales of alcohol

68. **Agree** that remote (eg, internet) off-licence retailers be required to:
 - a.) display their licence or licence information, manager's name, and delivery days and hours on the sale medium (for example, their website, catalogue or brochure);

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Appendix 2

- b.) display information on the alcohol purchase age; and
 - c.) clearly explain the consequences of making a false declaration of age and require purchasers to declare that they are over the alcohol purchase age;
69. **Agree** that where the retailer does not undertake delivery of remotely purchased alcohol, the retailer be required to take reasonable steps to verify that a person of or over the purchase age accepts delivery of alcohol sold remotely;
70. **Agree** that remote off-licence retailers be exempt from:
- a.) the national maximum trading hours requirements, but that deliveries not be permitted between the hours of 10:00pm and 6:00am;
 - b.) the requirement that an off-licence must display its opening hours at its physical premises, if no sales are made directly to customers on the physical premises; and
 - c.) the requirement for a manager to be on duty at all times when alcohol is sold;
71. **Agree** that the prohibited days would not apply to the remote sale of alcohol, but that remotely purchased alcohol could not be delivered on the prohibited days;

BYO restaurants

142 - 148

72. **Agree** that BYO restaurants will generally not be required to have a manager on duty at all times that alcohol is being sold or supplied, but allow licensing decision-makers to require a BYO restaurant to have a manager on duty, either in general or for particular days or times, through imposing a discretionary condition on the licence;

Club licences

149 - 155

73. **Agree** that licensed club managers be required to hold a general manager's certificate, which entails obtaining a prescribed qualification (currently the Licence Controller Qualification);
74. **Agree** that licensed clubs will generally not be required to have a manager on duty at all times that alcohol is being sold or supplied, but allow licensing decision-makers to require a licensed club to have a manager on duty, either in general or for particular days or times, through imposing a discretionary condition on the licence;
75. **Agree** that decision-makers be authorised to allow a club to serve guests of a member of a club that has reciprocal visiting rights as a condition of the licence;

Special licences

Appendix 2

76. **Agree** that legislation clarify when a special licence is required based on the nature of the event (public or private) and where it is being held (licensed premises or unlicensed premises);
77. **Agree** that special licence applicants be required to show that the premises will be clearly defined and appropriately monitored;
78. **Agree** that licence decision-makers be authorised to require special licence applicants for large or high-risk events to submit a proposed event management plan;
79. **Agree** that special licences continue to be available for genuine events or occasions on the prohibited trading days;
80. **Agree** that special licence applications be required to be submitted at least 20 working days before the date of the relevant event;
81. **Agree** that District Licensing Committees (proposed to replace District Licensing Agencies) be authorised to accept urgent special licence applications for unforeseen circumstances at their discretion;

District Licensing Agencies

Appendix 2

82. **Agree** that District Licensing Agencies be replaced by new District Licensing Committees, which would be a committee of the relevant territorial authority;
83. **Agree** that District Licensing Committees comprise three members selected by the territorial authority, one of which must be a local government councillor who would hold the position of chairperson;
84. **Agree** that current members of the industry and alcohol enforcement agents be prohibited from appointment to a District Licensing Committee;
85. **Agree** that councils be authorised to appoint a commissioner in place of the councillor chairperson on the District Licensing Committee;
86. **Agree** that councils be authorised to maintain a pool of District Licensing Committee members and establish more than one committee for its area as needed;
87. **Agree** that territorial authorities be authorised to share non-councillor members for District Licensing Committees if the workload warrants this;

- 88. **Agree** that District Licensing Committees be authorised to consider and determine all licence, managers certificate and renewal applications in the first instance;
- 89. **Agree** that all licensing decisions (including manager's certificates) must be made by District Licensing Committees, with the ability to delegate administrative functions only;
- 90. **Agree** that, as for existing District Licensing Agencies, all decisions made by District Licensing Committees be appealable by anyone appearing before the committee to the Alcohol Regulatory and Licensing Authority (the renamed Liquor Licensing Authority);
- 91. **Agree** that the appeal fee should be waived for licensing inspectors, Police and Medical Officers of Health;

Licensing Inspectors and Medical Officers of Health

Appendix 2

- 92. **Agree** that liquor licensing inspectors be employed by the chief executive of the relevant territorial authority;
- 93. **Agree** that the legislation explicitly specify that licensing inspectors have statutory independence to report on licence applications, monitor licensed premises and take enforcement applications to the Alcohol Regulatory and Licensing Authority (the renamed Liquor Licensing Authority);
- 94. **Agree** that Medical Officers of Health be forwarded all licence applications and be required to report on an application if they have any concerns;
- 95. **Agree** that legislation specify that the functions of Medical Officers of Health include education of licensees and collaboration with licensing inspectors and Police on alcohol harm reduction strategies;
- 96. **Agree** that Medical Officers of Health be authorised to delegate their functions under the legislation to designated officers;

Liquor Licensing Authority

Appendix 2

- 97. **Agree** that the Liquor Licensing Authority be renamed the Alcohol Regulatory and Licensing Authority;
- 98. **Note** that if recommendation 88 is accepted, the Alcohol Regulatory and Licensing Authority's main functions will be to hear appeals from District Licensing Committee decisions, appeals on local alcohol policies and enforcement applications for variation, suspension or cancellation of licences;

99. **Agree** that the Alcohol Regulatory and Licensing Authority continue to hear all enforcement applications, including variations of licence conditions;
100. **Agree** that the Ministry of Justice be responsible for developing guidelines on the legislation and issuing them with the approval of the Alcohol Regulatory and Licensing Authority;
101. **Agree** that the legislation provide flexibility for up to three District Court judges to sit on the Alcohol Regulatory and Licensing Authority if the workload warrants this;
102. **Agree** that provision for lay members of the Alcohol Regulatory and Licensing Authority be retained;
103. **Agree** that there be a right of appeal to the High Court on the merits of the case against enforcement decisions of the Alcohol Regulatory and Licensing Authority;

Public notice of licence applications

104. **Agree** that licence notice requirements be provided for in regulations;
105. **Note** that further work is being undertaken by officials on what the notice requirements should comprise;
106. **Agree** that applicants for a new, varied or renewed licence be required to affix a notice in the prescribed form to the proposed premises or site;
107. **Agree** that the timeframe for making an objection to an application for a new licence, a licence variation or a licence renewal be extended from 10 working days to 15 working days;

Licence fees

108. **Agree** that regulations allow for a risk-based licence fee scheme that aims to recover licensing costs as far as possible, with fee levels set either centrally, locally or through a combination of both;
109. **Note** that Cabinet will need to approve the licence fee model to be included in regulations at a future date, once policy work and consultation is complete;
110. **Agree** that licence fees be payable on an annual basis;

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156 - 162

<i>Licence renewals</i>	163 - 168
111. Agree that the existing renewal requirements be retained (ie, licences are initially granted for one year, after which they must be renewed every three years or sooner);	
112. Agree that legislation make it explicit that where no concerns are reported on a licence renewal application, the renewal may be granted on the papers without the requirement for a hearing;	
<i>Licence exemptions</i>	169 - 175
113. Agree that the licence exemption for prison officers' canteens be removed, on the basis that these no longer exist;	
114. Agree that the licence exemption for the House of Representatives be removed;	
115. Agree that the licence exemptions for New Zealand Police canteens, New Zealand Fire Service Canteens and the New Zealand Defence Force be retained;	
<i>Permanent charter clubs</i>	176 - 178
116. Agree that there be no change to the current status of, and requirements for, permanent charter clubs;	
117. Agree that the active permanent charter clubs be listed in regulations;	
<i>Licensing trusts</i>	Appendix 2
118. Invite officials to report to the Cabinet Legislation Committee on minor and technical matters relating to licensing trusts;	
Purchase age	180 - 192
119. Either	
a) Agree that the alcohol purchase age be set at 18 years for on-licence sale and supply and 20 years for off-licence sale and supply;	
OR [supported by the Treasury]	
b) Invite the Minister of Justice to report back to Cabinet with quantified analysis of the costs and benefits of the different options for changes to purchase age;	
120. Agree that the age at which a person may sell alcohol in restricted areas of licensed premises is set at 18 years;	

121. **Note** that, regardless of the purchase age, people under the purchase age would continue to be allowed to be employed in non-restricted areas (for example, supermarkets, cafés and restaurants) and for certain duties in restricted areas, such as cleaning and stocktaking;
122. **Agree** that the purchase age decided on by Cabinet is reflected in the relevant offence recommendations that reference purchase age;

Parental supply of alcohol to their children

194 - 200

Private settings

123. **Agree** that it continue to be lawful for parents and legal guardians to supply alcohol to their own children at any time in their own home or in any other private setting;

Licensed premises

124. **Agree** that parents and legal guardians continue to be allowed to supply alcohol to their children at certain licensed premises, such as restaurants;

Public places

125. **Agree** that it continue to be unlawful for a person to drink or possess alcohol in public if they are under the age of 18, unless they are accompanied by their parent or guardian;
126. **Note** that the current offence for a person under 18 to drink or possess alcohol in public unless accompanied by a parent or legal guardian is punishable by an infringement notice of \$200;

Parental consent to supply alcohol to minors

202 - 216

127. **Agree** that the consent of a parent or legal guardian is required for any other person to supply alcohol to a person aged under 18 years;
128. **Note** that the Police would have discretion not to prosecute when there is no public interest to do so;
129. **Agree** that failure to obtain the consent of a parent or guardian before supplying alcohol to an under-18 year old be a summary offence punishable by a fine of up to \$2000;
130. **Note** that recommendation 127 only applies to under-18 year olds because legal guardianship ceases at age 18; if recommendation 127 is agreed to, parental consent would not be required for supply to a person aged 18 or over, regardless of the agreed purchase age;

Responsible supply to minors

202 - 216

131. **Agree** that a parent, guardian or any other person who has parental consent who supplies alcohol to an under-18 year old be required to supply the alcohol in a responsible manner and supervise the consumption of the alcohol supplied;
132. **Agree** that failure to supply alcohol to an under-18 year old in a responsible manner and supervise the consumption of the supplied alcohol be a summary offence punishable by a fine of up to \$2000;
133. **Note** that recommendation 131 only applies to under-18 year olds because legal guardianship ceases at age 18; if recommendation 131 is agreed to, the offence would not apply to supply to a person aged 18 or over, regardless of the agreed purchase age;

REDUCING DEMAND

Excise tax and minimum pricing

217 - 228

134. **Agree** to reject the Law Commission's recommendation to raise excise tax on alcohol by 50%;
135. **Agree** to reject the Law Commission's recommendation to remove excise tax from low-alcohol products up to 2.5% alcohol by volume;
136. [Information withheld – related matters still under consideration];
137. **Agree** to monitor overseas developments on minimum pricing regimes;
138. **Agree** to explore non-regulatory options for obtaining price and sales data from alcohol retailers to inform consideration of a minimum price regime;
139. **Agree** to review the information available on alcohol sales and price after one year and at that time consider whether regulation is required;

Advertising, sponsorship and promotion of alcohol

229 - 237

140. **Agree** to accept the Law Commission's phase one advertising recommendation to strengthen the existing offence of promoting excessive alcohol consumption by making it an offence to:

- a.) in the course of carrying on a business, encourage the consumption of an excessive amount of alcohol, whether on licensed premises or at any other place;
 - b.) promote or advertise alcohol in a manner that has special appeal to people under the purchase age;
 - c.) promote or advertise alcohol, except in store or on premises, in a manner that leads the public to believe the price is 25% or more below the price at which the alcohol is ordinarily sold;
 - d.) promote alcohol that is free; or
 - e.) offer any goods or services on the condition that alcohol is purchased;
141. **Agree** to reject the Law Commission’s phase two and phase three advertising and sponsorship recommendations, including establishment of an inter-departmental committee for the time being;

LIMITING ALCOHOL-RELATED PROBLEMS

Offences, Monitoring and Enforcement

Definition of intoxication

142. **Agree** that a statutory definition of “intoxication” using the definition of “intoxicated” in the Policing Act 2008 be included in sale of alcohol legislation;

Offence for manager or employee to be intoxicated on duty

143. **Agree** that it be a summary offence, punishable by an infringement notice of \$200, for any manager or employee to be intoxicated while working on licensed premises;
144. **Agree** that the maximum summary penalties for managers and employees convicted of the offences set out in recommendation 143 be as follows:
- a. For an employee, a fine not exceeding \$2000;
 - b. For a manager, a fine not exceeding \$4000;
145. **Agree** that it be a summary offence, punishable by a maximum fine of \$5000, for any licensee to allow a manager or employee to be intoxicated while working on the licensed premises;

Appendix 2

240 - 243

Establishing age

245 - 249

146. **Agree** that the only defence for sale and supply of alcohol to a minor on or from licensed premises be that the person selling or supplying the alcohol reasonably believed that the purchaser appeared to be over the purchase age *and* sighted approved evidence of age that showed the person to be of or over the purchase age;
147. **Agree** that specification of what constitutes evidence of age for the purpose of purchasing alcohol be moved from primary legislation to regulations;

False representation of age

250 - 256

148. **Agree** that the offence of making a false representation of age to obtain alcohol be updated so that is it an offence to present fraudulent evidence of age to a licensee, manager or employee of any licensed premises;
149. **Note** that the offence of making a false representation of age would be punishable by a maximum fine of \$2000 as per the existing legislation or an infringement notice as per recommendation 166;
150. **Agree** that the offence of making a verbal false representation of age be repealed;
151. **Agree** that it be a new summary offence, punishable by a fine of up to \$2000 or an infringement notice of \$200, for any person to sell, hire, give or lend a *genuine* evidence of age document to a person under the purchase age knowing that they intend to use the document to obtain entry into licensed premises or purchase alcohol;
152. **Agree** that it be a new summary offence, punishable by a fine of up to \$2000 or an infringement notice of \$200, for any person to sell, hire, give or lend *false* evidence of age to a person under the purchase age for use to obtain entry into licensed premises or purchase alcohol;
153. **Agree** to reject the Law Commission's recommendation that licensees, managers and licensed door staff be empowered to confiscate fake or falsified evidence of age documents;

Repeat offending by managers or licensees

257 - 263

154. **Agree** that on application by a licensing inspector or member of the Police, a manager's certificate must be cancelled for five years where the person has been found to have committed any of the following offences on three

separate occasions within a three-year period:

- a.) Sale or supply of alcohol to a minor;
- b.) Sale or supply of alcohol to an intoxicated person;
- c.) Unauthorised sale or supply of alcohol;
- d.) Irresponsible promotion of alcohol;

155. **Agree** that licensing inspectors or Police be required to apply for cancellation of a licence where a licensee has been found to have committed any of the above offences on three separate occasions at the same premises within a three-year period;

156. **Agree** that decision-makers be authorised to consider whether a manager's certificate has previously been cancelled when determining future suitability to obtain a manager's certificate after the five-year cancellation period;

Closure of licensed premises

264 - 270

157. **Agree** that the Police be empowered to close all or a specified part of a licensed premises immediately where:

- a.) A riot, fighting or serious disorder takes place within the licensed premises or where there are reasonable grounds for believing that a riot, fighting or serious disorder will occur within licensed premises;
- b.) There is a significant threat to public health or safety;
- c.) The conduct in the premises amounts to a substantial public nuisance; or
- d.) Offences have been committed that carry a maximum penalty of five or more years imprisonment and there is a significant risk of further offending if the premises remain open;

158. **Agree** that a closure order may apply for up to 24 hours beyond the end of the day on which the order is made;

159. **Agree** that Police operational guidelines be developed to cover notification requirements where premises are closed;

Increased penalties

271 - 279

160. **Agree** that the maximum penalty for a licensee or manager allowing an intoxicated person to be or remain on licensed premises be increased from a fine of \$4000 to \$5000;

161. **Agree** that the maximum penalty for a licensee or manager allowing violent, quarrelsome, insulting or disorderly conduct to take place on the licensed premises be increased from a fine of \$4000 to \$10,000;

162. **Agree** that the penalty for the offence of failing to close licensed premises following an order of either the court or Police should, in addition to a fine not exceeding \$10,000 for licensees and managers, be suspension for up to seven days;
163. **Agree** that the maximum penalty for employees at licensed premises that sell or supply alcohol while a closure order is in place be increased from a fine of \$2000 to \$3000;
164. **Agree** that the maximum penalty for the offence of failing to provide information when requested by an enforcement officer in or about licensed premises be increased from a fine of \$1000 to \$2000;
165. **Agree** that the maximum penalty for promotion of excessive consumption of alcohol (section 154A) be increased from a fine of \$5000 to \$10,000, with the additional possibility of suspension of the licence for up to seven days;

Infringement offences

280 - 291

166. **Agree** that the following offences be made infringement offences, while retaining the ability to proceed summarily:
 - a.) Permitting people under the purchase age to be in restricted or supervised areas;
 - b.) Sales of spirits for consumption on the premises in a drinking vessel that exceeds 500 millilitres capacity;
 - c.) Licensee offences in respect of display of name of duty manager;
 - d.) Making a false representation of age to obtain alcohol;
167. **Agree** that breach of a liquor licence condition be an infringement offence;
168. **Agree** that only liquor licensing inspectors and members of the Police be authorised to issue infringement notices;
169. **Agree** that the maximum penalty for infringement offences under sale of alcohol legislation should be set by regulations but should not exceed \$1000;
170. **Agree** that the jurisdiction for infringement notices given to young people be reviewed by the Ministry of Social Development, in consultation with Police and the Ministry of Justice;

171. Agree that, as an interim response to facilitate the enforcement of youth liquor infringement notices, and subject to progress in this area under the Criminal Procedure (Simplification) Project and related policy work, section 272(3) of the Children, Young Persons, and Their Families Act 1989 be amended to clarify that jurisdiction for youth liquor infringement notices is the District Court, consistent with traffic infringement processes for young people;	
<i>Powers of licensing inspectors and collaborative arrangements</i>	292 - 296
172. Agree that liquor licensing inspectors be given the same powers of entry as Police have under section 175 of the Sale of Liquor Act;	
173. Agree that there be a statutory requirement for collaborative arrangements at the local level between liquor licensing inspectors, Police and Medical Officers of Health;	
<i>Alcohol in public places</i>	
174. Agree to reject the proposal to introduce a civil debt recovery system for Police to recover costs from intoxicated individuals due to the cost of such a scheme and the risk that vulnerable people may be discouraged from seeking Police assistance in unsafe situations;	296 - 307
175. Agree that the definition of “public place” in the Summary Offences Act 1981 be amended to provide that it includes a vehicle in a public place;	307
<i>Liquor bans</i>	308 - 324
176. Agree that the definition of “public place” in section 147(1) of the Local Government Act 2002 be made consistent with the definition of public place in the Summary Offences Act 1981, so that it includes school grounds, private carparks and other private spaces to which the public has legitimate access;	
177. Agree that there be additional criteria for liquor ban bylaws under the Local Government Act 2002 as follows:	
a.) The proposed area and timing can be justified as a reasonable limitation on the rights and freedoms of individuals;	
b.) There is a high volume of offending or disorder in the proposed area that can be linked to alcohol use within the area; and	

- c.) 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;

178. **Agree** that the Local Government Act 2002 be amended to provide for regulations on the signage requirements for liquor bans;

179. **Agree** that breach of a liquor ban only be punishable by an infringement notice of \$250, which may be issued by Police on the spot or following arrest;

And

Note that an infringement only offence with the power of arrest raises issues of consistency with section 22 of the New Zealand Bill of Rights Act 1990, which provides that everyone has the right not to be arbitrarily arrested or detained;

180. **Agree** that the evidential standard for determining that a substance is alcohol be amended to provide that it is sufficient proof, in the absence of other evidence, where;

- a.) The container is labelled as containing an alcoholic beverage and is of a type sold in the ordinary course of trade; or
- b.) The container appears to hold an alcoholic beverage and, when opened, the content smells like an alcoholic beverage; or
- c.) The defendant has admitted the container contains an alcoholic beverage;

Banning products

181. **Agree** that the Minister of Justice be enabled to ban, in consultation with the Minister of Health, particular alcohol products or classes of alcohol products considered undesirable, from importation for retail sale, manufacture or sale and supply in New Zealand having regard to the following criteria:

- a.) It is particularly dangerous to health; or
- b.) It is targeted at or particularly attractive to minors or can be confused with products associated with minors;

RTDs

182. **Agree** to set a maximum permitted strength of 5% alcohol by volume for pre-mixed ready-to-drink beverages;

183. **Agree** to set a maximum limit of 1.5 standard drinks per container for pre-mixed ready-to-drink beverages;

Appendix 2

Appendix 2

New Act

184. **Agree** that the Sale of Liquor Act 1989 be repealed and replaced with a new Sale and Supply of Alcohol Act;
185. **Note** that the intent of existing provisions of the Sale of Liquor Act 1989 to which no policy change is recommended will be retained in the new Act;
186. **Agree** that the new legislation will bind the Crown;

Relationship to other work underway

187. **Note** that proposals to reduce the impact of alcohol-impaired driving are being progressed through *Safer Journeys*, New Zealand's Road Safety Strategy 2010-2020;
188. **Note** my intention that the Sale and Supply of Liquor and Liquor Enforcement Bill be discharged in due course;
189. **Direct** officials to ensure that licensing certainty is maintained over the Rugby World Cup 2011 period;

Legislative implications

190. **Note** that an Alcohol Reform Bill, which will implement the legislative proposals agreed to by Cabinet, has been included in the 2010 legislative programme with a category 3 priority (to be passed within 2010 if possible);
191. **Authorise** the Minister of Justice to issue drafting instructions to Parliamentary Counsel to give effect to the legislative proposals agreed to in this paper;
192. **Agree** that the draft Bill be the government response to the Law Commission's report, with the result that there is no need for a further formal government response to the Commission's report;

Human rights implications

193. **Note** that the age-related proposals, the promotions proposal and the Police proposal for a power of arrest prior to an infringement notice for breach of a liquor ban raise potential issues under the New Zealand Bill of Rights Act 1990;
194. **Note** that the Police proposal for a power of arrest prior to issuing an infringement notice raises concerns about consistency with the New Zealand Bill of Rights Act 1990;
195. **Note** that there is strong evidence on alcohol-related harm to justify the age-related and promotions proposals;

196. **Note** that an assessment of human rights implications of the proposed legislative amendments will be completed once resulting legislation has been drafted;

Financial implications

197. **Note** the costs to government to implement the proposals will likely be able to be met within departmental baselines, but this will need to be confirmed once the legislation is finalised;

198. **Note** that initial cost estimates for government departments will be provided with the Cabinet Legislation Committee paper on introduction of a bill to implement the proposals agreed to by Cabinet;

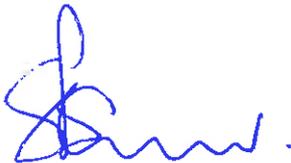
199. **Note** that there may be increased costs for local government as a result of the licensing proposals, including the possible development of local alcohol policies, but any financial impact will be addressed, as far as possible, through licence fees (recommendation 108);

200. **Note** that the proposal to introduce uniform liquor ban signage requirements will likely impose costs on local government;

201. **Note** that there may be significant increases in licensing fees if a risk-based cost-recovery model is adopted;

Publicity

202. **Note** that I intend to make this Cabinet paper and its appendices publicly available on the Ministry of Justice website once a bill has been introduced to the House.



Hon Simon Power
Minister of Justice

Date: 5/8/10.

Appendix 1: Alcohol-related harm

1. Alcohol use is a complex social issue. On the one hand, it is a social lubricant, often used safely and enjoyed by people as a part of social interaction and relaxation. Around 85% of the adult New Zealander population consume alcohol at least occasionally. On the other hand, when alcohol is consumed in a harmful manner it can lead to harm such as crime, victimisation, accidents, injury and disease.
2. Problems with alcohol are not confined to New Zealand and New Zealand does not consume more alcohol per capita than comparable countries. A sizable proportion of New Zealanders do, nonetheless, drink a large volume of alcohol on single drinking occasions, with a subsequent heightened risk of harm.
3. The harm caused by alcohol is not a small problem, nor is it confined to specific sections of the community. A range of studies indicates a high social and economic cost arising from New Zealand's alcohol consumption.⁵² The costs are borne by individuals, families, communities and the government. Costs to government are particularly marked as a result of health, justice and transport safety impacts. Estimates of direct costs to government range from \$500 million to \$1200 million.⁵³ A burden is also placed on businesses due to absenteeism, sickness and reduced productivity.
4. Risky drinking is prevalent among New Zealanders. One in three New Zealand drinkers consumes alcohol at an average daily level that increases their risk of dying of an alcohol-related disease or injury to above 1:100. Rates of hazardous consumption⁵⁴ are higher amongst young people, Māori, Pacific and lower socio-economic groups, but all groups experience a significant amount of harm as a result of hazardous consumption. Paradoxically, international research indicates that people whose total alcohol intake may be moderate or even low, but who drink to intoxication on occasion, account for a large burden of acute harm.⁵⁵

Alcohol and crime

5. Alcohol is strongly implicated as a facilitator of crime and antisocial behaviour. The Police National Alcohol Assessment (2009) found that in 2007/08.⁵⁶

⁵² For example: B Easton (1997) *The Social Costs of Tobacco Use and Alcohol Misuse*; B Easton (2001) *Estimating the Economic Costs of Alcohol Misuse*; B Easton (2002) *Taxing Harm: modernising alcohol excise duties*; F Barker (2002) "Consumption externalities and the role of government: The case of alcohol", *New Zealand Treasury Working Paper*, 02/25; BERL Economics (2009) *Costs of Harmful Alcohol and Other Drug Use*.

⁵³ F Barker (2002) "Consumption externalities and the role of government: The case of alcohol", *New Zealand Treasury Working Paper*, 02/25; BERL Economics (2009) *Costs of Harmful Alcohol and Other Drug Use*.

⁵⁴ Hazardous consumption is defined as an established pattern of alcohol consumption that carries a high risk of future damage to physical or mental health, but may not yet have resulted in significant adverse effects.

⁵⁵ T Babor et al (2010) *Alcohol: No Ordinary Commodity*, New York: OUP.

⁵⁶ New Zealand Police (2009) *National Alcohol Assessment*. <http://www.police.govt.nz>.

- Approximately one third of all Police-recorded offences were committed by an alleged offender who consumed alcohol prior to committing the offence;
 - Half of all homicides recorded from 1999 to 2008 involved either a suspect or victim who was under the influence of alcohol at the time of the incident;
 - 34% of recorded assaults associated with family violence involved an offender who had consumed alcohol prior to committing the offence;
 - One in five recorded sexual offences involved an offender who had consumed alcohol prior to committing the offence;⁵⁷
 - On average, 33% of all recorded offences are committed on Friday and Saturday nights and Saturday and Sunday mornings. This coincides with peak apprehension times when alcohol is recorded as a factor;
 - The highest proportion of alleged offenders who were drinking prior to the offence was between 16 and 24 years of age;
 - Māori and Pacific people represented a high proportion of offenders by population where alcohol was consumed prior to apprehension.
 - Over 21,000 people were driven home by police or taken to a safe place to sober up, due to their level of intoxication. This was an increase of nearly one quarter from 1998/99 (17,251 incidents).
6. District Court judges estimate that up to 80% of defendants coming before the criminal courts have alcohol or other drug abuse or dependency issues. Alcohol is the preferred substance in three quarters of these cases. These figures are mirrored in estimates by the Department of Corrections of the number of inmates who have had drug and alcohol problems in their lives.

Alcohol and accidents, injury and disease

7. About 1,000 New Zealanders were estimated to have died in 2004 from alcohol-attributable causes.^{58,59} About half of these deaths are due to the immediate effects of heavy episodic drinking, such as injuries relating to road trauma, accidents and self-inflicted injuries:
- In 2008 there were 119 deaths, 582 serious injuries and 1,726 minor injuries from vehicle crashes where driver alcohol or drugs was a contributing factor. Of all drivers involved in fatal crashes in 2007, the 20-24 and 25-29 year age groups were the most likely to be affected by alcohol or drugs or both,⁶⁰

⁵⁷ Police consider this figure to be conservative given the frequent delay in identifying and apprehending alleged sexual offenders.

⁵⁸ J Connor, J Borad, R Jackson, S Vander Hoorn and J Rehm (2005) *The Burden of Death, Disease and Disability Due to Alcohol in New Zealand* (ALAC Occasional publication 23). Wellington:ALAC.

⁵⁹ This compares to around 5,000 deaths a year from tobacco-related causes, including from second-hand smoke.

⁶⁰ Ministry of Transport (2009) *Alcohol and Drug Crash Factsheet*.

- Up to 22% of all ACC claims are estimated to have alcohol as a contributing factor, suggesting that alcohol-related claims to ACC cost a total of around \$650 million each year;⁶¹
 - Up to 30% of deaths from suicide and self-inflicted injury are estimated to be attributable to alcohol (the rate varies depending on age and gender);⁶²
 - Between 18 and 35 percent of injury-based Emergency Department presentations are estimated to be alcohol-related, rising to between 60 and 70% during the weekend.^{63,64}
8. Alcohol also contributes to, or exacerbates, a range of social problems, including child abuse and neglect, family and relationship problems, rates of unwanted pregnancy and sexual infections, educational failure and underachievement and low productivity and absenteeism.
 9. Nearly half a million people reported in the Ministry of Health's *Alcohol Use Survey 2007/08* that they had experienced harmful effects on their friendships or social life, home life or financial position in the past year due to someone else's alcohol use. More women than men experienced harmful effects from another person's alcohol use.
 10. Children are particularly vulnerable to primary and secondary effects of alcohol-related harm from as early as conception. Drinking during pregnancy increases the risk to the foetus of foetal alcohol spectrum disorder (FASD). Children with FASD have severe learning and behavioural problems, which are difficult to manage. Many continue to have a significant disability into adulthood. Recent New Zealand research suggests that around 25% of women are not following the advice to abstain from alcohol during pregnancy.⁶⁵ Parental abuse of alcohol can also have significant effects on children, including maltreatment, neglect, and poor attachment to parents.
 11. The Ministry of Health's *Alcohol Use Survey 2007/08* found that an estimated 147,500 adults (5.6% of the population) reported having at least one day off work or school in the past year as a result of their alcohol use. Thousands of people reported multiple days off, indicating around 392,800 work days per year in New Zealand are lost to alcohol. Nearly one in ten adults, and a higher proportion of men and younger people, worked while feeling under the influence of alcohol at least once in the last year.

⁶¹ ACC general manager of injury prevention Katie Sadler, quoted in Mike Houlahan (18 June 2009) "Academics Slam Result of Study into Alcohol Abuse", *The Press*, Christchurch. <http://www.stuff.co.nz/the-press/news/2510640/Academics-slam-result-of-study-into-alcohol-abuse>.

⁶² New Zealand mortality data from New Zealand Health Information Service. Alcohol-attributable fractures from D J Collins and H M Lapsley (2008) *The Costs of Tobacco, Alcohol and Illicit Drug Abuse to Australian Society in 2004/05*, Canberra: Commonwealth of Australia.

⁶³ G Humphrey, S Casswell and D Yeo Han (2003) "Alcohol and injury among attendees at a New Zealand emergency department, *The New Zealand Medical Journal* 116 (1168).

⁶⁴ I Jones, C McElnay and M Robinson (2009) *Alcohol related injury presentations*, Public Health Report 6 (1).

⁶⁵ R Ho and R Jacquemard (2009) "Maternal alcohol use before and during pregnancy among women in Taranaki, New Zealand, *The New Zealand Medical Journal*, 122 (1306).

Alcohol and young people

12. One in three men and one in five women aged 18 to 24 years consume a large amount of alcohol at least weekly.⁶⁶ Between 1995 and 2004, the proportion of young people who reported drinking more than six drinks on a typical occasion increased by 11% among drinkers aged 14 to 17 years and by 9% among drinkers aged 18 to 19 years.⁶⁷
13. Young people may be starting to drink earlier, based on recent findings that younger age groups were more likely than older age groups to report having consumed alcohol, having consumed large amounts of alcohol and having consumed enough to feel drunk by the age of 15.⁶⁸
14. Young people up to the age of 25, but particularly those under the age of 15, experience more harm per standard drink than older drinkers.⁶⁹ Early initiation of drinking can have adverse effects on physical and cognitive development and increases the risk of later alcohol-use disorders and other mental health problems.⁷⁰ Adolescents between the ages of 12 and 17 are more likely than older drinkers to suffer a range of adverse social consequences from their own or other people's drinking. These consequences include unprotected and unwanted sex, violence, assault, arrests and road crashes.⁷¹ Young people aged 18 to 29 suffer the greatest burden of alcohol-related mortality as a proportion of all causes of mortality. They also account for a large proportion of hospital presentations for alcohol-related injuries, alcohol-related offending and alcohol-use disorders.⁷²

⁶⁶ Ministry of Health (2009) *Alcohol Use in New Zealand: Key results of the 2007/08 New Zealand Alcohol and Drug Use Survey*. Wellington: Ministry of Health.

⁶⁷ Unpublished comparative analysis of the National Alcohol Use Survey Data 1995, 2000, 2005, Social and Health Outcomes Research and Evaluation (SHORE).

⁶⁸ As per footnote 64.

⁶⁹ National Health and Medical Research Council (2009) *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* Canberra: National Health and Medical Research Council.

⁷⁰ D H Jernigan (2001) *Global Status Report: Alcohol and Young People* Geneva: World Health Organization; C Odgers et al (2008) "Is it important to prevent early exposure to drugs and alcohol among adolescents?" *Psychological Science* 19: 1037; S Tapert, L Caldwell and C Burke (2004/2005) "Alcohol and the adolescent brain: Human studies" *Alcohol Research and Health* 28 (4); National Institute on Alcohol Abuse and Alcoholism (2004/2005) "The effects of alcohol on physiological processes and biological development" *Alcohol Research and Health* 28 (4).

⁷¹ Ministry of Health (2007) *Unpublished Data Analysis of the 2004 New Zealand Health Behaviours*.

⁷² K Lee and L Snape (2008) "The role of alcohol in maxillofacial fractures" *The New Zealand Medical Journal* 121 (1271); G Humphrey, C Casswell and D Han (2003) "Alcohol and injury among attendees at a New Zealand emergency department" *The New Zealand Medical Journal* 116 (1168); New Zealand Police (2009) *National Alcohol Assessment*. Wellington: New Zealand Police; J E Wells, J Baxter and D Schaaf (2006) *Substance Use Disorders in Te Rau Hinengaro: The New Zealand Mental Health Survey* Wellington: ALAC.

Appendix 2: Selected licensing and regulatory proposals

1. The following proposals are of a technical nature or are more straightforward than those covered in the body of the paper. They predominantly relate to liquor licensing, but also cover a definition of intoxication and product banning. These proposals are covered in the recommendations of the paper.

Object of sale of liquor legislation

Context

2. The objective of the Sale of Liquor Act 1989 is “to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as this can be achieved through legislative means”.
3. The focus on “the reduction of liquor abuse” is outdated and susceptible to narrow interpretation. It suggests an undue focus on people with alcohol use disorders such as alcoholism. It does not clearly take account of the harm that can arise from regular or sporadic consumption at levels described as heavy and medium. As such, it is of limited use in contributing to the reduction of alcohol-related harm.

Law Commission recommendations

4. The Commission recommends a detailed object provision for alcohol legislation [LC rec. 2] as follows:

The object of this Act is to establish a reasonable system for the sale, supply and consumption of alcohol for the benefit of the community as a whole, and in particular to:

- (a) *Encourage responsible attitudes to the promotion, sale, supply and consumption of alcohol.*
 - (b) *Contribute to the minimisation of crime, disorder and other social harms;*
 - (c) *Delay the onset of young people drinking alcohol;*
 - (d) *Protect and improve public health;*
 - (e) *Promote public safety and reduce public nuisance; and*
 - (f) *Reduce the impact of the harmful use of alcohol on the Police and public health resources.*
5. A broader object would ensure that all forms of alcohol-related harm are able to be considered in licence decision-making. It could mean that licences may not be granted so easily in future and that additional conditions may be placed on licences to reduce the risk of alcohol-related harm.
 6. The Commission also recommends that the term “liquor” should be replaced with the term “alcohol” [LC rec. 3]. “Alcohol” is now more commonly used and understood than “liquor”, which is often perceived to refer to spirits and spirituous drinks rather than the full range of alcoholic beverages and other

products. This would mean that the definition of “liquor” will need to be amended.

Proposed response

7. **I recommend accepting the Commission’s proposal that sale of liquor legislation should have a broader aim focused on minimising alcohol-related harm, including crime, disorder and public health problems (recommendation 11).**
8. **I recommend accepting the proposal that the term “alcohol” be used in the legislation instead of the term “liquor” (recommendation 12).**
9. **I recommend that the definitions of alcohol in sale of alcohol legislation, the Summary Offences Act 1981, the Local Government Act 2002 and other relevant legislation be made consistent (recommendation 13).**

Caterers

10. A caterer’s off-licence authorises the holder to deliver alcohol from their premises and sell it for consumption at other premises. As a caterer’s licence allows sale and consumption of alcohol on any premises, it is more akin to the activity of an on-licence rather than an off-licence.

Law Commission recommendation

11. The Commission recommends that caterers be required to obtain an on-licence rather than an off-licence, but that the law applying to caterers should otherwise remain unchanged [LC rec. 21]. This proposal would ensure that decision-makers take the correct approach to the licensing criteria and conditions that should be applied to a caterer in order to minimise alcohol related harm. Given the nature of caterers’ business, the on-licence requirements are unlikely to impose many new costs on caterers.

Proposed response

12. **I recommend accepting the Commission’s proposal that caterers be required to obtain an on-licence rather than an off-licence (recommendation 46).**

Mandatory and discretionary licence conditions

Context

13. The Act prescribes both mandatory and discretionary licence conditions that the licensing decision maker may impose across the four licence types: on-, off-, club and special licence.
14. The conditions contained in the Act are narrow in their focus and limit the ability of decision makers to use conditions to address potential alcohol-related harm. Decision makers can impose conditions relating to “any other matter aimed at promoting the responsible consumption of liquor”, but this is limited in its

application to the consumption of alcohol and does not explicitly encompass the sale and supply of alcohol.

Law Commission recommendations and proposed response

15. The Commission proposes expanding the mandatory conditions placed on on-licence and club premises to include:
 - the provision of food for consumption on the premises;
 - the sale and supply of low alcohol beverages and soft drinks;
 - the provision of free drinking water; and
 - the provision of assistance with, or information about, alternative forms of transport [LC rec. 24].
16. The proposed mandatory conditions would ensure responsible sale and supply of alcohol and reduce the risk of alcohol-related harm. A number of the proposed mandatory conditions are currently discretionary and are therefore inconsistently applied to licences.
17. **I recommend accepting this proposal. I recommend that the provision of free drinking water be a mandatory requirement for all licences that serve alcohol for consumption on the premises (recommendations 47 and 48).**
18. The Commission also proposes expanding the range of discretionary licence conditions [LC rec. 25; see Appendix 4 for details] and enabling decision makers to impose any reasonable condition designed to minimise harm on any licence [LC rec. 28]. The new Alcohol Regulatory Authority should issue guidelines on the types of conditions that are suitable to address particular risks [LC rec. 29].
19. The discretionary list identifies specific areas where conditions have been shown to assist harm minimisation or improve enforcement, but which would impose an unnecessary burden on some licensees if made mandatory for all. Application of these conditions would be selective and proportionate to the level of risk posed by the premises.
20. **I recommend that legislation include a provision to enable discretionary conditions that are tailored to the particular licence, as per Commission recommendation 28.** This provision should enable decision makers to impose any reasonable condition designed to minimise harm or facilitate enforcement (recommendation 50). I do not consider that legislation should attempt to specify a range of discretionary conditions. **I recommend instead that the Ministry of Justice develop guidelines for the use of discretionary conditions, as per Law Commission recommendation 29 (recommendation 51).**

21. The Commission also recommends a requirement that specialist off-licence alcohol stores be designated as supervised areas.⁷³ It further recommends a discretionary condition for off-licences relating to lighting and security measures [LC rec. 26].
22. **I do not support the mandatory designation of off-licences as supervised areas [LC rec. 26].** This could lead to situations where young children being looked after by someone other than their parent or guardian would need to be left, potentially unaccompanied, outside a store. **I recommend that this condition be discretionary (the status quo), with the current ability for the designation to apply to parts of the premises only (recommendation 52).**
23. **I consider that lighting and security could be covered off by the general discretionary condition-making power and a separate condition is therefore unnecessary.**
24. The Commission recommends a regulation-making power concerning the provision of point of sale information about the alcohol unit content of drinks and health information [LC rec. 30]. **The information could be centrally developed and disseminated, which would not impose a burden on licensees. I recommend accepting this proposal (recommendation 53).**
25. Additional mandatory and discretionary conditions may impose compliance costs on licensees. I consider that these costs are justified to reduce the risk of alcohol-related harm at licensed premises.

Prohibited trading days

Context

26. Under the Sale of Liquor Act, prohibited trading days are Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day, consistent with the Shop Trading Hours Act Repeal Act 1990. On these days the sale of alcohol is prohibited for some types of licensed premises, but not for others.
27. On prohibited trading days, the sale of alcohol in hotels and taverns is prohibited unless a customer is living or dining at the premises, while premises such as restaurants, cafés, movie theatres and other entertainment venues do not have any similar restriction and can sell alcohol without the dining requirement. The sale of alcohol at clubs is not restricted on the prohibited trading days. The prohibited trading days apply to all off-licences with one exception.⁷⁴
28. The Act does not specify the hour at which the prohibited trading days begin. In line with common law, the Authority takes the view that prohibited trading begins at 12:00am on the day in question.

⁷³ District Licensing Agencies and the Licensing Authority may designate areas in licensed premises as needing to be supervised; this means that a person under 18 years would need to be in that area with a parent or guardian.

⁷⁴ Off-licences may sell or deliver grape or fruit wine that is made on the premises or made from fruit grown on the site of the premises on the prohibited days.

Law Commission recommendations

29. The Commission recommends that:

- the status quo for off-licences should continue [LC rec. 36];
- sales of alcohol at any on-licence or club on a prohibited day should only be authorised if the alcohol is sold or supplied in association with the eating of a meal. This would mean that clubs would only be able to serve alcohol to their members and their guests who are at the club for the purpose of dining [LC rec. 37];
- on-licences should be able to remain open until their usual closing time on the night before the prohibited day, but must remain closed for a 24-hour period from this time [LC rec. 38].

30. Law Commission recommendation 37 would adversely impact upon premises that can currently serve people on prohibited days without the dining requirement, but would ensure the law is consistent and equitable across all types of on-licences.

31. Law Commission recommendation 38 would require amendment to shop trading legislation.

Proposed response

32. **I recommend that on the prohibited trading days on-licences would only be allowed to sell and supply alcohol to people living or dining on the premises (recommendation 65).**

33. **I recommend retaining the existing club licence provisions for prohibited days, which mean that alcohol may be sold and supplied without a requirement that the purchaser must be dining (recommendation 66).**

34. **I recommend rejecting the recommendation that on-licences be able to remain open until their usual closing time on the night before a prohibited day. I recommend that the application of the law continues to align with the law relating to shop trading hours.** This means that prohibited days will continue to begin at 12:00am for licensed premises (recommendation 67).

35. I note that recommendation 71 would allow remote off-licence retailers to sell alcohol on a prohibited trading day, but prohibit the delivery of alcohol on a prohibited day.

Anzac Day

36. Private Anzac Day functions where alcohol is supplied, but not sold, do not require a licence and this would continue to be the case.

37. Under recommendation 66, clubs (including Returned Services Associations) would continue to be allowed to sell and supply alcohol on Anzac Day. Special licences would also be available to non-licensees and people who hold on-licences who want to hold an event on Anzac Day. This would allow those

people to sell alcohol without the requirement for customers to be dining. The proposed national maximum trading hours would, however, mean that sale could not begin until 8:00am.

38. **I recommend that special licences be permitted for licensees and non-licensees to authorise trading outside of any maximum hours on Anzac Day for events in connection with the commemoration of that day (recommendation 61).** Anzac Day honours significant actions in New Zealand's history and is traditionally marked with early morning services. I do not consider that there would be any major risk of harm by allowing early trading in these limited circumstances.

Remote sales of alcohol

Context

39. An off-licence can currently be used to sell alcohol remotely through the internet, by phone, or by fax or mail order.
40. The Sale of Liquor Act 1989 does not, however, explicitly deal with remote sales and not all requirements specified for an off-licence are relevant or practical for remote retailers.

Law Commission recommendations

41. The Commission recommends specific provisions for internet alcohol retailers [LC recs. 22 and 23]. Internet alcohol retailers would be required to:
- display their licence on their website as well as at the physical premises;
 - make purchasers declare that they are over the legal alcohol purchase age and explain clearly the consequences of making a false representation of age to a licensee, manager or employee; and
 - accept credit card payment as the only method of purchase by members of the public.⁷⁵
42. Internet alcohol retailers would be exempt from:
- the national maximum trading hours requirements, but deliveries should not be permitted before 6am or after 10pm;⁷⁶
 - the requirement that an off-licence must display its opening hours at its physical premises; and
 - the requirement for a manager to be on duty at all times when alcohol is being sold.
43. The prohibited days would not apply to the remote sale of alcohol. However, the supply (delivery) would not be allowed to occur on the prohibited days, as is the case at present.

⁷⁵ This approach is recommended to reduce the opportunity for people under the purchase age to purchase alcohol remotely.

⁷⁶ This approach is recommended because receipt of alcohol purchased remotely cannot be instantaneous and the hours restrictions are intended to deter accessibility whilst drinking.

44. In all other ways internet and other alcohol retailers operating remotely would have the same requirements as other off-licences.

Proposed response

45. **I recommend accepting the Commission's proposals for internet alcohol retailers, and extending their application to all remote alcohol sales, including phone and mail order sales (recommendations 68 to 71).**
46. **I recommend rejecting the proposed requirement that credit card payment be the only acceptable method of purchase for remote sales (recommendation 68).** This proposal may be ineffective because people under 18 years may legitimately obtain credit cards. In addition, there are other types of payment methods for remote selling in common usage, so the requirement would be an excessive restriction for some people.
47. **I recommend that remote alcohol retailers also be required to display a manager's name and delivery days and hours on the sale medium (for example, their website, catalogue or brochure) and information on the alcohol purchase age (recommendation 68).**
48. **I recommend that, where the retailer does not undertake delivery of remotely purchase alcohol, the retailer be required to take reasonable steps to verify that a person of or over the purchase age accepts delivery of the alcohol (recommendation 69).**

Special licences

Context

49. Special licences are available for people who want to sell alcohol temporarily or intermittently or for licensees that want to sell alcohol outside of their standard licence conditions.
50. It is not always clear when a special licence is necessary and when it is not. This has led to varying practices around the country as to when a special licence is required. Some people are being required to obtain a special licence for occasions where alcohol is only being supplied and not sold.
51. The one-off nature of special licences means that appropriate scrutiny is not always carried out or appropriate conditions applied.
52. Furthermore, special licences are sometimes being obtained when a variation to a standard licence would be more appropriate.

Law Commission recommendations

53. The Commission recommends that the legislation clarify when a special licence is required by providing four categories of special licence: public events, private events at licensed premises, trade fairs and extended hours [LC rec. 78].

54. The Commission also recommends a range of requirements to improve the operation of special licences [LC recs. 79-86 – see Appendix 4 for details].
55. The Commission’s proposals would provide increased certainty to applicants and decision-makers about which situations must be governed by special licences. Importantly, the law would provide that after-ball parties would need a special licence where they supply alcohol and involve a fee or ticket for entry. In conjunction with the private supply proposals, the opportunities for people under the purchase age to drink at after-ball parties would be much more restricted than at present.

Proposed response

56. **I recommend largely accepting the Commission’s special licence recommendations (recommendation 76, 77, 78).**
57. **I recommend some additional or slightly different provisions for special licences than those proposed by the Commission, as follows:**
- **special licences should not be permitted between the hours of 4:00am and 8:00am, except for on Anzac Day as proposed by recommendation 61 or as provided for by LAPs (recommendation 59);**
 - **special licences should not be used to circumvent the general restrictions on selling alcohol on prohibited trading days, but should continue to be available on those days for genuine events or occasions (recommendation 79);**
 - **special licence applications should need to be submitted at least 20 working days before the date of the relevant event to allow for proper consideration of the application; this will be especially important for large events (recommendation 80);**
 - **District Licensing Committees should be authorised to accept urgent applications for a special licence for unforeseen circumstances, rather than only at funerals at clubs as proposed by the Commission (recommendation 81).**
58. **I recommend inviting the select committee to consider whether there should be provision for limited exceptions to the maximum national trading hours for special events (recommendation 62).**

Licence decision-making

Context

59. Those seeking a liquor licence currently apply to their local District Licensing Agency (DLA). The Sale of Liquor Act provides that each territorial authority is the DLA for its district. DLAs make decisions on special licences and unopposed licence applications and renewals, and are responsible for appointing liquor licensing inspectors who monitor compliance with liquor licensing.

60. DLAs are able to delegate many of their responsibilities to council committees or staff. As a result, there is wide variation in licensing processes around the country.
61. Opposed licence applications⁷⁷ are handled by the Liquor Licensing Authority. The Authority is a national tribunal administered by the Ministry of Justice. It is chaired by a District Court judge and includes lay members. The Authority makes decisions on contested licence applications and renewals, appeals from DLA decisions, and enforcement applications for variation, suspension or cancellation of a licence.

Law Commission recommendations for DLAs

62. The Commission recommends that the current system of DLAs be replaced with new District Licensing Committees (DLCs), which would operate as a committee of the territorial authority [LC rec. 39]
63. DLC membership would comprise one councillor selected for the task by the district council, and two members of the community appointed by the council [LC rec. 40]. If there are insufficient councillors, councils should be able to appoint a commissioner in place of the councillor on the DLC [LC rec. 41].
64. The Commission recommends both experience and appointment process requirements for the community members [LC recs. 42 and 43].
65. DLCs would consider all licence and managers' certificate applications in the first instance and determine applications by Police or inspectors for variation of licence conditions [LC rec. 44].
66. The Commission recommends that two districts should have the power to form a combined DLC if the workload would warrant this [LC rec. 45] and the statute should permit a DLC to delegate unopposed applications for managers' certificates and licence renewals to the Secretary of the DLC [LC rec. 46].
67. The Commission also recommends that all DLC members should receive training to enable them to undertake their functions properly [LC rec. 47] and that the statute should enable councils to have a pool of DLC members and to establish more than one DLC for its area, as needed [LC rec. 48]. This may be particularly appropriate for the new Auckland Council.
68. Any decision made by a DLC would be appealable to the national tribunal by anyone appearing before the DLC [LC rec. 57], as per the existing legislation.

Proposed response

69. **I recommend largely accepting the Commission's recommendations in relation to DLAs (recommendations 82, 85, 86, 88, 90).** They would improve the consistency of licence decision-making because all DLCs will have the same basic structure.

⁷⁷ Applications that are subject to an adverse report from a licensing inspector, member of the Police or Medical Officer of Health or objected to by an authorised member of the public.

70. I recommend varying the Commission's proposals as follows:

- District Licensing Committees should comprise three members. The chairperson should be a local councillor. The council should be authorised to select the other two members, either from the council or from elsewhere. This proposal will give councils greater flexibility to meet their local circumstances. Current members of the industry and enforcement agents should be prohibited from appointment to a DLC (recommendations 83 and 84);
- Applications by Police and licensing inspectors for variation of licence conditions should continue to be made to the Liquor Licensing Authority, to ensure consistency of enforcement decisions and allow flexibility in enforcement responses, such as a combination of variation and suspension of a licence (recommendation 99);
- Territorial authorities could share any non-councillor members, but each territorial authority would be required to operate a DLC that includes one of its councillors (recommendation 87);
- DLCs could not delegate any decision-making responsibilities because this could undermine the intention to create consistency. Administrative activities, such as licence notification and preparation of an application for decision, could be performed by council staff to reduce the workload of DLCs. The ultimate decision on an application should, however, be made by the DLC itself (recommendation 89).

Law Commission recommendations for licensing inspectors and Medical Officers of Health

71. In relation to inspectors, the Commission recommends that:

- inspectors be employed by the local authority [LC rec. 51];⁷⁸ and
- legislation explicitly provide that inspectors have independent statutory functions to report on licence applications, monitor licensed premises, educate licensees and managers and take enforcement action [LC recs. 52 and 53].

72. In relation to Medical Officers of Health, the Commission recommends that:

- they be forwarded all licence applications and be required to report if they have concerns relating to the proposed licence [LC rec. 50]. Currently, Medical Officers of Health are only forwarded applications for on-licences and club licences;⁷⁹

⁷⁸ Under the Sale of Liquor Act, liquor licensing inspectors are appointed by the councils themselves, which is unusual. Most appointments to local government positions are made by the chief executive of a territorial authority, or a delegated staff member. There is no particular reason for licensing inspectors to be appointed by the council.

⁷⁹ This proposal is supported by Medical Officers of Health.

- legislation provide for delegation of the Medical Officer of Health functions to designated health officers [LC rec. 54];⁸⁰ and
- legislation state that the functions of medical officers of health include education of licensees and collaborating with licensing inspectors and police on alcohol harm reduction strategies [LC rec. 55].

73. The Commission also recommends that the appeal fee should also be waived for enforcement officers to make the process easier for inspectors to bring an appeal and encourage enforcement action [LC rec. 58], but that inspectors should be required to first obtain leave to appeal from the Authority to ensure resources are not spent without proper cause [LC rec. 57].

Proposed response

74. **I recommend accepting the majority of the Commission's proposals in relation to liquor licensing inspectors and Medical Officers of Health (recommendations 93, 94, 95, 96).**

75. **I recommend clarifying that liquor licensing inspectors be employed and warranted by the *chief executives* of territorial authorities, which is usual practice (recommendation 92).**

76. **I also recommend that the appeal fee for Medical Officers of Health be waived and that inspectors not be required to obtain leave before appealing a decision (recommendation 91).** An additional requirement for an inspector to seek leave to appeal is not necessary and may hamper a decision to take a valid appeal.

Law Commission recommendations for the Liquor Licensing Authority

77. The Commission recommends that the Liquor Licensing Authority be replaced with a new Alcohol Regulatory Authority, the main functions of which would be to hear appeals from DLC decisions and enforcement applications for suspension or cancellation of licences [LC recs. 59 and 60].

78. The new Authority would also hear any appeals against local alcohol policies; monitor and report to Parliament on annual trends in its caseload and alcohol consumption, marketing trends and alcohol-related harm; make rulings on promotions; issue practice notices and guidelines; and monitor and audit the performance of DLCs [LC recs. 61 and 64].

79. The Commission proposes the Authority comprise of two District Court judges, with one judge sitting in Auckland and the other covering the rest of New Zealand [LC rec. 62]. An executive officer would be created to administer the Authority and carry out the policy work related to its expanded function [LC rec. 63].

80. The Commission recommends a general right of appeal to the High Court on the merits against a decision of the Authority [LC rec. 67].

⁸⁰ The Ministry of Health advises that feedback from some Medical Officers of Health indicates that they consider there could be some benefit in this proposal.

Proposed response

81. I generally agree with the Commission's recommendations for the Authority, but recommend some modifications (recommendations 97 to 103). I recommend the following approach:
- To avoid any confusion with the disestablished Auckland Regional Authority, I propose that the Authority be renamed the Alcohol Regulatory and Licensing Authority;
 - I recommend that trends in alcohol consumption and alcohol-related harm continue to be monitored by ALAC, rather than the Authority;
 - I recommend flexibility to appoint up to three District Court judges, if the workload warrants it;
 - Lay members should continue to be available to sit on the Authority. Lay members provide valuable support to the chairperson of the Authority, a community perspective for Authority decisions, and flexibility in scheduling;
 - I consider a right of appeal on the merits is appropriate for the enforcement decisions of the Authority, but not the adjudicative decisions on appeals from the DLCs. An appeal on the merits against adjudicative decisions would give parties three opportunities to have the case heard, which is unnecessary. I propose appeals against adjudicative decisions of the Authority be limited to points of law.
82. I do not support the Commission's proposal to allow the Authority to give an advance ruling on whether a planned promotion would comply with the law, with subsequent protection for the licensee from prosecution. This would jeopardise enforcement possibilities, as well as the Authority's core adjudicative role, if irresponsible or dangerous consumption did ensue because of the promotion.

Licence notification

Context

83. Applicants for a liquor licence must currently submit a range of information and give public notice of the application (for on-, off- and club licences). Applicants are required to publish a notice of the application, variation or renewal in the local newspaper on two occasions within 20 days of filing the application. The applicant must also affix a notice within 10 working days after filing the application, near or on the proposed site, unless the DLA deems that it would be impracticable or unreasonable to do so. Applicants for special licences are not generally required to publish a notice of the application in the local newspaper, but may need to attach a site notice to the premises.
84. The public notification requirements impose sizeable compliance costs on licence applicants and licence holders. There is evidence to suggest they are not working effectively. These days many people do not read the public notices

section of the newspaper and therefore do not become aware of an application, or become aware of it too late to make an objection. The prescribed premises notices are also not always easily seen.

Law Commission recommendations

85. The Commission recommends the following changes to licence notification requirements:
- On receipt of an application for a licence, the DLC should publish the application on a designated website, notify residents within 200m of the proposed premises and require the applicant to affix a notice in the prescribed form to the proposed site [LC rec. 49]. The current requirement for newspaper advertisements would be repealed;⁸¹
 - Licence renewal applications should be published on the applicable DLC website, and a physical notice in a prescribed form should be affixed to the premises [LC rec. 72];
 - DLCs should continue to have the discretion to decide whether a special licence application needs to be publicly notified [LC rec. 86].

Proposed response

86. **To future-proof the legislation, I recommend that licence notification requirements be set through regulations (recommendation 104).** Further consideration needs to be given to the most suitable form of notice. While internet services are becoming more accessible and reliable, newspapers are still an important information source for many people.
87. **I recommend accepting the proposal that applicants always be required to affix a notice on the proposed site or premises, except for special licences where this requirement would be discretionary (recommendation 106).**
88. **I recommend that the timeframe for making an objection be extended from 10 to 15 working days from the date of publication. This will provide a greater opportunity for authorised persons to lodge an objection (recommendation 107).**
89. **I do not recommend any changes to who may to object to a licence application. The 1989 Act allows any person who has a greater interest in the application than the public generally to object to the granting, variation or renewal of a licence. Case law indicates that the existing provision is wide enough to capture those with a legitimate interest, including residents and schools in the immediate area. The real problem appears not to be who can lodge an objection, but the grounds on which an objection can be made. This is being addressed through the proposal to broaden licence criteria.**

⁸¹ The cost of the proposed requirements should be less than the existing newspaper advertisement requirements.

Licensing trusts

90. Licensing trusts have been part of the sale of alcohol in New Zealand since 1944. The number of licensing trusts that retain the sole right to establish and operate on-licences in hotels and taverns and off-licences has reduced to four.
91. The Commission recommends one minor change to the provisions concerning licensing trusts [LC rec. 95]. That recommendation is that a petition to remove the monopoly right of a licensing trust should be submitted to the Regulatory Authority, rather than a licensing trust.
92. There are a number of minor and technical issues relating to licensing trusts. **I recommend that officials are invited to report to the Cabinet Legislation Committee on any changes required to modernise the licensing trust provisions, including the Commission's proposal (recommendation 118).**

Definition of intoxication

Context

93. The Sale of Liquor Act does not define "intoxication". The question of whether to include a definition was considered during the 1997 review of the Act. It was decided not to include a definition because of Police and other agencies' concerns at the time about opportunities that a definition might create for challenge in court.⁸² Including a definition of intoxication in the legislation would, however, provide greater guidance than is currently available to licensees, managers and staff about the scope of their obligations, and would assist with enforcement.

Law Commission recommendations

94. The Commission recommends adopting a statutory definition of "intoxication" using the definition of "intoxicated" in the Policing Act 2008 [LC rec. 110].
95. The definition of "intoxicated" in the Policing Act 2008 (section 36) applies for the purposes of empowering Police to detain intoxicated people who are in need of care and protection. It provides:
...intoxicated means observably affected by alcohol, other drugs, or substances to such a degree that speech, balance, co-ordination, or behaviour is clearly impaired.
96. This definition makes it clear what level of intoxication will apply to relevant offences without giving rise to an unacceptable risk of legal challenge. It also means that staff are not required to assess what has caused the intoxication (alcohol or other drugs), which is difficult to do on the spot.
97. The Commission further proposes that the new Authority should be required, by statute, to issue public guidelines to assist in determining whether a patron of licensed premises is intoxicated [LC rec. 111].

⁸² New Zealand Liquor Review Advisory Committee (1997) *Liquor Review: Report of the Advisory Committee*. Wellington: New Zealand Liquor Review Advisory Committee.

Proposed response

98. **I recommend accepting the Commission's proposals for a definition of intoxication (recommendations 100 and 142).**

Banning products

99. There is no power in legislation to ban undesirable alcohol products.

Law Commission recommendation

100. The Commission recommends that a power to ban products be included in the legislation [LC rec. 143]. A product could be banned by the Minister of Justice on the advice of the Expert Advisory Committee on Drugs that a product or class of product is undesirable because it is particularly dangerous to health; is targeted at or particularly attractive to minors; or encourages irresponsible, rapid or excessive consumption of the product [LC rec. number 143].
101. Examples of products that have been banned in Australia under similar provisions include alcoholic ice-blocks, alcoholic aerosol products, alcoholic milk and alcoholic vapour. Of these, milk-based ready-to-drink beverages are currently available in New Zealand and alcoholic ice-blocks have been available. The United States' Food and Drug Administration has asked manufacturers of drinks containing alcohol and caffeine to supply scientific evidence that the drinks are safe, and will consider whether such drinks should be banned if no evidence is produced. Alcoholic drinks containing caffeine are currently available in New Zealand.

Proposed response

102. **I agree that there should be a power to ban undesirable alcohol products according to legislative criteria, including effects on health or attractiveness to minors.** A ban would cover manufacture in New Zealand, importation for retail sale or sale and supply of a product in New Zealand.
103. **I would prefer a more flexible advisory function and recommend that the legislation simply provides that the Minister of Justice may ban a particular alcohol product or class of product, in consultation with the Minister of Health.** Ministers would make decisions on the advice of officials, which may include the view of the Expert Advisory Committee on Drugs.
104. **I consider that the Minister of Justice is the appropriate lead Minister, because the legislation falls within that Minister's portfolio responsibilities. Health is a major consideration in banning products, which is why I recommend requiring the Minister of Health to be consulted, but it is not the only relevant consideration (recommendation 181).**

RTDs

105. RTDs are pre-packaged, 'ready-to-drink' alcoholic beverages pre-mixed with non-alcoholic beverages. They are also known as alcopops or FABs (flavoured alcoholic beverages). RTDs are usually spirit-based, but wine-based and beer-based RTDs are also available.
106. Submissions to the Commission demonstrated strong concern about the appeal of RTDs to young people and the risk that these types of drink encourage young people to begin drinking alcohol at an earlier age due to their often sweet taste.
107. Research identifies that 14 to 17 year olds and 18 to 24 year olds are the most frequent drinkers of RTDs.⁸³ A 2005 Australian study found that a large proportion of young adolescents felt that RTDs were packaged to appeal to them.⁸⁴ Research is not conclusive, however, on an association between RTDs and earlier onset of drinking or harmful drinking.
108. The strength of RTDs sold in New Zealand varies from about 5% to 15% per single serve container (though some are as high as 20%), with the majority falling within the 5-6% range. Some pre-mixed drinks are sold in large volume vessels (for example, three litre casks), and therefore contain a high number of standard drinks.
109. On-licences, club licences and certain off-licences may sell spirit-based RTDs. Supermarkets and grocery stores are limited to selling wine, beer cider and mead.
110. While RTDs are generally more expensive on a per alcohol unit basis than beer or wine, their sale individually or in small packs means that they are accessible and desirable to young people.

Law Commission recommendations

111. The Law Commission did not make any specific recommendations about RTDs. It discounted a specific tax or ban on RTDs on the basis that this would likely lead to the development of alternative products or product switching (such as a switch to straight spirits mixed with other beverages by the consumer) and therefore would not reduce problematic alcohol consumption and subsequent harm.
112. The Commission envisaged its proposal for a regulation-making power to prohibit undesirable alcohol products could be used to ban particular RTD products if they were shown to create an unreasonable risk of harm.

⁸³ T Huckle, P Sweetsur, S Moyes and S Casswell (2008) "Ready to drinks are associated with heavier drinking patterns among young females" In *Drug and Alcohol Review* 27: 398.

⁸⁴ J Copeland, P Gates, D Stevenson and P Dillon (2005) *Young People and Alcohol: Taste Perceptions, Attitudes and Experiences, NDARC Technical Report No. 241*, Sydney: National Drug and Alcohol Research Centre.

Proposals

113. I consider that there is scope to limit the risk of harm posed, particularly to young people, by RTD beverages.
114. **I recommend introducing a maximum permitted alcohol content by volume for RTDs of 5% (recommendation 182).** This would mean that RTDs would be a lower-strength alcoholic beverage, on par with most beers, and would therefore reduce the risk of harm posed by these drinks when consumed in a moderate way. This proposal will have an impact on industry, given that a sizeable proportion of RTDs have an alcoholic strength greater than 5%.
115. **I also recommend introducing a maximum limit of 1.5 standard drinks per container for RTDs (recommendation 183).** This proposal will mean that large volume RTDs would be prohibited, thereby reducing the risk of excessive consumption of RTD drinks. There will be some impact on industry because large RTD containers (such as large bottles and casks) would likely need to be removed or have the alcohol strength reduced.
116. I note that there may be difficulties in defining RTD products as opposed to standard beer, wine and spirit products. It may be necessary to report to Cabinet further on this matter.

Appendix 3: Non-legislative proposals

1. The Commission makes some recommendations that do not require legislative change. These predominantly relate to treatment services but also cover training and collaboration for people working in the licensing system and population-level education.

Treatment

2. In relation to treatment services, the Commission identifies a lack of access to quality treatment across the spectrum of care because of service gaps and poorly defined systems and mechanisms of governance. The Commission's treatment recommendations are set out in full in Appendix 4 [LC recs. 147-153].
3. In summary, the Commission recommends that:
 - Key principles be adopted to underpin any changes to the alcohol addiction treatment system [LC rec. 147];
 - The Ministry of Health and Mental Health Commission be supported to develop a blueprint for addiction service delivery for the next five years [LC rec. 148];
 - A National Mental Health and Addictions Helpline be considered [LC rec. 149];
 - A policy be adopted requiring district health boards to develop care pathways [LC rec. 150];
 - Proceeds of the recommended increase in alcohol excise tax be applied to spending on alcohol treatment services and training [LC rec. 151];
 - Relevant sectors work together to develop local strategies for managing intoxicated people [LC rec. 152];
 - Section 65 of the Land Transport Act 1998 and associated services be reviewed [LC rec. 153].
4. Activity in the areas of many of the recommendations is already underway.

Proposed response

5. **I recommend that further work on the treatment recommendations be actioned by the Ministry of Health, reporting directly to the Minister of Health (recommendations 6 and 7).** The Ministry of Health supports this approach. In particular, the Ministry of Health has received instructions from the Minister of Health to lead the work on developing a blueprint for addiction service delivery. Implementation will be managed within baselines.
6. No action is required on the Commission's recommendation for a national mental health and addictions helpline [LC rec. 149] because the Alcohol Drug Helpline is already in place.

7. The Commission's recommendation concerning the application of additional excise tax proceeds to spending on alcohol treatment services and training is subject to Cabinet's decision on the broader excise tax recommendation [LC rec. 100].

Training and collaboration

8. The Commission makes the following training-related recommendations:
- All District Licensing Committee members should receive training [LC rec. 47];
 - Local Government New Zealand should consider requiring training for liquor licensing inspectors [LC rec. 56];
 - The Hospitality Standards Institute or other appropriate body should review both the content of unit standards required for managers' certificates and the rigour with which the unit standards are taught and tested [LC rec. 73].
9. The Commission also makes the following collaboration recommendations:
- All agencies should allocate adequate resources to ensure that effective liquor licensing collaboration is possible when implementing new legislation [LC rec. 129];
 - A nationwide shared information system on liquor licensing should be developed [LC rec. 130];
 - Territorial authorities should collect data so that changes in the nature and extent of alcohol-related harm in the area can be monitored and evaluated [LC rec. 131].

Proposed response

10. **I recommend that further work be done on the training and collaboration proposals (recommendation 8).** Most of them will require follow up with other organisations. I seek authorisation from Cabinet for the Minister of Justice to make the final determination on these recommendations, contingent on implementation being achievable within existing funding (recommendation 9).

Education

11. The Commission makes three recommendations in the area of education:
- The national marketing role of ALAC should continue [LC rec. 144];
 - The Ministry of Education should encourage school boards of trustees to organise drug and alcohol education programmes that meet the needs of their communities [LC rec. 145];
 - The multiple processes under way for considering the labelling of alcohol products should continue [LC rec. 146].

Proposed response

12. **I recommend accepting the proposals relating to education (recommendation 10).**
13. Law Commission recommendations 144 and 146 do not require any new action.
14. In relation to recommendation 145, action is already underway. The Ministry of Education has made available to all schools and boards of trustees a resource called "*Promoting Student Health and Wellbeing: A guide to drug education in schools*". The resource is intended for school boards of trustees, principals and teachers of drug education within the context of the health and physical education curriculum. The guide provides information and guidance for schools on developing and implementing drug education programmes. It also outlines how these programmes are supported by a whole-school approach to promoting health and wellbeing that links to wider school communities.

Appendix 4: Recommendations from the Law Commission’s Report *Alcohol in our Lives: Curbing the Harm* and proposed response

CHAPTER 5 - REGULATING THE SALE AND SUPPLY OF ALCOHOL			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R1	<p>The Sale of Liquor Act 1989 should be repealed and replaced by a new Act called the Alcohol Harm Reduction Act.</p> <p>Rationale: Existing Act is complex and confusing in places; additional changes would exacerbate that and an amendment bill would be difficult to follow; proposed title reflects new approach.</p>	<p>Partially accept.</p> <p>Introduce an omnibus “Alcohol Reform Bill”. New Act to be called the Sale and Supply of Alcohol Act.</p>	Ministry of Justice
R2	<p>The new alcohol legislation should include the following object provision:</p> <p><i>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:</i></p> <ul style="list-style-type: none"> <i>(a) Encourage responsible attitudes to the promotion, sale, supply and consumption of alcohol;</i> <i>(b) Contribute to the minimisation of crime, disorder and other social harms;</i> <i>(c) Delay the onset of young people drinking alcohol;</i> <i>(d) Protect and improve public health;</i> <i>(e) Promote public safety and reduce public nuisance; and</i> <i>(f) Reduce the impact of the harmful use of alcohol on the Police and public health resources.</i> <p>Rationale: Existing definition is imprecise and has a narrow focus.</p>	<p>Accept in general.</p> <p>Broaden the object of the legislation to focus on minimising alcohol-related harm, including crime, disorder and public health problems.</p>	Ministry of Justice
R3	<p>The definition of “alcohol” in the new legislation should be:</p> <p><i>Alcohol means any fermented, distilled, or spirituous liquor (including spirits, wine, ale, beer, porter, honey mead, stout, cider, and perry) that is found on analysis to contain 1.15 percent or more alcohol by volume.</i></p> <p>Rationale: The term “alcohol” is more commonly used than the term “liquor”.</p>	<p>Accept.</p> <p>Note connection to R87.</p>	Ministry of Justice

CHAPTER 7 - LICENCE CRITERIA

Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R4	<p>Every local authority should be required to adopt a local alcohol policy.</p> <p>Rationale: Provides a mechanism for all communities to have a say in licensing decisions. Compare SSLLE Bill: <i>Local authorities may voluntarily adopt a local alcohol plan.</i></p>	<p>Partially accept. Local authorities may voluntarily adopt a local alcohol policy.</p>	<p>Ministry of Justice, Local Government New Zealand</p>
R5	<p>In preparing the proposed policy, councils should consult with local iwi and hapū, Police, liquor licensing inspectors, Medical Officers of Health and any other persons they consider appropriate.</p> <p>Rationale: Territorial authorities would not necessarily hold all the information needed to develop a policy. Compare SSLLE Bill: <i>No equivalent provision.</i></p>	<p>Accept.</p>	<p>Local Government New Zealand, Police, Ministry of Health</p>
R6	<p>Public consultation on the proposed policy should be undertaken pursuant to the special consultative procedure (in section 83 of the Local Government Act 2002).</p> <p>Rationale: A matter as significant as alcohol requires a sufficient consultation process. Compare SSLLE Bill: <i>Equivalent provision.</i></p>	<p>Accept.</p>	<p>Local Government New Zealand</p>
R7	<p>Local alcohol policies should be required to include:</p> <ul style="list-style-type: none"> - 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 in the district; - permitted areas for licensed premises; - areas, if any, subject to liquor ban bylaws; and - a local process for managing intoxicated people in public places through collaboration of Police, ambulance and health services. <p>Rationale: To reduce the risk of wide variation in alcohol availability in different districts, the statute would set out matters that must be included. Compare SSLLE Bill: <i>No mandatory content; wider range of discretionary content.</i></p>	<p>Partially accept. Allow local alcohol policies to include permitted areas for licensed premises, but not make this mandatory because district plans already provide for zoning restrictions. Local processes for managing intoxicated persons would also be discretionary.</p>	<p>Ministry of Justice, Local Government New Zealand</p>

R8	<p>Local alcohol policies may include:</p> <ul style="list-style-type: none"> - a strategy for reducing alcohol-related harm in the district; and/or - 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). <p>Rationale: To reduce the risk of wide variation in alcohol availability in different districts, the statute would set out matters that may be included.</p> <p>Compare SSLLE Bill: <i>Wider range of discretionary content.</i></p>	<p>Partially accept.</p> <p>Local alcohol policies may restrict or extend the national maximum trading hours for licensed premises.</p>	<p>Ministry of Justice, Local Government New Zealand</p>
R9	<p>Local alcohol policies should be renewed at least every six years, in conjunction with every second long term community plan in the relevant area.</p> <p>Rationale: Ensures policies continue to be appropriate and avoids unnecessary costs.</p> <p>Compare SSLLE Bill: <i>No equivalent provision.</i></p>	<p>Accept.</p> <p>Note that local alcohol policies could be renewed in conjunction with any process that uses the special consultative procedure or on their own.</p>	<p>Local Government New Zealand</p>
R10	<p>Two or more territorial authorities should be able to develop a joint proposed policy for their combined districts.</p> <p>Rationale: Caters for smaller territorial authorities.</p> <p>Compare SSLLE Bill: <i>No equivalent provision.</i></p>	<p>Accept.</p> <p>Note that local alcohol policies could be tailored to meet different needs of different areas within its applicable district.</p>	<p>Local Government New Zealand</p>
R11	<p>Once a policy has been consulted on and agreed by the local authority, those who submitted on the policy should be able to appeal aspects of it to the new Alcohol Regulatory Authority.</p> <p>Rationale: Ensures a degree of national consistency and quality control in local alcohol policies.</p> <p>Compare SSLLE Bill: <i>No equivalent provision.</i></p>	<p>Accept.</p>	<p>Local Government New Zealand</p>
R12	<p>Resource Management Act and Building Code approvals for proposed licensed premises should continue to be a prerequisite for consideration of a licence application.</p> <p>Rationale: Important that proposed licensed premises comply with the relevant district plan in terms of permitted land use, just as any other business is required to do.</p>	<p>Accept.</p>	<p>Local Government New Zealand</p>

R13	<p>When considering any licence application, licensing decision-makers should be required to take into account:</p> <ul style="list-style-type: none"> - whether the applicant is a suitable person; - the object of the Act; - the provisions of the relevant local alcohol policy; - whether the amenity or good order of the locality would be lessened by granting the licence; and - whether the applicant has the appropriate systems, staff, and training to comply with the law and manage the risks. <p>Rationale: Enables the object of the Act and the impact on the community to be considered in licence decision-making.</p> <p>Compare SSLLE Bill: Adds the provisions of an applicable local alcohol policy to criteria.</p>	Accept.	Local Government New Zealand, Ministry of Justice
R14	<p>Where existing licensed premises are inconsistent with a new local alcohol policy, conditions should be imposed to reduce the inconsistency to the extent possible.</p> <p>Rationale: Enables the policy to be achieved as far as possible.</p> <p>Compare SSLLE Bill: Licences that cannot be made consistent through conditions will not be granted or renewed.</p>	Accept. Location restrictions should not apply to existing licensed premises.	Local Government New Zealand
CHAPTER 8 - NEW CRITERIA FOR SELLING TAKEAWAY ALCOHOL			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R15	<p>The types of premises eligible for an off-licence should be reduced to:</p> <ul style="list-style-type: none"> - specialist alcohol retailers or manufacturers - a food retailer where food, excluding confectionary, ice-cream, soft drinks or ready-to-eat or takeaway 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 licensed club). <p>Rationale: Provides greater certainty for off-licence eligibility and should reduce off-licence proliferation.</p> <p>Compare SSLLE Bill: Grocery stores with a floor area of less than 150m² not eligible for an off-licence.</p>	Partially accept. Specify “grocery retailer” (including supermarkets) instead of “food retailer”. Legislative guidance to be provided on the definition of grocery retailer. Complementary off-licence category to be retained, subject to prescribed conditions and a regulation-making power to exclude specific types of retailers.	Ministry of Justice

R16	<p>Any other type of retailer should be eligible for an off-licence if no other off-licence retailer is reasonably available to the public and the grant of the licence would not encourage alcohol-related harm.</p> <p>Rationale: Allows reasonable access for rural and remote communities.</p> <p>Compare SSLLE Bill: <i>Similar provision for small grocery stores in rural or isolated areas.</i></p>	Accept.	Ministry of Justice
R17	<p>The legislation should expressly prohibit service stations and take-away food outlets from being eligible for an off-licence.</p> <p>Rationale: Service stations are inappropriate given the risks associated with alcohol and driving. Takeaway food outlets are often frequented by unsupervised minors and the risk of outlet proliferation would be too great.</p>	Accept.	Ministry of Justice
R18	<p>Only specialist alcohol retailers or manufacturers and premises for which an on-licence is held should be able to sell spirits or RTDs under an off-licence. To be a specialist alcohol retailer, a store should be required to have the sale of alcohol as its principal business. The legislation should allow specialist alcohol retailers also to sell some food and other products. However, if the amount of food products in a specialist alcohol retailer is more than minimal, it will not be permitted to sell spirits and RTDs. Also, the stocking of non-food product lines needs to be consistent with and supplementary to a store's status as a specialist alcohol retailer.</p> <p>Rationale: Alcohol is not an ordinary commodity and it minimises risk of harm for sale of spirits and spirit-based drinks to be restricted to specialty alcohol stores.</p>	Accept.	Ministry of Justice
R19	<p>A specialist alcohol retailer within a supermarket or grocery store should only be able to sell wine, beer and mead.</p> <p>Rationale: The potential for alcohol-related harm resulting from opening the spirits market up to supermarkets through the use of stores within stores.</p> <p>Compare SSLLE Bill: <i>Restricts the range of alcohol that may be sold in premises with an off-licence that are within a shop, or adjacent to a supermarket and under the same management as the supermarket, to what may be sold by a supermarket (wine, fruit wine, beer and mead).</i></p>	Accept.	Ministry of Justice
R20	<p>Supermarkets should be required to keep liquor in one place on the premises as a condition of their licence. This will prevent supermarkets placing alcohol at the end of aisles, in doorway entrances and among other goods.</p> <p>Rationale: The placement of alcohol in supermarkets is of concern because it impacts upon its price and availability through encouraging high volumes of sales. The restriction will minimise exposure and normalisation of alcohol for young people.</p>	<p>Reject.</p> <p>Would unduly impede the right of supermarkets to manage their own business and risks single area being in a prominent location. See also R27.</p>	Ministry of Justice

R21	Caterers should be required to obtain an on-licence rather than an off-licence, but the law relating to caterers should otherwise remain unchanged. Rationale: The sale of alcohol by caterers is more akin to the activity of an on-licence than on off-licence.	Accept.	Ministry of Justice
R22	Internet alcohol retailers should be required to: <ul style="list-style-type: none"> - display their licence on their website as well as their physical premises - make purchasers declare that they are over the legal alcohol purchase age and explain clearly the consequences of making a false representation of age to a licensee, manager or employee; and - accept credit card payments as the only method of purchase by members of the public. Rationale: Adequate safeguards are required to prevent harm arising from the remote sale of alcohol.	Partially accept. Reject the recommendation to only allow credit card sales.	Ministry of Justice
R23	Internet alcohol retailers should be exempt from: <ul style="list-style-type: none"> - the national maximum trading hours requirements, but deliveries should not be permitted before 6am or after 10pm - the requirement that an off-licence must display its opening hours at its physical premises - the requirement for a manager to be on duty at all times when alcohol is being sold Rationale: Due to the type of business remote sellers are operating, special requirements and exemptions are required.	Accept.	Ministry of Justice
CHAPTER 9 – CONDITIONS ON LICENCES			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R24	Mandatory statutory conditions placed on on-licence and club premises should include: <ul style="list-style-type: none"> - the provision of food - the sale and supply of low alcohol beverages and soft drinks - the provision of free drinking water - the provision of assistance with, or information about, alternative forms of transport Rationale: These conditions are important tools for reducing alcohol-related harm and should therefore apply to all on-licences and club licences.	Accept.	Ministry of Justice

R25	<p>Discretionary conditions to be imposed on any licence depending on the circumstances should include (in addition to specified existing conditions):</p> <ul style="list-style-type: none"> - the use of CCTV cameras, including requirements for their location and number - the provision of seating - no serving in glass containers at specified times - the number of door staff required - no shots or particular types of drinks to be served after specified times - a limit on drink sizes after specified times - restrictions on permitted drinking vessels - no alcohol service for a specified time before the closing of a licensed premises - conditions relating to management, for example, with a requirement for multiple managers at large establishments - the provision of transport for patrons. <p>Rationale: The list identifies specific areas where conditions have been shown to assist harm minimisation or improve enforcement, but which would impose an unnecessary burden on some licensees if made mandatory for all.</p>	<p>Partially accept.</p> <p>Legislation should include an enabling provision as per recommendation 28. Guidelines should be developed on the types of conditions that are suitable to address particular risks as per recommendation 29.</p>	Ministry of Justice
R26	<p>For off-licences, there should be a mandatory condition for specialist liquor stores to be designated as supervised areas, and a discretionary power to impose conditions relating to lighting and security measures (in addition to specified existing conditions).</p> <p>Rationale: Will reduce exposure of young people to alcohol and increase the security measures for licensed premises.</p>	<p>Reject.</p> <p>Designation of specialist liquor stores should remain discretionary. The other matters could be covered by discretionary conditions.</p>	Ministry of Justice
R27	<p>For supermarkets there should be a mandatory condition to only allow alcohol to be offered for sale in a single area.</p> <p>Rationale: The placement of alcohol in supermarkets is of concern because it impacts upon its price and availability through encouraging high volumes of sales. The restriction will minimise exposure and normalisation of alcohol for young people.</p>	<p>Reject.</p> <p>Would unduly impede the right of supermarkets to manage their own business and risks single area being in a prominent location. See also R20.</p>	Ministry of Justice
R28	<p>The licensing decision-makers should be able to impose any reasonable condition designed to minimise harm on all licences.</p> <p>Rationale: Enables conditions to be tailored to particular risks posed by a particular licence.</p>	<p>Accept.</p>	Ministry of Justice

R29	<p>The new Alcohol Regulatory Authority should issue guidelines on the types of conditions that are suitable to address particular risks.</p> <p>Rationale: Will facilitate consistency across the country.</p>	<p>Accept.</p> <p>The guidelines should be developed by the Ministry of Justice and approved by the Authority prior to release.</p>	Ministry of Justice
R30	<p>There should be a power to consult and make regulations concerning the provision of point of sale information about the alcohol unit content of drinks and health information.</p> <p>Rationale: Designed to help people make informed choices about levels of alcohol consumption.</p>	<p>Accept.</p>	Ministry of Justice
R31	<p>Off-licences should be required to close no later than 10pm and not reopen until 9am.</p> <p>Rationale: Will reduce availability by preventing 24-hour trading and reduce opportunities for young people to gain access to alcohol before school starts.</p>	<p>Partially accept.</p> <p>Trading hours for off-licences should be 7am to 11pm.</p>	Ministry of Justice
R32	<p>On-licences and licensed clubs should be required to close no later than 4am, with a mandatory one-way door from 2am, and not reopen until 9am. The one-way door requirement means people cannot enter after 2am but do not have to leave until 4am or the premises' closing time, whichever is earlier.</p> <p>Rationale: Will reduce availability by preventing 24-hour trading and prevent a large number of people leaving bars and nightclubs at the same time.</p>	<p>Partially accept.</p> <p>Start time should be 8am rather than 9am.</p> <p>One-way door will be a discretionary condition.</p>	Ministry of Justice
R33	<p>The legislation should refer to the Gambling Act 2003 exception to the national maximum hours for casinos.</p> <p>Rationale: Will provide a clear reference to other relevant legislative provisions.</p>	<p>Accept.</p>	Ministry of Justice
R34	<p>When setting the trading hours for a licence, the licensing decision-makers should not be able to set maximum trading hours that are greater than the national maximum hours.</p> <p>Rationale: Permitting some areas to have later closing times would incentivise the transference of harm to those areas with longer opening hours.</p>	<p>Partially accept.</p> <p>Licensing decision-makers must have regard to local alcohol policies, which will be able to restrict or extend the national maximum trading hours for licensed premises.</p>	Ministry of Justice
R35	<p>Territorial authorities should have the discretion to restrict hours further than the national maximum hours under local alcohol policies.</p> <p>Rationale: Local views should be able to shape decisions on opening hours to reflect the particular issues of local areas.</p>	<p>Accept.</p> <p>Local alcohol policies will be able to restrict or extend the national maximum trading hours for licensed premises.</p>	Ministry of Justice

R36	All sales of alcohol at an off-licence should be prohibited on Good Friday, Easter Sunday, Christmas Day, and on Anzac Day prior to 1pm. Rationale: Licence conditions on prohibited days should reflect the general law relating to business in New Zealand.	Accept. Note that remote sales over the internet etc would be an exception. Alcohol could be sold, but not delivered, on prohibited days.	Ministry of Justice
R37	Sales of alcohol at any on-licence or licensed club on a prohibited day should only be authorised if the alcohol is sold and supplied in association with the eating of a meal. Alcohol should be considered to be sold and supplied in association with the eating of a meal if it is provided to a consumer after they order a meal and before they finish eating the meal, or within one hour before they order the meal or after they finish the meal. Rationale: Requiring that alcohol can only be served with a meal encourages responsible drinking on these days.	Partially accept. The existing provisions applying to club licences on prohibited days should continue with no change, allowing alcohol to be sold and supplied without a requirement that the purchaser must be dining.	Ministry of Justice
R38	On prohibited days on-licences should be able to remain open until their usual closing time in the night before the prohibited day, but must remain closed for a 24 hour period from this time. Rationale: Provides for less disruption to businesses without undermining the concept of a prohibited day.	Reject. Would require amendment to shop trading legislation.	Ministry of Justice

CHAPTER 10 - LICENSING BODIES

Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R39	District Licensing Agencies should be replaced with new District Licensing Committees (DLCs). Rationale: Provides for more consistent decision-making structures, reflects the operating practices of territorial authorities.	Accept.	Ministry of Justice
R40	The membership of each DLC should consist of a councillor selected for the task by the district council, and two members of the community appointed by the council. Rationale: The use of community members will alleviate demands on councillors' time, while ensuring councils remain close to decision-making.	Partially accept. Require DLCs to have three members, one of whom is a local councillor, but give councils the flexibility to determine the remaining membership.	Ministry of Justice
R41	If there are insufficient councillors, councils should be able to appoint a commissioner in place of the councillor on the DLC. Rationale: Some councils may have an exceptionally high work load, which would overburden a councillor. A similar approach is used in the resource management context.	Accept.	Ministry of Justice

R42	<p>The process for appointment of community members should be publicly advertised, and the selection of community members should be undertaken in consultation with the Police, liquor licensing inspectors and Medical Officers of Health.</p> <p>Rationale: Will provide transparency in the process.</p>	Refer to R40.	Ministry of Justice
R43	<p>There should be a requirement for community members to have particular knowledge and experience in areas specified in statute, such as:</p> <ul style="list-style-type: none"> - public health; - the social issues of the particular community in which the DLC is situated; - the liquor industry (but not be currently participating in this); - law enforcement (but not be currently participating in this); or - legal or regulatory matters. <p>Rationale: Ensures a relevant range of knowledge and experience for decision-making.</p>	Refer to R40.	Ministry of Justice
R44	<p>The functions of DLCs should be to:</p> <ul style="list-style-type: none"> - consider and determine all applications for licences - hold hearings on all opposed applications - impose conditions on successful licence applications in accordance with the statute and any national guidelines - determine applications for managers' certificates - process or determine licence renewals under a new streamlined process - consider and determine variations to licence conditions upon application by a liquor licensing inspector - gather information, monitor and keep records on licences within the district - report regularly to the new Alcohol Regulatory Authority <p>All DLC members should receive training to enable them to undertake their functions properly.</p> <p>Rationale: Increases the functionality of DLCs and the ability of local authorities to take ownership of local alcohol issues.</p>	<p>Partially accept.</p> <p>All enforcement matters, including variations of licence conditions, should be managed by the national tribunal for consistency purposes.</p>	Ministry of Justice
R45	<p>Two districts should have the power to form a combined DLC if the workload would warrant this.</p> <p>Rationale: Would foster more efficient use of resources.</p>	<p>Partially accept.</p> <p>Each territorial authority would need to appoint a responsible councillor.</p>	Ministry of Justice

R46	<p>The statute should permit a DLC to delegate unopposed applications for managers' certificates and licence renewals to the Secretary of the DLC, which should be a full-time position.</p> <p>Rationale: Enables the DLC to consider the most important applications without becoming overloaded.</p>	<p>Reject.</p> <p>All decision-making responsibility should sit with the DLC.</p> <p>Administration could be delegated.</p>	Ministry of Justice
R47	<p>All DLC members should receive training to enable them to undertake their functions properly.</p> <p>Rationale: Ensures members are well equipped to undertake their functions.</p>	<p>Accept in principle.</p>	Ministry of Justice
R48	<p>The statute should enable councils to have a pool of DLC members and to establish more than one DLC for its area, as needed.</p> <p>Rationale: Provides flexibility for the larger caseloads of certain DLCs and enables DLCs operating in smaller territorial authorities to share community members.</p>	<p>Accept.</p>	Ministry of Justice
R49	<p>On receipt of an application for a licence, the DLC should publish the application on a designated website, notify residents within 200m of the proposed premises and require the applicant to affix a notice in the prescribed form to the proposed site.</p> <p>Rationale: Ensures the people most likely to be most affected by new licensed premises become aware of the application and have an opportunity to be heard.</p>	<p>Partially accept.</p> <p>Further consideration required.</p> <p>Accept that applicants should affix a notice to the site. Other notification requirements should be specified in regulations.</p>	Ministry of Justice
R50	<p>All licence applications should be forwarded to a licensing inspector, a Medical Officer of Health and the Police. Licensing inspectors should report on all applications. The Police and Medical Officers of Health should only report if they have any concerns relating to the proposed licence.</p> <p>Rationale: Ensures any relevant issues are raised and addressed to minimise potential harm.</p>	<p>Accept.</p>	Ministry of Justice
R51	<p>Licensing inspectors should be employed by the local authority.</p> <p>Rationale: Enables inspectors to maintain essential links with other areas of the council.</p>	<p>Accept.</p> <p>Note that the employment relationship would be with the chief executive of the territorial authority.</p>	Ministry of Justice
R52	<p>Licensing inspectors should have independent statutory functions.</p> <p>Rationale: Licensing inspectors are often referred to as being part of the District Licensing Agency, but they have a separate function, which should be made explicit.</p>	<p>Accept.</p>	Ministry of Justice
R53	<p>The statute should expressly provide that licensing inspectors have reporting, monitoring, educative and enforcement roles.</p> <p>Rationale: The role of licensing inspectors needs to be more clearly defined.</p>	<p>Accept.</p>	Ministry of Justice

R54	The statute should provide for delegation of the Medical Officer of Health functions to designated health officers. Rationale: Recognises existing practice.	Accept.	Ministry of Justice
R55	The statute should state that the functions of Medical Officers of Health include education of licensees and collaborating with licensing inspectors and Police on alcohol harm reduction strategies. Rationale: Service delivery from the health sector has been uneven across the country and public health participation should be strengthened.	Accept.	Ministry of Justice
R56	Local Government New Zealand should consider requiring training for inspectors. Rationale: Training will be required due to the greater role for licensing inspectors. The Local Government ITO currently manages a qualification for local government compliance officers who deal with liquor licensing and enforcement.	Accept in principle.	Local Government New Zealand
R57	Decisions made by a DLC should be appealable by anyone appearing before the committee to the new Alcohol Regulatory Authority, although licensing inspectors should be required to first obtain leave to appeal from the Alcohol Regulatory Authority. Rationale: Appeal right provides for natural justice and quality control. Inspectors would require leave of the Authority to ensure resources are not spent without proper cause.	Partially accept. Inspectors should not be required to obtain leave to appeal.	Ministry of Justice
R58	The appeal fee should also be waived for enforcement officers. Rationale: Make the process easier for licensing inspectors to bring an appeal and encourage enforcement action.	Accept. The appeal fee should also be waived for Medical Officers of Health.	Ministry of Justice
R59	The Liquor Licensing Authority should be replaced by a new Alcohol Regulatory Authority. Rationale: The new name is to reflect its expanded focus.	Accept. Note that the new body would be called the Alcohol Regulatory and Licensing Authority.	Ministry of Justice
R60	The main function of the new Authority should be to hear appeals from decisions of the DLCs and applications for suspension or cancellation of licences. Rationale: All decision-making on applications for a licence or manager's certificate to be devolved to DLCs in the first instance.	Accept.	Ministry of Justice
R61	The expanded functions of the Authority should include: - monitoring and reporting to Parliament on annual trends in its caseload and alcohol consumption, marketing and alcohol-related harm in New Zealand - making rulings on promotions of alcohol	Partially accept. The trends in alcohol consumption should continue to be monitored by ALAC, and the Authority should not	Ministry of Justice

	<ul style="list-style-type: none"> - issuing practice notes and codes of practice on matters within the Authority's jurisdiction - monitoring and auditing the performance of DLCs and local alcohol policies - enhancing the flow of data and information concerning licensing matters. <p>Rationale: To enable the Authority to act proactively and head off difficulties before they arise.</p>	make rulings on promotions of alcohol outside of individual cases in their jurisdiction.	
R62	<p>The Authority should comprise two District Court Judges. One judge should sit in Auckland, and the other should cover the rest of New Zealand.</p> <p>Rationale: Auckland is where the bulk of current applications are made.</p>	<p>Reject.</p> <p>More flexibility is desirable.</p>	Ministry of Justice
R63	<p>An executive officer should be created to administer the Authority and carry out the policy work related to its expanded function.</p> <p>Rationale: Many of the proposed functions are not performed by the Liquor Licensing Authority currently, so the Authority will require additional support.</p>	<p>Reject.</p> <p>Adjusted functions should be managed within Ministry of Justice resources.</p>	Ministry of Justice
R64	<p>Guidelines should be consulted on by the executive officer, and signed off by the two judges.</p> <p>Rationale: Guidelines need to be authoritative; Authority approval will provide that.</p>	<p>Accept.</p> <p>The guidelines should be developed by the Ministry of Justice and approved by the Authority prior to release.</p>	Ministry of Justice
R65	<p>The legislation should set out in full the duties and powers of the Authority and DLCs, which should mirror those contained in the Inquiries Bill presently before the Parliament. This includes the power to award costs.</p> <p>Rationale: Improve accessibility of the legislation.</p>	Accept.	Ministry of Justice
R66	<p>There should be a requirement that the Authority and DLCs conduct hearings with as little formality as is consistent with a fair and efficient process.</p> <p>Rationale: Improve accessibility of the process.</p>	Accept.	Ministry of Justice
R67	<p>There should be a general appeal on the merits against a decision of the Authority to the High Court.</p> <p>Rationale: This is a standard provision to ensure the development of the law in this area remains under the control of superior courts.</p>	<p>Partially accept.</p> <p>Allow any Authority decision on an enforcement application to be appealed on the merits, but all other cases should only be appealable on point of law.</p>	Ministry of Justice

CHAPTER 11 - LICENCE FEES, RENEWALS AND MANAGERS

Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R68	<p>A risk-based licence application fee and annual renewal fee scheme should be consulted on and established by regulation.</p> <p>Rationale: Licence fees should be sufficient to cover all local authority licensing costs and reflective of a premises' level of risk. The detail of such a scheme will require further work.</p>	Accept.	Ministry of Justice
R69	<p>Premises categorised as low-risk and that have had no compliance issues in the preceding year should be granted a yearly licence renewal on the basis of payment of an annual fee.</p> <p>Rationale: Would reduce compliance costs for low-risk premises and provide an incentive for them to maintain high standards of compliance work.</p>	<p>Reject.</p> <p>The existing renewal requirements should be retained with costs reduced through changes to fee levels and notification requirements.</p>	Ministry of Justice
R70	<p>If there are compliance issues for any low-risk premises, an inspector should be able to require the licensee to formally apply for a licence renewal within three years of the date on which the licence was last renewed. An annual fee should still be payable.</p> <p>Rationale: Ensure that risk assessment of low-risk premises is accurate and the appropriate conditions are imposed on the licence.</p>	<p>Reject.</p> <p>The existing renewal requirements should be retained with costs reduced through changes to fee levels and notification requirements.</p>	Ministry of Justice
R71	<p>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, rather than a three-yearly licence renewal fee.</p> <p>Rationale: Regular renewal is appropriate for non low-risk premises.</p>	Accept.	Ministry of Justice
R72	<p>Licence renewal applications should be published on the applicable DLC website, and a physical notice in a prescribed form affixed to the premises.</p> <p>Rationale: Reduce the compliance burden.</p>	<p>Partially accept.</p> <p>Applicants should affix a notice to the site. Other requirements require further consideration and should be specified in regulation.</p>	Ministry of Justice
R73	<p>The Hospitality Standards Institute or other appropriate body should review both the content of unit standards required for managers' certificates and the rigour with which the unit standards are taught and tested.</p> <p>Rationale: A manager's certificate can currently be obtained relatively easily and speedily.</p>	<p>Accept in principle.</p> <p>Refer to Ministry of Justice for action.</p>	Ministry of Justice, Hospitality Standards Institute

CHAPTER 12 - CLUB LICENCES			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R74	<p>There should be more rigorous enforcement of licensing laws for clubs than there is at present.</p> <p>Rationale: Some clubs are not abiding by the conditions of their licence and increased supervision of the sale of alcohol in clubs is required.</p>	Accept.	Police, Local Government New Zealand
R75	<p>The current distinctions between the club licence and the 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.</p> <p>Rationale: The risks of intoxication and service to minors are no different for many clubs than they are for on-licences so a manager should be required to be on duty whenever alcohol is being sold or supplied. The exception recognises that small clubs and events are unlikely to cause alcohol-related harm.</p>	<p>Reject.</p> <p>Licensed clubs should generally be exempted from the requirement to have a manager on duty, but licensing decision-makers should have discretion to impose this requirement as a licence condition.</p>	Ministry of Justice
R76	<p>Managers of clubs should be required to have the same qualifications as general managers.</p> <p>Rationale: There is no need to differentiate between a club manager's certificate and a general manager's certificate.</p>	Accept.	Ministry of Justice
R77	<p>Some clubs should be authorised at the licence 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.</p> <p>Rationale: Clubs have a degree of control over these people because of reciprocal visiting arrangements between clubs.</p>	Accept.	Ministry of Justice
CHAPTER 13 - SPECIAL LICENCES			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R78	<p>The legislation should provide for four categories of special licence: public events, private events at licensed premises, trade fairs and extended hours.</p> <p>Rationale: To clarify when a special licence is necessary for alcohol to be served at an event or function.</p>	Partially accept. Special licences should be distinguished by the nature of the event (public or private) and where the event is being held.	Ministry of Justice

R79	<p>In addition to the general licence criteria, applicants for special licences should be required to show that the premises will be properly defined and appropriately monitored.</p> <p>Rationale: The licence criteria are intended to promote the proposed object of the Act to minimise alcohol-related harm and encourage safe consumption of alcohol.</p>	Accept.	Ministry of Justice
R80	<p>Licensing decision makers should have the discretion to require applicants for special licences for large or high-risk events to submit a proposed event management plan.</p> <p>Rationale: Ensure special licences do not authorise looser access to alcohol than other types of licences.</p>	Accept.	Ministry of Justice
R81	<p>It should be a mandatory condition of special licences that free drinking water is supplied.</p> <p>Rationale: Ensuring water is available can help consumers manage their alcohol consumption and reduce the risk of alcohol related harm.</p>	Accept.	Ministry of Justice
R82	<p>Licensing decision makers should have the discretion to impose on a special licence any reasonable condition designed to minimise harm, including any of the conditions that must or may be imposed on on-licences or licensed clubs.</p> <p>Rationale: Takes account of the different types of events that special licences may cover.</p>	Accept.	Ministry of Justice
R83	<p>The national maximum hours and prohibited days restrictions should apply to special licences unless exceptional circumstances apply.</p> <p>Rationale: The legislation should provide for all circumstances. Events that expect to qualify as exceptional circumstances will be rare, such as events of national significance.</p>	<p>Partially accept.</p> <p>Special licences should be available for genuine events on prohibited days.</p> <p>Special licences should not allow exemptions to the national maximum hours except for Anzac Day events. Invite select committee to consider whether there should be any other provision for limited exemptions to the national hours for special events.</p>	Ministry of Justice
R84	<p>The legislation should specify that clubs are required to obtain a special licence for a public or private event at licensed premises if they want to be able to serve the public.</p> <p>Rationale: Clubs risk losing the very basis on which they argue for differentiation from other on-licences if they regularly serve alcohol to the public.</p>	Accept.	Ministry of Justice

R85	The legislation should allow the fast-tracking of special licences for funerals held at clubs. Rationale: Applicants will rarely have enough time before a funeral to arrange for a special licence under normal procedures.	Accept.	Ministry of Justice
R86	DLCs should continue to have discretion about whether a special licence application needs to be publicly notified. Rationale: Procedural requirements should not be too onerous for special licence applications.	Partially accept. Public notification requirements to be specified in regulations.	Ministry of Justice
CHAPTER 14 - EXEMPTIONS			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R87	The exemptions based on the form of alcohol sold should be addressed in the definition of alcohol in the new legislation. Rationale: Definition to provide further detail in order to include certain substances that fall within the definition and exclude other substances that should not be regulated by this Act. Neater to deal with exclusions in the definition than elsewhere in the legislation.	Accept. Note that this is a drafting issue. See also recommendation 3.	Ministry of Justice
R88	The legislation should continue to exclude sales of alcohol from a maker, importer, distributor, or wholesaler to a maker, importer, distributor, wholesaler or licence holder and sales at homestays. Rationale: Only retail sales are subject to this legislation, there is no need for this to change.	Accept.	Ministry of Justice
R89	The exemption for prison officers' canteens should be removed from the new legislation. Rationale: Prison officer's canteens are no longer in existence so there is no reason to retain a statutory exemption for these.	Accept.	Ministry of Justice
R90	The New Zealand Defence Force should no longer be exempted from licensing legislation, but the Chief of Defence 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. Rationale: Alcohol sold anywhere should necessitate the application of licensing controls and host responsibility requirements. The Defence Force includes a high proportion of young people. Young people are known to be at higher risk of alcohol-related harm.	Reject.	Ministry of Justice

R91	New Zealand Police canteens and New Zealand Fire Service canteens should no longer be exempted from licensing legislation, but they should be treated as clubs. Rationale: Alcohol sold anywhere should necessitate the application of licensing controls and host responsibility requirements. Less controlled access to alcohol should not be used as a reward for commendable public service.	Reject.	Ministry of Justice
R92	The House of Representatives should no longer be exempt from licensing legislation. The Speaker of the House should retain the sole authority to monitor and enforce this legislation. Rationale: Alcohol sold anywhere should necessitate the application of licensing controls and host responsibility requirements. Where alcohol is being sold at Parliament, the risks in terms of alcohol-related harm are the same as for any other premises selling or supplying alcohol.	Accept.	Ministry of Justice
R93	Permanent club charters should no longer be exempt from licensing legislation, but should be required to obtain club licences. Rationale: Alcohol sold anywhere should necessitate the application of licensing controls and host responsibility requirements. There are no substantive reasons why permanent charter clubs should not be subject to the same regulations as other clubs.	Reject.	Ministry of Justice

CHAPTER 15 - LICENSING TRUSTS

Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R94	The legal mechanism for monopoly licensing trusts should be retained in the legislation. Rationale: Decisions about the future of licensing trust monopolies should be made by local communities.	Accept.	Ministry of Justice
R95	The regulations should require that a petition must be submitted to the new Alcohol Regulatory Authority rather than a licensing trust. Rationale: Existing situation raises concerns about privacy and natural justice.	Accept.	Ministry of Justice

CHAPTER 16 - AGE RESTRICTIONS

Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R96	The minimum purchase age should be increased to 20 for all licensed premises including: - Making it an offence to sell or supply alcohol on licensed premises to anyone under the age of 20, even if accompanied by a parent or guardian	Partially accept. The purchase age should be set at 18 years for on-licence sale and supply and 20 years for off-licence	Ministry of Justice

	- Making it an infringement offence for anyone under the age of 20 to purchase or consume alcohol on licensed premises. Rationale: Increasing the age at which young people may legally purchase alcohol would help reduce consumption and harms.	sale and supply.	
R97	It should be an offence for anyone under the age of 20 to drink or possess alcohol in a public place, even if accompanied by a parent or guardian. Rationale: Setting restrictions on public drinking consistent with the purchase age would simplify the law. Exceptions for 18 and 19 year olds would be impractical given that legal guardianship ceases at 18 years of age, so a new definition of parent or guardian would be required.	Reject. It should continue to be unlawful for a person to drink or possess alcohol in public if they are under the age of 18, unless they are accompanied by a parent or guardian.	Ministry of Justice
R98	It should be an offence for any person to supply alcohol to someone under the age of 18 unless that person is the minor's parent or guardian or a responsible adult authorised by the parent or guardian, and it should also be an offence if the alcohol is not supplied in a responsible manner. This means that any person legally entitled to supply a minor who then fails to supply in a responsible manner, including by providing inadequate supervision, also commits an offence. Rationale: The current private supply law is ineffective and needs to recognise the rights and responsibilities of parents. Compare SSLLE Bill: <i>Offence to supply a minor without express or implied parental consent.</i>	Accept. Note that Police would have discretion not to prosecute when there is no public interest to do so.	Ministry of Justice
R99	The minimum age for people employed to sell alcohol at an on-licence should be increased to 20. Rationale: If the minimum purchase age is increased to 20 it would be best to maintain consistency with regards to employment to sell alcohol.	Reject. The age at which a person may sell alcohol in restricted areas of licensed premises should continue to be 18 years.	Ministry of Justice
CHAPTER 18 - ALCOHOL PRICING POLICIES			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R100	The excise tax rate should be increased by 50%, which will increase the price of alcohol by around an average of 10%. Rationale: The use of excise tax helps reduce and compensate for the externalities (social costs) of alcohol-related harm.	Reject.	Customs

R101	The excise tax on low-alcohol products up to 2.5% alcohol by volume should be removed to encourage the development of such products. Rationale: To encourage the production and availability of more low-alcohol products.	Reject.	Customs
R102	Given the potential for a minimum price regime, in association with excise tax, to reduce the availability of cheap alcohol, the government should fully investigate a minimum price regime. Rationale: A minimum price scheme in a competitive retail environment is untried; it would be prudent to investigate the merits of a minimum price regime.	Partially accept. Monitor international developments.	Ministry of Justice
R103	Retailers and producers should be required to provide sales and price data to enable the government to investigate a minimum price regime and to be able to effectively model the impacts of changes in excise tax levels. Rationale: This information is required to successfully evaluate the benefits and costs of a minimum price regime.	Voluntary options to obtain this information from retailers should be explored in the first instance. Reconsider after 1 year if necessary.	Ministry of Justice
CHAPTER 19 - ADVERTISING, SPONSORSHIP AND PROMOTION OF ALCOHOL			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R104	An interdepartmental committee, overseen by the Ministers of Health and Justice, should plan and implement the management of a phased programme to limit the exposure to alcohol promotion and restrict the content of alcohol promotion messages, including alcohol-related sponsorship. Rationale: A phased programme will require coordination over a period of time. Compare SSLLE Bill: <i>Enforced self-regulation model (cease and desist order for serious or persistent advertising code breaches; non-compliance with order punishable by fine of up to \$200,000 for body corporate or \$60,000 in any other case).</i>	Reject.	Ministry of Justice
R105	A new regime should be in place within five years. Rationale: It will take some time to go through a series of managed phases before full implementation.	Reject.	Ministry of Justice
R106	Stage 1 of the programme, comprising a new offence relating to the irresponsible promotion of the consumption and supply of alcohol (replacing the current offence) should be implemented immediately. Rationale: To introduce immediate interventions targeted at sales promotions and advertising that encourage excessive consumption.	Accept.	Ministry of Justice

R107	<p>The new provision should make it an offence to:</p> <ul style="list-style-type: none"> - in the course of carrying on a business, encourage the consumption of an excessive amount of alcohol, whether on licensed premises or at any other place; - promote or advertise alcohol in a manner that has special appeal to people under the age of 20; - promote or advertise alcohol, except in store or on premises, in a manner that leads the public to believe the price is 25% or more below the price at which the alcohol is ordinarily sold; - promote alcohol that is free; or - offer any goods or services on the condition that alcohol is purchased. <p>Rationale: To strengthen the existing section 154A of the Sale of Liquor Act 1989.</p>	Accept.	Ministry of Justice
R108	<p>The interdepartmental committee should consider legislative measures to be introduced in stage 2 of the programme. These measures are aimed at reducing exposure to advertising, particularly for young people.</p> <p>Rationale: Legislative restrictions could have an impact on consumption patterns, and induction of young people to drinking, but the potential effect of such measures must be carefully considered.</p>	Reject.	Ministry of Justice
R109	<p>The interdepartmental committee should consider stage 3 measures with the aim of restricting the promotion of alcohol, including sponsorship, in all media. No alcohol advertising should be allowed in any media other than advertising that communicates objective product information, including the characteristics of the beverage, the manner of its production and its price.</p> <p>Rationale: Would significantly reduce exposure to advertising, which, according to the evidence, is particularly relevant to young people's drinking, while allowing for objective product information. A phased introduction would allow the effects of restrictions to be carefully considered.</p>	Reject.	Ministry of Justice
CHAPTER 20 - OFFENCES, MONITORING AND ENFORCEMENT			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R110	<p>A statutory definition of "intoxication" using the definition of "intoxicated" in the Policing Act 2008 should be adopted in the new legislation.</p> <p>Rationale: Would assist licensees, managers and staff to understand the scope of their obligations, and would assist enforcement.</p>	Accept.	Ministry of Justice

R111	<p>The new Alcohol Regulatory Authority should be required, by statute, to issue public guidelines to assist in determining whether a patron of licensed premises is intoxicated.</p> <p>Rationale: To provide consistent, authoritative guidance to people selling and supplying alcohol.</p>	<p>Partially accept.</p> <p>The guidelines should be developed by the Ministry of Justice and approved by the Authority prior to release.</p>	Ministry of Justice
R112	<p>It should be an offence for any manager or employee to be intoxicated while working on licensed premises. The maximum penalty for this offence should be \$2,000. This offence should also be able to proceed as an infringement offence.</p> <p>Rationale: Management of licensed premises requires sound judgement and decision-making and serving staff need the ability to make judgments about the age and degree of intoxication of people they serve.</p>	<p>Accept.</p>	Ministry of Justice
R113	<p>The only defence to sale and supply of alcohol to a minor should be that the person selling or supplying alcohol has sighted an evidence of age document that belongs to the person to whom alcohol is sold and that shows the person to be over the purchase age.</p> <p>Rationale: Verification of age would be required whenever there is any doubt about a person's age; otherwise it is too easy for people supplying alcohol to minors to escape liability.</p> <p>Compare SSLLE Bill: <i>Equivalent provision.</i></p>	<p>Accept.</p> <p>Also require the purchaser to appear to be over the purchase age.</p>	Ministry of Justice
R114	<p>An amendment should be made to the offence of making a false representation to obtain alcohol to the effect that the offence is not committed by a person who makes a false representation (other than in writing) at the request of a member of the Police acting in the course of their duties.</p> <p>Rationale: Such amendment would facilitate Controlled Purchase Operations and assist enforcement of the Act.</p>	<p>Not necessary on basis that offence as a whole will be replaced.</p>	Ministry of Justice
R115	<p>Licensees, managers and licensed door staff should be given the power to confiscate false evidence of age documents or evidence of age documents that have been tampered with. This power should not extend to passports.</p> <p>Rationale: There are an increasing number of forged documents being generated. Power of confiscation is likely to deter fraudulent use of documents. Licensees and managers have been found to be suitable to manage licensed premises, and undergo training to do so, which could extend to exercise of confiscation powers.</p>	<p>Reject.</p> <p>There are limited protections against the risk of inappropriate confiscation.</p>	Ministry of Justice

R116	<p>A new infringement offence should be created for an individual who lends a genuine evidence of age document to a minor, knowing the minor intends to use the document to obtain entry into licensed premises or purchase alcohol on those premises.</p> <p>Rationale: Most identification documents handed in to licensees are superseded licenses that belong to siblings or friends.</p> <p>Compare SSLLE Bill: <i>Offence to present a false evidence of age document at licensed premises and offence to sell, hire, lend, give or otherwise dispose of a false prescribed evidence of age document to another person.</i></p>	<p>Accept.</p> <p>This offence should also apply to giving, selling or hiring genuine or forged evidence of age documents.</p>	Ministry of Justice
R117	<p>The Chief District Court Judge should designate several District Court Judges in each of the six judicial regions to be involved in the hearing of alcohol offences and associated sentencing. These judges should be given additional training in sale of alcohol matters, and the new Alcohol Regulatory Authority should assist in this.</p> <p>Rationale: Judges involved in the hearing of alcohol offences and sentencing should have specialist knowledge of the law relating to the sale and supply of alcohol.</p>	<p>Reject.</p> <p>All District Court Judges should be trained to hear alcohol cases.</p>	Ministry of Justice
R118	<p>The following offences should be made infringement offences under the new legislation while retaining the ability to proceed summarily, as currently provided in s162B:</p> <ul style="list-style-type: none"> - permitting people under the age of 20 in restricted or supervised areas; - sales of spirits in a vessel that exceeds 500ml; - licensee offence of failing to ensure that a manager is present at all times; - making false representation as to age (whether in writing or not) - serving alcohol on licensed premises while intoxicated. <p>The maximum penalty for infringement offences should be set by regulations, but should not exceed \$1000.</p> <p>Rationale: These offences are relatively minor, and the time and effort in prosecuting them is sometimes seen as disproportionate by enforcement agencies.</p>	<p>Accept.</p> <p>The first offence is dependent on the purchase age decision and the third offence should apply only to licensee offences in respect of displaying a manager's name.</p>	Ministry of Justice
R119	<p>A breach of a liquor licence condition should also be an infringement offence.</p> <p>Rationale: The current approach of applying to the Liquor Licensing Authority involves unnecessary cost and delay in circumstances where an immediate sanction would be more effective.</p>	<p>Accept.</p>	Ministry of Justice
R120	<p>Only liquor licensing inspectors and members of Police should be authorised to issue infringement notices.</p> <p>Rationale: Proliferation of enforcement powers is not warranted or desirable.</p>	<p>Accept.</p>	Ministry of Justice

R121	<p>A manager's certificate should be automatically cancelled for five years where three adverse findings (either convictions or findings by the Alcohol Regulatory Authority) are made against the manager for the following offences (whether or not of the same type) within a three year period:</p> <ul style="list-style-type: none"> - sale or supply of alcohol to a minor - sale or supply of alcohol to an intoxicated person - unauthorised sale or supply of alcohol - irresponsible promotion of alcohol. <p>Rationale: Managers' certificates are generally suspended rather than cancelled; repeated breaches demonstrate that a person is not suitable to hold a manager's certificate.</p> <p>Compare SSLE Bill: <i>Automatic cancellation of manager's certificate for five years upon application by police or inspector where three adverse findings relating to people under the purchase age (sale/supply/allowing entry to supervised or restricted areas) are made against the manager within two years.</i></p>	Accept.	Ministry of Justice
R122	<p>A licence should be automatically cancelled for five years where three adverse findings (either convictions or findings by the ARA) are made against the manager for the following offences (whether or not of the same type) within a three year period:</p> <ul style="list-style-type: none"> - sale or supply of alcohol to a minor - sale or supply of alcohol to an intoxicated person - unauthorised sale or supply of alcohol - irresponsible promotion of alcohol. <p>Rationale: In practice, licences are rarely cancelled. Generally successful applications determined by the Liquor Licensing Authority result in a suspension of licence for a defined period. Repeated breaches demonstrate that a person is not suitable to hold the licence.</p>	Partially accept. The licensing inspector should be required to lodge an application for cancellation where there are three offences within a three-year period.	Ministry of Justice
R123	<p>There should be no bar on considering a cancelled certificate or licence when determining future suitability to obtain a manager's certificate or licence after the 5 year cancellation period.</p> <p>Rationale: A cancelled licence or certificate is relevant to an assessment of suitability.</p>	Accept.	Ministry of Justice
R124	<p>The Police should have the power to close all or a specified part of a licensed premises immediately where:</p> <ul style="list-style-type: none"> - a riot takes places within licensed premises, or where there are reasonable grounds for believing a riot would occur - there is fighting or serious disorder, or there are reasonable grounds for believing that fighting or serious disorder will break out within licensed premises - there is a significant threat to public health or safety 	Accept.	Ministry of Justice

	<ul style="list-style-type: none"> - the conduct in the premises amounts to a substantial public nuisance - offences have been committed that carry a maximum penalty of five years' imprisonment or more and there is a significant risk of further offences being committed by patrons if the premises remain open. <p>Rationale: Existing powers are rarely used and are of limited utility because of the time it takes to get a court order.</p>		
R125	<p>As soon as possible after the exercise of the power to close a bar immediately, the Police should be required to notify the local liquor licensing inspectors.</p> <p>Rationale: The seriousness of the circumstances that bring about a closure and the significant impact on the licensee.</p>	Partially accept. This should be dealt with through operational guidelines.	Ministry of Justice
R126	<p>The duration of a court order or police order for closure of licensed premises should extend up to 24 hours beyond the end of the day on which the order is made.</p> <p>Rationale: There are practical difficulties with the limited duration of the current power to close.</p> <p>Compare with SSLLE Bill: Allow a closure order to apply for up to 48 hours after the time at which it was given.</p>	Accept.	Ministry of Justice
R127	<p>Liquor licensing inspectors should have the same powers of entry as the Police under section 175 of the Sale of Liquor Act 1989.</p> <p>Rationale: Current requirements mean the ability of licensing inspectors to detect breaches of the Act is severely undermined.</p>	Accept.	Ministry of Justice
R128	<p>There should be a statutory duty on the new DLCs, Police and health authorities to collaborate in the enforcement of liquor licensing.</p> <p>Rationale: The law is most effective when the relevant agencies take a collaborative approach to compliance and enforcement.</p>	Accept.	Ministry of Justice
R129	<p>All agencies should allocate adequate resources to ensure that effective liquor licensing collaboration is possible when implementing the new legislation.</p> <p>Rationale: Relationships and outcomes are strongest where dedicated resources have been allocated to enforcement.</p>	Accept in principle.	Police, Ministry of Health, Local Government New Zealand
R130	<p>A nationwide shared information system on liquor licensing should be developed.</p> <p>Rationale: There is currently no joined-up database where all records about liquor licensing are held.</p>	Accept in principle. Feasibility needs to be assessed.	Ministry of Justice

R131	<p>Territorial authorities should collect data, such as that collected by the Far North Co-Location Project, so that changes in the nature and extent of alcohol-related harm in the area can be monitored and evaluated.</p> <p>Rationale: If better information is collected, changes in alcohol-related harm can be properly evaluated.</p>	Accept in principle.	Local Government New Zealand
CHAPTER 21 - ALCOHOL IN PUBLIC PLACES			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R132	<p>The offence of public drunkenness should not be reintroduced.</p> <p>Rationale: The existence of this offence previously did not stop people becoming intoxicated. Policing the offence consumed considerable police and court time.</p>	Accept.	Ministry of Justice
R133	<p>There should be a civil cost-recovery regime providing Police the power to serve a notice of debt on anyone who, because of intoxication, is either driven home, placed in temporary shelter or put in a police cell under section 36 of the Policing Act 2008, with a prescribed amount, such that will make it economic to collect. The proceeds should go to the consolidated fund and any disputes should be dealt with by the Disputes Tribunals of the District Courts.</p> <p>Rationale: People whose conduct causes expense to the public should be charged a monetary amount, assigning personal responsibility for one's actions.</p>	<p>Reject.</p> <p>The costs of administering such a scheme and the changes to existing rights and roles required outweigh the benefits.</p>	Ministry of Justice, Police
R134	<p>Following a final evaluation, further funding should be provided to enable existing watch-house nurses to continue in their role of assisting the Police in better managing the risks of those in their custody with mental health, and alcohol and other drug problems, with particular consideration given to setting up additional services in high-volume locations.</p> <p>Rationale: Police are not trained professionals in managing intoxicated persons. The initial indications of this pilot are very positive.</p>	<p>Accept.</p> <p>Funding is already secured to retain existing Mental Health Alcohol and Other Drug Nurses in Police Watch Houses on an ongoing basis.</p>	Ministry of Health
R135	<p>There should be an amendment to the definition of "public place" in the Summary Offences Act 1981 to codify case law and clarify that the definition of a public place includes a vehicle in a public place.</p> <p>Rationale: Case law has established that the definition of "public place" includes a vehicle in a public place. This case law should be codified to clarify and avoid doubt.</p>	Accept.	Ministry of Justice

R136	<p>Section 272(3) of the Children, Young Persons, and Their Families Act 1989 should be amended to clarify that liquor infringement notices issued to minors, in limited situations where they are defended or for fines enforcement purposes, should be within the jurisdiction of the District Court.</p> <p>Rationale: There is uncertainty in situations where a notice is defended or fines enforcement action is required, whether the Youth Court or District Court has jurisdiction.</p>	<p>Accept as an interim measure. There should be a wider review of the youth infringement notice jurisdiction.</p>	<p>Ministry of Social Development</p>
R137	<p>Before liquor ban bylaws are created, it should be a requirement that:</p> <ul style="list-style-type: none"> - the proposed area and timing can be justified as a reasonable limitation on the rights of freedoms of individuals; - there is a high volume of offending or disorder in the proposed area that can be linked to alcohol; 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. <p>Rationale: There are deficiencies with the law contained in the Local Government Act 2002 relating to liquor bans. Evidential requirements are necessary to show a liquor ban bylaw is the most appropriate way to address the problem.</p>	<p>Accept.</p>	<p>Ministry of Justice, Department of Internal Affairs</p>
R138	<p>Local Government New Zealand and the Parliamentary Counsel Office should collaborate to ensure an appropriate drafting template is produced to assist territorial authorities in making liquor ban bylaws.</p> <p>Rationale: A standard template is needed to ensure consistency.</p>	<p>Accept.</p>	<p>Local Government New Zealand</p>
R139	<p>The definition of “public place” in section 147(1) of the Local Government Act 2002 should be amended to include private carparks to which members of the public have access.</p> <p>Rationale: Private car parks have become a place of resort and are outside the scope of the current liquor bans.</p>	<p>Accept. The definition should be made consistent with the Summary Offences Act 1981.</p>	<p>Ministry of Justice</p>
R140	<p>Regulations should set out signage provisions for liquor ban bylaws to uniformly show where they apply.</p> <p>Rationale: Notices have been found to be hard to locate or read.</p>	<p>Accept.</p>	<p>Ministry of Justice, Department of Internal Affairs</p>
R141	<p>The maximum fine for a breach of a liquor ban should be \$500.</p> <p>Rationale: The current maximum penalty of \$20,000 is disproportionate to the nature of the offence.</p>	<p>Reject. Penalty to be an infringement notice of \$250 that could be issued on the spot or after a person has been arrested.</p>	<p>Ministry of Justice, Department of Internal Affairs</p>

R142	<p>When enforcing a liquor ban, and determining whether a substance is alcohol, it should be sufficient proof, in the absence of other evidence, that:</p> <ul style="list-style-type: none"> - the container is labelled as containing an alcoholic beverage and is of a type sold in the ordinary course of trade; or - the contents of a container, when opened, smell like an alcoholic beverage and the container appears to be one that contains an alcoholic beverage; or - the defendant has admitted the container contains an alcoholic beverage. <p>Rationale: The existing process for proving a substance is alcohol is cumbersome and the costs place an undue financial and administrative burden on Police.</p>	Accept.	Ministry of Justice
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CHAPTER 22 - REGULATING ALCOHOL PRODUCTS

Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R143	<p>The legislation should contain a provision that allows particular alcohol products or classes of products to be banned if considered “undesirable” on the recommendation of the Expert Advisory Committee on Drugs. The criteria for determining that a product or class of products is “undesirable” should be that it:</p> <ul style="list-style-type: none"> - is particularly dangerous to the health; - is targeted at or particularly attractive to minors; or - encourages irresponsible, rapid or excessive consumption of the product. <p>Rationale: There are some products that by their nature create considerable risk of harm and the government should be able to prohibit the sale of these products in New Zealand.</p>	<p>Accept.</p> <p>There should also be controls on the strength and standard drink content of pre-mixed ready-to-drink alcoholic beverages.</p>	Ministry of Justice

CHAPTER 23 - EDUCATION

Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R144	<p>The national marketing role of ALAC should continue.</p> <p>Rationale: ALAC’s research shows there is significant recall and understanding of the moderation message it promulgates and it continues to play an important part in reducing alcohol-related harm.</p>	Accept.	ALAC
R145	<p>The Ministry of Education should encourage school boards of trustees to organise drug and alcohol education programmes that meet the needs of their communities.</p> <p>Rationale: Education must continue to be part of the package of measures employed to counter alcohol-related harm.</p>	<p>Accept.</p> <p>Action in this area is already underway.</p>	Ministry of Education

R146	The multiple processes underway for considering the labelling of alcohol products should continue. Rationale: Product labelling and warning labels provide important information to consumers.	Accept.	Ministry of Justice
CHAPTER 24 – TREATMENT			
Rec No	Summary of Law Commission recommendation	Proposed response	Responsible agency
R147	The key principles underpinning any changes to the alcohol addiction treatment system should be as follows: <ul style="list-style-type: none"> - mental health and addiction services need to work as an integrated system - the system needs to deliver levels of intervention ranging from brief to intensive - the system response must be adaptable – able to assess type and level of need - the roles, responsibilities and powers to coordinate care and treatment need to be specified - the system is interdepartmental, interministerial and cross-sector – it involves, for example, the Health, Justice, Child, Youth & Family, ACC, Corrections and Transport sectors, which also fund treatment and/or rely on it to improve outcomes - care pathways are required to define how people with acute problems can get access to care. Rationale: Improvements to treatment services for people with an alcohol use disorder are required alongside legislative changes.	Accept. This should be referred to the Ministry of Health for action.	Ministry of Health
R148	The Ministry of Health and Mental Health Commission should 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 ALAC and the National Addiction Centre, along with all government agencies whose outcomes could benefit from improved access to alcohol addiction treatment services. This work should be based on best practice principles and address: <ul style="list-style-type: none"> - level and type of service (how much, what type and location); - required resourcing and staffing levels, including workforce issues; - the design of a service system, including models of care pathways, service delivery systems and coordination. Rationale: Improvements to treatment services for people with an alcohol use disorder are required alongside legislative changes.	Accept in principle. This should be referred to the Ministry of Health for action.	Ministry of Health

R149	<p>A National Mental Health and Addictions Helpline should be considered, providing triage, advice, disposition and service coordination for district health boards.</p> <p>Rationale: Improvements to treatment services for people with an alcohol use disorder are required alongside legislative changes.</p>	The Alcohol Drug Helpline is already in place.	Ministry of Health
R150	<p>A policy should be adopted requiring district health boards to develop care pathways along the lines of a plan put forward to the Law Commission by the Mental Health Commission.</p> <p>Rationale: Improvements to treatment services for people with an alcohol use disorder are required alongside legislative changes.</p>	<p>Accept in principle.</p> <p>This should be referred to the Ministry of Health for action.</p>	Ministry of Health
R151	<p>Some of the proceeds of the proposed increase in alcohol excise tax should be applied to spending on alcohol treatment services and training.</p> <p>Rationale: Improvements to treatment services for people with an alcohol use disorder are required alongside legislative changes.</p>	Reject.	Treasury
R152	<p>Intoxicated people are placing an unacceptable burden on police, ambulance services and acute health services but there is no single national solution for this. Relevant sectors should work together to develop local strategies for managing intoxicated people.</p> <p>Rationale: Improvements to treatment services for people with an alcohol use disorder are required alongside legislative changes.</p>	Accept.	Ministry of Health, Police
R153	<p>Section 65 of the Land Transport Act 1998 and associated services should be reviewed with the aim of ensuring that: rehabilitation is addressed, barriers to receiving appropriate treatment through the process are minimised, and interventions provided are effective and cost-effective.</p> <p>Rationale: Improvements to treatment services for people with an alcohol use disorder are required alongside legislative changes.</p>	Accept.	Ministry of Health, Ministry of Transport

Appendix 5: List of active permanent charter clubs

- Auckland Club
- Northern Club (Auckland)
- Commerce Club of Auckland
- Hamilton Club
- Gisborne Cosmopolitan Club
- Hawkes Bay Club (Napier)
- Napier Club
- Napier Cosmopolitan Club
- Hāwera Club
- St John Club (Whanganui)
- Wanganui Club
- Wanganui Cosmopolitan Club
- Rangitikei Club (Feilding)
- Manawatu Club (Palmerston North)
- Palmerston North Cosmopolitan Club
- Masterton Club
- South Wairarapa Workingmen's Club (Greytown)
- Petone Workingmen's Club (Lower Hutt)
- Wellesley (Wellington)
- Wellington Club
- City Club (Nelson)
- Nelson Club
- Blenheim Workingmen's Club
- Oxford Workingmen's Club
- Kaiapoi Workingmen's Club
- Canterbury Club (Christchurch)
- Christchurch Club
- Christchurch Workingmen's Club
- Richmond Workingmen's Club (Christchurch)
- Ashburton Club
- South Canterbury Club (Timaru)
- Commerce Club Otago (Dunedin)
- Dunedin Club
- Invercargill Club