

**A SUBMISSION TO
THE ADVISORY COMMITTEE**

LIQUOR REVIEW 1996

NEW ZEALAND BUSINESS ROUNDTABLE

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EXECUTIVE SUMMARY

- Beer, wine and spirits provide substantial benefits for those who choose to consume them. This is best shown by their willingness to buy liquor.
- A contemporary view of the effect on health of liquor recognises that moderate consumption can extend life.
- The vast majority of consumers of liquor act responsibly. Only a very small percentage of people engage in anti-social behaviour. Policies that target the misuse of liquor rather than responsible consumption are required to address anti-social behaviour.
- Some of the least desirable drinking habits were encouraged by inappropriate licensing and other restrictions. The relaxation of controls introduced by the Sale of Liquor Act 1989 (the Act) has contributed to a more mature and responsible approach to drinking.
- There has been a large increase in the number of liquor outlets since 1989 while the volume of per capita sales has declined. This outcome contradicts the prediction of those who claimed that greater availability of liquor would lead to increased consumption.
- The regulatory framework for the supply and consumption of liquor should be brought into conformity with that of other products, except where there are valid public policy grounds for industry-specific interventions.
- The Laking working party recommended a significant liberalisation of our liquor laws, but it did not advocate the dismantling of the heavy-handed and paternalistic regulation that distinguishes the distribution of liquor from that of other products. The present review should build on the Laking reforms in establishing an efficient regulatory framework that is appropriate for the 21st century.
- Young people, because of their immaturity, limited experience and knowledge, may not be able to make decisions which are likely to maximise their welfare. The prime responsibility for overseeing the purchase and consumption of liquor by young people should rest with their parents or guardians.
- Parents may face excessive costs in constraining the purchase and consumption of liquor by young people who are under their care and in monitoring their behaviour in this regard. Government regulation may enable such costs to be reduced. It may also be necessary to provide greater certainty for suppliers on whether parents wish their children to consume liquor.

- The issue of a minimum drinking age revolves around the age at which young people are generally considered to be sufficiently mature to judge their long-term welfare and the willingness of the community to comply with, and support the enforcement of, a particular age limit.
- The Advisory Committee should examine whether suppliers of liquor should continue to be licensed.
- The main contemporary rationale for licensing is to further the enforcement of the prohibition on sales to under-aged drinkers and to intoxicated adults. This cannot possibly require the present heavy-handed and costly regulation of the supply of liquor.
- Open competition among firms offers the best opportunity to satisfy consumers' preferences at the lowest possible cost. The sale of liquor should not be restricted by licensing to particular classes of firms such as bottle stores, supermarkets, hotels, taverns, clubs and restaurants.
- The regulation of trading days and hours cannot be justified on the grounds of controlling sales to young drinkers or intoxicated adults. The only plausible rationale, aside from paternalism, is a belief in the discredited availability theory.
- The days and hours of supply of liquor for consumption on-premises or off-premises ought to be a matter to be determined by traders.
- Licensing trusts should be exposed to competition on as neutral a basis as possible.
- A sceptical view should be taken of industry-specific advertising restrictions and self regulation of advertising which is motivated in large part by the desire to avoid statutory regulation. Such restrictions harm consumers.
- The grounds for believing that consumers systematically under-estimate the risks to their health from consuming liquor are dubious. The argument for requiring mandatory health warnings to be included on liquor labels and in advertisements is weak.
- Our recommendations are presented in section 8.

LIQUOR REVIEW 1996

1 OVERVIEW

This submission is made on behalf of the New Zealand Business Roundtable (NZBR), an organisation of chief executives of major New Zealand business firms. The purpose of the organisation is to contribute to the development of sound public policies which reflect overall New Zealand interests. Of particular relevance to the present submission is its view that consumer interests should be paramount in policy design.

Liquor has been consumed for thousands of years. Over 70 percent of women and 80 percent of men are reported to be drinkers (ALAC 1996). Beer, wine and spirits provide substantial benefits for those who choose to consume them. This is best shown by their willingness to buy liquor. Statistics New Zealand reports that on average households spent \$17.60 a week or 2.6 percent of their weekly expenditure on liquor in 1995/96. This is broadly comparable to the amount spent on each of the following categories of food: meat, poultry and fish (\$17.10), fruit and vegetables (\$16.90), and cereals (\$14.80).¹

A contemporary view of the health benefits and risks associated with liquor is provided by the American Council on Science and Health (ACSH). ACSH is an independent consumer education and public health institution that is directed and advised by prominent American physicians and scientists.

Ellison (1993), who prepared ACSH's report, wrote:

The scientific evidence is now clear. Moderate alcohol use can extend life. Most studies on the health effects of alcohol conclude that moderate or light consumers - defined as those who consume an average of up to one or two drinks per day - have the lowest death rates. We believe this level of alcohol intake can be consistent with good health and is not associated with increases in those forms of death (like liver cirrhosis) which are known to be causally related to alcohol misuse.

ACSH concluded:

People who regularly consume moderate amounts of alcohol have significantly lower death rates than both non-drinkers and alcohol abusers. ... moderate drinkers not only have a lower risk of dying from coronary heart disease but also a diminished risk of death from any [health] cause.

Jackson and Beaglehole (1993), both of the University of Auckland, reviewed many studies in the medical literature relating to the effect on the risk of death from coronary heart disease of alcohol consumption. They concluded that:

¹ Statistics New Zealand (1996).

An apparent protective effect of light-to-moderate alcohol consumption on the risks of coronary heart disease has been documented in numerous ecological, case-control and cohort studies. The findings are consistent and there are several biological effects of alcohol which could explain the findings. It has been argued, however, that the observed association is an artefact due to either the misclassification of ex-drinkers as never-drinkers or to confounding factors. A series of recent studies have addressed these concerns and examined the possible biological mechanisms involved. These studies add support to the hypothesis that the inverse association between light-to-moderate alcohol consumption and coronary disease risk is causal.

Scragg (1995), in the first serious New Zealand study aimed at estimating the proportion of deaths caused or prevented by drinking, reported a net saving in lives of 416 (equal to 1.5 percent of all deaths) in 1987. This study presents a totally different picture from the 700-800 lives lost annually that is commonly cited.² Taking account of the age of people whose lives were saved or lost, Scragg concluded that a total of 9,525 person-years of life were lost. This result reflects the finding that young people tend to lose their lives, mainly through accidents, whereas middle aged and older people with a shorter life expectancy tend to have their lives extended.

Plant (1982) observed that:

The benefits from alcohol and drinking are highly underrated and under represented by specialists and those authorities concerned with a proper perspective on problem drinking.

Although the balance of professional opinion has shifted since 1982, some groups continue to argue that the consumption of liquor reduces community welfare. The Ministry of Health, for instance, released an issues paper in 1995 on a national policy on drugs which claimed that the "economic costs of alcohol" amounted to \$1,500 million (Ministry of Health 1995). The Ministry did not acknowledge compelling criticisms of an Australian report on which the estimate was based.³ Devlin *et al.* (1996) suggests that the "social cost of alcohol abuse" was between \$1.5 and \$2.4 billion in 1991. This estimate omitted any benefits from the consumption of liquor despite an acknowledgment by Devlin *et al.* that they are generally recognised in the literature. Their finding is included in ALAC's 1996 Fact Pact without qualification (ALAC 1996).

Such studies are seriously flawed as a basis for public policy making.⁴ The broad issue for public policy is not the level of gross or even net social costs but whether people bear the economic costs of their consumption decisions (that is, that all costs which are

² See, for example, Ministry of Health (1995).

³ The Australian study referred to is Collins and Lapsley (1991). For a critique of their methodology see ACIL Economics & Policy Pty Ltd (1994).

⁴ For an example of a rigorous analysis of a health issue from a public policy perspective see Philipson and Posner (1993).

external to the consumer are imposed on the consumer where it is efficient to do so).⁵ In the case of young people, the principal issue is whether they are sufficiently mature to take decisions that advance their welfare. Neither the studies cited by the Ministry of Health (1995) nor that by Devlin *et al.* (1996) address these issues.⁶

The vast majority of consumers of liquor act responsibly. Only a very small percentage of people engage in anti-social behaviour.⁷ Policies that target the misuse of liquor rather than responsible consumption are required to address anti-social behaviour. This approach is similar to that taken in respect of motor vehicle accidents. Greater mobility is rightly seen as a benefit of higher living standards, and strategies to reduce accidents are targeted at their specific causes. The problem does not relate to people who drive, or even to those who drive a lot, but to those who cause accidents.⁸ A similar approach in respect of liquor requires policies directly targeted at its misuse.

Some of the least desirable drinking habits were encouraged by inappropriate licensing and other restrictions, such as the construction of large on-licence establishments that were commonly referred to as booze barns and 6 o'clock closing. The relaxation of controls introduced by the Sale of Liquor Act 1989 (the Act) has contributed to a more mature and responsible approach to drinking. The volume of per capita consumption of liquor has declined despite a large increase in the number of outlets.⁹ This outcome contradicts the prediction of those who claimed that greater availability of liquor would lead to increased consumption. Moreover, there has been a fall in the rate of fatal accidents that are reported to be alcohol-related.¹⁰

Since 1984 successive governments have placed greater focus on their core role of setting the framework which enables individuals and firms to interact in ways that maximise community welfare. The supply of goods and services has increasingly been viewed as the function of private enterprise except in certain exceptional circumstances. Competition has correctly been seen as the key to encouraging producers and distributors to satisfy consumer preferences at the lowest possible cost. The vast majority of New Zealanders endorsed these broad policy directions at the

⁵ The Laking working party noted this critical point. See Castle (1986).

⁶ The largest cost item noted by Devlin *et al.* (1996) was excess unemployment among alcohol abusers which amounted to between \$369 and \$1,108 million depending on assumptions. The cost of unemployment is primarily borne by affected workers and their families rather than by other members of society. Some other cost items included in the estimate are also met by the affected consumer rather than society.

⁷ Devlin *et al.* (1996), for example, assume that abusers constitute 4.3 percent of the population. In 1986 Bailey reported that people who drink sufficient quantities of liquor to be likely to have a fatal accident if they subsequently drive a motor vehicle probably constitute between 2 and 5 percent of the adult population. See Bailey and Carpinter (1991).

⁸ Research by Bailey shows that 37 percent of drunk drivers who were responsible for fatal accidents had two or more prior convictions for theft, burglary, violence, illicit drugs or alcohol-related offences. Just over half of such drivers had two or more convictions for serious driving offences (Quay Group 1995b). These findings illustrate the point that the focus should be on deviant behaviour.

⁹ Bushnell and Howden-Chapman (1994) shows that average consumption of beer, wine and spirits by people aged 15 years and over has fallen by about 20 percent since 1978. The Quay Group (1995b) reported that the number of licensed outlets more than doubled between 1980 and 1993.

¹⁰ Quay Group (1995b) and Bailey *et al.* (1995).

recent general election. The review of the Act provides an opportunity to apply them more consistently to the distribution of liquor.

The supply and consumption of liquor are heavily regulated. The minimum drinking age is controlled, suppliers are licensed, managers are required to be certified, trading hours and days and liquor advertising are subject to industry-specific rules, and public enterprises - licensing trusts - are protected from competition. Liquor is subject to substantial excise taxes. These provisions extend well beyond those applicable to most other products. They impair competition and lead to higher prices and lower quality service than otherwise, waste resources from a community perspective and inhibit innovation.

The thrust of this submission is that the regulatory framework for the supply and consumption of liquor should be brought into conformity with that for other products, except where there are valid public policy grounds for industry-specific interventions. Many other products or activities - food, transport equipment, sport and recreational activities and so forth - involve risks and the possibility of abuse, yet are not subject to anything like the degree of control and punitive taxation as liquor. While there are grounds for some restrictions on the minimum drinking age, virtually all other industry-specific regulations cannot be justified on accepted public policy criteria.

The Laking working party recommended a significant liberalisation of our liquor laws.¹¹ However, it did not go far enough in dismantling the heavy-handed and paternalistic regulation that distinguishes the distribution of liquor from that of other products. Moreover, its proposals were not adopted fully.

The present review should build on the Laking reforms in establishing an efficient regulatory framework that is appropriate for the 21st century. The key steps required include:

- the adoption of more appropriate rules relating to the supply of liquor to young people. Such rules should be soundly based, command the support of the community and be properly enforced. A decrease in the minimum drinking age is recommended;
- the abolition of liquor licensing. The control of the consumption of liquor by under-age drinkers and intoxicated adults is not sensibly addressed by licensing traders. Furthermore, present arrangements limit competition and waste resources by imposing unnecessary compliance and administration costs on the community. Any class of business should be able to sell liquor;
- the removal of controls on trading days and hours or, at least, bringing the supply of liquor under the provisions of the Shop Trading Hours Repeal Act 1990;
- the introduction of competition for licensing trusts;

¹¹ Laking *et al.* (1986).

- the removal of restrictions on liquor advertising and promotion; and
- a review on a first principles basis of excise duties.

The above measures would enable the Act to be repealed with residual matters, such as the drinking age, included in the Crimes Act 1961. The efficiency of the distribution of liquor would increase substantially, thereby conferring benefits on responsible drinkers and on the wider community through a more efficient use of resources.

This submission addresses all issues listed in the Ministry of Justice's discussion paper (the discussion paper) except the definition of intoxication and technical issues.¹²

The balance of this submission is presented in 7 sections. The next section (section 2) addresses the minimum drinking age including the issue of identification cards. The regulation of traders is examined in section 3. The question of whether particular classes of business should be licensed to supply liquor and whether trading hours and days should be restricted is discussed. Section 4 focuses on licensing trusts. Sections 5 and 6 address liquor advertising and promotion, and health warnings respectively. Excise taxes are discussed in section 7. Our conclusions and recommendations are presented in section 8.

¹² Ministry of Justice (1996).

2 THE MINIMUM DRINKING AGE

2.1 Conceptual Approach

The establishment of a minimum drinking age or ages is arguably the most important issue in the regulation of liquor. If the supply of liquor to young people were not prohibited, the justification for industry-specific regulation of the distribution of liquor would vanish.

An economic approach to the question of whether there should be restrictions on the drinking age and, if so, the broad nature of such limits starts from the proposition that unless special factors apply liquor should be treated like most other goods and services for regulatory and taxation purposes. Its consumption should be a matter for individual choice and responsibility. The next step is to examine whether there are valid grounds for specific government intervention. The costs and benefits of any intervention would then need to be assessed.

Society generally accepts that individuals can make rational choices - not in the sense that they do not make mistakes but that they do not systematically act against their interests. Aside from a few products that are prohibited from sale or distribution, such as illicit drugs, or those that are sold subject to special conditions like firearms, traders are entitled to supply goods and services and adults of sound mind are able to choose whether to buy them.

Young people, because of their immaturity, limited experience and knowledge, may not be able to make decisions which are likely to maximise their welfare. This, for example, is the economic rationale for limits on the capacity of minors to enter into enforceable contracts. However, parents (and other people who act in their place such as guardians) can be expected to oversee the decisions of their children. Parents are generally assumed to act in the best interests of young people because they have stronger incentives to do so than any other person or agency (Becker 1991). For this reason, the rights of parents to act for children should generally be upheld and interventions restricted to clear cases of negligent or abusive behaviour.

The prime responsibility for overseeing the purchase and consumption of liquor by young people should rest with their parents. On this basis the supply of liquor to children would be prohibited where the relevant parent (or guardian) did not explicitly authorise their child's actions (for example, when the parent is not present). This approach would imply an extension of the exemptions that apply at present. It would, for instance, suggest that there should be no age limit on the consumption of liquor by children who are with a parent just as the present law does not attempt to regulate the consumption of liquor by young people in their homes. Most liquor is consumed off-premises.

The discussion to this point is predicated on the presumption that parents are capable of making informed decisions. The supply of liquor to people under the minimum age should not be able to be authorised by a parent who is intoxicated.

Parents may face excessive costs in constraining the purchase and consumption of liquor by young people who are under their care and in monitoring their behaviour in

this regard. Government regulation may enable such costs to be reduced. It may also be necessary to provide greater certainty for suppliers on whether parents wish their children to consume liquor. The issue of identifying parents and guardians might be troublesome. On these grounds it may be efficient to impose some additional constraints on the supply of liquor to young people. It would be necessary for society to judge that the benefits, in terms of bringing young people's pattern of liquor purchase and consumption closer to that approved by their parents, outweigh the costs involved. The latter include administration and compliance costs, and interference with the freedom of those parents whose preferences would be unable to be satisfied.

A related issue is the minimum age at which the consent of parents would not be required to buy or consume liquor. This relates to the age at which young people are generally considered to be sufficiently mature to judge their long-term welfare and the willingness of the community to enforce a particular age limit. For a range of activity, the former is generally between 16 years (for a full driver's licence and to appear before the District Court) and 18 years (for the right to make a will, to enter into an enforceable credit contract without parental consent, to obtain a firearm's licence, to vote in a general election, to undertake jury service, to serve in the defence forces and to go to war). While 16 years is the minimum age at which a person can be married, people under the age of 20 generally require their parent's consent. The school leaving age is to be set at 17 years. By contrast the present minimum drinking age is generally 20 years but in some circumstances it is 18 years.

The apparent widespread breach of the present law suggests that it is not supported by a large section of the community. According to research summarised by the Alcohol and Public Health Research Unit (1996), men and women between the ages of 18 and 19 have the second highest mean level of alcohol consumption for all age groups of men and women respectively. Only 20-24 year olds recorded a higher mean consumption than 18-19 year olds. Moreover, nearly a third of 14 to 19 year olds surveyed claimed to have consumed liquor in hotels in the previous year and some 38 percent claimed to have bought liquor for off-premise consumption. These findings suggest that any attempt to constrain the supply of alcohol to at least 18 and 19 year olds is doomed to fail, unless there is a substantial change in community attitudes to liquor consumption by young people. This seems unlikely.

A minimum drinking age in the 16 to 18 years range is supported by the policies adopted by comparable countries. A survey of 23 developed countries by the Brewers Association of Canada (1993) revealed that:

- two countries (Belgium and Portugal) have no age limit;
- seven countries (Austria, France, Germany, Italy, the Netherlands, Spain and Switzerland) have set the minimum legal drinking age at 16 years;
- 10 countries (Australia, Denmark, Finland, Ireland, Luxembourg Norway, Poland, South Africa, Sweden and the United Kingdom) have adopted 18 years; and
- four countries have set an age limit above 18 years. Canada has an age

limit of 18 or 19 years depending on the province or territory. The age limit in New Zealand and Japan is 20 years while the United States has adopted 21 years.

There are some exceptions to the above summary. Several countries have no limit (France and Spain, and two provinces of Canada) or a lower limit (Luxembourg and New Zealand) where a person who would otherwise be under age is accompanied by an adult, parent or guardian or when dining (New Zealand and the United Kingdom). Belgium prohibits anyone under 16 entering a dance hall where fermented beverages are served, or other licensed establishments where there is dancing, unless the person is accompanied by a parent or guardian. Denmark has no age limit for the off-premise purchase of liquor. In one or two countries a slightly higher age limit applies where spirits are consumed.

2.2 Laking Working Party and the Discussion Paper

The Laking working party was of the opinion that much of the literature supported its view that the level of enforcement was more important than the age at which people are permitted to drink. It concluded that:

- the problem of alcohol abuse by young children can be tackled effectively only through a process of education of both children and parents;
- any legal minimum age requirement, if it is to command public support, must be seen to have some logical basis in the New Zealand context;
- the legal age must be capable of more effective enforcement than was the case when its report was prepared.

On this basis, the Laking working party recommended that:

- the drinking age be fixed at 18 years;
- persons under 18 years should not be permitted to consume liquor on licensed premises in any circumstances;
- the licensing authorities be empowered to designate, in respect of any establishment, the areas from which persons under 18 years are prohibited (restricted areas); and
- the licensing authorities should be empowered to designate areas to which persons under 18 years may have access only if accompanied by an adult spouse, parent, guardian or any other adult acting in place of a parent (family areas).

Parliament did not accept the Laking working party's recommendation that the minimum drinking age be reduced to 18 years. It set 20 years as the minimum drinking age in most cases and introduced a range of age limits which apply depending on the

designation of the premises and the circumstances.

In presenting arguments for the status quo option, the discussion paper suggests that a lowering of the age at which young people may legally buy alcohol and consume it in restaurants, hotels, taverns and clubs may lead to a rise in the road toll. Drawing on US research it suggests that:

There is overwhelming evidence that lowering the legal drinking age would lead to more road accidents, road deaths and more alcohol-related problems.

A lower age limit would also result in:

... an increase in juvenile crime, non-traffic accidents, violence and attempted suicides.

Moreover:

... while the minimum age, *de jure*, is 20 years, many believe the *de facto* minimum age is lower, so if the minimum age was lowered then the *de facto* age would drop even further to that of 16 years.

There are several responses to these arguments. They include the following:

- policies aimed at addressing the abuse of alcohol should be targeted at its misuse. The argument that a lower age limit would increase accidents could be advanced in support of prohibition as all alcohol-related accidents and anti-social behaviour would be avoided if no alcohol were consumed. This would be an inefficient policy because it would be widely disregarded, and it ignores the benefits that responsible drinkers, including young ones, derive from liquor. These and other benefits need to be taken into account if an appropriate policy is to be put in place;
- while the drinking age restricts the purchase of liquor and its consumption on the trader's premises, it is of limited effect in controlling the consumption of liquor by young people in other places away from direct parental control because of the willingness of adults to supply liquor to them. Is it better to allow young people to consume liquor in a civilised manner with adults and where responsible attitudes can be encouraged rather than in cars and public parks?
- similar arguments were advanced in relation to proposals to relax controls on the availability of liquor that were introduced in the Act. There has, however, been a reduction in road fatalities since 1989 despite a large growth in the number of registered motor vehicles. This is not surprising. It probably reflects rising per capita incomes, higher spending on safety, such as improvements in roads and motor vehicles, better enforcement of certain rules of the road, higher penalties for serious offences and

publicity campaigns; and

- laws which do not command the general support of the community and which are not appropriately enforced are bad laws. They undermine the integrity of our legal system and its institutions. They encourage otherwise law-abiding citizens to become criminals. The present drinking laws are not enforced because they do not command the support of a large section of the population and because they are a low priority from a policing perspective. There are no circumstances which would justify support for an intentional gap between the *de jure* and *de facto* age limits.

While the age of 18 years has been proposed as an alternative, it is possible that an age limit between 16 and 18 years may be necessary to achieve community support for its enforcement. Community support in this context involves:

- a willingness by the majority of parents to require their children to comply with the law. The focus should be placed on the views of parents who are likely to permit drinking by their children at possible drinking ages and not on those who are opposed to drinking and are unlikely to allow their children to consume liquor at any age. It is decisions at the margin which matter most. This aspect is critical to achieving a high level of voluntary compliance;

An age limit of 18 or 20 years with no exceptions at all, as has been suggested, would fail to satisfy this criterion. Most parents introduce their children to liquor, often at a quite young age, and would be willing for them to consume, for example, when dining. What is more, how can young people be expected to learn to act responsibly if they are denied the opportunity to consume liquor under the supervision of their parents in civilised surroundings as they approach full maturity?

- a commitment by most industry participants to apply the law. They need to encourage compliance by young people and support the decisions of parents. This won't happen if industry participants believe that the minimum drinking age is too high and is not considered important by parents and the wider community;
- an appropriate level of enforcement by the police. The police must judge the relative priority to be accorded to the enforcement of drinking and other laws. The minimum drinking age needs to be set at an age where enforcement is perceived to be a reasonable priority; and
- the imposition of deterrent sanctions by the courts where breaches are proven to have occurred. Penalties, together with a subjective assessment of the likelihood of being successfully prosecuted, indicate to young people the expected cost of breaking the law. As this cost rises, the likelihood that young people will try to break the law and take the risk of

being convicted will decline. This point also applies in respect of offences for supplying liquor to under-aged drinkers.

There is also the need to contain pressures for exceptions. Too many exceptions would make the suggested approach difficult to apply.

2.3 Conclusion on the Drinking Age

The key conclusions which emerge from the above discussion are that:

- young people under the minimum age who are being supervised by a parent or guardian should generally be able to buy and consume liquor; and
- the minimum age at which young people can buy and consume liquor without parental consent should be set between 16 and 18 years.

2.4 Identification Cards

The introduction of compulsory identification cards to provide proof of a person's age solely or mainly for the purposes of enforcing liquor laws could not possibly be justified. The costs of coercion together with administrative and compliance costs could be expected to far exceed the benefits.

Any proposal to introduce a national identification system for other purposes, such as traffic enforcement or to further the administration of tax and income support systems, would raise significant civil liberty issues. It would need to be carefully considered, and is beyond the scope of the Advisory Committee.

The Laking working party's approach, which emphasises the right of traders to refuse service where there is any doubt about a person's legal right to buy or consume liquor, together with voluntary identification arrangements, are sufficient. The efficacy of that approach would be enhanced if the minimum age is lowered to a level which is supported by the community.

3 REGULATION OF TRADERS

3.1 Classes of Businesses Which May Sell Liquor

The discussion paper examines whether supermarkets and grocery stores should be permitted to sell beer and spirits. They are presently able to sell wine other than in a dry or trust area. The discussion paper is insufficiently searching in its review. The Advisory Committee should examine whether suppliers of liquor should continue to be licensed.

The Laking working party identified two main objections to the liberalisation of the distribution of liquor. First, there were submissions which argued that the more liquor is available, the higher consumption would be. The second argument related to the protection of existing traders from competition. The Laking working party rejected both views. It did, however, comment that:

... because of our concern about drinking and driving, we think it inappropriate that a service station should be granted an on-licence or an off-licence.

Parliament did not fully accept these recommendations. It prohibited dairies from selling liquor and it limited supermarkets to selling wine (and low strength beer which is not defined as liquor for the purposes of the Act). Parliament agreed that service stations should not be permitted to sell liquor.

The Liquor Licensing Authority (LLA) noted that there is no clear distinction among a grocery, superette and a dairy. As a consequence, it has been asked to make what it terms "some peculiar decisions." In the LLA's view, the relevant section of the Act needs to be reviewed because of this and other drafting difficulties.

The Laking working party's view that service stations should be prohibited from selling liquor is questionable. It is, for example, legitimate to drive to a licensed outlet or for an outlet to be located near a service station. In one decision of the LLA an off-licence was granted to a business which was established in the rented former lubrication bay of a service station because the premises were next to and not part of the service station.¹³

While drinking and driving is a serious problem, it affects a minority of the population. A restriction on liquor sales by service stations seems to be an inefficient method of addressing the drink-drive problem. No one would seriously suggest that service stations should be prohibited from selling matches and cigarettes because their misuse in the presence of petrol could have tragic consequences.

A survey of 23 countries by the Brewers Association of Canada (1993) shows that the supply of liquor to consumers is generally licensed. There are, however, some exceptions, particularly in relation to the supply of liquor for off-premise consumption. The degree of restriction imposed by licensing varies. The extent to which licensing

¹³ This refers to an application by R W Hensen and Liquor Licensing Authority decision 1612/91.

requirements are enforced is not known.

Sellers of liquor for both on- and off-premise consumption are not licensed in Spain. Off-premise sales are not subject to industry-specific licensing in Austria, Denmark, Germany and Portugal. It is said that a person can buy beer in Germany for off-premise consumption anywhere he or she can purchase milk. In Japan and Portugal, restaurants and bars are not required to obtain a special licence to sell liquor. In the Netherlands, beer and wine may be sold for off-premise consumption from any stores that are licensed to sell food. In Luxembourg beer can be sold in unlicensed premises that sell food such as restaurants and snack bars.

The discussion paper argues that one reason for permitting the sale of wine by supermarkets and grocery stores is that it is considered to be an adjunct to food and it is therefore appropriate that people should be able to buy it at the same time as they purchase food. This argument has connotations of a centrally planned distribution system. The essential argument for allowing firms to sell liquor is to encourage competition, thereby encouraging them to satisfy consumer preferences at the lowest possible cost.

The main contemporary rationale for licensing is to further the enforcement of the prohibition on sales to under-age and intoxicated drinkers. This cannot possibly require the present heavy-handed and costly regulation of the supply of liquor.

The Act reflects the view that the availability of liquor should be controlled to reduce abuse and that particular classes of firms such as hotels, taverns, clubs and off-premises should be subject to different regulatory requirements. The outcome is a reduction in competition leading to higher distribution costs than otherwise and lower quality services. Moreover, large deadweight costs, arising from a substantial licensing apparatus, are imposed on the community. One of the major costs of licensing is the delay involved. According to industry sources it takes around six months to obtain an on-licence.

Open competition among firms offers the best opportunity to satisfy consumers' preferences at the lowest possible cost. For this reason, the sale of liquor should not be restricted to particular classes of firms such as bottle stores, supermarkets, hotels, taverns, clubs and licensed restaurants. The price differences among fully licensed, BYO and unlicensed restaurants reflect impaired competition and the direct costs of the licensing system as well as perceived differences in the quality of service. This is an efficiency rather than a fairness argument as the discussion paper suggests. In our view liquor licensing should be abolished.

There may be grounds for identifying premises or businesses which are engaged in the supply of liquor, if this is necessary to enforce the minimum drinking age and a prohibition on sales to intoxicated people. These grounds are, however, unlikely to be sufficient to justify detailed registration procedures, or licensing. Restrictions on the sale of books and similar publications to people under certain ages do not, for example, require the licensing of book sellers.

The present requirement for reports from health and fire safety perspectives duplicate separate regulatory provisions. The distinctions among restricted, supervised and undesignated areas reflect the view that young people should not be present in certain

areas such as public bars but should be able to use licensed dining rooms and conveyances such as aircraft and trains. They complicate the present rules, are poorly understood by the public and impede enforcement. Such distinctions are unnecessary. Similarly, it is not immediately obvious why laws relating to the closure of licensed premises in the case of serious disorder (riot) ought not to apply regardless of the nature of the activities that are taking place (for example, the consumption of liquor, demonstrations, sporting events and rock concerts).

The economic grounds for requiring managers of on-licensed premises to be suitable persons relates to the enforcement of hours of trading and age limits. Licensed managers who persistently break such rules may be unable to renew their licences. On the first point, it is proposed below that the hours of sale be deregulated. The age limit would be less of a problem if rules that are broadly supported by the community were put in place.

If it is necessary to identify the person responsible for the sale of liquor to facilitate enforcement, firms that sell liquor might be required to display the name of the duty manager as at present. There is little justification, however, for certification requirements and insufficient grounds to require managers to complete NZQA or other recognised training as suggested in the discussion paper.

There have been suggestions that a minimum age should be set for all staff who sell liquor to the public. The responsibility for compliance with the law should rest, in the first instance, with business owners and managers. They appoint staff and arrange for their training. No person under the school leaving age (soon to be 17 years) would normally sell liquor without supervision by a manager or owner. Staff also have a responsibility to comply with the law. This applies in respect of liquor, cigarettes and restricted publications and videos, and to the general law such as food regulations. Age limits have not been imposed for these comparable activities. They would impose considerable costs initially on traders such as restaurants and supermarkets, and ultimately on consumers.

The appropriate penalty for selling to under-age or intoxicated persons should generally be a fine rather than a prohibition on a person's means of livelihood. (There may be grounds for reviewing the level of penalties.) Provision could be made to prohibit a person who habitually sells liquor to under-age drinkers or intoxicated persons from selling liquor but this would not necessarily require all managers to be certified. Some people are prohibited from becoming a director of a company but this does not require all other directors to be certified.

Any provisions along the above lines should be included in the Crimes Act 1961. There is no need to retain the Sale of Liquor Act 1989. The district licensing agencies and the LLA should be abolished with a significant saving in administration and compliance costs. The LLA alone expects to determine 7,200 applications in 1996/97.

3.2 Trading Days and Hours

The discussion paper notes that there are concerns with the differential treatment of particular classes of licence holders, and there are problems with what is meant by the expression "for the purposes of dining". It notes that all licence holders could be

permitted to trade on Sundays or no licence holders could be permitted to trade on Sundays. These are not the only options that should be considered. The Advisory Committee should examine seriously why there should be any special regulation of trading hours or days in respect of liquor.

The Laking working party concluded that the abandonment of any legislative provision imposing minimum or maximum hours for hotels and taverns would have little, if any, impact on the time that they are open for business, or on consumption. As a consequence, it did not propose to prescribe the days or hours of trade for on-licences, off-licences or club licences. However, the hours of trade were included as a criterion for the issue of such licences and provision was made for the LLA to specify such hours in granting licences. The basis on which the LLA was to decide applications was not stated.

Parliament did not accept fully the Laking working party's recommendations. It decided that trading on Sundays, Good Friday and Christmas day should be prohibited as a condition of all on-licences, off-licences and club licences. Exceptions were provided for lodgers and employees of the licensee and for any person who was present on the premises for the purposes of dining. For those entities which had been permitted to trade on a Sunday (for example, clubs), this represented a tightening of the rules.

In 1991 the sale on Sundays of grape wine or fruit wine made on the premises, pursuant to a licence issued under the Wine Makers Act 1981, was authorised.

Since 1 August 1990, most shops have been free to trade 24 hours a day except for Christmas day, Good Friday and Easter Sunday, and up to 1 pm on Anzac day.¹⁴ The ban on Sunday trading in liquor is more restrictive than that applying to most businesses.

The LLA reported that the pattern of trading hours generally approved during the 15 months to June 1991 was as follows:

- 24 hour licences for hotels and taverns or licences to trade until 3 am where there are no neighbouring residential properties. (Contrary to the explicit provisions of the Act, the LLA has authorised trading between midnight on Saturday and 3 am on Sundays);
- trading until 11 pm Monday to Thursday and midnight or 1 am on Fridays and Saturdays depending on the proximity of neighbouring residential properties; and
- Sunday hours restricted to lodgers in hotels or persons present on the premises for the purposes of dining in hotel or tavern dining rooms.

The LLA reported that 24 hour trading has generally been accepted without any great public outcry or the creation of additional problems for the police.

¹⁴ These provisions are contained in the Shop Trading Hours Repeal Act 1990 which is administered by the Industrial Relations Service of the Department of Labour.

The LLA has generally set 11 pm as the latest hour for trade by off-licence holders. One authority has noted that the LLA does not have the power to adopt this stance and that it is inconsistent with the Laking working party's report (Dormer, Sherriff and Crookston 1990).

The Laking working party rejected the notion that controls on the availability of alcohol were an efficient method of limiting alcohol abuse. In these circumstances, restrictions on the hours and days on which alcohol may be consumed can be expected to have the following adverse economic effects:

- they alter the pattern of consumption. Consumers who would prefer to drink at a hotel or tavern are required to go without, to consume at another venue such as at home, or to consume when trading is permitted. This interference with their preferences imposes a cost on them;
- they require consumers to subject themselves to an ordeal to consume alcohol during prohibited hours.¹⁵ This might involve buying a meal, joining a club or travelling to an airport bar that has less restrictive licensing terms, or buying alcohol in advance for later off-premises consumption.

An ordeal is an inefficient method of allocating goods and services among consumers because it results in a waste of resources (for example, the otherwise unnecessary trip to an airport bar). The ordeal is of no benefit to the seller as it does not signal the value of the service which is provided and thus disrupts market responses. An ordeal also forces consumers to choose between the product which they wish to acquire and the one which they must give up to do so. Similar constrained choices are not required under price rationing. Finally, the money-equivalent price of the ordeal differs from person to person. (Note the tendency for old people and children rather than people of working age to queue for food in the former Eastern European countries.) For these reasons, ordeals are Pareto-inefficient;¹⁶

- they distort the pattern of production and distribution. For example, packaged liquor is favoured relative to on-tap beverages. The location of production and distribution facilities reflects the pattern of trade which emerges under current regulation rather than that which would emerge under an alternative set of rules. Organisational forms which have more liberal trading hours are favoured relative to others (for example, clubs relative to hotels);

¹⁵ A common ordeal is the requirement of some local authorities that hand-held hoses only may be used to water gardens during summer. The ordeal referred to here is additional to that which might otherwise be required (e.g. a trip to the consumer's preferred outlet).

¹⁶ Pareto efficiency is achieved when it is not possible to make one person better off without reducing the welfare of another.

- they require resources to be committed to the administration of, and compliance with, the regulations. Delays arising from the need to prepare a submission and obtain approval impose further costs on suppliers. In addition, resources are committed to lobbying to obtain favourable rules and outcomes from administrative bodies. Lobbying activities tend to favour well organised and well-off groups at the expense of others. Resources devoted to lobbying are wasted from society's point of view (that is, total output is reduced); and
- they penalise minority groups whose work and recreational activities occur at less common times. Small communities are penalised relative to large ones because the former are likely to be serviced by a narrower range of suppliers (for example, the distribution of airports affects the availability of liquor).

The response of consumers and producers to the liberalisation of shop trading hours demonstrates that restrictions on trading hours, even apparently innocuous ones, can impose significant costs. It is also apparent that no government has reliable information on such costs. On the other hand, to the extent that the present procedures tend to be non-constraining, they impose unnecessary compliance and administration costs on the community.

The regulation of trading days and hours cannot be justified on the grounds of controlling sales to under-age people or intoxicated adults. The only plausible rationale, aside from paternalism, is a belief in the discredited availability theory. Issues relating to the location of outlets, noise and nuisance to neighbours are matters that should be addressed under the Resource Management Act 1991 and not under the Sale of Liquor Act 1989. This point applies to the suggestion in the discussion paper that people should be able to object to the issue of an application for a licence on the grounds that the premises are or will be in the immediate vicinity of a place of public worship, a hospital or a school.

The days and hours of supply of liquor for consumption on-premises or off-premises ought to be a matter to be determined by traders (first preference) or made subject to the Shop Trading Hours Repeal Act 1990 (second preference). The establishment of separate rules for selected goods and services, as presently applies to wine in supermarkets, imposes unnecessary costs on traders.

The restrictions on trading days contained in the Shop Trading Hours Repeal Act 1990 are an anachronism which reflect a conflict model of employment relationships and are out of step with the preferences of most consumers. If liquor is brought within that Act, provision would need to be made for a continuation of trading on Anzac morning and for sales on Christmas day, Good Friday and Easter Sunday to diners, lodgers and employees to avoid any unintended tightening in the controls.

Under both options traders would respond to commercial pressures as is the case for dairies and service stations.

4 LICENSING TRUSTS

The Laking working party concluded that neither public nor private control of liquor sales could claim greater success in the struggle against liquor abuse. It also noted that the rationale that trusts made a substantial financial contribution to the community was a doubtful one. For these reasons, the Laking working party recommended that:

- the same licensing rules should apply throughout the country;
- licensing trusts should no longer retain any sole rights or privileges beyond those enjoyed by private enterprise; and
- trusts should be relieved of many of the restrictive provisions that limit trustee powers.

The Act provides that a trust may be constituted by Order in Council by the Governor-General who acts on the recommendation of the Minister of Justice. The Minister in turn is required to advise the Governor-General on receipt of a written request to form a trust from at least 15 percent of qualified local authority voters in the area. There is also provision for the amalgamation of trusts. A trust may hold a poll of electors on a proposal that the trust give up its exclusive right to hold on-licences, off-licences and club licences in return for the right to carry on any business within its objects outside as well as within its district. Unless such a poll is successfully carried, certain trusts have a monopoly right to hotel or tavern licences and they are largely protected from competition in respect of other licences. A supermarket in a trust area, for instance, cannot sell wine. These rights are able to be extended to new trusts.

Since the Laking working party's report was finalised, considerable evidence has emerged on the way in which public ownership, particularly when coupled with other impediments to competition, leads to inefficiency. The residual owners of public enterprises have little stake in the firm. They therefore have few incentives to monitor its management. This leads to excessive costs and a divergence between the interests of the owners and those of other stakeholders such as managers. The lack of competition impairs cost control, reduces choice for consumers and impedes innovation. The corporatisation and privatisation process in New Zealand and elsewhere has shown that these costs are often substantial.

The provisions contained in the Act are intended to facilitate the voluntary removal of the preferred status conferred on trusts, consistent with the Laking working party's view that there are no economic grounds for their competitive advantages. Trusts are, however, unlikely to act in this way.

Licensing trusts should be exposed to competition on as neutral a basis as possible. This is consistent with the view that the licensing of liquor outlets should be abolished. Trusts will only survive in a competitive environment if they offer the service demanded by consumers. Provision should be made for their sale. The proceeds could be applied for charitable community purposes in the areas in which the trust operated.

5 ADVERTISING AND PROMOTION

The advertising of liquor through broadcast media is subject to significant controls which are administered by the Advertising Standards Authority (ASA). The ASA is a self-regulatory body which is supported in large part because statutory regulation would otherwise be imposed. It administers a code of practice and services the Advertising Standards Complaints Board. Broadcasters are required to provide \$3 million a year in unpaid time to promote moderate consumption of liquor. These arrangements are uncharacteristic of the general run of commerce.

The thrust of the discussion paper is that present arrangements, which were recently reviewed by a team appointed by the ASA, are satisfactory.¹⁷

Product-specific controls on liquor advertising are usually advocated on the grounds that advertising encourages consumption that is harmful to society, including that by vulnerable members of society such as young people.¹⁸ An economic perspective of advertising provides a contrary view. This is outlined below:

- advertising is associated with the freedom of speech which belongs to the domain of rights and duties. Those rights are fundamental to the freedom and dignity of people. The preservation of them, subject to some limits, is normally seen as a key function of democratic governments and may take precedence over efficiency (Okun 1975 and Gray 1992). While Potter *et al.* (1994) accepted legal advice that a ban on liquor advertising and sponsorship could breach the New Zealand Bill of Rights Act 1990, they did not examine whether the present restrictions were consistent with the Act or more general principles of freedom;
- advertising reduces the cost to consumers of identifying sellers, obtaining information on alternative products and other goods and services that are available, and on their relative prices. Because advertising facilitates competition, it also generally results in lower quality-adjusted prices.¹⁹ These benefits of advertising enhance the welfare of consumers. Potter *et al.* (1994) omits any serious consideration of the benefits of advertising to general consumers. One of its main points, for example, was that sponsorship advertising is "justified given its importance to the promotion of sport and other activities". This is an irrelevant justification from a public policy perspective. The Potter report is notable for the omission of an appropriate conceptual framework and adequate information to make valid decisions on liquor advertising;

¹⁷ See Potter *et al.* (1994).

¹⁸ See von Dadelszen (1979). The Toxic Substances Board (1989) sought an end to tobacco advertising on similar grounds. Its report was severely criticised on methodological grounds and for its lack of scientific rigour by Justice Jean-Jude Chabot in the Quebec Superior Court. See Luik (1991).

¹⁹ See, for example, research reviewed by Pauly (1986) relating to restrictions on the advertising of medical services and supplies.

- there are no compelling grounds for believing that advertising can have a large impact on aggregate consumption of liquor because relative prices and income largely explain demand.²⁰ Advertising expenditures are generally believed to have a limited impact on aggregate demand and a more significant impact on the distribution of sales among competitors;
- if a reduction in the price of alcohol products were worth more to consumers than advertising expenditure, consumers would voluntarily demand less advertising and lower-priced brands, and producers would also exploit this opportunity. (The supply of 'no frills' products in supermarkets is a partial example of this response.²¹) This proposition illustrates the point that advertising conveys information relating to the quality of products - for instance information on the uniformity of the product, its taste and the reliability of the quantity supplied - and does not just reduce search costs (Schneider, Klein and Murphy 1981 and Barzel 1982);
- controls on advertising reduce the marginal efficiency of advertising expenditure and thereby impose a deadweight cost on the community. Restrictions on the style of advertising (over and above valid ones that apply to all industries on matters such as misleading or deceptive advertising), the medium which may be used and the time at which advertisements may be broadcast also impose deadweight losses for similar reasons;
- restrictions on advertising are likely to bias the form of advertising. A ban on brand advertising, for example, could be expected to result in more sponsorship advertising than otherwise. Similarly, a ban on brand advertising on television would be likely to lead to more advertising on radio and in the print media. Another example would be the promotion of products indirectly through agreements with the producers of television programmes to display products in their television programmes. Thus unless advertising restrictions are extensive, their main effect is likely to be a decrease in the efficiency of advertising expenditure rather than a large reduction in consumption of the relevant product;
- brand advertising promotes the reputation of producers and distributors. They have incentives to enhance their reputations and their long-term interests are damaged by the association of their products with misuse such as the commission of crimes. To the extent that restrictions on advertising inhibit the promotion of the reputations of producers and

²⁰ See Smart (1988) for a review of empirical evidence.

²¹ The reputation of the distributor rather than that of the producer is emphasised with no frills products. The limited size of the no frills market relative to that for comparable branded products illustrates the importance to consumers of advertising and similar expenditure.

distributors, they will impair the incentives of producers and distributors to discourage the misuse of their products;

- advertising bans, by lowering the non-quality-adjusted price of the product, may actually increase consumption of the product concerned by a small amount, thereby biasing consumer choice. In addition, bans may prohibit anti-drinking publicity or the promotion of moderate drinking, thereby contributing to higher demand than otherwise. Finally, advertising bans may make it more costly to introduce new brands such as low-strength alcohol, thereby adding to consumption. Similar findings were reported by Schneider, Klein and Murphy (1981) in respect of cigarette advertising;²² and
- while consumers do not face the costs of subsidised public health services (other than indirectly through excise taxes), controls on advertising are an inefficient way of addressing this issue because, for example, they do not impose the marginal alcohol-induced health costs on consumers.

Private individuals and groups who wish to promote lawfully the prohibition of liquor or its moderate use should be able to do so using their own resources. As Gray (1992) concluded:

The danger [to society] comes, not from advocacy advertising, but from restrictions on advertising which have the same goals as some of the advocacy groups ... who pursue these goals via restrictive regulation and prohibition rather than by persuasive communications.

For these reasons we believe a sceptical view should be taken of industry-specific advertising restrictions. The same view is appropriate in respect of self regulation which is motivated in large part by the desire to avoid statutory regulation. The evidence indicates that such restrictions harm consumers. Controls on advertising focus on restricting liquor consumption rather than addressing abuse. They cannot be justified on economic grounds and should be abolished.

²² Schneider, Klein and Murphy (1981) rejected previous research findings which had indicated that advertising bans had been effective in reducing demand. In their view earlier studies had been based on mis-specified econometric equations.

6 HEALTH WARNINGS

The assumption that consumers are poorly informed on the health risks of liquor underlies the argument for mandatory health warnings on labels and in advertisements. Consumers are said to under-estimate such risks and this leads to excessive consumption of liquor from the community's viewpoint.

There are strong grounds for being sceptical of the view that consumers are misinformed on the risks that they face. As Fischhoff *et al.* (1981) noted:

Risk is an ever-present aspect of life, and its management occupies a prominent position among society's concerns.

Health risks associated with the consumption of liquor are but one risk which consumers face every day. In economic models, utility maximising consumers are postulated to trade off the possibility of some small detrimental effect on their health against the benefits from the consumption of goods and services that involve those risks. Thus Woodfield (1984) wrote:

Moderate drinkers willingly accept a small amount of risk in order to enjoy the ... benefits associated with alcohol use. If that risk did not exist, they would probably drink more alcohol. An important implication of this argument is that willingly-accepted health risks associated with drinking are internalised in the measurement of consumer surplus, the estimate of which would be smaller, the greater the perceived health risk.

The same is true for those consumers who consume more, or less, than a moderate amount of liquor. Furthermore, individual consumers may be willing to bear different amounts of risk. There are no valid grounds for arguing that public policy should be predicated on the view that risk averse behaviour is more efficient or desirable than other aptitudes for risk (Demsetz 1969).

The next question is whether it is valid to assume that consumers are uninformed about the level of health risks associated with the consumption of liquor. Consumers have incentives to acquire information on the risks which they face up to the point where the marginal benefit of acquiring information equals the marginal cost involved in its production and dissemination. Because information is costly to obtain and analyse, research aimed at seeking 'complete' or 'perfect' information would be uneconomic (Demsetz 1969).²³

Producers also have incentives to provide information on the safety of their products and could be expected to do so if it were beneficial to consumers (for example, where it is cheaper for the producer rather than the consumer to provide the information). Information provided may be of a general nature, such as that conveyed by the reputation of the producer (for instance, by a particular brand). It may also include

²³ Grant (1985) makes the common mistake of dismissing economic analysis on the grounds that consumers do not have perfect information.

detailed information on health risks such as that which is available from health professionals (among other sources).

There are also empirical reasons for being sceptical of the view that drinkers systematically under-estimate the risks involved. Individuals have generally been found to be informed on most risks that they face. Peltzman (1975) showed that the use of motor car seat belts was consistent with rational maximising behaviour. In an experiment related to the information content of hazard warnings, Viscusi and O'Connor (1987) found that chemical plant workers responded largely as expected to new information on the risks which they faced (that is, their turnover rate increased and they sought higher wages in response to larger risks). Furthermore, Viscusi, Magat and Huber (1987) examined the rationality of consumer valuations of multiple health risks. Their results bore out "many of the most salient predictions of economic theory."²⁴

Consumers' response to information on the health risks associated with smoking are perhaps most closely related to those of liquor. Becker and Murphy (1988) commented as follows:

The information that began to become available in the late 1950s on the relation between smoking and health provides an excellent experiment on whether persons addicted to smoking consider the delayed harmful consequences or whether, instead, they are myopic. Ippolito, Murphy, and Saint ... estimate that 11 years after the first Surgeon General's report on smoking in 1964, per capita consumption of cigarettes and of tar and nicotine had been reduced by 34 percent and 45 percent respectively.

In the view of Becker and Murphy:

This evidence blatantly contradicts the view that the majority of smokers were myopic and would not respond to information about future consequences because they discount the future heavily.

Subsequent research reinforces this conclusion. Viscusi (1990) found that both smokers and non-smokers greatly over-estimate the lung cancer risk of cigarette smoking, and that the extent of over-estimation was much greater than the extent of under-estimation.²⁵ Furthermore, Viscusi (1995) notes that:

People overestimate small identified risks, whereas they often ignore small unidentified risks. People also tend to underestimate the large risks that have the greatest consequence. Publicity has a distorting rather than an informative role as people tend to overestimate highly publicised risks as well as those risks with which they have had

²⁴ Contradictory evidence relates to an apparent under-insurance of low probability but potentially high cost events such as possible loss from earthquakes and floods - see Viscusi (1987). Health risks do not fit into this category. For a discussion of the relevant research and possible explanations see New Zealand Business Roundtable (1989).

²⁵ That is, the distribution of respondents was biased toward over-estimation.

recent experience. More generally, people display limited cognitive ability to process information.

Both theoretical and empirical analyses suggest that the grounds for believing that consumers systematically under-estimate the risks to their health from consuming liquor are dubious. The arguments that consumers are poorly informed or are myopic often seem to reflect a paternalistic view (Castle 1986). These findings suggest that the grounds for requiring mandatory health warnings on liquor labels and in advertisements are weak.

The inclusion of a mandatory health warning about the consumption of liquor during pregnancy on all liquor labels would be a cost ineffective means of conveying information to the target population. Similarly, it is implausible that many drinkers are unaware that consumption of liquor may impair their capacity to drive or operate machinery. The suggestion that consumers be warned that liquor can "increase the risk of developing hypotension, liver disease and cancer" is potentially misleading if the protective effects of moderate consumption noted above were not also included.

There may, at most, be a valid case for the government to provide information to the public on the health risks associated with the misuse of liquor on the presumption that consumers are misinformed. The government would in effect subsidise the cost of acquiring information. Any information should be targeted at people who are likely to benefit. The government has programmes along these lines in place.

7 EXCISE TAXES

Liquor, tobacco and certain petroleum fuels are the only products still subject to excise taxes.²⁶ Excise duties on beer, wine and spirits are forecast to raise \$452 million, or 1.4 percent of total tax revenue, in 1996/97. Excise tax accounts for about 20, 30 and 50 percent of the retail price of certain representative beer, wine and spirit products respectively.²⁷

There are no economic grounds for levying excise taxes on beer, wine and spirits where the consumer is of sound mind and is capable of making rational decisions, bears the full costs of his or her actions and is aware of the risks and benefits involved. In these circumstances, excise duties are inconsistent with standard efficiency and equity criteria.

The social cost argument for excise taxes is dubious. Most costs that arise from the consumption of liquor are met by the affected consumer and the household unit, not by other members of society. The consumer bears the adverse effect on his or her productivity (for example, through lower wages and impaired promotion prospects) and many costs associated with alcohol-related accidents and illnesses (through insurance premiums and the loss of enjoyment of life) and anti-social behaviour (fines and other penalties).

The main categories of costs that are not fully imposed on the consumer arise from the provision of most health services free of charge, from some aspects of the ACC scheme and from the criminal justice system which does not permit victims to be compensated fully by offenders. The government could take action to place the costs more directly on those responsible for generating them. The relevant policies, however, are not specific to costs arising from the consumption of liquor.

If these policies are retained in respect of other activities, it is unlikely that efficiency can be improved by applying selective taxes to consumers of liquor alone. Even if this approach were adopted, a substantial reduction in taxes would be justified. The costs of health care and accidents that relate to the use of beer, wine and spirits would not warrant the present levels of duty.

Excise taxes are an inappropriate means of attributing social costs to users. They affect all consumers of beer, wine and spirits rather than people who engage in anti-social behaviour only. Would it be sensible to impose excise taxes on ammunition because some shooters are involved in accidents?

Excise duty subjects significant numbers of members of low and moderate income households who consume beer, wines and spirits to higher levels of total taxation than households with members on comparable incomes who do not consume such products. Similarly, households with members who drink liquor and earn similar incomes pay varying amounts of total tax depending on the level of their consumption. These outcomes are inconsistent with the principle of horizontal equity which states that

²⁶ To the extent that excise tax on petroleum products is used to finance roading expenditure it should be examined as a user-charge.

²⁷ Quay Group (1995a).

households in like situations should pay the same amount of total tax.

Since 1984 tax reforms have removed or reduced most highly distorting taxes. Excise duties on beer, wine and spirits have not yet been addressed although the government has accepted as a principle that only GST should apply to these products. Selective taxation is likely to be an inefficient method of raising revenue relative to broad-based taxes at a uniform rate because it distorts the patterns of trade and personal consumption. It creates unintended anomalies as technology and tastes change. It penalises groups in society, often unintentionally, and sometimes as a result of attempting to relieve the burden on someone else.

Excise tax on liquor needs to be addressed on a first principles basis in establishing an efficient regulatory framework for the supply and consumption of liquor. The Advisory Committee should recommend that the government undertakes such a review.

8 CONCLUSIONS AND RECOMMENDATIONS

The thrust of this submission is that the regulatory framework for the supply and consumption of liquor should be brought into conformity with that of other products, except where there are valid public policy grounds for industry-specific interventions. Many other products or activities involve risks and the possibility of abuse, yet are not subject to anything like the degree of control and punitive taxation as liquor.

People derive substantial benefits from the consumption of liquor. The vast majority of users act responsibly. Policies that target the misuse of liquor rather than responsible consumption are required to address anti-social behaviour.

The prime responsibility for encouraging young people to use liquor appropriately rests with their parents. The government's main roles are to establish and enforce laws which uphold the rights of all citizens and to fund health programmes that treat alcohol abuse. Industry participants have an important duty to foster responsible attitudes to drinking and to comply with the liquor laws.

Most present regulatory interventions focus on the control of the supply of liquor. This approach was correctly rejected by the Laking working party and has been further discredited since its report was completed. The primary focus of the Advisory Committee should be to recommend rules that help to bring the drinking decisions of young people into conformity with the wishes of their parents and guardians. If such rules are to be credible, they will need to command wide support within the community, be practicable, and be properly enforced. Most industry-specific regulations are not required for the achievement of these objectives, and the Committee should propose their abolition.

The NZBR recommends that the Advisory Committee adopt the following proposals:

- that young people who are supervised by a parent or guardian should generally be able to buy and consume liquor;
- that the minimum age at which young people can buy and consume liquor without parental consent should be reduced to between 16 and 18 years;
- that liquor licensing be abolished to facilitate open competition among firms;
- that traders be permitted to establish the days and hours of business. If this recommendation is not accepted then it is recommended that the sale of liquor be made subject to the Shop Trading Hours Repeal Act 1990;
- that industry-specific controls on liquor advertising be abolished;
- that the inclusion of mandatory health warnings on liquor labels and liquor advertisements be opposed; and

- that the government undertakes a first principles review of excise tax on liquor.

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