

**The Distilled Spirits Association of
New Zealand**

**response to the
The Law Commission's Issues Paper
on the reform of New Zealand's liquor laws**

October 2009

SUMMARY

The current liquor framework for the sale, supply and distribution of alcohol beverages is in many parts anti-competitive, illogical and discriminatory and there is no economic or scientific justification for the maintenance of this situation. This is a very significant issue for the Association.

Adjustments to the legislative framework should proceed on the basis of sound scientific evidence of what works. Further, the successful outcomes identified by methodical research should be considered in a way that creates a fair and equitable licensing and distribution regime – especially one that does not discriminate against one beverage type or business format over another. Additionally, it is accepted that controls are needed but they should be in the context of reducing harm associated with the misuse of alcohol and where there is an evidential basis for doing so.

Our liquor laws must also recognise that millions of New Zealanders drink responsibly and that the majority of businesses behave in a responsible and compliant manner. Accordingly then, the formation of any new policy should focus on targeting the problematic minority of operators and drinkers.

The Association looks forward to a licensing regime that reflects current community attitudes, is progressive in outlook and where needed, regulations are justified and based on the empirical evidence.

ASSOCIATION POSITION AND POLICY OPTION PREFERENCES

The Association welcomes the opportunity to respond to the Law Commission’s “Alcohol in our lives – An issues paper on the reform of New Zealand’s Liquor Laws” consultation document. The following table summarises our position on some of the main topics:

Issue	Association Position	Policy Option Preference
Age	The Association does not support changing the current minimum purchase age settings	Purchase/Drinking Age option: (a) No change
Types of products available at off-licence premises	The Association recommends that there should be no discrimination of products on the grounds of how it has been	Off-licence product option: (b) Allow all off-licence premises to sell all alcohol products

	produced or how it looks in off-licence product options	<p>OR</p> <p>NEW OPTION:</p> <p>Enable the sale of beverages in supermarkets and grocery stores based on certain alcohol content thresholds</p>		
Excise tax -Lower rate for low %abv products	The Association supports reduced excise tax on low alcohol products if it was applicable to ALL beverage categories	<table border="1"> <tr> <td>Excise tax option</td> </tr> <tr> <td>(c) Reduce tax on low alcohol products with qualification</td> </tr> </table>	Excise tax option	(c) Reduce tax on low alcohol products with qualification
Excise tax option				
(c) Reduce tax on low alcohol products with qualification				
Excise tax -Rates	The Association recommends that all alcohol beverages be charged a uniform tax rate, based on their alcohol content	<table border="1"> <tr> <td>Excise tax option:</td> </tr> <tr> <td>(f) Change to a pure volumetric excise tax system (that is, remove the current bands to make the rates more closely reflect volumes of alcohol)</td> </tr> </table>	Excise tax option:	(f) Change to a pure volumetric excise tax system (that is, remove the current bands to make the rates more closely reflect volumes of alcohol)
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Minimum price	The Association does not support minimum retailing pricing	<table border="1"> <tr> <td>Pricing option:</td> </tr> <tr> <td>(a) No change</td> </tr> </table>	Pricing option:	(a) No change
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Advertising	The Association supports the current self-regulatory regime settings	<table border="1"> <tr> <td>Advertising option:</td> </tr> <tr> <td>(a) No change</td> </tr> </table>	Advertising option:	(a) No change
Advertising option:				
(a) No change				
Promotions	The Association does not support prohibition on price advertising	<table border="1"> <tr> <td>Promotions option:</td> </tr> <tr> <td>(a) No change</td> </tr> </table>	Promotions option:	(a) No change
Promotions option:				
(a) No change				
Serving sizes	The Association supports no restrictions on spirit serve size	<table border="1"> <tr> <td>Proposed Change :</td> </tr> <tr> <td>On-Licensees be free to serve any size alcohol beverage container</td> </tr> </table>	Proposed Change :	On-Licensees be free to serve any size alcohol beverage container
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BACKGROUND

DISTILLED SPIRITS ASSOCIATION OF NEW ZEALAND

The Association is the national trade organisation representing New Zealand's leading brand owners, importers and exporters of premium spirits (e.g. Brandy, Whisky, Rum, Gin, Vodka) and spirit 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, Lion Nathan Wines and Spirits Ltd, Moët Hennessy NZ Ltd, Pernod Ricard New Zealand Ltd, The Rum Company (New Zealand) Ltd and Vintage Wines and Spirits Ltd.

The Association has a remit to deal with all matters that impinge on the manufacture, importation, distribution, sale and consumption of distilled spirits in New Zealand.

GENERAL POSITION

Before directly analysing the matters raised in the issues paper, the following comments outline the general approach and perspective of the Association.

There is no doubt that alcohol beverage consumption is an integral part of the social and economic fabric of New Zealand as is a well-run licensed domestic (and high export value) industry. This includes all parts of the supply chain including: producers, importers, packaging and printing companies, distributors, wholesalers, retailers, marketing, advertising companies, commodity and component suppliers, transport and warehousing logistics. All of these underpin a responsible and vibrant beverage, retailing, hospitality, entertainment and tourism industry for New Zealand at large.

Many commentators often confuse all alcohol beverage consumption with alcohol beverage abuse. There is a clear difference between the two. It should be acknowledged that alcohol beverages are hugely enjoyed by millions of New Zealanders who do not cause or have any problems with their drinking. This is consistent with the repeated comments of Ministers, agencies and officials that *"it is not the drinking but how we are drinking"* that is the problem.

The Association believes that reasonable regulations concerning alcohol availability - or where, when, and by whom alcohol can be sold, obtained, and consumed - are key components of the licensing framework. This recognises that alcohol beverages are not in themselves the problem. Rather, it's the abuse of alcohol beverages by a minority of irresponsible individuals.

The Association opposes the trade-restrictive and discriminatory elements of the current regime as in many places it unfairly infringes upon individual rights and freedom of choice of the moderate-drinking adult majority.

The Association also considers that harm can be ameliorated by having a legislative framework that is targeted directly at high-risk individuals and behaviours rather than the population at large.

Regulations on the availability or access to alcohol beverages formed without the identification of clear need or from a rigorous scientific basis, potentially risk generating future unintended consequences such as driving consumers toward certain types of product or disadvantaging particular business formats.

The Association believes that the current law is largely working satisfactorily and this has also been noted by the Liquor Licensing Authority in its last five annual reports¹ to Parliament. A completely new Sale of Liquor Act is therefore, in our opinion, unnecessary and will not stop people drinking to excess. Rather, reform should focus on promoting better individual and parental responsibility around alcohol use, improving the enforcement of existing powers, applying maximum penalties, together with the removal of several discriminatory trading anomalies and operational inconsistencies.

Rigorous enforcement and strong judicial action should be backed by education of the general public about sensible drinking patterns and outcomes. Disappointingly, the issues paper lacks any significant focus on education or awareness raising of individual responsibility and parental/caregiver responsibility for the supply and supervision of liquor to minors.

Parents need to teach moderation and responsible drinking to their children. Additionally, parents have an important role to play especially in controlling their children's behaviours and approach to alcohol beverages.

Accordingly, the policy approach going forward could be improved by prominently emphasising personal responsibility and accountability by individual drinkers in the same way as current policy holds licensees to account. There are serious consequences for problematic and or non-compliant licensee behaviours but little or no consequences for irresponsible individual drinkers. Good parental role modelling, guidance, supervision and responsibility for their children are also vital in fostering a better drinking culture in New Zealand. Providing more restrictions will not stop the abuse of alcohol beverages.

REGULATORY BALANCE

We therefore consider that the policy challenge and opportunity for the Law Commission is to recommend balanced regulatory adjustments that meet the reasonable needs of the vast majority of responsible consumers and industry of tomorrow - not yesterday - and not to treat New Zealanders as though they are foolish and not to be trusted. Much respect should be given to the recent comments issued by various Ministers including:

The Justice Minister, Hon Simon Power who said:

“Any attempt to ameliorate the negative impact of alcohol abuse must be balanced against the freedom of the majority of the adult population to drink responsibly”²

¹ Report of the Liquor Licensing Authority to the House of Representatives June 2009, June 2008, June 2007, June 2006, June 2005

² Hon Simon Power, Sale and Supply of Liquor and Liquor Enforcement Bill, First Reading, 10 March 2009

Similarly, the Prime Minister Hon John Key commented that:

“It is a problem, alcohol abuse, but not everybody drinking is abusing alcohol”³

Finally, the Associate Minister of Health Hon Peter Dunne stated:

“It will be important that any new legislation that emerges from this process strikes a careful balance between the rights of most New Zealanders who enjoy alcohol without any problems, and the minority who suffer serious personal harm and adverse social consequences from their misuse of alcohol”⁴

Furthermore, the Law Commission will be well aware that the present Government⁵ has expressed a clear and consistent intention to reduce the amount of unnecessary regulation on business. The alcohol beverages industry is already one of the most highly regulated sectors in New Zealand (see Appendix 1). The impact of a number of the Law Commission’s “tentative” proposals would have a negative effect of lowering productivity and the standard of living which New Zealanders enjoy.

For good public policy purposes, the Law Commission should be cognisant and committed to the Government’s general principles of removing or not creating new unnecessary regulatory burdens on business. And where regulation is justified, demonstrate with unequivocal scientific evidence that the benefit of its targeted implementation will be effective in reducing costs or problems.

Parliament’s recent rejection of two private member bills⁶ concerning the banning or restricting alcohol advertising practices and its administration, demonstrates the general distaste for unnecessary “nanny state” regulatory measures. In all, the Law Commission should propose or recommend policy options that are consistent with international best practice and the current Government approach.

³ “Key: can’t punish everyone for youth benders” 27/4/09 NZPA

⁴ Peter Dunne: “Alcohol report comprehensive and thought-provoking” 30/7/09 NZ Government

⁵ Government Statement on Regulation – better regulation, less regulation Hon Bill English and Hon Rodney Hide 17/8/09

⁶ Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill and the Liquor Advertising (Television and Radio) Bill

TOPICS FOR COMMENT

Given the scale of the Law Commission issues paper, with its 31 questions and over 100 policy options, it is not possible for us to comment on every aspect. Therefore our response is limited to those matters of direct relevance and of immediate concern affecting spirits interests. Our discussion follows the heading order as contained in the questionnaire section and we specifically comment on:

1. Age
2. Types of products available at off-licence premises
3. Tax/Price
 - Excise tax-lower rate for low %abv products
 - Excise tax-rates
 - Minimum price
4. Advertising and Promotions
5. General - spirit serving sizes
6. Other Matters: RTDs - Misconceptions versus Realities

1. AGE

Question 14:

At what age should a person be able to purchase alcohol in New Zealand?

Question 15:

At what age should a person be able to drink at a pub, club, bar or restaurant?

The Association does not support changing the current minimum age of purchase settings and therefore supports **Purchase/Drinking Age option: (a) No change.**

The Association and other responsible operators in the drinks industry do not wish to encourage the purchase or drinking of alcohol beverages by minors. We agree with the Government and others that alcohol beverages should only be sold to the right people.

Despite two comprehensive Parliamentary considerations of the minimum age of purchase, the first being in 1999 which simplified the age to 18 years and the second in 2006⁷ when MPs rejected by 72-49 votes a private member's bill by former Hamilton West MP Martin Gallagher to raise the age to 20, various advocates continue to relitigate the minimum age of purchase issue. From the Association's perspective, the logic of the 1999 Parliamentary decision remains relevant today.

Advocates for change judge that current purchasers are irresponsible and pose a risk to themselves and others because of their age. They argue that raising the minimum age threshold could reduce so-called alcohol harm.

The Association believes that whatever the age limit, the problematic drinking behaviour of some individuals will not be solved this simply as the issue is one of education, supply, supervision and monitoring, not age of purchase.

Proponents of change ignore the main sources of alcohol beverages for those under the minimum age of purchase. These are family and friends or other people that buy for them rather than them purchasing alcohol beverages illegally from commercial licensed premises. Annual NZ Police data shows there were just 10 purchase offences by minors in 2008. Regarding this data, changing the current minimum purchase age is immaterial.

Also, Alcohol Advisory Council (ALAC) research has found that minors are more likely to be in their own home or someone else's home when they had their last drink not licensed premises. This suggests that a minimum age of purchase and further

⁷ Hansard 8 November 2006

related licensing restrictions would not be a real solution to keeping alcohol away from minors.

Further, lifting the minimum age of purchase will not prevent the current irresponsible drinking culture of some young people. It is also important to recognise that whilst there may be a limit on the age of purchase, there is no minimum age on drinking. The Association believes that the greatest deterrent to under-age sales and purchase is the risk of being caught and punished. Therefore the priority in any legislative reform is to ensure that licensees mandatorily sight age-documentation and verify the age of all customers who could potentially be underage. This needs to be accompanied by regular and visible law enforcement. Additionally, the Association supports a regime whereby those licensees who knowingly supply alcohol beverages to minors, by whatever means, should lose their right to trade.

This sort of approach would reinforce the unacceptability of under-age liquor sales.

Split Age

The Association is doubtful that a higher age limit for the purchase of alcohol from off-licence premises (than the existing 18 years) will be effective in mitigating youth binge drinking or the abuse of alcohol. Interestingly, the wider discussion has not given any justification for selecting 18 or 20 as the threshold.

The Association considers that a uniform minimum age of purchase for all licence types should continue to apply. The advantage of one age is that it is simple to understand and enforce and avoids any potential confusion.

Finally, responsible producers and traders do not encourage sales to minors and do not wish to see alcohol beverages consumed by this group. The Association is therefore opposed to proposals to introduce differential minimum ages of purchase according to venue type. Such a move would be a backward step and remove us from the current “consistency” of approach with one uniform age.

A more simple and appropriate strategy may be to emphasise the need for all licensees to diligently check the age documentation of all customers who could potentially be underage. Doing so would eliminate any sales to minors.

2. TYPES OF PRODUCTS

Question 18:

Do you think the rules about supermarkets and grocery stores selling liquor should continue as now?

The Association supports **Off-licence product option: b) Allow all off-licence premises to sell all alcohol products.**

As an intermediate option to the above and consistent with the issues paper suggestion (at para 9.145) the Association would strongly support a **recasted** policy option, that is fair to all alcohol beverage manufacturers. This would enable the sale of alcohol beverages on the basis of a product containing a certain alcohol content threshold. Consequently, the policy option should be extended to enable either:

Existing Option b: Allow all off-licence premises to sell all alcohol products or

New sub-Option b (1): Allow supermarkets and grocery stores to sell all types of liquor containing not more than 23% alcohol by volume⁸ or

New sub-Option b (2): Allow supermarkets and grocery stores to sell all types of liquor containing not more than 15% alcohol by volume⁹.

A level commercial playing field

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 the current rules need reform.

The Sale of Liquor Act illogically differentiates between alcohol beverage types based on how a product is produced, i.e. spirits are distilled whilst other beverages (e.g. beer and wine) are fermented. It accords an unfair competitive advantage to one group over another. We submit that this situation is iniquitous and inconsistent.

This regulatory bias was not the original intention of the 1988 Laking Committee who outlined a list of principles for the law, including the view that the legislation should not be seen as economic regulation and that it should not impose unnecessary restrictions on the drinking of alcohol.

The 1997 Liquor Review Advisory Committee has also criticised the 1989 Act’s off-licence product regime as lacking consistency and equity.

⁸ Products would include: Fortified wines (Port & Sherry containing around 18%abv) and Liqueurs (e.g. cream-styles – 17% to 18%abv). NB: a 23%abv threshold is used by the NZ Customs Service for tax and tariff policy and Food Standards Australia New Zealand for food composition and labelling policy

⁹ The upper alcohol threshold limit for table wine

Specifically, the Laking Committee recommended that all forms of alcohol beverage be allowed to be sold in off-licences such as supermarkets and grocery stores.¹⁰ Yet this is not the case.

The current legislation therefore produces an uneven commercial playing field. Clearly, the legal bias against spirits cannot be continued in such a way that it commercially favours one party over another. There are sound policy reasons for a consistent approach in the legislation and the exercise of reasonable control.

Object of Act

Turning to the Act itself, section 4(1) states that the object is *“to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means”*.

The phrase “reasonable system of control”, as interpreted by the Association means controls should not be excessive and should be proportionate in response to the nature of the risk backed up by the scientific evidence.

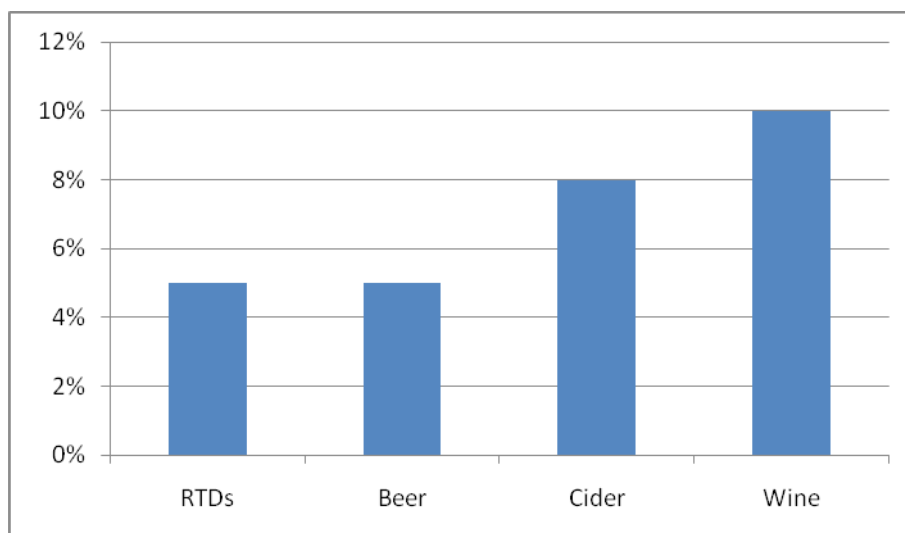
No rational justification

From a scientific point of view it is therefore difficult to discern a clear rationale for the exclusion of some types of alcohol beverage from sale in one type of off-licence (i.e. supermarkets and grocery stores) when there is no prohibition on other off-licence venues such as bottle stores, duty free outlets, and “general stores” which are subject to the same licensing requirements and rules. There is no evidence that a supermarket off-licence is less responsible than other off-licence operators.

The law is further inequitable when there are spirits and spirits-based beverages that contain a similar amount of alcohol to beer and cider (around 5-8%abv) or have a lesser amount of alcohol than other beverages, such as wine (at 9-14%abv), but are prohibited from sale from supermarket off-licences.

The following figure, from NZ Customs Service tax data, shows the typical percentage alcohol content of some popular beverage types:

¹⁰ Report of the Working Party on Liquor “The sale of liquor in New Zealand” (October 1996)



Presently, section 37 *Conditions of off-licences* prohibits and restricts consumer and trading rights but there is no empirical evidence that it has contributed to the reduction in alcohol abuse. Potential or imagined problems are not enough to justify the current prohibition.

In regard to consumption, we are not aware of any evidence that spirits drinkers drink more heavily than others or are more susceptible to problem drinking.

As to the lurking perception that distilled spirits drinks are more potent than other beverages, this is not supported by the Government’s own messages that state that a standard drink of spirits contains the same amount of alcohol as a glass of beer or a glass of wine, i.e. “alcohol is alcohol”. Further, Government educational initiatives stress, “*it is not the drink, but how we are drinking*” which remains the issue.

If it is accepted that spirits are permitted to be sold in other licensed premises, then we know of no logic to maintain its exclusion from all appropriately licensed off-premises including supermarkets and grocery stores.

The empirical situation regarding the type of off-licence premises that can sell **all** alcohol beverage types, include:

- Auctioneers
- Bottle stores
- Cash and Carry¹¹
- Caterers
- Chartered clubs
- Duty free stores
- General stores
- Hotels
- Mail order
- Taverns
- Tourist lodges

¹¹ New Zealand’s major “cash and carry” off-licences, Gilmours, Toops and Trents are owned and operated by the two major supermarket groups, Foodstuffs and Progressive Enterprises

- Wineries

but not supermarkets and grocery stores.

The following table sets out the types of alcohol beverages that can be sold in off-licences.

Off-licence Type	8-14%abv Wine	4-11%abv Beer	5%abv Mead	5-8%abv Cider	37%abv Spirits	18-23%abv Liqueurs	37%+abv Liqueurs	5-8%abv Pre-mixed spirits	5-8%abv Wine coolers	Port/Sherry 18-23%abv
Bottle stores	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mail order	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Duty free	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Manufacturers	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Caterers	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Auctioneers	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Bars	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Taverns	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Clubs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Cash n' Carry	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Supermarkets	✓	✓	✓	✓	X	X	X	X	X	X

X complementary with other alcohol beverages but sales prohibited

It is difficult to see how the sale of all alcohol beverage types in the supermarket and grocery off licence would pose a greater level of risk to the community than other off-licence premises.

International comparisons

New Zealand is significantly out of step with a majority of comparable countries when it comes to a level retail and licensing playing field.

If we look overseas, many jurisdictions do not discriminate against spirits sales in off-licences; for example: Australia* (e.g. ACT, NT, Vic), Austria*, Belgium*, Czech Republic*, Denmark*, France*, Germany*, Greece*, Hong Kong, Hungary*, Ireland*, Italy*, Japan*, Luxembourg*, Mexico*, Poland*, Portugal*, Singapore, Spain*, Thailand, United Kingdom*, and USA* (excluding control states), permit the sale of all alcohol beverage types in supermarket and grocery store off licences. (*OECD

countries). Even China, Cuba, Russia and Vietnam Communist countries let their citizens buy spirits at supermarkets.

Finally, if some of the dire predictions of the anti-alcohol lobby were plausible from the implementation of a level playing field policy approach, it should be possible to point to all those jurisdictions and illustrate the harmful consequences. But that is not possible, because the predictions of the anti-alcohol lobby have no basis in fact.

Law Commission lack of analysis

Turning to the Law Commission's draft regulatory impact statement (para A41, page 266) we are concerned that no firm evidence has been presented to support the preliminary finding to continue with the retail discrimination against spirits "at this stage". We note that the issues paper at para 9.141 and 9.143 (page 138) openly acknowledges benefits for consumers from eliminating retail discrimination against spirits and the need to remedy this disadvantage.

The unconvincing rationale offered at para 9.144, that if the trading disadvantage against spirits is lifted prices would fall, is spurious. Applying the same logic, all other alcohol beverages should be prohibited from the supermarket and grocery channel. According to basic economic theory, competitive market forces of supply and demand determine prices. And spirits by virtue of their premium and highly taxed nature will always be significantly higher in price than other beverages. The Association would welcome any further reasoning and justification the Law Commission could offer for maintaining the discrimination against spirits.

Discrimination must end

We have identified some major anomalies and inconsistencies to highlight the bias against spirits. There are no reasonable grounds for the licensing regime to continue to discriminate against spirits.

It is obvious that all alcohol beverage types should be treated equally in the licensing arena. Moreover, historical precedent and patronisation should now be both well and truly abandoned in the 21st century.

3. TAX/PRICE

Question 19:

Do you think the availability of cheap alcohol is contributing to alcohol-related harm?

The Association believes that it is arguable that because something is cheap it necessarily promotes consumption leading to harm; and the reasons why some people drink inappropriately and to excess cannot be simply explained away by price.

The question is rather loaded and presupposes that decisions on whether to drink and how much to drink are purely determined by price.

It is our submission that the price of an alcohol beverage does not cause harm. Rather, the driver of harm is the irresponsible use and abusive behaviour by an individual compounded by complex social and cultural factors.

It would be helpful to clearly acknowledge that the majority of New Zealanders do not have or create problems with their drinking at any price level. And that harmful drinking, for a minority, may occur at any particular price point.

Moreover, heavy or problem drinkers are little swayed by price or the drinking venue.

Noting the experience of other countries is useful in this discussion. Take for example the Scandinavian countries, where drinks tend to be very expensive due to high taxes. There are still considerable problems in those societies with the excessive consumption of alcohol. In contrast, a number of Mediterranean countries have lower tax rates and lower prices and report little or no serious problems or harms with alcohol consumption.

Question 20:

Does the difference in price between alcohol bought from retailers such as supermarkets and liquor stores and alcohol bought in a bar or restaurant influence where you drink?

The Association concludes that a venue choice is ultimately a matter for individual choice. Price is not often a simple or sole determinant.

Price differential is just one factor, of many, that may have an influence on where an individual drinker may drink.

It does not follow that an off-premise venue and its lower pricing is more problematic than an on-premise venue, or vice versa. Perhaps this wrongful thinking comes about from the assumption that all off-licence purchases, to drink at home, are all destined for “immediate consumption”. Of course this is not true. There is strong common sense evidence that many people plan ahead and buy alcohol beverages to stock-up or to enjoy over a period of time. Perversely, upcoming tax increases/price hikes encourage many people to buy in large quantities to “save money”.

A drinker may prefer a particular on-premise venue because it provides ambience, food, entertainment, music etc. It is therefore not surprising that this type of venue will have different cost structures and pricing practices that will be significantly higher to reflect rental, and costs such as service, cleaning, rates, insurance, than if the drinker consumed his/her beverages in the privacy and freedom of a home (because of convenience or reaction to anti-drink drive and anti-smoking policies). Since the economy moved into recession, drinking at home has become an increasing trend.

That said, some on-premise venues such as: student unions, sports clubs, Police and military canteens and Parliamentary bars often subsidise or offer price discounts over other on-licence premises. Combined with their looser licensing standards¹² this could influence the venue choice for some drinkers [These licence types should not be exempt from any Commission considerations around any minimum pricing regime see later discussion.]

It is therefore illogical and misleading to infer that alcohol purchased from an off-licence is somehow more problematic than if sourced from other licence types.

A venue’s climate and the environment can strongly influence an individual’s decision-making and influence how an individual consumes alcohol. Especially one, where there is much social or peer pressure to drink to excess.

Question 21:

Do you think there is a case for increasing tax or setting a minimum price for alcohol in order to help reduce the amount of alcohol consumed by young people and heavy drinkers?

The Association:

***Supports Excise tax option (f) *“Change to a pure volumetric excise tax system (that is, remove the current bands to make the rates more closely reflect volumes of alcohol)”*.**

***Supports reduced excise tax on low alcohol products if it was applicable to ALL beverage categories.**

¹² Police bars need higher standards 8/9/09 DomPost

*Does not support the regulating of alcohol prices by introducing a minimum price per unit of alcohol. Accordingly, the Association favours **Pricing option “(a) No change”**.

A Case for Excise Tax Reform

Throughout this response we argue that there is no case for increasing excise tax on alcohol beverages. Instead, we put a case for a level playing tax field.

The Association is strongly opposed to any further increases in excise tax on distilled spirit beverages because of the existing disproportionate level of discrimination against them in comparison to other beverages.

Moreover, increasing alcohol taxes is a poorly targeted policy tool which is likely to have more impact on responsible and moderate drinkers but negligible influence on young and problem drinkers.

In a recent media statement, Prime Minister Hon John Key expressed his reservations about increasing the price of alcohol across the board. He said:

"I think you've got to be very careful you don't get in a situation where you simply whack up the price of booze and everybody gets affected because some, particularly young people, are going out on benders".¹³

Similarly, the Minister of Revenue Hon Peter Dunne said:

"I am also aware, of course, that any increase in alcohol taxation has to serve a purpose, and not just be because it feels like a good thing to do".¹⁴

Rather than increasing taxes, we are of the view that there is a compelling case to reform the current excise tax regime to ensure that it is fair and equitable. This can be achieved by charging a uniform tax rate, based on a product's actual alcohol content. In our opinion, this is consistent with the important objective of harm minimisation, incentivising producers to look towards lower strength products in the marketplace, and equality of tax treatment.

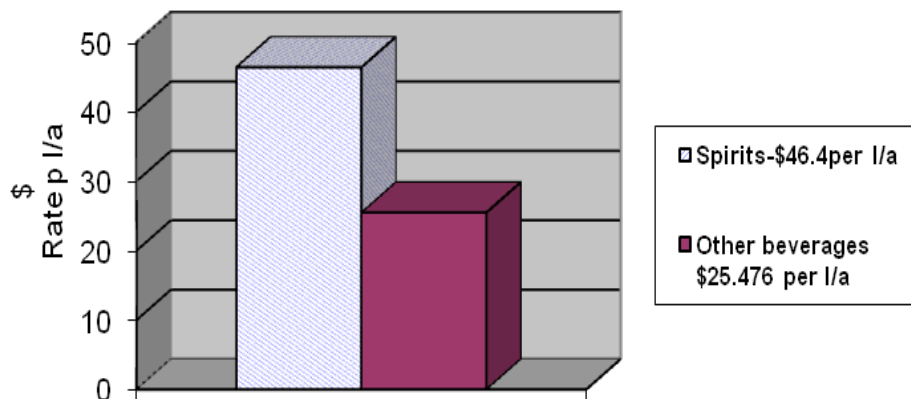
For background purposes, distilled spirits, and other alcohol beverages produced in or imported into New Zealand are taxed at different rates and indexed to annual movements in inflation.

Alcohol excise tax rates differ by type of beverage, and are illogically higher for distilled spirits than for beer and wine. In fact, spirits are taxed up to 82% higher than other beverages.

¹³ "Key: Can't punish everyone for youth 'benders'" NZPA 27/4/09

¹⁴ Address to the "Cutting Edge National Conference", 10/9/09

Excise Tax - 82% Differential Between Beverages



Excise tax harmonisation

The current excise tax structure comes from a historical background where spirits were taxed higher for moral and social reasons that are no longer relevant today. It was believed that spirits consumption was indulgent and that wealthy people could afford to be taxed higher.

Therefore, the current system is unfair and discriminatory against spirits and the Association is not alone in calling for a reform of the current alcohol excise tax regime. There are several relevant reasons and precedents the Law Commission should take on board, for equality of tax treatment, including:

- **“Alcohol is alcohol”**

On a scientific basis there is absolutely no chemical difference between fermented and distilled alcohol¹⁵, therefore alcohol beverages should be taxed according to actual alcohol content, not by production process or by ‘type of beverage’.

Put another way, “alcohol is alcohol” regardless of whether the product has been made from grapes, brewed or distilled. Regardless of the way each different alcohol beverage is typically served, there is the same amount of alcohol and effect in each standard drink.

- **Political precedence**

The 1989 Budget announced that the outdated and iniquitous tax system would change. Accordingly, it provided for the (higher) spirits rate to be frozen (at \$30 per litre of alcohol) until such time as cumulative increases in the lower excise rate (of \$15 per litre of alcohol), adjusted by Consumers Price Index (CPI) movements, equated with spirits.

Later, it was also promised by the Rt Hon Jim Bolger¹⁶ that excise tax would decline, leaving GST as the only tax on alcohol beverages.

¹⁵ Molecular formula C₂H₅OH

¹⁶ Ministerial statement, December 1992

- **Expert opinions**

In a September 2009 background paper for the **Tax Working Group** departmental officials recorded the following comments regarding the different excise tax rates levied on alcohol beverages:

“Currently alcohol containing more than 14 percent alcohol by volume is taxed at a rate 82 percent higher than alcohol containing less than 14 percent alcohol by volume. Under this practice, a consumer of low strength alcohol (such as beer and wine) can consume almost twice as much alcohol as a consumer of high strength alcohol (such as spirits) for the same tax burden. From a social costs basis, there is no justification for differential rates per unit of alcohol that leads to such an outcome”¹⁷.

Reporting in 2001, the **McLeod Tax Inquiry**¹⁸ acknowledged that the excise tax regime was discriminatory. It found that spirits were, without scientific or public health basis, taxed around two times higher than other alcohol beverages.

On 17 June 2005 **Rob McLeod** went on to say: *“In our view the current excise and duty regime cannot readily be justified on conventional tax policy grounds.”*

Organisations such as the Treasury¹⁹, NZ Customs Service, the Alcohol Advisory Council^{20,21} and independent economists²² have also expressed a view that the current system is discriminatory against spirits. They do not favour an excise tax being levied on how a product is manufactured, but prefer to see it be levied against a product’s actual alcohol content.

- **Official and regulatory approaches**

In a recent national response²³ to the World Health Organisation concerning the draft Global Alcohol Strategy on taxation (and other matters), the New Zealand Government stated that it: *“does not support taxation on ‘type of beverage’, as this is inconsistent with the rationale behind a taxation regime based on alcoholic content”*.

Relevant official agencies, statutes and regulations also recognise and accept that ‘alcohol is alcohol’ and accordingly for policy purposes treat all alcohol beverages exactly the same.

For example, the **Land Transport Authority** and the **NZ Police** all measure drunk driving the same way. To the breathalyser all alcohol beverages have the same effect.

¹⁷ "Other base broadening and revenue raising ideas". Background paper for Session 3 of the Victoria University of Wellington Tax Working Group, IRD and Treasury, September 2009

¹⁸ Issues Paper – Tax Review 2001 and Final Report – Tax Review 2001

¹⁹ Tom Hall, Taxation: The Optimal Excise (Empirics), June 1996

²⁰ Alcohol.org.nz, Vol9, No2, September 2008

²¹ “We would like to see excise tax imposed on all alcohol on the basis of alcohol content” ALAC Annual Report 2008, page 6

²² Brian Easton report

²³ “New Zealand Comment on the World Health Organisation’s draft Global Alcohol Strategy”, email correspondence to the Association from Hannah Adams, Ministry of Health 24/9/09

The safe drinking guidelines published by the **Alcohol Advisory Council** define a standard drink containing 10grams of alcohol (which is the equivalent of 30ml of spirit, 100ml of wine and 330ml of beer) (“alcohol is alcohol”).

In terms of marketing, the Advertising Standards Authority administered **Code for Liquor Advertising** and **Code for the Naming, Labelling, Packing and Promotion of Liquor** similarly does not distinguish between alcohol beverage types.

Finally, medical researchers agree that the health effects e.g. cardiovascular benefits associated with drinking are the same for all alcohol beverages.

Experts, policy makers and agencies generally accept that “alcohol is alcohol” and do not take separate approaches for beer, wine and spirits. Accordingly, there is a compelling case for a reformed excise tax system that does not discriminate against spirits.

Reduce tax on low alcohol products

Given the prevailing public sentiment around healthy living, it is timely and appropriate that the issues paper suggests that the current excise tax regime could be restructured to incentivise the development and encouragement of consumption of lower-alcohol beverages to potentially help reduce intoxication. Although the issues paper has provided no formal definition, the Association believes a possible definition for “low alcohol beverages” could be “alcohol beverages containing up to 2.5% alcohol by volume”.

We note that in May 2003 there was legislative package in regard to low(er) alcohol beverages. The then Government (under the acting Minister of Customs, the Hon Jim Anderton) amended the regime²⁴ and applied excise tax on beverages containing 14-23%abv according to their actual alcohol content (where previously they were charged on a deemed average alcohol content). Reforming excise tax to remove system anomalies and to encourage the consumption of lower alcohol content beverages is therefore clearly not unprecedented.

The Association believes that it would be equitable for any reduction in excise tax for low alcohol beverages to be applicable to all competing beverage types. Therefore, all alcohol beverage types should qualify for an excise free threshold, say 2.5% abv (up from the present 1.15%abv). That is, the first 2.5% abv of a product is exempt from paying excise tax. It is logical that the excise taxation regime be balanced and fair. This approach and that signalled by the Law Commission (at para 10.23, page 167) is consistent with our view that all alcohol beverages, regardless of how they are produced or appear, should be treated equally.

²⁴ Customs and Excise (Alcoholic Beverages) Amendment Bill

Minimum pricing

As a producer trade association, we note that producers cannot legally dictate the final selling price of a product. Retail pricing is actually determined by an individual on-licence (e.g. bars, clubs, restaurants, etc) or off-licence (e.g. bottle stores, supermarkets, etc) or venue 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.

According to the Government Statistician²⁵, alcohol price increases in the past year have been higher than overall inflation. In the September Year 2009 alcohol prices rose 4.54% compared to an overall inflation rate of 1.67%. The industry is behaving responsibly on price.

Notwithstanding this, consumers do expect to see the best possible prices. Producers and suppliers are not consulted on retail pricing. However, it is self-evident that producers and suppliers have a keen interest in achieving the best pricing that maximises profitable returns although never in ways that might encourage irresponsible consumption or behaviour.

Spirits are premium products and are generally not subjected to marketing behaviour known as “loss leading” or below cost selling. Where there is reduced pricing, it can occur for a several reasons; generally it is to quit an old or slow moving brand or to reward consumers. On the other hand, sellers do not deliberately set out to make a loss.

As alluded to above, as producers and suppliers we do not wish to see our longstanding investment in our brands eroded by inappropriate retail pricing. Producers and suppliers, on the whole, prefer that their products be sold at a higher price to maintain margins and brand reputations.

The Association shares the community’s ambition to tackle irresponsible consumption or the abuse of alcohol beverages. However, we question whether setting minimum retail prices for the total population will reduce alcohol misuse amongst young people or abusers. There are several serious flaws with the notion of minimum pricing.

Anti-competitive and market distorting

Firstly, Government controls on pricing harks back to an interventionist and draconian era and would most likely be a policy measure that risks running afoul of current competition law.

²⁵ http://www.stats.govt.nz/browse_for_stats/economic_indicators/CPI_inflation/ConsumersPriceIndex_HOTPSep09qtr.aspx

We note that the effect of fixing, controlling or maintaining prices is prohibited under the Commerce Act 1986 (sections 30-34 and 37-38). Once price fixing is established, the arrangement is deemed to have the purpose, effect or likely effect of substantially stifling the benefits of competition. A regime of minimum prices would distort the market and consumers would be disadvantaged.

We strongly believe that the role of government is not to dictate to a specific business operator exactly what margin or return they can or can't make. Minimum pricing feeds straight to retailer's profits and not to the Government or producers. According to press reports traditional bottle stores' minimum gross margin on liquor is around 25%. In contrast, *"supermarkets were happy to make single-figure gross profits of 8-9%. And in some cases they were prepared to drop gross profits to as little as 1-2%"*²⁶.

It should be pointed out that whilst a significant price gap exists between the on-trade and the off-trade, the difference is explained by the fact that the on-trade provides amongst other things food, service, entertainment and a place for people to meet and socialise.

Not international best-practice

Secondly, a minimum retail-pricing regime, to the best of our knowledge has been tried in one western market, namely Canada²⁷ (in eight of the 12 provinces and territories). There is no evidence that the measure reduced excessive consumption or changed the behaviour of people who misuse alcohol²⁸. The Canadian model must be approached with caution, as that market also operates provincial monopoly mechanisms not practiced in New Zealand.

We note that in some Mediterranean countries alcohol beverages are relatively accessible and cheap yet there does not appear to be any significant problematic drinking behaviour. Conversely, some of the highest rates of binge drinking and drunkenness among young people in Europe are in Scandinavia, where there are also some of the highest alcohol beverage prices.

In other markets which New Zealand often compares itself to (including Australia, Ireland, the United Kingdom, the EU and the United States) minimum pricing is not used. In recent months, the UK Office of Fair Trading²⁹, the British Home Secretary Jacqui Smith (December 2008) and the British Prime Minister have all rejected the notion of minimum pricing.

PM rejects minimum alcohol price idea 16/3/09 The Independent

(UK)

Prime Minister Gordon Brown has rejected a recommendation from his chief medical officer that the Government should bring in minimum prices for alcohol in an attempt to cut excessive drinking.

²⁶ Cut-price wine is all down to power? 28/6/09 Sunday Star Times

²⁷ Introduced in the 1920s as a war time and anti-prohibition provincial government measure

²⁸ 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.

²⁹ John Fingleton, CEO OFT Chief Executive, A speech given to the Regulatory Policy Institute 7/9/09

Liam Donaldson said the Government should set a minimum price of 50p per unit of alcohol, which would nearly double the price of some discount beer and wine.

Donaldson said the plans would mean a bottle of wine could not be sold for less than £4.50, a bottle of whisky for less than £14 and a six pack of 500 ml cans of lager for less than £6.

However, Brown said he did not want to punish the majority for the actions of the few.

"It is right for society to bear down on, and deal with, anti-social behaviour that is associated with drinking," he told a news conference.

"But ... it is also right that we do not want the responsible, sensible majority of moderate drinkers to have to pay more, or suffer, as a result of the excesses of a small minority."

The British understanding should not be ignored.

In another jurisdiction, the European Court of Justice's Advocate General has ruled that minimum pricing is illegal on the grounds that it distorts competition³⁰.

Won't stop abuse

Thirdly, much of the argument for minimum pricing is that it would help significantly cut alcohol-related abuse. Unfortunately such a policy would be poorly targeted and 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.

A related, and unintended consequence, may be to drive people to drink cheaper alcohol beverages in private and unregulated settings.

Inflationary and regressive

Another problem is that, whilst the New Zealand economic outlook remains uncertain, it would be inconsiderate to raise prices for moderate and responsible consumers many of whom are already struggling to make ends meet. There is also the contribution to inflation that such a decision would produce.

Minimum pricing would also be a deeply regressive measure falling disproportionately on low to middle income New Zealanders and would not curb the excesses of the minority abusers. Further, consumers would simply see any price increases as racketeering by retailers and or the Government.

Encourage unregulated home production

Finally, there would be some risk to Government and society^{31,32,33,34} as higher minimum prices could create fertile ground for the trade and consumption of

³⁰ "New doubt on alcohol pricing plan", The Scotsman, 23/10/09

<http://thescotsman.scotsman.com/latestnews/New-doubt-on-alcohol-pricing.5760095.jp>

³¹ "Home brew raid follows assault probe" 9/5/09 Southland Times

³² "Teenager sentenced for crime spree" 19/12/08 Southland Times

³³ "Drunk teen's mum angry" 12/4/07 Timaru Herald

³⁴ "High alcohol level led to death" 12/6/09 [An Invercargill man dies after drinking home brew vodka]

unregulated home-produced alcohol (as the price gap between home-made and commercial products is widened) and decrease legitimate sales and the Crown's revenue base.

In a 1996 Treasury paper³⁵ it was estimated there were about 4,000-5,000 home stills and a 1995 survey of drinking in New Zealand suggests that about three percent of absolute alcohol consumed is home-produced. A simple process, home distillation is marketed for its cost savings. Anecdotally, this fact has not escaped the attention of some organised crime elements in New Zealand.

In practical terms, a standard 1-litre bottle of spirit can be produced for \$6 compared to \$35-\$45 purchased at a licensed liquor store. On average, homemade spirits are one-sixth of the price of their retail equivalents³⁶. And in the on-premise situation, a typical bar serve of a spirit is priced in the \$8-\$10 range.

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

It is clear that a minimum price regime can lead to unintended consequences of more drinking in unregulated home or in private venues. A further effect is the potential encouragement of the parallel importation of alcohol beverages. The Association has noticed that many imports are non-compliant with mandatory labelling and safety requirements e.g. failing to declare standard drinks contents and obscuring date or lot codes which in turn can create additional public health concerns.

Beyond the above listed flaws, the issues paper provides submitters with no discussion on the mechanisms underpinning a minimum price regime. Some important questions need to be fully detailed before the idea is advanced any further. For example:

- who sets the minimum price (i.e. which Government agency and what new bureaucratic costs are involved for the Crown and industry)?
- what beverages would it apply to?
- what is an acceptable level?
- why and how such a system would be reviewed?

In short, excise tax rises and minimum pricing would fail to target those individual drinkers who misuse alcohol beverages but unfairly penalise the responsible majority.

³⁵ Taxation: The Optimal Excise (Empirics), Tom Hall, The Treasury, June 1996

³⁶ "Make your own vodka" 2/6/09 NZ Herald

4. ADVERTISING AND PROMOTIONS

Question 22:

Should the way alcohol is marketed (including advertising, promotions, and sponsorship) have greater restrictions? If so, what restrictions are appropriate?

The Association does not support restricting the price advertising of alcohol beverages. Accordingly, we favour **pricing option: “(a) No change”**.

The Association does not support changes to the current advertising or promotions regime for alcohol beverages. Accordingly, we favour **advertising option: “(a) No change”**.

New Zealand already has in place a sophisticated self-regulatory framework, which includes social responsibility around alcohol advertising and promotions. Over the years, the wider drinks industry has significantly strengthened its efforts to ensure the responsible promotion of its brands. It remains strongly committed to promoting responsible consumption and discouraging excessive consumption. Those commitments are optimally set and are embodied in the industry’s compliance with the very strict Code for Advertising Liquor and the recently implemented Code for the Naming, Labelling, Packing and Promotion of Liquor³⁷, both are administered by the Advertising Standards Authority.

The two Codes both contain similar themes, namely: moderation in consumption, no targeting of minors and high standards of social responsibility.

Against this background, there is no empirical evidence that directly proves alcohol advertising, by brand or by its price, causes individuals to increase consumption or to abuse alcohol beverages. Many commentators wrongly think “correlation” is the same as “causation”. There is no evidence that further advertising restrictions will stop binge or harmful drinking behaviours.

Alcohol advertising models normative drinking behaviour and may actually inhibit alcohol abuse. The implicit message in the vast majority of alcohol advertisements and marketing is for moderate drinking. There are no portrayals of excessive or irresponsible consumption. Problematic drinking behaviour is dictated by context, not by brand advertising.

In general, the marketing of alcohol beverages is intended to shift preferences between brands and to provide consumers with brand information, such as pricing.

³⁷ The Alcohol Promotions Code and its complaints system complements the ASA Advertising Code and came into force on 1 October 2009

Marketing is only one of many influences on shaping consumer attitudes and behaviour. However, principal influences on drinking behaviour are largely learned from observation, especially that of peers and parents.

The Association seriously questions whether greater efforts to restrict the advertising of brands and their pricing information will stop or deliver any substantive change to irresponsible behaviours and consumption.

Alcohol advertising practices

As mentioned above, all alcohol advertising is subject to the very strict Advertising Standards Authority (ASA) Code for Advertising of Liquor. The voluntary industry code of practice applies not just to producers but also to advertising agencies, the media, retailers and licensed venues.

Amongst the guidelines, the codes requires that advertising does not target persons below the minimum age of purchase; that it depicts responsible and moderate consumption; that it has no strong appeal to young people; and that it features adults over the age of 25.

Under the code, advertisements are not designed to increase total per capita alcohol consumption, and responsible industry members never target those below the legal age of purchase. Advertisements are designed to increase sales of a particular brand and develop brand loyalty rather than mass consumption or increasing the sales of competitors.

The Association is unaware of any empirical research or evidence that demonstrates that alcohol brand advertising and their pricing cause consumption or the abuse of alcohol, either amongst adults or young people.

While young people may see on or off-premise advertising and pricing information, including: mailers, newspaper advertisements, point of sale materials, menus, blackboards, etc, it should not be possible for them to purchase these products when retailers are vigilantly respecting the law and guarding against the sale to minors.

Advertising of price

Turning to the policy option which proposes a ban on price alcohol advertisements we are not aware of any evidence showing that such a practice would be effective in reducing consumption or stopping alcohol misuse and the irresponsible behaviour by a minority of people. The policy option would however have wide reaching consequences, alter market shares of competitors and affect marketing opportunities for them. Additionally, there could be severe implications for print media such as newspapers and advertising agencies.

Advertising also provides social benefits, giving consumers product information as they shop when they need it most.

Research shows minors and young people do not generally buy their own alcohol beverages but obtain it from parents and other adults. Therefore advertising price restrictions will not affect them directly.

Finally, the proposal to ban the advertising of price potentially raises competition issues and is prima facie in breach of the Commerce Act.

Breach of the Bill of Rights

We note that Section 14 of the Bill of Rights Act 1990 refers to the right to freedom of expression including the freedom to seek, receive, and impart information and opinions of any kind in any form. The Attorney General recently reaffirmed that protection³⁸.

The Association has interpreted freedom of expression to include alcohol brand advertising and the advertising of availability, product characteristics and price information. As stated elsewhere, the only purpose of advertising is to provide information to encourage consumers to choose one particular product over other similar alternatives.

The Association therefore believes that the proposed policy option could constitute an infringement on New Zealander's democratic freedoms and commercial free speech which should not be constrained.

It is not necessarily a given that all off-licence purchased alcohol is actually consumed in one sitting and is consumed irresponsibly. Common sense and everyday experience suggests people may stock up because of favourable pricing trends, convenience or intention to consume at a later date.

We are not aware of any empirical evidence that proves the provision of pricing information causes individuals to drink or drink to excess. People who set out to get drunk would not be overly influenced by the advertised price of a product.

We see no justification for not allowing alcohol price advertisements. Consumers must still make a conscious decision to visit the store and purchase the goods advertised.

Self-regulation works well

The Association is of the view that voluntary industry self-regulation of alcohol advertising and promotions combined with individual companies own internal codes of practice, works well and is effective.

In a minority report on the "**Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill**" the National Party recognised that the ASA "*does a commendable job of exercising control and self-regulation over certain specified complaints relating to the broadcasting of liquor advertising*"

³⁸ Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on Liquor Advertising (Television and Radio) Bill notified to Parliament that the Bill trespassed on civil freedoms

The following quote from a recent Parliamentary debate³⁹ on alcohol advertising is also highly informative:

*“The Government is of the view that the Advertising Standards Authority currently does a sufficient job of exercising control and encouraging self-regulation over certain specified complaints relating to the broadcasting of liquor advertising”.
“Alcohol advertising already has many restrictions designed to ensure that the target audience is not youth, and the liquor industry generally acts responsibly to appeal to an adult audience”.*

As is the recent comment of the President of the Law Commission⁴⁰:

“The New Zealand model of regulating through the Advertising Standards Authority has a lot going for it if it is doing the job effectively”

There has been a very intensive and comprehensive scrutiny of alcohol advertising conducted over the past 18 years⁴¹. Whilst all reviews found that some small improvements could be made, none found any failure of the self-regulatory system or criticised the code and its administration, which could justify the case for further regulation.

The recent rejection by Parliament of a private members’ bill in the name of Brendon Burns MP, the **Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill** further demonstrates the confidence in the oversight of television liquor advertising by the industry-run ASA rather than the need to transfer jurisdiction to the government-controlled Broadcasting Standards Authority (BSA).

The Association believes proposals for additional regulatory controls i.e. “enhanced self-regulation” (presently under consideration by Parliament⁴²) will not measurably reduce alcohol abuse. We agree with the Law Commission’s preliminary view that additional regulatory controls are not required. The current self-regulatory framework around alcohol advertising and promotion is robust and effective in mitigating the risk of industry non-compliance. A new enforced self-regulatory system by way of legislation is unnecessary.

³⁹ Hon Dr Jonathan Coleman - Minister of Broadcasting - Liquor Advertising (Television and Radio) Bill — First Reading 1/7/09

⁴⁰ Rt Hon Sir Geoffrey Palmer speech 24/4/09

⁴¹ 1994 under the Chair of Judith Potter (now Justice Potter), 1998 under the Chair of Sir Ian Barker and 2003 under the chair of Sir Michael Hardie Boys

⁴² Sale and Supply of Liquor and Liquor Enforcement Bill

5. GENERAL

Question 31:

Do you have any further comments or suggestions?

The Association proposes the following change :
On-licensees be free to serve any sized alcohol beverage container.

The issues paper has provided a discussion on “**Product labelling and serving sizes**” (at page 227). However it does not follow through and provide a specific question or relevant reform policy options on this subject area. We assume this to be an accidental omission and the Association therefore presents below some additional comments and recommendations.

Serving sizes

The Sale of Liquor Act’s Section 169 “**Sales of spirits otherwise than in a glass**” is an example of an unjustified and archaic licensing law. To the Association’s knowledge no problem has actually been identified and it is our submission 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 for other beverage types or venues.

Section 169 states:

Every person commits an offence and is liable to a fine not exceeding \$2,000 who, being the licensee or a manager of any licensed premises or an employee of the licensee, sells or supplies any spirits to any person, for consumption on the licensed premises, otherwise than in a drinking vessel of a capacity not exceeding 500 millilitres.

Subsection (1) of this section does not apply to the sale or supply of any spirits to a person who is a lodger on the licensed premises for consumption in that part of the licensed premises in which that person lodges.

In brief, the section is patronising and irrationally discriminates against the sale of spirits in a drinking vessel exceeding 500ml such as a pitcher of cocktails or a 700ml bottle of cognac (e.g. in a on-premise venue such as a restaurant or club setting) whereas large capacity 750ml bottles of wine and 745ml bottles of beer are exempt and even encouraged. In fact, “large sized bottles” are actively encouraged to be shared.

We are not aware of any evidence that proves that the size of a beverage container results in immoderate or irresponsible consumption. Clearly, if there is any issue

with spirit containers exceeding 500ml the Government should have a similar prohibition in the off-licence scenario. The law is further confused when it allows “*lodgers of the licensed premise*” but not others to consume from larger drinking vessels. There is no evidence that non-lodgers are less responsible than lodgers. The current restriction on spirit serve sizes has no basis in factual necessity. Moreover, the nineteenth century moral and paternalistic attitudes have dramatically changed and are no longer valid or defensible. The Association believes that on-premise operators should be free to serve spirits, just like all other beverage types, in any sized container to all legal patrons. Consumers are the final arbiters as to how their favourite beverage is served and they should therefore be able to exercise that choice.

The Association therefore urges the removal of spirit serve size prescriptions.

6. OTHER ISSUES

RTDS Misconceptions versus Realities

The subject of pre-mixed drinks or ready to drink (RTDs) beverages has been referenced directly and indirectly throughout the issues paper and two paragraphs stand out in the overall narrative.

The first acknowledges that:

“Problems with youth drinking cannot be simply explained by the... development of... RTDs”. (Issues paper, page 100)

And the other asserts:

“So far, we have heard many representations that ready-to-drink spirits-based drinks should be banned or controlled. We are not persuaded that it is wise for the law to travel in that direction. We are reluctant to make distinctions between various liquor products”. (Issues paper, para 12.33, page 224)

The Association welcomes these well-considered statements and agrees unequivocally with the Law Commission assessment, especially given that “alcohol is alcohol”.

Against this background, the Association observes that there is much ill-informed scapegoating and misinformation spread about RTDs. Critics and other commentators will seek to devalue the category by demonising it, which will in turn distract the public from facing the real issues around drinking and the behaviour and responsibility of individuals.

To reinforce the Law Commission’s judgements and to ensure public debate is based upon the facts, we have set out a list of the current myths and realities about RTDs below:

What are RTDs?

Simply explained, RTDs are alcohol beverages packaged in single-serve containers. They can contain an alcohol base derived from distilled or fermented alcohol (e.g. malt, grape or fruit) and are often combined with a mixer such as soda, tonic, cola, ginger or fruit juice. Today’s RTDs are no different to wine coolers that were popular in the mid-1980s.

Consumers have been combining alcohol beverages with mixers for many years and RTDs are not a new trend. They have been evolved out of adult consumer demand for convenience, lower alcohol content beverages and to provide a broader choice for spirit drinkers.

RTDs:

- Do not contain a higher level of alcohol than most standard drinks

- Are not marketed to youth
- Are not cheap beverages
- Are no more attractive or sweet than other alcohol beverages
- Are not a large part of the liquor market

Myth: RTDs have a high alcohol content

Reality: The majority of spirit-based pre-mixed drinks sold in New Zealand range from 5% to 6% alcohol by volume (abv), and are comparable in alcohol content to beer, wine coolers and cider. RTDs typically have half the alcohol content of table wine (which can range up to 14% abv). The proposition that all RTDs are ‘potent’ is very much 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

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

Myth: RTDs are marketed to youth

Reality: Alcohol beverage producers and retailers are not legally allowed to promote to minors. In addition to the Sale of Liquor Act requirements, strict industry-run self-regulatory codes of practice expressly prohibit any marketing or promotional campaigns directed to minors.

There is little or no broadcast or television advertising or promotion for spirit-based pre-mixed drinks. The promotional material that does exist 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.

Concerning the perception that RTDs appeal to young people, the scientific research does not bear this out. According to ALAC research⁴³ 61% of youth drinkers (12-17years of age) prefer beer, wine and spirits to RTDs.

Myth: RTDs are sold for low prices

Reality: Retail outlets and other licensed premises determine the selling price of products. As manufacturers we do not set the retail price, nor do we sell RTDs 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.

RTDs are often a dearer proposition per serve than other beverage types. For example, beer can be purchased for \$15.99 (12x330ml=3.96 litres, or \$4 per litre) or

⁴³ ALAC Youth Monitor 2006/7

a three-litre cask of wine for \$17.99 (\$6 per litre). Meanwhile, RTDs are typically sold in a four-pack at \$12.95 (4x330ml=1.32litres, or \$9.78per litre). RTDs do not give the highest alcohol content per dollar and other beverages are potentially much cheaper.

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

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

Reality: 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 flavoured beer, carbonated cider, wine spritzers, wine coolers, sparkling and dessert wines are also popular and well-known beverages in New Zealand.

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 per cent of RTDs consumed in New Zealand are dark-coloured products (e.g. Bourbon, Rum and Scotch Whisky based drinks).

RTDs are a huge part of the liquor market

Reality: RTDs exist because of a legitimate consumer demand and accordingly have been available in New Zealand for more than 20 years but comprise a small segment of the total alcohol drinks market. By volume, RTDs represent just 12% of the total volume of alcohol available for consumption in New Zealand and have taken market share from glass spirits and beer. The growth in RTDs has been considerably affected by a decline of consumption in the spirits category.

According to Statistics New Zealand the most popular beverages, for the year ended June 2009, ranked by actual litres were:

	Volume	Percentage share
Beer	308million litres	65%
Wine	97million litres	21%
Spirits ⁴⁴	9million litres	2%
RTDs	57million litres	12%

⁴⁴ There has been a fall off in spirits consumption. Volumes are 5.7% lower than in 2008

On other occasions and in the discussion immediately following the release of the issues paper, some commentators have suggested that RTDs should be prohibited or taxed more. Neither suggestion has merit nor would establish any coherent plan to improve drinking behaviour. The problem prohibition is supposed to solve simply ignores consumers ability to switch to other competing alcohol beverages (such as beer, wine coolers, cider and spirits) to allow some individuals to carry on their abusive behaviours. Recent Australian experience demonstrates that a knee-jerk tax increase policy was seriously faulty in that it failed to reduce alcohol misuse. Moreover, there has been virtually no change in overall alcohol consumption levels in Australia^{45,46}.

Finally, it is instructive to bring to the attention of the Commission and others that in a recent policy paper⁴⁷ prepared by the Ministerial Committee on Drugs (MCDP), the Committee stated that there was no evidence internationally in support of targeted taxes on RTDs leading to a reduction in alcohol-related harm.

⁴⁵ Australian Budget Strategy and outlook, Budget paper No 1, 2009-10

⁴⁶ The impact of the RTD tax increase: 12 months on. Nielsen Liquor Services, July 2009

⁴⁷ <http://www.ndp.govt.nz/moh.nsf/indexcm/ndp-ready-to-drink-beverages>

CONCLUSION

In conclusion, the current liquor licensing framework is generally working well. However, there are some parts that are iniquitous and anomalous which irritate and hamper commerce and consumers freedom of choice.

There is no acceptable justification for the maintenance of laws that are discriminatory in nature and we would urge the Law Commission to recommend a level playing field approach in all its policy considerations.

The Association looks forward to assessing the outcome of the Law Commission review and working with licensing laws that are proportionate, are least trade restrictive and place more responsibility on individuals for their own drinking behaviour. Finally, we suggest that any mooted policy changes should be targeted rather than be applied on total population basis, be justified on robust scientific evidence and be best international practice when addressing an identified problem.

Distilled Spirits Association of New Zealand Inc

Appendix 1

The drinks sector is highly regulated. It is subject to at least fourteen statutes, six regulations and three Codes of Practice, including the following:

TAXATION	Jurisdiction
Alcohol Advisory Council Act	Alcohol Advisory Council
Customs & Excise Act Customs & Excise Regulations	NZ Customs Service
Tariff Act	Ministry of Economic Development, NZ Customs Service

PRODUCTION, COMPOSITION, LABELLING	Jurisdiction
Food Act Food Safety Regulations	Ministry of Health, Food Safety Authority NZ, Local health authorities
Food Hygiene Regulations	Ministry of Health, Food Safety Authority NZ, Local health authorities
Food Standards Code	Food Standards Australia New Zealand
Hazardous Substances & New Organisms Act HSNO Regulations	Ministry for the Environment, Environmental Risk Management Authority, Territorial Authorities
Weights & Measures Act Weights & Measures Regulations	Ministry of Consumer Affairs

MARKETING & PROMOTIONS	Jurisdiction
Code for Liquor Advertising	Advertising Standards Authority
Code for Naming, Labelling, Packaging & Promotion of Liquor	Advertising Standards Authority
Food Act	Ministry of Health, Food Safety Authority NZ, Local health authorities
Fair Trading Act (see also: Consumer Guarantees Act)	Ministry of Consumer Affairs, Commerce Commission
Gambling Act Gambling (Prohibited Property) Regulations	Department of Internal Affairs
Major Events Management Act	Ministry of Economic Development
Privacy Act	Privacy Commission
Unsolicited Electronic Messages Act	Department of Internal Affairs

SALES	Jurisdiction
Consumer Guarantees Act	Ministry of Consumer Affairs
Food Safety Regulations	NZ Food Safety Authority
Food Hygiene Regulations	Ministry of Health, Food Safety Authority NZ, Local health authorities
Sale of Liquor Act	Ministry of Justice, Liquor Licensing Authority, Territorial Authorities, NZ Police

