

The Distilled Spirits Association of New Zealand

**Submission to the
Justice and Electoral
Select Committee on
the Alcohol Reform
Bill**

February 2011

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SUMMARY

The sale and supply of liquor in New Zealand is regulated. One of the main reasons for regulation is to stop the abusive consumption of alcohol beverages.

There are limits to what the law can do to minimise this risk. However, regulation can be effective when it is well-targeted, enforceable and strictly enforced.

Education and the encouragement of personal responsibility are also vital to help minimise alcohol abuse and to shift New Zealanders' tolerance to drunkenness.

Our licensing laws can work best when they adopt a commonsense approach; do not penalise responsible consumers and the industry; are supported by evidence; and are embraced by the wider public.

Finally, licensing reform should be approached on the basis that, alcohol is alcohol. Whether it is wine, spirits, beer or cider which is consumed, all have a similar effect on the human body.

Therefore we believe that all alcohol should be treated in exactly the same way under the law. Yet the Association believes the Bill is failing to recognise this in relation to some key issues.

The Association has a number of recommendations to propose regarding some of the clauses of the Bill.

RECOMMENDATIONS

1. Clause 59: Restrictions on which kinds of alcohol can be sold in grocery stores

- The Association recommends that there is a need for a level retail playing field and that the licensing regime should not discriminate against spirits.

2. Clause 220: The irresponsible promotion of alcohol

- The Association recommends that the language in clause 220 of the Bill related to irresponsible promotions of alcohol be revised to protect against encouraging excessive consumption and or the targeting of minors and ensure that advertiser and consumer rights are not unreasonably limited and industry self regulation is complemented.

3. Clause 237: Other offences on licensed premises

- The Association recommends that the out-dated and discriminatory spirit serve size restrictions be removed.

4. Clause 383: Regulations related to RTDs

The Association recommends that the Committee:

- Recognise that a workable ready to drink (RTD) definition will need to be simple and free of exemptions;
- Encourage the Government to adopt a two standard drink measure for single serve RTDs;
- Expand the grounds upon which a ruling is made to ban a product and require Minister(s) to demonstrate or to provide relevant independent New Zealand-based research or evidence before any decisions are made regarding an RTD definition. And that regulation does not ban products that are legally permitted under the trans-Tasman Australia New Zealand Food Standards Code.

5. Other issues of interest

- The Association recommends that any minimum price should apply to all alcohol beverages and all licensed premises;
- The Association recommends that home distillation of alcohol beverages be made a prohibited activity.

ABOUT THE SUBMITTER

The Distilled Spirits Association of New Zealand (the Association) is a national trade organisation which represents New Zealand's leading producers, brand owners, importers and exporters of premium spirits (e.g. Brandy, Whisky, Rum, Gin, Vodka) and spirit-based drinks.

The Association's members include: Anchor Ethanol Ltd, Bacardi Martini Asia Pacific Ltd, Beam Global (NZ) Ltd, Brown Forman Beverages Worldwide, Diageo (New Zealand) Ltd, EuroVintage Ltd, Federal*Geo Ltd, Hancocks Ltd, Lion Nathan Wines and Spirits Ltd, Moët Hennessy NZ Ltd, Pernod Ricard New Zealand Ltd, and The Rum Company (New Zealand) Ltd.

The Association has a substantial trade interest in the Bill as it various proposals adversely affects the availability and accessibility of spirits and spirit - based beverages in New Zealand.

The Association would like to appear before the Committee to speak about this submission. The writer maybe contacted as per below:

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INTRODUCTORY COMMENTS

The Association supports the underlying aims of the wide-ranging Alcohol Reform Bill 2010 which are to reduce the risk of excessive alcohol consumption and to improve the licensing regime.

Given the unique opportunity presented to Parliament to update 20 year old liquor licensing laws, it is crucial that the Bill also addresses and eliminates those legislative disparities where the treatment of spirits is inconsistent with the approach taken for other alcohol beverages. In other words, all alcohol beverages should be treated in exactly the same way as each other.

The Bill will reshape the licensing landscape for the foreseeable future. However, in its current draft form and with proposals that are not firmly based on scientific evidence, it is unlikely that many of its interventions will actually eliminate the misuse of alcohol beverages by some individuals in our community.

For example, departing from a uniform minimum purchase age and introducing a split purchase age for different licensed premises fails to target problem drinkers and will not change the drinking culture. Also, singling out lone products or beverage type is misdirected as a means to change drinking habits.

Similarly, proposals to give communities a greater role in the licensing process, by adopting local alcohol policies and limiting permitted trading hours, fail to target problem drinkers and may create unintended consequences such as vexatious and frivolous objections against licensees from professional objectors. From our members' perspective, in common with consumers and other businesses, there is a need for a consistent approach across all territorial authority areas in New Zealand.

As an important starting point, it must be recognised that alcohol beverages, per se, are not the problem - it's the deep-rooted and complicated reasons that lead some individuals to deliberately drink to intoxication that need to be addressed.

"it's the deep-rooted and very complicated reasons that lead some individuals to deliberately drink to intoxication that needs to be addressed"

Furthermore, a clear distinction needs to be drawn between moderate alcohol consumption (which is not bad in itself) and the abuse of alcohol by a minority of individuals. Alcohol beverages are consumed responsibly by the majority of ordinary New Zealanders who enjoy a beer, a glass of wine or a single malt in social settings. This is consistent with the repeated comment of Ministers, agencies and officials that *"it is not the drinking, but how we are drinking"* which is the problem.

The underlying notion that spirit beverages are somehow more intoxicating than other alcohol beverages and require special legislative treatment, such as at clauses 59¹ and 237², is absurd and has no empirical basis. Such outdated thinking must change.

“The underlying notion that spirit beverages are somehow more intoxicating than other alcohol beverages and require special legislative treatment is absurd”

All standard drinks of alcohol beverages contain equivalent amounts of ethyl alcohol (C₂H₅OH) and have the same effect on drinkers. For example, a glass of white or red wine, a bottle of beer, and a serve of distilled spirits all contain equivalent amounts of alcohol.

A standard drink³ is defined as:

- 330ml bottle or can of beer at 4% abv
- 100ml glass of table wine at 13% abv
- 30ml of distilled spirits (either straight or in a mixed drink) at 37% abv

There is no beverage of moderation, only behaviours of moderation. Legislative approaches that differentiate beverages by the way they are made or how they look are nonsensical because the human body cannot tell the difference between different types of alcohol. Once absorbed into the blood stream, the body processes all ethyl alcohol in exactly the same way.

We would also reaffirm our view that alcohol is alcohol, whatever its source. This fact is already well-recognised in public policy areas and jurisdictions including the Alcohol Advisory Council (ALAC), Ministry of Transport, New Zealand Police, Food Standards Australia and New Zealand and the New Zealand Food Safety Authority. Further, the Bill in the interpretation section, clause 5, actually defines “alcohol” as meaning “fermented, distilled or spirituous liquor”. This fact should therefore be consistently applied throughout our licensing regime.

Alternatively, where an alcohol distinction is required, we note that clause 19 (1) of the Bill properly references alcohol beverages, not by how they are produced or how they look, but by their alcohol content. This equitable approach is preferred by the Association as it treats all alcohol beverage types similarly. Moreover, it does not directly discriminate between beverage categories.

The various interventions proposed in the Bill ought to be targeted at those few individuals who abuse alcohol beverages. Rather than over-regulating, the Association believes that the Government could achieve more by focusing on non-regulatory interventions such as educational or awareness programmes to help individual drinkers understand the need to be responsible for their drinking and subsequent behaviour.

¹ Clause 59: Restriction on kinds of alcohol sold in grocery stores and premises accessible from grocery stores

² Clause 237: Sales of spirits otherwise in vessel exceeding 500ml

³ <http://www.alcohol.org.nz/WhatsInAStandardDrink.aspx>

Research shows that minors are usually supplied alcohol beverages by older family members, friends and other adults, rather than purchasing the alcohol themselves. Therefore, parents and guardians have an important role to play in educating their children about the use of alcohol and fostering their responsible drinking habits. We support the Government's decision in the Bill which makes it an offence for anyone other than a parent or guardian to provide alcohol beverages to a minor. Clause 224⁴ of the Bill goes some way to placing responsibility back into the hands of the individual.

"We support the Government's decision which makes it an offence for anyone other than a parent or guardian to provide alcohol beverages to a minor"

Education programmes, - for parents in the home, in schools and the community - so that the risks and consequences of excessive alcohol consumption are understood - is more likely to create a healthier drinking culture in New Zealand than state regulation.

Liquor licensing legislation can have real effect if New Zealanders broadly support and respect consistent laws and their enforcement. Without this support, the legislation will fall into disrepute and will not be effective at changing the current poor attitudes to alcohol in this country.

The Association is not seeking any special legislative treatment. We wish only to see a licensing regime that treats all alcohol beverage types on the same regulatory basis as each other, regardless the method of production, alcohol content or packaging configuration. We believe that this level playing field approach is imperative, as it:

- Removes inequalities, inconsistencies and anomalies;
- Removes the administrative costs of different licensing systems;
- Simplifies the law;
- Is consistent with overall Government policy of "alcohol is alcohol";
- Is consistent with agency social change campaigns which say: "It not the drink, but how were are drinking that is the problem";
- Reduces unintended consequences, including product substitution

The remainder of the Association's submission responds to the various clauses in the Bill that are directly applicable to the spirits sector and/or impact members' spirit interests.

⁴ Clause 224 Supplying alcohol to minors

CLAUSE-BY-CLAUSE COMMENTARY

COMMENCEMENT

Clause 2 provides for the Bill's commencement.

Whilst the majority of the Bill's provisions will take effect on assent, that Regulations will come into force 12 months after assent. We are supportive of the transitional phase which recognises the complexity to come in developing technical details such as the definition of certain alcohol products and the need to fully consult with affected industry members. We suspect that a large number of businesses will also appreciate and benefit from the extra time to be informed of any changes and to make any adjustments.

PART 1 PRELIMINARY MATTERS

PURPOSE

Clause 3 sets out the Bill's purpose.

The Association is pleased to see reference to the legislation being "reasonable" in its approach. This is an appropriate approach for the law to take. This is, however, a subjective term and we recommend that consideration be given to including a statement outlining the characteristics of a "reasonable" regime.

OBJECT

Clause 4 sets out the Bill's object.

It makes clear that the concern of the Bill is the safe and responsible consumption of alcohol beverages and the minimisation of excessive or inappropriate consumption of alcohol beverages. These are two areas of focus long championed by the Association. These objectives support the legislation's need to concentrate on the irresponsible actions and behaviours of a minority, rather than penalising the responsible majority.

The clause could be improved by stating the expectations of individual drinkers such as drinking responsibly. This is especially relevant when the overwhelming majority of consumers drink sensibly and do not have, nor cause, problems with their drinking.

INTERPRETATION

Clause 5 sets out a number of terms used in the Bill.

The Association agrees with the definitions for spirits and liqueurs.

We note that the definitions are aligned with the requirements of the Australia New Zealand Food Standards Code⁵, particularly Spirits standard 2.7.5.

As mentioned previously, we would further highlight that the Bill defines “alcohol” as “fermented, distilled or spirituous liquor”. It is therefore vital that the draft Bill does not discriminate against certain beverage types when it is clear that “alcohol is alcohol”.

PART 3 LICENSING

RESTRICTIONS ON THE KINDS OF ALCOHOL SOLD IN GROCERY STORES

Clause 59 restricts the types of alcohol beverages that may be sold in supermarkets and grocery stores to beer or mead; and wine (containing not more than 15% alcohol by volume).

Notably, spirits and liqueurs (and fortified wines such as Vermouth, Port and Sherry) are irrationally excluded.

The Association has long advocated the creation of a fair licensing regime that does not discriminate against spirits especially when the reality is that “alcohol is alcohol”. To this end, we believe that all alcohol beverage types, irrespective of their production method, should be treated equally in all areas of the licensing arena.

RECOMMENDATION

The Association recommends that there is a need for a level retail playing field and that the licensing regime should not discriminate against spirits.

PART 5 ENFORCEMENT

IRRESPONSIBLE PROMOTION OF ALCOHOL

Clause 220(1) lists the ways that the promotion of alcohol may be deemed irresponsible.

The Association supports **sub-clause 1a**, which states that it is an offence if a person: “**does anything** (our emphasis) that encourages people to consume alcohol to an excessive extent”. The tone of the sub-clause appears reasonable and brings the law in line with the offence that applies to irresponsible on-licence promotions under s154a of the 1989 Act. However, we have concerns around the wording “*does anything*” which is unhelpfully vague and open to wide interpretation. The clause would still retain its intent with the removal of the “does anything” phrase.

The Association does not support **sub-clause 1b**, which proposes that promotions or advertisements for 25% discounts or more be conducted on licensed premises only. It does not make sense to restrict promotions, for example in mailers and newspaper advertisements, but not on licensed premises. Responsible drinkers should not be denied

⁵ <http://www.foodstandards.gov.au/foodstandards/foodstandardscode/standard275spirits.cfm>

legitimate market information. Discounting is an important tool for brand promotion and clearing excess stock.

Moreover, the proposed sub-clause would likely to be seen to be a restrictive trade practice and possibly be in breach of the Commerce Act.

Sub-clause 1c makes it an offense to promote or advertise alcohol that is free of charge. We understand that Parliament may wish to prohibit discounts such as “*buy one get one free*” that encourage excess consumption on-premise. However, as currently worded, this clause would also prevent retailers and producers offering free samples, to encourage consumers to try their other products e.g. offers to buy a particular brand of spirits and receive an attached small miniature bottle; or by offering free taste samples, in-store or on distillery tours.

Sub-clause 1d makes it an offence to “offer any goods or services on the condition that alcohol is bought”. Producers, brand-owners and marketers routinely give potential customers the opportunity to win a range of goods and services, in order to promote or to revitalise a brand. It is hard to see how this could be categorised as the “irresponsible promotion” of alcohol beverages. We do not believe it is the intention of Parliament to restrict such a common and innocuous situation as a customer buying a single malt whisky being entered into a prize draw to win a free trip to Scotland.

We do not believe that the advertising and promotional situations described above could be considered “irresponsible” or as encouraging or promoting excessive alcohol consumption. Additionally, we cannot see how the currently worded proposal will tackle alcohol abuse or is a “driver of crime”. Accordingly, we urge the Committee to clarify the sub-clause to ensure they focus on activities that encourage excessive consumption on premise.

Sub-clause 1e proposes that it be an offence that a person “promotes or advertises alcohol in a manner aimed at, or that has, or is **likely to have**, (our emphasis) special appeal to minors”. While the Association has no objection to this, the sub clause is unnecessary as there is a very effective industry self regulatory system in place. This includes a pre-vetting and advisory system and robust consumer complaints process which strictly follows the requirements of the voluntary Code for Advertising⁶, and the Code for the Naming, Labelling, Packaging and Promotion of Liquor⁷. Both codes, which are administered by the Advertising Standard Authority, expressly prohibit advertisements and promotions to minors.

The purpose statement of the Code for Advertising states:

“that liquor advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor

⁶ http://www.asa.co.nz/code_liquor.php

⁷ http://asa.co.nz/code_liquor_promo.php

*merchandising and consumption, and **which does not encourage consumption by minors***".

Similarly, the purpose statement of the Promotions Code states that it:

*"is to ensure that liquor naming, labelling, packaging and promotions will be conducted in a manner that is not inconsistent with the need for responsibility, moderation, minimisation of harm, **and minimisation of appeal and exposure to minors***".

Non-compliant advertising or promotion is either withdrawn from the market or packaged and marketed in a more responsible manner.

Sub-clause 1e also "competes" with the voluntary codes of practice and creates a parallel method of jurisdiction. This could potentially undermine the vital influence of the industry self-regulatory system which to a large extent relies on matters being quickly resolved by discussion between parties.

All members of the Association, and other responsible trade groups, are seriously committed to marketing and promoting brands responsibly. The industry is also committed to adhering to the spirit and the letter of the aforementioned codes of practice. As an alternative the proposed sub-clause could be reworked such that it complements and provides the self regulatory regime, a legal backstop. In other words, when a cease and desist order is made by the self regulatory process and this is not complied with the legal punishments would then apply.

RECOMMENDATION

The Association recommends that the language in the sub-clauses around irresponsible promotions of alcohol be revised to protect against encouraging excessive consumption and or the targeting of minors and ensure advertiser and consumer rights are not limited unreasonably and industry self regulation is complemented.

OTHER OFFENCES ON LICENSED PREMISES

SALES OF SPIRITS OTHERWISE THAN IN VESSEL EXCEEDING 500ML

Clause 237 retains, from the Sale of Liquor Act 1989, an offence of selling spirits in containers greater than 500ml.

To the best of our knowledge New Zealand is the only country with such a restriction and there is no reasonable basis to keep it. Moreover, the Association submits that the law does not have a sufficient basis to stipulate the size of spirit serves in an on-licence setting, especially when it does not do so for other beverage types or venues.

"To the best of our knowledge New Zealand is the only country with such a restriction and there is no reasonable basis to keep it"

Presently, drinkers can be served an alcohol beverage in an on-premise venue in any large capacity containers, which are actively encouraged to be shared. Examples of this include: 600ml to 750ml quarts of beer; mini-kegs, and casks of beer (between 2 and 5 litres capacity); 750ml bottles of table wine; carafes (1 litre); magnums (1.5 litres); and 750ml bottles of fortified wines. However under the law these types of container are not considered a form of “liquor abuse” or excessive drinking.

Yet without any rational basis, the same on-premise patron, in a restaurant or night club setting, cannot be trusted to be served spirit drinks in containers greater than 500mls capacity such as a pitcher of cocktails or a 700ml bottle of cognac. For the latter, prices are commonly just too high for a quick turnover and the product is made for sharing around the table.

It is illogical to treat the size of a beverage container as a cause of immoderate or irresponsible consumption. We are not aware of any empirical evidence to support this presumption.

“It is illogical to treat the size of a beverage container as a cause of immoderate or irresponsible consumption. We are not aware of any empirical evidence to support this presumption”

Further, **sub-clause 237(3)** reinforces the law’s archaic origins and creates inconsistency when it allows only “*lodgers on the licensed premise*” but not others to be sold a larger vessel. These laws date back to the 1881 Licensing Act⁸ where there was a legal requirement for almost anyone licensed to sell alcohol to the public to provide lodgings and stabling for horses. There is no evidence that non-lodgers are less trustworthy and responsible than lodgers.

The current restriction on spirit serve sizes has no basis in necessity in the 21st century. Moreover, the 19th century moralistic and religious attitudes have dramatically changed and are no longer valid in today's society.

The Association believes that on-licence operators should be free to serve spirits, just like all other beverage types, in any sized container, to all legal patrons. Local licensee knowledge and expertise, on a case by case basis, should be the final arbiter as to how spirits are served to patrons rather than state -enforced paternalistic attitude.

RECOMMENDATION

The Association recommends that the out-dated and discriminatory spirit serve size restrictions be removed.

⁸ Page 122, Removing Temptation: New Zealand's Alcohol Restrictions, 1881-2005, Paul John Christoffel, a thesis submitted to VUW 2006

PART 8

OTHER MATTERS

REGULATIONS BANNING OR RESTRICTING CERTAIN ALCOHOL PRODUCTS

Clause 383(3) enables the targeted regulation of specific alcohol products including the size of containers and alcohol content of ready to drink (RTD) beverages as set out in recent Government media releases⁹. The Association has some concerns about the workability of the policy proposal to limit RTDs to 5%abv and 1.5 standard drinks.

To assist the Committee and officials, the following discussion, presented in three parts, highlights the challenges ahead in deriving an accurate definition of RTDs. It sets out a case for why spirits-based RTDs should not be singled out and offers a counter-proposal of a two standard drink alcohol limit for RTDs, if the policy is to be proceeded with.

i. RTD Definition

There is a common perception that RTDs are predominately spirit-based alcohol beverages but there are also wine-based RTDs (e.g. a new generation of wine coolers, and fruit flavoured wines), malt-based RTDs (e.g. flavoured beers) and ciders and fruit flavoured ciders available. There are no objective criteria by which to define a RTD and no legal definition exists for such ready to drink beverages. We note that there is considerable difficulty in establishing an official definition. Notwithstanding this, the policy proposal as drafted could unfairly and without any empirical basis, exclusively target products based on spirits.

The Association considers that, taken in its broadest sense, the RTD terminology can cover a wide range of single-serve alcohol beverages all with a similar alcohol content and packaged in such a way that they can be immediately consumed directly from the container. They all have similar alcohol content, ranging from 5% alcohol by volume (%abv) to 8% abv.

“The line between spirit-based RTDs and other alcohol beverages is increasingly blurred”

The line between spirit-based drinks and other alcohol beverages is increasingly blurred when traditional single-serve beverages are manufactured to mimic or resemble the taste, packaging and marketing of spirits-based beverages. This is illustrated in **Figure 1** below. This needs to be taken into account in the development of an RTD definition.

⁹ “Government outlines balanced plan for alcohol reform”, News release Hon Simon Power, 23/8/10

Figure 1:



A workable RTD definition would be one that is simple and free of exemptions. For consistency, any such definition must be compatible with or have the same meanings as set out in the Working Tariff Document of New Zealand¹⁰, The Trans-Tasman Food Standards Code¹¹ and New Zealand’s international trade agreement obligations related to alcohol beverages.¹² A consistent definition would provide for product innovation such as the multi-serve packages of ready to serve bar-quality cocktails recently introduced to meet perceived consumer needs and to compete with all sectors of the alcohol beverage industry.

The Association would, in due course, welcome the opportunity to assist officials in the development of an RTD definition.

ii. No case to single out spirits-based RTDs

The Minister of Justice has publicly stated a policy intention to limit the size and alcohol content of RTDs. However, it is not exactly clear if this refers to spirits-based drinks only. The Association believes such a restriction would be short-sighted and it is strongly opposed to a policy proposal to arbitrarily limit the alcohol content of just spirits-based RTDs.

The Association considers that the potential singling out of spirits-based RTDs would be flawed and not based on any sound evidence. We wish to draw to the attention of the Committee some of the implications and fundamental problems with the policy proposal:

¹⁰ Working Tariff Document: <http://www.customs.govt.nz/library/The+Working+Tariff+Document/default.htm>

¹¹ Australia New Zealand Food Standards Code: <http://www.foodstandards.gov.au/foodstandards/foodstandardscode/>

¹² e.g. CER, P4, NZTCEP, NZ-HK CEP

1. It is arbitrary to target and discriminate against spirits-based RTD beverages only.
2. It is not clear how restricting just spirits-based RTD beverages will be effective in stopping alcohol abuse or change New Zealand's poor drinking culture.
3. There is no New Zealand specific data or research in support of the proposal and it goes against official guidance provided by the Law Commission and others.
4. It will encourage consumers to substitute other single serve alcohol beverages such as high alcohol content beer, cider and wine coolers/flavoured wine-products.
5. It fails to grasp the commercial implications including the significant curtailment of our industry's right to trade in certain packaging formats.

These points are explained in more detail below.

Arbitrary and Discriminatory

"Problematic drinking is not about the product but more about the method of consumption"

Whilst we share the community's concerns around excessive alcohol consumption and unsociable behaviour arising from the abusive use of alcohol by a minority of the population, alcohol abuse is not an alcohol type or alcohol content issue.

Put another way, spirit-based RTDs do not have any different properties or represent more of a potential hazard than other beverages with similar alcohol content or container size.

According to the Law Commission, "The risks associated with drinking RTDs are of no marked difference to any other alcohol product"¹³. Therefore, problematic drinking is not about the product, but more about the method of consumption.

Further to this, we are not aware of any scientific evidence that shows beverages which contain more than the 5% alcohol by volume cause alcohol abuse or that limiting the alcohol content of RTDs will stop abusive drinking.

Spirits-based RTDs are not the problem

"targeting of RTDs, in the proposed manner, does not in any way address the root causes of alcohol misuse"

¹³ Law Commission Report para 22.9

The real issue is not the product type, its packaging or its alcohol content, but rather the manner in which some individuals drink irresponsibly. The Alcohol Advisory Council's (ALAC) research and various Ministers have expressed it as: *"it is not what we are drinking but how we are drinking that is the problem"*.

Official surveys run by ALAC show that RTDs are not exclusively consumed by young people and they are not the sole alcohol beverage preferred by this demographic. Additionally ALAC¹⁴ and other officials find that research regarding an association between RTDs and an earlier onset of drinking or harmful drinking is not conclusive. A recent Cabinet paper stated:

*"Research is not conclusive, however, on an association between RTDs and earlier onset of drinking or harmful drinking"*¹⁵

Therefore, we do not agree with the notion that the proposed limits on RTDs will curb binge drinking among young adult drinkers nor stop their appeal to drinkers. The irresponsible behaviour of a few individuals is not justification for restricting one product category that the majority of consumers use responsibly.

Lack of Credible Research

Another major flaw with the proposed policy is that it is contrary to and does not sit easily with advice tendered by the Ministerial Committee on Drug Policy (MCDP) and the Law Commission. It also runs counter to the approach of many departments and agencies. The MCDP said:

*"Focusing on RTDs as the issue to address binge drinking among young people may not necessarily be the most effective approach to take"*¹⁶

Sir Geoffrey Palmer's Law Commission, stated:

"So far, we have heard many representations that ready-to-drink spirits-based drinks should be banned or controlled. We are not persuaded (and we) are reluctant to make distinctions between various liquor products".¹⁷

It is clear that there is no indication that the MCDP or the Law Commission has any particular problem with RTDs.

Across a range of Government jurisdictions such as ALAC, New Zealand Customs Service, the Treasury, the Ministry of Transport, New Zealand Police and the New Zealand Food Safety Authority it is noted that a consistent "alcohol is alcohol" (a standard drink is a standard

¹⁴ ALAC RTD Policy September 2008

¹⁵ "Alcohol Law Reform" Cabinet Paper 5/8/10 – para107

¹⁶ <http://www.ndp.govt.nz/moh.nsf/indexcm/ndp-ready-to-drink-beverages>

¹⁷ 'Alcohol In Our Lives' Issues paper, para 12.33, page 224

drink) policy approach has been adopted. In areas such as tax and levies¹⁸, blood alcohol driving limits and food standard settings, RTDs are treated in the same way as other alcohol beverages because it is well recognised that their effect is exactly the same as for other beverages.

The above reports and official approaches are highly significant and should be taken into consideration in the context of the Bill's regulation-making.

Regulatory Impact Analysis non-existent

"the case for the proposed policy is arbitrary and not based on any strong or substantiated New Zealand evidence"

All Bills with significant impacts are obliged to be accompanied by a regulatory impact statement (RIS) to ensure high quality, cost-effective and justified regulatory interventions.

Given the huge public interest in the proposal, we had expected the Bill (and other supporting documents such as the "Alcohol Reform 2010: Regulatory Impact Statement") to have provided evidence justifying the ultimate proposal to limit RTDs to a maximum of 5%abv and 1.5 standard drinks, however there was nothing included in the Bill.

To date, the Government has declined to present at least some evidence supporting its policy proposal. We therefore conclude that the case for the proposed policy is arbitrary and not based on any substantiated New Zealand evidence. Accordingly, a more pragmatic approach should be taken and the policy deferred until there is quality empirical evidence or a rigorous RIS proving its efficacy.

As a precedent, we note that that Transport Minister, the Hon. Steven Joyce has ruled out any policy change to the adult blood alcohol driving limit until independent New Zealand-based research could quantify any adjustment¹⁹.

Neither equitable nor in line with world best-practice

To the best of our knowledge no other country in the world restricts RTDs in the manner as proposed. Specifically, there is no alcohol content or container size limitation placed on RTDs in countries we export to and often model ourselves on (e.g. Australia, the United Kingdom, Canada and the United States).

Further, the policy proposal fails to grasp the commercial implications for the important domestic industry. Competing segments of the industry will potentially benefit from the policy proposal, while the spirits sector will be disadvantaged.

¹⁸ For excise tax purposes all beverages, regardless of their form, containing between 2.5%-6%abv and 6 to 9%abv are treated exactly the same; based on their actual or "deemed" alcohol content

¹⁹ "Tackling New Zealand's drink driving problem" – media release – 26/7/10, Hon Steven Joyce

The policy proposal needlessly punishes responsible consumers and fails to recognise the reasonable and likely prospect that certain consumers (those who favour the higher alcohol content drink) will simply switch to other non-restricted products or similar and substitutable alcohol beverages. As a result, the substitution effect is unlikely to reduce the harm, particularly amongst abusers.

Perversely, there is a real potential that the policy proposal could encourage some consumers to drink more or to mix their own drinks at indeterminable alcohol content levels. In terms of alcohol content and taste there are a multitude of beverage types that can be procured in greater strengths and containers, which defeats the purpose of the policy.

In this respect, recent experiences in Switzerland, Germany, Ireland and Australia demonstrate this effect clearly. The introduction of a tax increase in Germany²⁰ in 2004 and in Australia²¹ in 2008 resulted in a range of unintended consequences. These included consumers substituting spirits-based RTDs for alternative products such as beer²², cider and other fermented alcohol beverages with equivalent or higher alcohol content. Other industry members were incentivised to develop new beverage types. These new beverage types were termed "malternative beverages". For example in Australia companies introduced "malternatives" (deflavoured beer – where the beer taste is stripped out during production)^{23,24} in response to the tax impost placed on RTDs. There is no reason why the New Zealand experience would not be similar.

On the likely risk and substitution effect the Ministerial Committee on Drug Policy said:

"Overseas experience has shown that where there is a reduction in RTD consumption, this has led to an increase in the consumption of other liquor"²⁵.

A local example of the substitution outcome can be recalled when the Minister of Customs, the Hon Jim Anderton at the time (May 2003) introduced an excise tax change on alcohol

²⁰ "Changes in alcohol consumption and beverage preference among adolescents after the introduction of the alcopops tax in Germany", *Addiction*, Volume 105, Issue 7, pages 1205–1213, July 2010

²¹ Alcopop tax fails to curb teenage drinkers 26/9/10 Melbourne Age
<http://www.theage.com.au/victoria/alcopop-tax-fails-to-curb-teenage-drinkers-20100925-15rnz.html>

²² Mr Pollaers said that in the past 18 months, the beer market had benefited from one-off factors. "This included a higher tax on RTD (ready-to-drink) mixed beverages...".
CUB finance director Stephen Matthews said whereas changes to the tax on RTDs had led to an increase in beer sales. Source: "CUB says it can regain market share", AAP 21/10/10
<http://nz.finance.yahoo.com/news/CUB-says-regain-market-share-aap-3905234785.html?x=0>

²³ "Fosters introduces Carlton Dry Fusion Black", October 26, 2010, Australian Food News
<http://www.ausfoodnews.com.au/2010/10/26/fosters-introduces-carlton-dry-fusion-black.html>

²⁴ "Alcohol company finds way around "alcopop" tax", 16/9/08
<http://www.ausfoodnews.com.au/2008/09/16/alcohol-company-finds-way-around-alcopop-tax.html>

²⁵ Minutes of the New Zealand Ministerial Committee on Drug Policy Meeting, 2 September 2008

beverages ranging from 14%abv to 23%abv. Unintentionally, fortified wines such as Port and Sherry were caught up in the increase. The result was a new range of general alcohol beverages came on the market containing 13.9%abv to avoid the higher tax band.

It is therefore important for the Committee to consider what, if any, unintended or adverse substitution effects the policy proposal may create.

In the following discussion, the Association further highlights the anomalies contained in the policy proposal and recommends that the Government adopt a more workable and fairer two standard drink measure for RTDs.

Proposed RTD Policy – Inequities and Anomalies between RTDs & other beverages

The Ministry of Justice's set of "questions and answers"²⁶ released in tandem with the "Cabinet Paper: Alcohol Law Reform" (on 23 August 2010) reveals that the basis for the proposed limits of "5%abv and 1.5 standard drinks" is that it is on a "par with beer". This assumption ignores the fact that many beer brands and their variants contain significantly more than 5%abv and 1.5 standard drinks.

For example, there are numerous domestic and imported (e.g. English and Continental style) higher alcohol content beers that range from 7% to 8.5%abv (the equivalent of 2 standard drinks) to 10%abv (2.6 standard drinks) and many are sold in over-sized containers.

To illustrate: Elephant Beer 330ml at 7.2%abv contains 1.9 standard drinks, an imported English 440ml 5%abv beer contains 1.7 standard drinks and a Lambic 500ml 8%abv beer contains 3.1 standard drinks.

In the same vein, there are a growing number of Cider/flavoured cider and Perry brands that contain significantly more than 5% abv and 1.5 standard drinks.

For example: Scrumpy Cider in a 1.25 litre bottle at 8.2%abv contains 8.1 standard drinks and Perry often has an alcohol content of up to 8.5%abv.

In light of the above examples easily substitutable and well established competing beverages such as wine coolers/flavoured wine-products, high alcohol content cider and flavoured cider and flavoured beer would remain "legal" and be positioned to benefit at the expense of spirits-based RTDs, containing the same number of standard drinks, which would be considered "illegal" under the Bill (see Figure 2).

²⁶ <http://www.justice.govt.nz/policy-and-consultation/alcohol/alcohol-law-reform>

Figure 2: Anomalies RTDs vs. Other Alcohol beverages

Drink ²⁷	Container Size (ml)	% Alcohol content	Number of Standard Drinks	“Legality”
Beer	440	5	1.7	✓
	500	8	3.1	✓
	745	5.35	3.1	✓
	1500	5	5.9	✓
Wine	2000	13	20.5	✓
	3000	5.1	12.1	✓
	750	13	7.7	✓
Cider	330	8.2	2.1	✓
	1250	8.2	8.1	✓
	1500	4.7	5.6	✓
“RTDs”		>5	>1.5	✗

Logically speaking, all alcohol beverages, irrespective of how they’re made or how they look should be treated on the same legal basis as each other.

To assist the Committee and officials we believe the following questions should be considered:

1) Why should spirits-based RTDs be potentially limited to 5%abv and 1.5 standard drinks when directly substitutable single serve beer , cider or wine coolers/flavoured wine products are not - when there is no difference in terms of access, supply or health effects between a 6%abv RTD and a 6%abv beer or cider or wine product?

2) Why should the container size of spirit-based RTDs be potentially limited when over-sized containers of beer (e.g. 745ml quarts), cider (e.g. 1.5 litre), or wine coolers/flavoured wine products (e.g. 2 and 3 litre casks) are not limited?

iii. Alternative RTD policy proposal: Two standard drinks

The Association considers that the proposed arbitrary 1.5 standard drink and 5%abv limit for RTDs to be too conservative and it appears to us that it fails to recognise the number of competing beverages with higher alcohol contents.

²⁷ Typically available brands

“If stopping alcohol abuse is the Government’s most pressing concern, addressing it would be best accomplished by creating regulations that apply to the entire alcohol beverage category – rather than to a single alcohol beverage category”

We would suggest that a more representative “average” of the market would be for **all single serve ready to drink beverages contain a maximum of two standard drinks** (see **Annex 1** for a ready-reckoner table).

We believe there is a strong case for this alternative approach compared with the current proposal, as it:

- Obviates the need to specify an alcohol content limit as it is the quantity or the number of standard drinks that are consumed which really matters;
- Codifies an existing two standard drink voluntary arrangement industry adopted in 2008. The private action was agreed with Ministry of Health, Alcohol Advisory Council officials and the Ministerial Committee on Drug Policy;
- Aligns with similar Australian industry practices (and is consistent with the joint Australia New Zealand Food Standards Code);
- Fits well and is consistent with the Government’s objective around binge drinking and ALAC drinking guidelines²⁸ recommending no more than six standard drinks for men and four standard drinks for women per drinking occasion;
- Achieves a parity of treatment for spirits-based RTDs with other alcohol beverages; and
- Future-proofs and limits the potential for product displacement to occur and restricts the scope for evasion by product innovation.

If stopping alcohol abuse is the Government's most pressing concern, addressing it would be best accomplished by creating regulations that apply to the entire alcohol beverage category – rather than to a single alcohol beverage category.

Clause 383 (5) provides for the Minister to consult.

The Association welcomes the sub-clause requirement for the Minister to consult with stakeholders who may be significantly affected by the regulations. The Association also welcomes the opportunity to work with officials to ensure the development of consistent, industry-wide standards.

Clause 383 (7) provides for various grounds to ban a product or kind of product.

The proposed grounds to ban products are when they are:

- “Particularly dangerous to health”; or
- “Has special appeal to young people”.

²⁸ <http://www.alcohol.org.nz/InpowerFiles%5CPolicies%5CDocument.Document.944.405ffb02-9229-4282-acd5-a822907af520.pdf>

The above grounds are critical to the application of clause 383 therefore we would recommend that the grounds to ban a product or kind of product be expanded to require the Ministers of Justice and Health to provide relevant independent New Zealand-based research or scientifically peer-reviewed evidence or both, before any decisions comes into force.

Further, it would be helpful if the vague and imprecise term “young people” (which does not necessarily have the same meaning as the word “minor”) is clearly defined or substituted for the term “minor” which is used consistently and is a focus throughout the bill.

Finally, we consider that clause 383 could be improved with an additional sub clause which recommends Ministers not make regulations banning products that are legal and permissible under the Australia New Zealand Food Standards Code administered by the bi-national Food Standards Australia New Zealand.

RECOMMENDATIONS

-That a workable RTD definition will be simple and free of exemptions.

-That the Government adopt a two standard drink measure for single serve RTDs.

-That the grounds upon which a ruling is made to ban a product be expanded and Minister(s) be required to demonstrate or to provide relevant independent New Zealand-based research or evidence before any decisions are made regarding an RTD definition. And that any regulation does not ban products that are legally permitted under the trans-Tasman Australia New Zealand Food Standards Code.

OTHER ISSUES OF INTEREST

The following section raises other important matters that the Association feels the Committee may find relevant, namely minimum pricing and unregulated home distillation of alcohol.

MINIMUM PRICING

Although the issue of minimum pricing is not directly referenced in the Bill, we note that the Government in recent media statements has said it is investigating a minimum pricing regime. Against this background and anticipating that there will be much public interest in the proposal, we would like to assist the general discussions with the following comments.

The Association shares the community's ambition to tackle a culture of irresponsible alcohol consumption. However, there remains some doubt as to whether a regime to set minimum retail prices would be effective in significantly reducing alcohol misuse amongst drinkers. Any minimum pricing plan appears to be fraught with practical difficulties.

We would outline the main difficulties as:

1. Government controls on pricing hark back to an interventionist era and would most likely be a policy measure that risks running foul of current competition law. As a producer trade association, we note that producers cannot dictate the final selling price of a product as this is tantamount to price fixing, which is illegal. Retail pricing is actually determined by an individual on-licence or off-licence operator. Licensees set chosen price points in pursuit of the gross profit they wish to achieve. We note that current retail prices are not insignificant. For example, on-licensees typically charge \$8-\$10 for a spirit-based drink whilst in the off-premise a standard bottle of spirit typically retails from \$35 and upwards.
2. There is the prospect of significant compliance costs on industry members such as re-pricing tasks and associated red tape of record-keeping which would in turn have cost implications for official monitoring and auditing agencies. A minimum pricing regime could also affect the ability of some licensees to sell end of line or difficult to shift stock.
3. A minimum retail-pricing regime, to the best of our knowledge has been tried in one western market, namely Canada²⁹ (in eight of its twelve provinces and territories). There is no evidence that the measure reduced excessive consumption or changed the behaviour of people who misused alcohol beverages³⁰.

The Canadian model must be approached with caution, as that market also operates provincial monopoly mechanisms which are not practiced in New Zealand.

²⁹ Introduced in the 1920s as a war time and anti-prohibition provincial government measure

³⁰ The Ministerial Committee on Drug Policy noted that there are no international examples where minimum pricing policies had been introduced and the long-term effectiveness in alcohol related harm reduction evaluated Minutes 2 September 2008.

In other markets which New Zealand compares itself with (including Australia, Ireland, the United Kingdom, the EU and the United States) minimum pricing is not used. The recent decision of the Scottish Parliament (10 November 2010) is particularly noteworthy in that, as part of their “Alcohol etc (Scotland) Bill”³¹, a minimum pricing regime was rejected for the third time. This important example should not be disregarded as it serves as a useful guide.

4. The main basis of the argument behind minimum pricing is that it would help significantly cut alcohol-related abuse. Unfortunately such a policy would be an inefficient measure to change the abusive behaviour of some individuals who are highly motivated to get a drink regardless of the price. The problem in this context is that heavier drinkers – those that the policy is supposed to be targeting – are least responsive to price changes.

5. Whilst the New Zealand economic outlook remains uncertain, it would be inconsiderate to alienate and punish the vast majority of moderate and responsible drinkers in order to target a tiny minority of people who are having problems controlling themselves. There is also the contribution to inflation that such a policy measure would create.

RECOMMENDATION

The Association recommends that any minimum price should apply to all alcohol beverages and to all licensed premises.

UNREGULATED HOME DISTILLATION

Missing from the Bill is any recognition of the practice of homemade alcohol³² that is currently in a boom phase due to the economic downturn.

Extending policies around the supply and availability of alcohol beverages, while seemingly attractive, can have a number of unintended consequences. One flow on effect is the encouragement and entrenchment of an underground black-market for homemade alcohol, particularly homemade spirits.

Homemade low quality alcohol maybe produced for personal consumption however media often report that it is increasingly intended and offered for illegal sale – sometimes to minors^{33,34,35,36,37,38,39}. In some cases, it is alleged that there are links to, or it invites the participation in, organised crime.

³¹ <http://www.scottish.parliament.uk/s3/bills/34-AlcoholEtc/index.htm>

³² Overall, an estimated 1.8% (1.4–2.2) of New Zealanders aged 12–65 years had produced homemade alcohol (beer, wine and/or spirits) in the last 12 months. Source: Ministry of Health. 2007. Alcohol Use in New Zealand: Analysis of the 2004 New Zealand Health Behaviours Survey – Alcohol Use

³³ “Veteran, 80, fined for moonshine operation”, 25/8/10 NZ Herald

³⁴ “Illegal booze concerns police”, 30/7/10 Horowhenua Chronicle

³⁵ “Man charged after police swoop on home distilling”, 30/7/10 The Press

³⁶ “Homebrewer, 80, sold alcohol to Police”, 3/7/10 DomPost

³⁷ “Smugglers revert to alcohol”, 13/7/09 The Press

³⁸ “High alcohol level led to death”, 12/6/09 The Southland Times

³⁹ “Sly-grog operation”, 18/10/10 Taranaki Daily News

Illegally sold alcohol, often sold cheaply and traded in an unsafe environment, clearly places consumers' health at risk. Homemade alcohol can be riddled with toxic chemicals, causing blindness, and kidney failure.

For the price of one bottle of average blended whiskey home distillers can make around ten litres of spirit at the same strength.

From a Government perspective there are several important issues around homemade spirits.

These include:

- Unpredictable alcohol by volume (abv) content;
- The high risk of products containing harmful fusel oils;
- The potential loss of tax revenue (excise tax and GST);
- The risk of unregulated on-sale to the public including minors; and
- The undermining of public health objectives.

The issue of counterfeit products and their infringement on important intellectual property rights also arises.

The Association notes that backyard home distillation is illegal in every country New Zealand often compares itself with, including the UK, USA, Canada, and Australia.

The Association urges the Committee to recommend to the House that the home distillation of spirits be prohibited once again (i.e. a return to the legal situation prior to October 1996).

RECOMMENDATION

The Association recommends that home distillation of alcohol beverages be made a prohibited activity.

CONCLUSION

We urge the Justice and Electoral Committee to recommend the Alcohol Reform Bill be passed with the amendments as highlighted above.

Concerning the drafting of Regulations we ask that they be framed with the suggestions as highlighted above.

The Association welcomes an opportunity to discuss with the Committee any of the information provided in this submission.

DISTILLED SPIRITS ASSOCIATION OF NEW ZEALAND INC

ANNEX 1

Standard Drinks Ready Reckoner

The following table sets out a standard drinks ready reckoner to a maximum of two standard drinks in typical single serve pack sizes against a selected %abv range.

	% abv							
litres	5	5.5	6	6.5	7	7.5	8	8.5
0.25	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7
0.275	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8
0.32	1.3	1.4	1.5	1.6	1.8	1.9	2.0	
0.33	1.3	1.4	1.6	1.7	1.8	2.0		
0.335	1.3	1.5	1.6	1.7	1.9	2.0		
0.355	1.4	1.5	1.7	1.8	2.0			
0.375	1.5	1.6	1.8	1.9				
0.4	1.6	1.7	1.9					
0.44	1.7	1.9						
0.50	1.9							

Standard Drinks Formula: Litres x abv x 0.789

ANNEX 2

5 RTD MYTHS

In the general debate around alcohol policy there will be many points of view, some of which will be anecdotal or misinformed. The purpose of this section of the Association's submission is to convey the facts and challenge the myths.

Myth One: Spirit-based RTDs are sold for low prices

Fact: Retailers and other licensed premise operators determine the final selling price of spirit RTDs to consumers. Manufacturers and/or importers do not set the retail price, nor do they sell to minors. Any unusually low pricing often reflects a licensed retailer's desire to shift old or slow moving stock. Generally this will be a one-time event rather than a regular practice.

Spirits-based RTDs are often the most expensive form of alcohol per standard drink. For example, beer (purchased for \$15.99 @ 15x330ml@4% contains 15.62 standard drinks) costs \$1.53 per standard drink or cask wine (purchased for \$17.99 @ 13%abv contains 31 standard drinks) costs 58cents per standard drink. Meanwhile, RTDs typically sold in a four-pack at \$12.95 (4x330ml@5%abv) costs \$2.49 per standard drink.

Many people mistakenly believe that spirit-based RTDs are sold in supermarkets. This could be because many competing products mimic the "trade-dress" or look of RTDs⁴⁰. This is incorrect, pre-mixed spirit-based RTDs are not available for sale in New Zealand supermarkets and grocery stores.

Myth Two: Spirits-based RTDs have a high alcohol content

Fact: The majority of spirit-based pre-mixed drinks sold in New Zealand range from 5% to 8% alcohol by volume (abv). Other single serve alcohol beverages, including beer, wine coolers, cider and perry typically range from 4-8%abv. The proposition that all RTDs are 'potent' is a misconception.

Under food labelling laws, all products must declare their alcohol content. Additionally, all labels must carry a 'standard drinks' declaration. For example, a bottle of wine contains eight standard drinks – around double the number of "standard drinks" contained in a four-pack of RTDs.

⁴⁰ USA – Brewed malt beverages were produced under multiple brands that looked and tasted the same as spirit based RTD drinks. Some brands had "brewed" alcohol in the USA market and spirit alcohol in other countries for exactly the same product.

Australia – Prior to the lowering of excise tax on RTDs in Australia several brands had the majority of the alcohol content from wine with some spirit added.

Wine Coolers and Flavoured Beers – Wine coolers preceded spirit based RTDs but had similar flavours and presentation. Flavoured beers have been marketed that mimic RTDs and some beers have been produced with spirit alcohol or flavours added.

RTDs offer a pre-measured and known amount of alcohol. This can assist consumers to monitor their own consumption.

Myth Three: Spirits-based RTDs are marketed to youth

Fact: RTD producers do not target minors. In fact, the Sale of Liquor Act and industry-run self-regulatory codes of practice expressly prohibit any marketing or promotional campaigns to minors.

There is little or no broadcast or television advertising or promotion for spirit based pre-mixed drinks. What promotional material exists is largely in-store point of sale material – which is generally accessible and promoted only to persons of the minimum age of purchase.

In terms of access, Alcohol Advisory Council (ALAC) research shows that parents are the main suppliers of alcohol to minors, followed by other adults, friends and family members. Additionally, most drinking takes place in the private home.

Myth Four: Spirits-based RTDs are brightly coloured, sweet-tasting and attractive

Fact: Brightly coloured alcohol drinks have been around a long time – e.g. Crème de Menthe, Galliano, red wine, rose wine and golden beer. Sweet tasting drinks such as carbonated cider, wine spritzers, wine coolers, sparkling and dessert wines are also popular and well-known beverages in New Zealand.

Spirit-based RTDs contain similar levels of sugar as drinks mixed at home or in a bar. Coloured and sweet tasting drinks appeal to some consumers’ taste buds, just as bitter beers and dry wines appeal to others. The attractiveness of the product is not determined by its sweetness or colour – these characteristics are as much of a deterrent to some consumers as they are appealing to others.

More than 70% of spirits-based RTDs consumed in New Zealand are dark-coloured products (e.g. Bourbon, Rum and Whisky based drinks).

Myth Five: RTDs are a huge part of the liquor market

Fact: According to Statistics New Zealand the most popular beverages, for the year ended September 2010, ranked by actual litres were:

	Volume	Percentage share
Beer	302million litres	64%
Wine	99million litres	21%
RTDs	59million litres	12%
Spirits	13million litres	3%

Spirit-based RTDs have been available in New Zealand for more than 20 years and comprise a small proportion of the total alcohol drinks market. By volume, RTDs represent just 12% of the total volume of alcohol available for consumption in New Zealand. The growth in RTDs has been considerably affected by a decline of consumption in the spirits category.