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Liquor Project Coordinator
Law Commission
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Submission to *Alcohol in our Lives* - an Issues Paper on the Reform of New Zealand's Liquor Laws

The New Zealand Drug Foundation – Te Tūāpapa Tarukino o Aotearoa welcomes the opportunity to comment on *Alcohol in our Lives* - the Law Commission's issues paper on the reform of New Zealand's liquor laws.

Our comments on this report are influenced by our guiding principles, including a commitment to evidence-based best practice and policy, and harm minimisation. The Drug Foundation has had a very long interest in ways that the laws governing the sale and supply of alcohol could be strengthened to reduce alcohol-related harm, and to create a healthier drinking culture in New Zealand. Information about the Drug Foundation is appended to this submission.

We welcome the current Law Commission review on the reform of New Zealand's liquor laws, particularly the comprehensive approach the Commission is taking. We believe that *Alcohol in our Lives* is a well researched and written report that provides an excellent springboard for public debate of the issues. In calling for public submissions, we note that the Commission has identified a broad range of policy options and questions that have been grouped under three areas: supply control, demand reduction and problem limitation. We have structured our submission under these three broad areas.

We also note that the Law Commission has highlighted the options that it tentatively favours as part of a package of changes to New Zealand's liquor laws. With a few important exceptions, the New Zealand Drug Foundation endorses many of the options that the Law Commission has indicated it prefers. Our submission gives particular emphasis to the areas where our views diverge from the tentative options favoured by the Law Commission. Most importantly, we call for a complete ban on all forms of alcohol advertising. We also support a return to a purchase age of 20 years, with no exceptions, though we recognise that a split purchase age may be a politically acceptable compromise. We would be happy to elaborate on our submission in person and can be contacted on 04 801 6303.

The harm

The high level and wide range of alcohol-related harms that New Zealand is experiencing are very well documented by the Law Commission. We strongly believe that these alcohol-related harms do indeed justify a new approach to the law. This approach should take into account what we have learned since the reforms of 1989, including the extensive new research evidence that has become available.

When it comes to alcohol-related harms, we believe that it is important to look beyond simplistic notions of individual responsibility. This notion overlooks important factors about alcohol itself and the wider environment in which it is consumed, both of which can have a strong influence on individual decision-making. The law should clearly take into account the fact that alcohol is no ordinary commodity. It is an addictive and dependence-inducing substance that can seriously impair an individual's ability to make rational decisions. Individuals also find themselves in an environment in which vast sums of money are spent on sophisticated alcohol marketing strategies that exploit human needs, particularly among young people, and promote a culture of drinking. Furthermore, a permissive environment has dramatically increased access to alcohol over the last 20 years (both in terms of the number of outlets and reduced real cost).

Object of the law

We believe that the laws governing the sale and supply of alcohol are an important component in the mix of forces shaping our drinking environment. Currently, the liberalised drinking environment is oriented towards ease of access and promoting drinking to excess. While we acknowledge that legislation alone can't change our drinking culture, our view is that legislation has a crucial role to play in influencing the drinking environment, which in turn can facilitate culture change. Legislation helps to bring about changes that individuals on their own cannot achieve, and sets new standards for the public good. We believe that there are important parallels that can be drawn from the success of tobacco control legislation, where a significant culture change has occurred following the enactment of smoke free environments law earlier this decade.

Supply controls

Licensing

The Drug Foundation has long called for communities to have greater control over liquor licensing. There is no doubt that under existing law there is inadequate provision for people who live in the area to have their views given due regard in the granting or renewal of a license. As such, we strongly support the proposal to allow the Liquor Licensing Authority (LLA) to refuse a license on wider grounds than permitted at present - for example, if the social impact of the license is judged likely to be detrimental to the well-being of the local community. The LLA has repeatedly reported that it finds itself unable to respond to the reasonable concerns raised by communities. Key issues include sites that are unsuitable locations for licensed premises and over-density of outlets in a saturated alcohol market, contributing to local alcohol-related problems. We believe that allowing the LLA to refuse

a license on wider grounds should translate into giving communities greater control over liquor licensing.

We agree with the Law Commission's preference to retain the LLA as the specialist regulator while giving it a range of enhanced powers and functions that will enable it to be more proactive in enforcing the law and furthering the object of the act. We also support the proposal for every District Council to be required to have a local alcohol policy that is produced on the recommendation of the District Licensing Agency, with input from the Police and medical officers of health.

Type of off-license premises

The Drug Foundation supports restricting the ability of groceries with a floor area of less than 150^m² to obtain off-licenses. To avoid retailers creatively circumventing this proposed limit, we recommend that the stipulated floor area applies specifically to retail floor space. Although widening the grounds on which the LLA can refuse a license may alleviate the need to impose restrictions on the basis of retail floor area, this can not be assumed to be the case in every instance.

Enacting a restriction on the basis of retail floor area is also consistent with the original intent of the 1989 legislation - licensing supermarkets but not dairies. For liquor licensing purposes, a "supermarket" must be either 1000 sq m in area – or a "main-order grocery store". Licence applicants are now defining themselves as a "main order grocery" store by stating that they carried a wide range of items, regardless of size of store or stock. The outcome is a proliferation of alcohol outlets that look like any "dairy" but describe themselves as convenience stores or superettes or "main-order grocery stores", and now sell beer and wine.

There is considerable international and New Zealand evidence demonstrating that increased numbers and increased density of alcohol outlets is associated with increased alcohol-related harm, particularly at the neighbourhood level.¹ Enacting a restriction on the basis of retail floor area is a simple and fair strategy to counter the proliferation of alcohol outlets and alcohol-related harms in our neighbourhoods.

Hours

We strongly support the principle of restricting the extended, including 24 hour, trading of liquor that we currently have. As such, we endorse the Law Commission's proposal to restrict the hours that liquor can be sold from both off- and on-licenses and believe that the cut-off times that have been proposed are reasonable.

Restricting the availability of alcohol is recognised as one of the most effective strategies to reduce alcohol-related harms. There is good evidence to show that a reduction of the hours of sale of alcohol leads to fewer alcohol-related problems, including violent offences.²

The proposal for on-licenses to be permitted a standing extension to the time they can serve liquor if they operate a one-way door policy is worth pursuing. However, this proposal should not detract from efforts to ensure that premises implement good host responsibility practices. While a one-way door policy may reduce the number of intoxicated people moving about on the streets and facilitate a staggered departure from licensed

premises, premises that have been granted an extension to the national closing time must show that they have taken steps to minimise the alcohol-related harm associated with later trading hours.

Age

The Drug Foundation strongly endorses returning the minimum alcohol purchasing age to 20 years, with no exceptions. New Zealand and international evidence overwhelmingly shows that raising the age is one important part of an overall strategy to reduce availability and thereby reduce the harms from drinking.³

We do not support the proposal for a split purchase age. While we acknowledge that this may represent a politically acceptable compromise, we believe that changes to the minimum purchasing age should be guided by the best available evidence, not on unproven assumptions. There is no clear evidence to support a split purchasing age. What we do have is clear evidence of the increase in alcohol-related damage to 15-19 year olds since the dropping of the purchase age in 1999.⁴ We also know that licensed premises are not the safe, supervised environments they are sometimes made out to be. For instance, a significant proportion of serious assaults occur in and around licensed premises.⁵

The basic rationale behind the split purchase age - the hope that young people will be safer and drink more responsibly on licensed premises - is clearly not supported by the evidence. On the contrary, the 1995 Drinking in New Zealand survey showed that young men did much of their heavier drinking on licensed premises and were more likely to experience various forms of harm from drinking on licensed premises.⁶ The 2000 national survey showed that, on heavy drinking occasions, more alcohol is consumed by men in pubs and nightclubs than in other locations.⁷ Australian research has also found higher rates of intoxication and alcohol related harm associated with drinking in pubs and nightclubs.⁸

Individual and parental responsibility

The Drug Foundation supports legislation that will curb the social supply of alcohol to young people by adults. We support making it an offence for an adult to supply liquor to a young person unless that adult is the young person's parent or guardian. We believe that it is also important to add the requirement for supervised safe drinking. Police regularly respond to complaints about out-of-control, inadequately supervised parties where alcohol has been supplied by adults to other people's children yet they find it very difficult to investigate or prosecute the supplier of the alcohol under existing legislation. We propose the following wording that makes it clearly illegal for an adult to supply alcohol to a minor who is not their own child, and adds the requirement for supervised safe drinking.

Purchasing liquor for minors.

(1) Every person commits an offence and is liable to a fine not exceeding \$ AMOUNT who supplies liquor to any person who is under the age of 18 years.

(2) Subsection (1) of this section applies irrespective of any liability that may attach to the licensee or any manager or other person in respect of the sale or supply of the liquor.

(3) Subsection (1) does not apply to a person who purchases or acquires any liquor and supplies it to any child of whom that person is a parent or guardian for consumption under the supervision of that parent or guardian.

(4) No person shall be guilty of an offence against subsection (1) of this section by supplying to any person who then supplies it to a third person who is under the age of 18 years, if the defendant satisfied the court that he/she did not know or had no reasonable grounds to believe that the liquor was intended for that other person.

Any such legislative change would need to clearly define what is meant by supervised safe drinking and be accompanied by a high profile campaign to inform parents of these requirements.

Types of products available

We are strongly opposed to extending the right to sell all types of liquor to off-licenses that are currently restricted to selling beer and wine.

Currently, supermarkets and grocery stores are restricted to selling beer and wine. While we were opposed to granting these types of outlets the rights to sell wine and beer (and remain uncomfortable with the fact that they do so), we concede that seeking to remove beer and wine sales from supermarkets and grocery stores would not be publicly acceptable. However, we are strongly opposed to extending the types of liquor (e.g. ready-to-drinks, spirits) that supermarkets and grocery stores can sell. Any such moves to increase the availability of alcohol will only exacerbate the levels of alcohol-related harm. While there may be a business case to allow all off licenses to sell all types of liquor, this would clearly run counter to public health and is something we vigorously oppose.

Demand reduction

Tax/price

The New Zealand Drug Foundation strongly supports raising excise taxes (calculated on the basis of actual alcohol volume for all alcohol categories) to raise the price of alcohol. We also recommend that a part of this tax take should be ring-fenced for monitoring licensed premises and enforcement of the laws on alcohol sales and social supply, and public education.

The World Health Organisation recognises that alcohol tax is one of the most effective public health tools for reducing alcohol-related harm. It is well established that price affects consumption levels, and that tax changes can have a rapid effect on patterns of consumption.⁹ International research shows that raising the price of alcohol can reduce alcohol-related harm, including levels of crime and violence.¹⁰ Raising alcohol excise rates will make a major contribution to reducing alcohol-related harm in New Zealand.

Higher alcohol prices both reduce the amounts consumed by heavier drinkers – about one percent for each percentage rise in price – and help prevent moderate drinkers becoming heavier drinkers. Teenagers are particularly sensitive to price, so higher excise taxes can help reduce teenage binge drinking. Comparisons of tax rates and prices across US states show that increases of as little as 10c a drink are reflected in reduced levels of domestic violence, sexual diseases and road crashes.¹¹

We also support the principle of reducing excise tax on low-alcohol products to encourage their marketing and consumption against products with higher alcohol contents. Currently,

products with an alcohol content of less than 1.15 percent are not taxed. We believe this threshold could be raised to 2.5 percent, a suggestion that has already been made by ALAC, and is a move that would make low alcohol beer even more price attractive to standard beer.

The Drug Foundation believes there is a strong case for implementing a minimum pricing system, in addition to a raise in excise tax. Fixing minimum drinks prices can achieve health goals that raising alcohol taxes alone cannot by preventing below-cost selling and the deep discounting of alcohol that some retailers engage in. The key benefit of a minimum price system would be to raise the retail price of the alcohol products that provide the cheapest forms of absolute alcohol. Unlike a raise in tax, there is no opportunity for its effect to be diluted as a consequence of being absorbed by producers, wholesalers, distributors and retailers. We also believe there is a need to limit cut price promotions at on-license venues. Promotions such as 'happy hours' encourage heavy and rapid alcohol consumption and undermine efforts to promote a culture of responsible drinking.

It is worth emphasising that the purported cost to moderate drinkers of measures such as raising the price of alcohol has been greatly exaggerated. Recent modelling in the UK has shown that setting a minimum price of 50 pence per unit would likely increase the average weekly spend on alcohol of moderate drinkers by only 23 pence per week, but would decrease the consumption by underage and heavy drinkers by 7.3 percent and 10.3 percent, respectively.¹²

The evidence on price and tax policy suggests that it is one of the most effective ways of reducing alcohol-related harm. We recognise that taking action on these is difficult and that the public, though supportive of measures to reduce the burden of alcohol use on society, may be resistant to increases in price. The alcohol industry is likely to strongly oppose increases in price. There are also legal, administrative and commercial constraints that may impact on policy action in this area. Nevertheless, we believe strongly that action to increase prices is both necessary and possible.

Advertising and marketing

The Drug Foundation supports a complete tobacco-style ban of all alcohol advertising across all media and the discontinuation of all alcohol sponsorship of sporting or cultural events.

Alcohol advertising takes the form of delivering very clever and subtle messages through a variety of media and formats, drawing on the best marketing science available. It exploits human needs, which are most intensely expressed in youth, as part of its promotion of alcohol. These include the need for inclusion as part of the 'in crowd', the 'winners' and the need to feel grown up. Marketing tactics used by the alcohol industry appear very similar to those formerly used by the tobacco industry.

While evidence of the precise link between alcohol advertising and consumption is complex, this is largely because of methodological difficulties. What is very clear is that alcohol advertising does shape our attitudes and plays an important role in shaping our drinking culture. A large body of research shows that alcohol advertising influences children and young people's alcohol attitudes and drinking patterns.¹³ Alcohol advertising depicts the young adult lifestyles to which young teenagers aspire.¹⁴

Television is the most powerful medium, reaching into homes with intensively tested marketing messages. Despite time restrictions, alcohol advertising on television is seen by many children,¹⁵ not just in direct advertisements but through brand logos on sports coverage and other sponsored programmes, which circumvents time restrictions. Radio is also effective for reaching children and teenagers, and this medium often blurs the line between commentary and advertising.¹⁶

New Zealand research showed that 10-17 year olds who recalled and liked alcohol advertisements most had more positive attitudes to drunkenness, over-estimated drinking by others their age and drank more themselves.^{17, 18} Studies in the US and UK show similar findings. The Dunedin Childhood Development study found that teenagers who recalled more alcohol ads at age 15 were drinking more at age 18 and those who responded most positively to ads at age 18 drank more at age 21 and at age 26.¹⁹ Problem drinkers also report that television advertisements also make it more difficult to abstain.²⁰

Since the early 1990s, alcohol advertising has been self-regulated by the industries involved. The Code on Liquor Advertising is enforced by the Advertising Standards Authority, a private sector body representing the advertising and media industries. Since 1992 alcohol brand advertising has been permitted on radio and on television, initially after 9pm but now after 8.30pm. The code relies on complaints by individuals. Public health groups have expressed concern that ASA decision-making has been slow and not independent of industry interests, the code does not address the many sophisticated ways in which advertising makes alcohol attractive to young teenagers.²¹

In the 2003 review of the code, ALAC recommended that the time for alcohol ads be cut back to 9.30pm. The Ministry of Health recommended discontinuation, or if not a 10.30pm limit. Instead, the Advertising Standards Authority changed the time to 8.30pm – a time at which 26 percent of 10-17 year olds are watching.²²

In its 2003 review of the alcohol advertising code the Advertising Standards Authority focused on whether research shows that alcohol advertising increases total national consumption. Alcohol and tobacco are the only industries that say advertising is about market share, not increasing sales. In markets saturated with both alcohol and alcohol advertising, the marginal effects of additional advertising expenditure on consumption are difficult to demonstrate and this body of international research shows mixed results. Some positive if weak influence on total consumption is shown by studies that look at beer, wine and spirits separately and use quarterly advertising expenditure to capture the pulsing of advertising campaigns.²³ Two US studies looked at drinking patterns by young people, rather than total consumption, and found that this was influenced by the level of expenditure on alcohol advertising.²⁴

Alcohol brands sold in New Zealand are increasingly being marketed via sponsorship of music and sporting events. Alcohol sponsorship of clubs, sports events, rock concerts and other events helps embed alcohol brands and products into the everyday lives of young people.²⁵ This type of alcohol sponsorship is not covered by the existing Code for Advertising Liquor and there is no complaints system, yet alcohol sponsorship may be almost as important a means of promoting alcohol brands and drinking as advertising through the media. In 2003 Sport and Recreation New Zealand reported that alcohol companies sponsored sport and recreation organisations to the tune of \$34 million a year. Many men's sports clubs have become dependent on alcohol sales and alcohol

sponsorship. Large licensed sports clubs have been described by licensing police as ‘virtual taverns’. Marketing linkages between alcohol, sports and masculinity reinforce our heavy drinking culture and linkages between alcohol and music events tap into youth culture.

This situation is unsatisfactory. The government has lost policy control over the promotion of alcohol in the media and via sponsorship. The promotion, as well as the sale, of alcohol are key public health issues for New Zealand. Voluntary self-regulation and self-review will not deliver on public health goals. We recommend the introduction of a New Zealand version of the French strategy, “Loi Evin” in which no alcohol promotion is permitted through television, radio, cinema, billboard or internet advertising, and alcohol sponsorship of cultural or sporting events is discontinued.

In 2006, we made a comprehensive submission on the regulation of alcohol advertising that expands on the points we have made above. A copy is attached.

Problem Limitation

Treatment

The Drug Foundation recommends the urgent and extensive expansion of alcohol and other drug treatment services that are more responsive to the diverse needs of clients, their families and communities. There is a real and urgent problem with lack of residential beds for those with severe problems for whom outpatient care will be ineffective.

We also recommend the following:

- Give priority to providing appropriate treatment programmes in all parts of the country for young people, Māori, Pacific people, and those in criminal justice settings
- Increase skills development training in the alcohol and drug workforce, with targets for qualification levels in the treatment sector
- Increase effort to recruit, train and support Māori and Pacific workers to provide effective culturally-specific alcohol treatment and health promotion programmes
- Develop and provide programmes for brief intervention practices in primary care and emergency rooms
- Provide centres for temporary supervision for individuals who are not charged with an offence but pose a significant concern to their own or others’ safety or health
- Require the need for alcohol and other drug assessment and treatment to be taken into account during sentencing in cases where alcohol and other drugs may have contributed to the offending.

Enforcement and penalties

We support measures to enhance the current enforcement tools and endorse proposals that would increase the penalties for breach of license conditions, including making it easier for a licensee to lose a license.

We are opposed to the proposal to make drunkenness in a public place an infringement notice and hold strong concerns about the disproportionate impact such a proposal would have on specific populations such as young people.

BAC

The New Zealand Drug Foundation recommends lowering the blood alcohol content limit (BAC) to 0.05gm/100ml for drivers, and a zero BAC for drivers under 20 years, drivers without their full license and commercial drivers.

The evidence is that the risk of crashes is associated with youthfulness far more than inexperience per se. In New Zealand, 15-19 year old drivers at the current legal limit of 30 mg/100ml are 15 times more likely to die in a night-time road crash than a sober driver aged 30 or over.²⁶

A 0.05gm/100ml BAC limit is standard in most of the industrialised world, and those jurisdictions that have lowered the limit have experienced general reductions in drinking and driving and alcohol-related deaths and injuries.²⁷ Twenty-seven countries including Australia and 25 out of 29 European countries have a BAC of 0.05gm/100ml or less for adult drivers. When Sweden lowered its BAC level from 0.05gm/100ml to 0.02gm/100ml in 1990, fatal alcohol-related accidents dropped by 10 percent, similar to the experience of Austria, Belgium and France.²⁸

General comments

The Drug Foundation cautions against including industry in the formulation of alcohol policy. This reflects the fundamental conflict of interests between public health interests and economic interests that we believe lies at the core of the issues relating to alcohol policy. The majority of all alcohol that is consumed in New Zealand is done so in the context of what can be termed excessive or harmful drinking. It is naïve to expect that industry would voluntarily support measures to reduce overall consumption when the impact of this would be to significantly undermine their profits.

We wish to draw attention to the WHO Expert Committee recommendation that “WHO continues its practice of no collaboration with the various sectors of the alcohol industry. Any interaction should be confined to discussion of the contribution the alcohol industry can make to the reduction of alcohol-related harm only in the context of their roles as producers, distributors and marketers of alcohol, and not in terms of alcohol policy development or health promotion.”²⁹ WHO has also stated that “Public health policies concerning alcohol need to be formulated by public health interests without interference from commercial interests” We fully endorse WHO’s position and believe that the government should take a similar stance.

There are many parallels between the strategies and tactics employed between the alcohol industry and the tobacco industry. A major focus of industry lobbying is to campaign against effective strategies and for ineffective strategies. Another industry tactic that has been adopted is to attempt to instil doubt about non-industry research. A recent disclosure of hitherto unpublished documents provides a revealing insight into how the alcohol industry operates.³⁰ It shows that industry holds grave concerns that alcohol will be viewed through a public health lens in the same way as tobacco, and has invested in coordinated strategies to divert attention away from those programmes they perceive will do the most damage to their interests. Among the measures they have opposed most strongly are tax increases, controls in advertising and sponsorship, health warnings and tough policing, especially on drink driving. According to the lead author of this paper, “although they [alcohol industry] don’t want to be seen in the same way as big tobacco, they’re going down exactly the same path. Heavy advertising, heavy promotion, heavy sponsorship, opposing tax increases, soft education programmes that don’t work”.

Please contact me if you need further information or require clarification on points made in this submission.

Yours sincerely

Ross Bell
Executive Director

About the New Zealand Drug Foundation

The New Zealand Drug Foundation, established in 1990, is an independent trust with a national focus on minimising drug-related harm. This includes social and health harms caused by legal drugs, such as tobacco and alcohol, as well as illegal drugs, such as cannabis.

The Drug Foundation advocates evidence-based policy on these issues, and provides reliable and credible information to organisations and individuals. We take a lead role in networking and cooperation within the alcohol and drug sector.

The Drug Foundation recognises that drugs, legal and illegal, are a part of everyday life experience. Drugs, and their use, impact on many of us, and on the people we care about. Harms to individuals and families include injury, disease, social, personal and financial problems and a reduced quality of life. Harms to society include unsafe communities, increased need for law enforcement, and high health and economic costs. Worldwide, tobacco and alcohol, not just illicit drugs, are major contributors to the burden of injury and disease.

For these reasons, the Drug Foundation is committed to reducing drug use and its harmful consequences. This commitment to reducing harm includes moderation in the use of alcohol and ensuring that any illicit drugs, if used, are used safely. Our focus is on advocating for policies that build a healthy society where there is the least possible harm from drug use. All efforts to control or reduce the harm from tobacco, alcohol and illicit drugs must be evidence based, socially just and maintain the rights of individuals and the aspirations of communities.

The Drug Foundation provides leadership and representation for our nationwide membership of organisations and individuals working on alcohol and drug issues. The Drug Foundation is a member of the Global Alcohol Policy Alliance, the International Harm Reduction Association, and the International Drug Policy Consortium.

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